



# CRIMINAL TRIALS

## IN THE

STATE OF TEXAS

vs.

JAMES EARL RAY

Defendant

Case No. 100-10000-00000

## STATE OF TEXAS

vs.

JAMES EARL RAY

Defendant





# CRIMINAL TRIALS



## IN SCOTLAND,

FROM A.D. M.CCCC.LXXXVIII TO A.D. M.DC.XXIV,

EMBRACING THE ENTIRE

REIGNS OF JAMES IV. AND V., MARY QUEEN OF SCOTS,  
AND JAMES VI.

COMPILED FROM THE ORIGINAL RECORDS AND MSS.

WITH

HISTORICAL NOTES AND ILLUSTRATIONS,

BY

ROBERT PITCAIRN, ESQ.

WRITER TO HIS MAJESTY'S SIGNET, F.S.A. SCOT. AND HON. F.S.A. PERTH, &c.

VOLUME THIRD.

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TO  
THE HON. DAVID HUME,  
ONE OF THE BARONS OF THE COURT OF EXCHEQUER, IN SCOTLAND.  
LATE  
PROFESSOR OF SCOTS LAW,  
IN THE UNIVERSITY OF EDINBURGH,  
AND  
AUTHOR OF COMMENTARIES ON THE CRIMINAL LAW, &c. &c.  
THIS THIRD VOLUME  
OF A COLLECTION OF THE MOST ANCIENT TRIALS, NOW ON RECORD.  
BEFORE THE  
HIGH COURT OF JUSTICIARY,  
IS, WITH EVERY SENTIMENT OF ESTEEM AND RESPECT,  
DEDICATED  
BY  
THE EDITOR.





CRIMINAL TRIALS  
AND OTHER PROCEEDINGS BEFORE THE  
HIGH COURT OF JUSTICIARY.

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[*Sir Williame Heart, Justice-Depute.*]

**Treasonable Fire-raising — Cruel Oppression — Treason — Break-  
ing Ward out of the Castles of Blackness and Edinburgh.**

[THE almost incredible wickedness and atrocious cruelty of SIR JAMES MAKONEILL (MACDONALD), the individual whose Trial follows, and the horrible facts which the reader will find therein disclosed, afford a lamentable picture of the barbarous state of manners prevalent in the Western Islands of Scotland, even at so comparatively recent a period as the reign of King James VI. Did we not know that such outrageous proceedings were but too common in Scotland at this melancholy period, and especially in the Highlands and Islands, which were then far removed from the feeble arm of the Law, *Sir James's* misdeeds would hold a most conspicuous place in the dark catalogue of crimes. Without entering into any narrative of similar acts of violence and bloodshed, but merely to shew that *Makoneill* was not a solitary instance of the perpetration of such execrable deeds, and that he was by no means unworthy of his descent and kindred, the reader need only refer to a previous portion of this Collection,<sup>1</sup> where a few of the acts of *Angus Makoneill of Dinnievaig*, his father, and of *Maclane of Dowart*, his maternal uncle, are rehearsed.

It would be rather out of place to enter here into a detail of the frightful and bloody feuds and conflicts between the contending tribes of CLANDONALD and CLANLAIN; which are fully recorded by Sir Robert Gordon of Gordonstoun, in his valuable Genealogical History of the Family of Sutherland, who informs us, that these inveterate hostilities were long and fiercely 'prosecuted, to the destruction almost of both their families!'<sup>2</sup>

Of the personal history of SIR JAMES MAKONEILL little can now be collected, saving from the Books of Adjournal and of the Privy Council, and from the public transactions in the Isles, after he had effected his second escape from 'ward.' It is certain, that he could boast of a very honourable descent, being sprung from the ancient Norwegian family of the Lords of the Isles, who long maintained their independence of the Scottish Crown, and used and received the title of KINGS OF THE

<sup>1</sup> Vol. I. p. 224, Jan. 19, 1590-1.

<sup>2</sup> This is now rendered the more unnecessary, as the Editor has (since this Notice was in types) been informed by his friend, DONALD GREGORY, Esquire, one of the Secretaries to the Society of Antiquaries of Scotland, that he is now engaged in preparing, for publication, a HISTORY OF THE ISLES and adjacent HIGHLANDS, embracing a minute account of the various rebellions, feuds, and conflicts of the various families, who, after the fall of the Lords of the Isles, rendered this part of Scotland a scene of almost uninterrupted warfare and bloodshed: which Mr GREGORY purposes to compile from Original Documents, the result of a laborious investigation into the Public Records, and other genuine and authentic sources of information. The publication of Mr GREGORY'S History of the Isles, &c. will save the Editor the necessity of giving many of the Documents which he had prepared for publication, in illustration of various Trials; for they ought rather to form a part of such an historical work, which is a great desideratum, and cannot fail to be favourably received by every lover of Scottish History.

ISLES. JOHN OF YLE, or *de Insulis*, eldest son of *John Lord of the Isles*, was unquestionably the common ancestor of the *Macdonalds of Dunniveg and Glynnnes, the Marquis of Antrim*, in Ireland, &c., and predeceased his father; who, Nov. 15, 1369, gave his grandson *Angus* as a hostage to *King David II*, for his obedience, &c. Some of the descendants of this *John*, having settled in the North of Ireland, acquired by force, and afterwards maintained by violence, *the Route and the Seven Glynnnes*,<sup>1</sup> and soon distinguished themselves by their services against the Scots. *Alexander Mac-Donell* was, in 1557, for his valuable assistance, presented by *the Earl of Sussex*, Lord Lieutenant of Ireland, with a gold sword and silver-gilt spurs; and others of the family were equally active against their ancient mother country. A brother of this *Alexander*, named *Sorley-buy*,<sup>2</sup> having seated himself elsewhere, built and fortified the strong Castle of Dunluce, in the county of Antrim: and, as being of the Scottish-Irish race, was by patent, dated at Westminster, Apr. 14, 1573, created a free denizen of Ireland. Having rebelled, *Sir John Perrot*, Deputy of Ireland, took the Castle of Dunluce, with all his islands and loughs; and, next year, having sued for the protection and favour of *Queen Elizabeth*, he entered into indentures for preservation of the peace, Jun. 28, 1586. *Sorley-buy* married *Mary*, daughter to *Con O'Neill*, afterwards created Earl of Tyrone. Their eldest son, *Randal*, was created *Earl of Antrim*.

The purpose of stating this connexion is to prevent *Sir James Makconneill* of Kintyre and Knockrynsay, the Chief or eldest son of the Chief of the powerful *Clandonald* or *Clan Ian More* of Kintyre and Ilay, from being mistaken for another *Sir James Makconneill*, one of his Irish relatives (the second son of this *Sorley-buy*), who, at this period, visited Scotland, and was honourably received by the King, when he had the honour of knighthood conferred upon him. He was afterwards created a Baronet, by Privy Seal, dated Southwicke, 20 June, and by Patent, at Dublin, Nov. 30, 1627, 'as well for his service done unto him, as for his other virtues';<sup>3</sup> and was known, in Ireland, by the title of *Sir James Mac-Sorlye-Boye*. The first notice of the latter *Sir James*, which the Editor has met with, is in an Anonymous MS. History of Scotland, in the Advocates' Library, where mention is thus quaintly made of him. 'The 20 day of Aprylle, (1597,) JAMES M<sup>c</sup>ONEILL, *alias Soirllbowy*,<sup>4</sup> cam to Edr, quha wes maid kny<sup>t</sup> be his Ma<sup>y</sup>, the 24. This Schir James wes ane Scottis manne, of bluid, albeit his landis lvis in Yrland. He was ane braw manne of perfoun and behaviour, bot had nocht the Scottis toung, nor na langage bot Eirfe.' *Birrel*, in his gossiping Diary, contents himself with remarking, that 'Serlie Bui cam to the toune, ane Hyland man.' And (May 4) 'JAMES M<sup>c</sup>ONEILL, *alias Serle Bui*. The 7 day of Maii he went homeward; and, for honour of his *bonyalla*, the canons shott out of the Castell of Edinburghe.'<sup>5</sup>

With regard to *Sir James Makconneill* of Knockrynsay and Kintyre, as he lived in a district so remote from the seat of Government, and seems to have had his hands full at home, the first known mention made of him is—(Aug. 5, 1598,) 'M<sup>c</sup>LEANE was slayne be M<sup>c</sup>ONEILL,<sup>6</sup> in Ylla, he being moder-brother to the said *Schir James M<sup>c</sup>conneill*, and ane of the braw man that wes in this cuntrey, in his tyme. Thair wes slayne that day betuix thame, on bayth fydis, to the number off 150 menne.'

These few imperfect sketches prove that *Makconneill* was reckoned a personage of considerable note, even at Court, and in the Capital, previous to the King's accession to the English throne.

The next prominent circumstance in the life of *Makconneill* which can now be collected, after the

<sup>1</sup> It is worthy of remark, that, from the age of *Donald de In-ulis*, who flourished in 1449, to *Angus*, the father of *Sir James* of Knockrynsay, the lineal descendants of *John de Insulis* above noticed, resident in the Isles, are uniformly styled 'Lords of Dunnoway and Glynnis.' Whether they merely assumed the title as feudal superiors of the Irish branch, or whether they were actually the proprietors of the soil, of whom the Irish Macdonalds held, Mr Gregory will probably be enabled to explain. <sup>2</sup> The yellow-haired Somerled. B. Lat. *Sorletus*, or *Sorlie*, and in Irish and Gaelic, *Samhairle*, long a prevalent name in the family of the Isles. <sup>3</sup> *Lodge's Irish Peerage*, I. 106. <sup>4</sup> 'Surlé-Bouie' is interlined. <sup>5</sup> Anon. Hist. of Scotland, MS. Adv. Library. <sup>6</sup> 'NEIL (HECTOR) M<sup>c</sup>LANE slaine, and twentie of his narrest freindis, and his awen sone, be M<sup>c</sup>Connell; thair being at ane trust, under trust.—*Birrel*.

period of his apprehension and imprisonment, is the extraordinary attempt to escape out of Ward, from the Castle of Edinburgh,<sup>1</sup> which was so boldly planned, and so successfully accomplished by *John Lord Maxwell*. The event is thus briefly described in the above mentioned Chronicle, where the cause of Sir James Makcneill's failure is rightly attributed to the circumstance of his having been unable to extricate himself from his heavy irons, whereby he dislocated or broke his limb, in leaping over the wall. This breaking of ward forms one of the leading Articles of Dittay against Makcneill. (1607, Dec.) 'In the beginning of December, THE LORD MAXWELL, being wairded in the Castle of Edinburgh, deviseth a play<sup>2</sup> for the keepers, whereby it behoved them to runne out of the house where he lay. They lay aside their swords; Maxwell and another gentleman who came purposlie to assist him, with the advice of *Mackneill*, take their swords, cloffe them in a house, come to the Castle gate, hurt the porters, lappe the Castle-wall at the utter-gate. *Maxwell* and his friend departed. *Mackneill*, because he had the boyes<sup>3</sup> on his legges, wrested his kute<sup>4</sup> in leaping; yett he creeped to a dunghill. The crye<sup>5</sup> rising, he was diligentlie fought, found casting the muck upon himself, and was brought to the Castle agane. This fell furth in the gloming.<sup>6</sup> The rest of the Wairders were kepted the straiter. *Clofburne* was intified be thame, but refused to breake waird.'

The anonymous Chronicler, before quoted, thus narrates the proceedings which followed on the recapture of this refractory prisoner. 'Now as ye have hard befor, *Sir James M<sup>c</sup>coneill* of Kintyre, being in waird in the Castell of Edinbrughe, was, one the 13 day of Maii (1609), brocht to the tolbuyth of Edinbrughe, and thair, befor the Justice, put to the tryell of ane Assyise, for findrie poyntis of Treffoun, to witt, for Slachter, wnder trest, of sum Heland-men, in his awin hous of Kintyre; as also, for diuerse ffyris that he had raiffit, contrair the Act of Parliament; and, in speciall, for the cryme of Treffoune, in breking of the Kingis waird, and streking of his Maiesteis seruandis: And, being conuict, condemnit, as ane Tratour to his Maiefty, to haue hes heid strukin off,—bot nather the day nor please desigmit. Quhairwpon he was conwoyt bak to the Castell, to remayne during the Kingis will.' This History, unfortunately, terminates before Makcneill's final escape.

Without rehearsing the substance of the interesting ORIGINAL LETTERS of Sir James Makcneill and others, after the date of his second escape, (which at length he effected, and made a successful retreat to the Isles, and maintained himself and a considerable force which he had collected,) it is sufficient to mention, generally, that, according to Sir Robert Gordon, '*Sir James Mackonald* was thereafter, by the Earle of Argyle his meanes, wairded in the Castell of Edinburgh, and kept prisoner ther a long tyme; from whence he escaped, by the meanes and diligence of his cousen *Mackrenald*, who then fled with him into Spain;<sup>7</sup> wher they were weil interteyned. And vpon the Earle of Argyle his flight from Scotland to the King of Spain, they were both recalled home from thence by his Majestie, into England, the yeir 1620; and had there ane yeirle pension of ane thousand merks sterling; wher Sir James Mackonald remained vntil his death, which happened the yeir 1626.' The Documents given in the APPENDIX explain fully all that can now be satisfactorily ascertained, so far as is necessary to elucidate the details of this Trial. It is certain that Sir James was pensioned, and was permitted to reside, without molestation, in England; but it is not so easy to account for the extraordinary policy of the King and his advisers, not only in sparing the life of so notorious a criminal and rebel, but in giving him likewise so liberal a pension, for so many years.

The arm of Government must have been weak indeed, when, after the forfeiture of Sir James, his

<sup>1</sup> See also *Lord Maxwell's Trial*, Jun. 24, 1609, and the Appendix of Original Documents, for farther particulars of this remarkable attempt. <sup>2</sup> Sport, frolic. <sup>3</sup> A cant phrase for gyves, or heavy irons used for desperate offenders. <sup>4</sup> Sprained or dislocated his ankle. <sup>5</sup> *Spraiche*; hue and cry. <sup>6</sup> After sunset; towards nightfall.

<sup>7</sup> 'During *Sir James Mackonald* his stay in Spain, his brother ANGUS MACKONALD (*Angus Oig*), standing out against the Earle of Argyle, was trained into Edinburgh by the Lord Ochiltree and the Campbells, vpon promise to saiff his lyff: And the Castell of Dounnivaig was randered vnto them, vpon the same termes. Nevertheless, the said Angus was executed, and put to death, at his coming to Edinburgh.'—*Hist. of Earls of Sutherland*, p. 239. See also this Collection, Jul. 3, 1615.



brother *Angus Oig* should have been able, in defiance of the various Royal Lieutenants sent to reduce him to obedience, to maintain the Castle of Dunnievaig, until 1615! The same barbarous policy which Argyle adopted in reference to the MacGregors, was resorted to with Angus Oig; who, under promise of safety, was trained to Edinburgh,—also by the Campbells, his feudal enemies; who had long been eagerly soliciting, and, by their treacherous conduct, finally obtained, a grant of the ancient inheritance of the Macdonalds,—and executed for Treason!

Sir James Balfour of Kinnaird and Denmylne has fortunately preserved a body of original and authentic information, relative to the state of the Western Islands, in his extensive and truly valuable MS. Collections,<sup>1</sup> which the Editor shall have frequent occasion to refer to, in the course of this Work. A selection from these Original Papers, given from time to time, will better, and much more forcibly, illustrate the causes and effects of those various commotions in 'THE ISLES,' which excited such lively interest during King James VI's reign, than any detailed Narrative, which, owing to the nature of this Collection, must necessarily be brief.

After considerable research, the Editor has the satisfaction of being enabled to append to the ensuing Trial, and to that of *Angus Oig*, a number of valuable Letters and Papers, taken from the Originals still extant amongst the Records of the Privy Council of Scotland, and in the Advocates' Library. These Documents will be found of considerable importance, as not only affording satisfactory elucidation of points connected with Sir James Makconell's Trial, but as supplying much curious information relative to the state of the Western Islands, during that unhappy period.

The History of Scotland, so far as concerns the various Expeditions against the Islesmen, which were fitted out at the public expense, as well as the numerous feuds and conflicts between contending Chieftains and Clans, is necessarily meagre and unsatisfactory; and, as is well known to those who have attempted such investigations, it is extremely difficult to obtain authentic information on the subject.<sup>2</sup>

It may, however, be proper to remark here, generally, that, owing to the inaccessible nature of their country, and the facilities which the natives possessed for carrying on a most harassing warfare against any invaders, however well appointed and disciplined these might be, the most vigorous steps taken by the ablest Royal Lieutenants or Commanders ever sent to quell the Islesmen, frequently proved abortive or nugatory. At other times, the natives contrived to protract the warfare, without coming to decided hostilities, in order that the season might elapse without any considerable advantages being gained by their enemies; and then, they had the whole winter and spring to repair their losses, and to arrange for a more vigorous resistance, should a landing be effected, during the next summer. On almost every such occasion, the largest expeditions ever fitted out by the Privy Council of Scotland, even when assisted by English vessels of war, (after King James had succeeded to the throne of England,) were baffled by the ingenuity and military skill of this handful of hardy and active Islesmen. Some of the Royal Lieutenants appear to have been furnished with large complements of troops; but this very circumstance, formidable as it might otherwise appear, frequently tended to their discomfiture. The castles of the Island Chiefs were usually places of great strength; and, on such occasions, were well victualled; and besides, many of them were, by nature, situated where the clumsy battering-trains then in use could not be brought to bear upon them. The setting fire to the wretched huts of the natives, and laying waste the country, was attended with comparatively little loss to them. Indeed, this was a measure often resorted to, on emergencies, by *themselves*; for it deprived the more effeminate Lowland troops of that shelter which was absolutely necessary for their health.

From the hour of their disembarking, the Royal troops knew no repose; and they suffered the most dreadful privations from cold, famine, incessant watching, and fatigue; for the Islanders, besides their

<sup>1</sup> Preserved in the Library of the Faculty of Advocates, Edinburgh.      <sup>2</sup> Mr GREGORY's Historical enquiries must throw much light on every point connected with the Isles and adjacent Highlands; and the authentic sources from which his materials are derived, must stamp the highest value on the work he has undertaken.

usual annoyances, harassed them chiefly during the night, by making continual attacks and skirmishes, setting fire to their huts, tents, &c. Besides all these hardships, owing to the tempestuous seas and the imperfect state of navigation at the period, the invaders were frequently cut off from their supplies for a long time. On the other hand, the vigilant Islanders, when they happened to be very hard pressed by a determined pursuit and onset, merely flitted from one Island to another, in their *curraghs* or light boats, which they easily carried with them over land; and, almost before their enemies had prepared to rest from their fatigues, they were surprised and attacked during the night.

The chief cause of the numerous successes gained by the Islanders over their invaders seems to have arisen from the minute knowledge which they possessed of the fastnesses of the country, and their determination to avoid a general engagement. A common *ruse de guerre* was, for a party of active men to make a bold attack on the encampment, as if to carry off plunder, &c., at a time when the Royal troops were unprepared; and when pursued, they gradually fell back on the hilly ground, so as to lead their invaders into ambushes, which were frequently formed not far from the tents. In this way great numbers fell 'in detail.' When the King's soldiers endeavoured to penetrate into the country, in pursuit of the enemy, they appeared to meet with little actual resistance, but were artfully decoyed farther and farther, by the occasional appearance of numbers of the Islesmen, as if in full retreat. The Royal troops, as soon as they were considered to be fatigued with the day's march, were, in their turn, severely galled, and the stragglers systematically picked off. Vigorous attacks were also occasionally made on the main body; and, on their finally returning to the tents, they found their guards killed, and the whole encampment plundered and destroyed by fire!

Thus, for want of a substantial enemy wherewith to contend, each campaign was, of necessity, terminated before any decisive blow could be struck; and while the Royal troops were greatly thinned in their numbers, by fatigue and famine, as well as by the ceaseless assaults of their enemies, the hardy Islesmen, trained to hardships, and inured to almost daily privations from their infancy, thought little of their toils and dangers. Indeed, they were often enriched by considerable booty, carried off from the enemies' camps; and, in reality, they almost always triumphed over their formidable, numerous, and well-disciplined foes, by stratagem, and the skilful employment of the most approved tactics then known in Highland warfare.]

May 13, 1609.—SIR JAMES MAKONEILL of Knokrynfay, kny<sup>t</sup>.<sup>1</sup>

Dilaitit of airt and pairt of the treffonable Raifeing of ffyre and burning of the hous of Askomell in Kyntyre, in the moneth of Januare, I<sup>m</sup>.V<sup>c</sup>.lxxxxvij yeiris; and vtheris treffonabill crymes, contenit in his DITTAY vnderwrittin.

SIR JAMES MAKONEILL of Knokrynfay, kny<sup>t</sup>, ze ar indyttit and accuset: Forsamekill as, frome your verrie youthe, ze, being tranet vp in all maner of crewall barbaritie and wiketnes, and following the pernitiuous exampill of your godles parentis, kynsmen and cuntrie people, haifing committed infinit Opprefiones and violences aganis sic persones as ze millykit, in þe cuntreyis of Kyn-tyre, Ila, and vtheris Hielandis Iles of this Kingdome, to the heich offence of God, displefour of the Kingis Maieftie, contempt of his authoritie, and violatioun of his Lawis: For forder manifestatioun of your extream and maift vnnaturall mischancie,<sup>2</sup> vnderftanding þat þe fones of þe vmq<sup>le</sup> Tutour of Loupe war in your faperis hous of Askomell, in Kyntyre, and that the Laird of Loupe (quho

<sup>1</sup> See Jul. 3, 1615, &c.

<sup>2</sup> Recklessness, wickedness. Old Fr. *meschanceté*.

had flane 3our fader<sup>1</sup>) was verrie defyrous to haif pair lyves ; 3e, accompaneit with 3our broper, Angus Oig, and the said Laird of Loupe, with tua or thre hundredreth barbarus, wikked and bludie Hieland-men, foirneris, and avowed maliefactouris, all bodin in feir of weir, with hagbutis, pistolettis and vtheris forbidden wappones, vpone the . . .<sup>2</sup> day of Januar (fyftene dayis or pairby eftir 3ule) in pe 3eir of God, I<sup>m</sup>.V<sup>c</sup>. fourfcoir fevintene 3eiris, (1597) come in the nycht to the said hous of Askomell, quhair pe said Tutour of Loupis fones war, takand pe nychtis rest, lipning for no trubill, danger or invafioune to haif bene maid be ony man aganis pame ; and invironed pe famyn, in all fydis, with grit numberis of 3our airmet men ; and about pe brek of day, calling in to theas who war within, to rander pe hous and pame felfis to 3ow, thay, for feir of pair lyves and of pe mercieles crewaltie of 3ow and 3our bludie affifteris, refuifeing to rander ; albeit 3e knew that Angus M<sup>c</sup>oneill,<sup>3</sup> 3our fafer, was within the hous, with whome 3e had privat and freindlie meiting and conference that fame nycht, and had pairtit frome him in sic professioun of love and naturall deutie and reuerence, as 3e had presentit and gevin to him ane pair of pistolettis : NEUERPELES, casting of all bandis and respectis of conscience, honestie, and of nature, to 3our fafer, and to 3our mofer Fynwall Nikclane,<sup>4</sup> quhome 3e knew to be also within pe said hous, 3e godleslie, barbaruslie, viprouslie and trefsonabillie, be 3our self and 3our complices, in 3our name, of 3our caufing, command, affiftance and rathabitoun, fet ffyre in all pe four coirneris of pe said hous ; quhairby 3our saidis parentis, and hail remanent perfonas being within pe said hous, being brocht at peverrie instant to extreme danger of pair lyves, and 3our mofer crying out to 3ow, ' THIEF ! Will thow burne thy mofer ? ' 3e nawayis caufit stay or flokin<sup>5</sup> pe ffyre, bot sufferit pe famyn to rage, quhill<sup>6</sup> pe ruif of pe hous began to fall ; and 3our fafer, haifing sufferit most crewall extremitie, and being brunt in thre or four pairtis of his body with pat fyre, was forcet to rusch to the dur, quhair 3e had prepairit ane number of grit treyis to be laid croce pe dur, aper to stay his furth cuming, to pe effect he nicht be brunt within the hous, or nicht be so hinderit in his furthcuming, as he fould indoutitlie fall in 3our mercieles handis : Accordring to the quhilk proiect, he, falling amangis pe said treyis, was pudillit in ane myre<sup>7</sup> be 3our servandis, in 3our ficht ; and paireftir transportit, in his fark, to Smerbie, tuo myles distant from Askomell, quhair 3e fetterit him in irnes, with ane vther

<sup>1</sup> Probably father-in-law ; the father of Margaret Campbell, his wife. <sup>2</sup> ' Threttein ' is partially erased. <sup>3</sup> Angus Macdonald of Dynnievaig and Glynnas. <sup>4</sup> *Nyc*, ' daughter,' is sometimes, in the public Records, used as a prefix to the patronymic, in the case of a female. *Mac*, ' son,' is the masculine, though, in modern practice, generally used indiscriminately for the patronymic of both sexes. *Nik* is considered to be a compound of *Nyn* and *Vic*, which is the genitive of *Mac*. *Nik* thus signifies *Daughter of the son of*, or *Grand-daughter of*. This Lady was a daughter of Maclane of Dowart. See Vol. I. 224, Jan. 9, 1590-1. <sup>5</sup> Quench, *slake*, extinguish. <sup>6</sup> Until. <sup>7</sup> Dragged through a miry puddle.

of your priffoneris, and detenit him in þat moſt vnnaturall, mercieles and miſer-  
 abill eſtair, be þe ſpace of ane quarter of ane zeir: AND ſua, be þe crewall and  
 wilfull ffyre-raifing, committit be 3ow, and vperis in 3our name, of 3our cauſing,  
 command, aſſiſtance and ratihabitoun, in maner aboue writtin, quhair of 3e war  
 and ar airt and pairt; 3e committit moſt heigh and manifeſt Treafone, and aucht  
 and fould be pwneift pairfore, accoirding to þe Lawis and practik of this realme:  
 Quhilk is notourlie knawin, and 3e can nocht deny. SECUNDLIE, 3e ar indytit  
 and accuſet, fforſamekill as his Maieſtie, (quhome þe warld knowis, and þis cun-  
 trie hes evir experimentit to be ane moſt godlie, juſt, and gracious Prince,) de-  
 teſting 3our vnnaturall crewaltie and wikketnes, haifing cauſit tak and apprehend  
 3ow, and commit 3ow to waird in þe Caſtell of Blaknes, for þe ſaid treſſonable  
 cryme of ffyre-raifing, committit be 3ow at þe tyme and in maner foirſaid, and  
 many vtheris 3our haynous offences and crymes, 3e, in the moneth of . . . . ,  
 or pairby, þe zeir of God 1604 zeiris, moſt treſſonabillie interpryſet, be þe aſſiſt-  
 ance of ſum of 3our auld complices, to haif treſſonabillie forcet þe ſaid Caſtell of  
 Blaknes: Quhilk purpois being diſcloſet and diſapointit, and 3e, for 3our moir  
 ſaif keeping, being tranſportit to þe Caſtell of Edinburgh, 3e pair lykwayis inter-  
 pryſet, in the moneth of . . . . , the zeir of God I<sup>m</sup>.Vj<sup>c</sup>. and ſax zeiris, and pre-  
 pared meanis to haif brokin 3our waird: And being alſo diſapointit of that at-  
 tempt, 3e war þairin detenit in irnes, till at laſt, in the monethis of Nouember  
 and December, the zeir of God 1607 zeiris, 3e treſſonabillie conſultit, devyſet,  
 reſoluet, and concludit with Johnne Lord Maxwall, and Robert Maxwall callit  
 of þe Tour, being bothe his Maieſteis Wardouris,<sup>1</sup> fforceable, violentlie and treſ-  
 ſonabillie to force his Maieſteis Caſtell of Edinburgh, and brek waird furth þair-  
 of; conforme to þe quhilk reſolution, 3e and 3our ſaidis complices, vpone þe  
 . . . . day of December, the zeir of God I<sup>m</sup>.Vj<sup>c</sup>. and ſevin zeiris, haveing pre-  
 pairit all thingis neceſſar for executioun of 3our devillifch proiect, be ſubteill  
 meanis, maid 3our ſelffis maifteris of 3our keiperis wapones; and than ruſching  
 furth of þe chalmer, and loking þame in within þe ſame, quhairby thay fould  
 naper be able to ſtay 3our purpois, nor to diſcouer 3ow, 3e come to þe Inner-3et  
 of the ſaid Caſtell, quhair, being accompanyeit with þe ſaid Lord Maxwall and  
 Robert Maxwall, with drawin ſuordis in 3our handis, 3e treſſonabillie invaidit  
 Alexander Struþeris,<sup>2</sup> keiper of þe ſaid 3ett, for his ſlauchter; and becaus he,  
 accoirding to his deutie, reſiſted 3ow in 3our ſaid treſſonabillie interpryſe, 3e gaif  
 him dyuerſe grit and dangerous woundis in his heid and airme, to the grit effu-  
 fioun of his bluid and danger of his lyfe; and haifing left him lying for deid, 3e  
 and 3our ſaid complices forceable and treſſonable opnit þe ſaid Inner-3et, quhair

<sup>1</sup> Prisoners, persons detained in ward or captivity; not *Warders*, in the English sense of the word.  
<sup>2</sup> Struthers.

3e lykwayis vnhoneftlie, crewallie, and treffonabillie hurt and woundit Margaret Phillope, wyfe to the faid Alexander, in þe heid, with 3our fuordis, to þe grit effufioun of hir bluid, and left hir alfo lying for deid : And then, haifing no forder refiftance, 3e 3eid<sup>1</sup> forwartis to þe Myd-3et of the faid Caftell ; and þair 3e and þe faid Lord Maxwell treffonabillie invaidit Archibald Cunninghame, Maifter-porter of þe faid Caftell, for his flaughter ; and becaus he wald nocht delyuer to 3ow þe keyis of þe faid 3et, 3e gaif him ane grit and dangerus ftraik, in þe left airme ; be þe paine quhairof, and abundance of þe bluid rynnning frome him, he being almoft in found,<sup>2</sup> 3e reft the keyis frome him, and treffonabillie forcet þe faid 3et, and paft furth pairat ; and than going to þe Bak-wall, 3e and 3our faidis complices lap ouer þe fame ; and þairby treffonablie brak þe faid waird, and fled to haif efcaiped ; quhill<sup>3</sup> 3e, being followit be þe Conftable of þe faid Caftell, and vperis, his Maieftis guid and faithfull fubiectis, 3e war tane and brocht bak to þe faid Caftell. **QUHILKIS** treffonabill crymes war moft wicketlie and contemptiouflic committit be 3ow and 3our faidis complices ; and 3e war and ar airt and pairt pairof : And þairfoir aucht and fould be pwneifchet be tynfall and fforfaltour of 3our lyfe, landis and guidis ; accoirding to þe lawis and practik of þis realme.

**THE** faid Sir James, eftir reding of the faid Dittay, produceit certane Articles ; togidder with ane Instrument, of the dait of thir presentis, quhair Margaret Campbell, his fpous, paft to Mr Johnne Ruffell, Aduocat, and presentit him the Counfallis Warrant to compeir in his defence ; quha refuifit to compeir, as the Instrument beris : And als produceit the Lordis of Secreit Counfall Warrant and delyuerance, quhair thay grant Licence to procuratouris to compeir. **Quhilkis** being red, the Aduocat tuik instrumentis thairvpoun, and fpeciallie, vpoun the productionun of the Warrant gewin be the Lordis of Secreit Counfall to Aduocattis to compeir.—The Aduocat produceit ane Act of Counfall, for his Warrant to infift in perfuit of Sir James M<sup>c</sup>connell.

Mr Johnne Ruffell, Aduocat, compeirand judiciallie, in prefens of the Juftice, declairit he wald nocht compeir in defence of the pannell, without his Maieftis fpecial Warrant and Commiffioun, commanding him to compeir.<sup>4</sup>

**THE** Juftice declairit and anfuerit to the faid Mr Johnne, that gif he wald compeir ; bayth the Act of Parliament gevis him Licence, and the Counfall hes gevin him ane particular Warrant for his compeirance : And thairfoir, gif he

<sup>1</sup> Went.      <sup>2</sup> In a swoon or fainting-fit.      <sup>3</sup> Until.      <sup>4</sup> This refusal does not seem to have proceeded from personal fear of the consequences of undertaking this defence ; for in numerous instances, this learned man undertook as desperate cases ; and in the present instance, he had a special Licence. It must have proceeded from the utter hopelessness of Makconell's defence ; and the detestation naturally felt at the almost unparalleled cruelties committed by this ferocious barbarian. He absolutely refused to appear, unless *commanded* by his Majesty.

will nocht compeir,—delay nocht the Jugement ony langer.—The said Mr Johnne refuifet altogidder to compeir.

Quhilk Dittay, eftir reiding thair of oppinlie in Judgement, the Justice fand relevant : And thairfoir referrit the famyn to the knowlege of ane Affyfe, of the perfones following.

## ASSISA.

Andro Lord Stewart of Vchiltre,	Rob <sup>t</sup> Chennen of Chennentoun,	W <sup>m</sup> Sinclair of May, younger,
The Laird of Drumlanerig, elder,	Dauid Arnote of Chapell,	Mr Frances Bothuell, brother to
Sir James Douglas, kny <sup>t</sup> ,	James Tennent of Lennox,	my Lord Halyrudhous,
Sir James Cunninghame of	(Linhoufe,) Willame Trumbill of Airdrie,	
Glengarnock,	Thomas Sibbald, Tutour of	Johnne Johnneftoun, Bailzie of
Mr Robert Fawfyde, elder, of	Rankelour,	the Watter of Leith,
that Ilk,	Sir James Balfoure, brother to	Johnne Achiefoun, portioner of
Laurence Gordoun of Glenluce,	my Lord of Burlie,	Innerask.

The said Sir James produceit to the Affyfe ane Warrant, fufcryuit be his Maieftie, allowing<sup>1</sup> the taking of his father Angus M<sup>c</sup>coneill, the maner, forme, and circumftances done thairin ; quhilk is of the dait, att ffalkland, the aucht day of Auguft 1598 : Quhilk he tuik vp agane, and wald not vfe.

It was allegeit (by the pannell,) that ony verificatioun that is producet of Depofitiounis, tane be my Lord of Ergyll, can nocht be availzeable ; in respect my Lord Ergyll hes mellit with his blude and leving.

Our said fouerane lordis Aduocat, for verificatioun of the said Dittay, producet to the saidis perfones of Affyfe, Angus M<sup>c</sup>coneill of Dynnievaig, father to the said Sir James, and Fynwall Nickclane, his mother, thair Depofitiones ; togidder with his awin Depofitiones ; made be thame, in prefens of the Lordis of his hienes Counfall ; for verifeng that article and poynt of Dittay, anent the raifeing of the ffyre, and burning of the hous of Askomell. And ficlyk, for verificatioun of the laft article of Dittay, repeittit the said Sir James awin Judicial Confefioun, maid be him in the said Justice and Affyfouris prefence ; confefing the breking of the said waird of the Castell of Edinburgh : And als produceit, for verificatioun thair of, the saidis Archibald Cunninghame, Maifter-porter, and Alexander Strutheris, thair Depofitiones maid and fufcryuit be thame, in prefens of the saidis Lordis of Counfall ; quhilkis tua Depofitiones was ratifeit and approvin, in Judgement, be the saidis Archibald and Alexander, in prefens of the said Sir James : Quhilkis our fouerane lordis Aduocat alfo repeitit. And in respect thair of, proteftit for Wilfull Errour, in cais the saidis perfones of Affyfe Clange or Acquit him of the saidis crymes.

VERDICT. The Affyfe, be the mouth of the said Andro Lord Stewart of

<sup>1</sup> Sanctioning, permitting ; not *admitting* or *confessing*, as the word usually fignified, in ancient legal pleadings.

Vchiltrie, all in ane voce, ffind, pronuncet and declarit the said SIR JAMES M<sup>c</sup>ONEILL of Knokrynfay, knycht, to be Giltie and convict of airt and pairt of the Raifeing of ffyre in the hous of Askomell and burning of the famyn, accoirding to his Dittay, in all poyntis; cleirlie verifeit to thame be his awin Depositiones, and vtheris probationes producet in proces. AND lykwayis, the saidis perfones of Affyfe, all in ane voce, ffind, pronuncet and declairit the said Sir James to be Giltie, culpable and convict of the Breking of his Maiefteis waird of the Castell of Edinburgh: And of airt and pairt of the forceing of the zettis of the said waird: And of airt and pairt of Hurting and Wounding of Archibald Cunninghame, Maifter-porter, Alexander Strutheris and Margaret Phillope, his fpous, ordiner fervandis and porteris of the said Castell.

SENTENCE. To be tane to the place of his Executioun, and thair to be demanit and execute as ane tratour; and his heid to be ftrukkin frome his body;<sup>1</sup> and all his landis, heritages, barroneis, takis, fteidingis, rowmes, poffeffiones, coirnes, cattell, inficht pleniffing and annuelrentis, guidis and geir pertening to him, to be fforfaltit, efcheit and inbrocht to our fouerane lordis vfe: as convict and culpable of the saidis crymes.

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#### APPENDIX OF ORIGINAL PAPERS.<sup>2</sup>

[THE following Documents are carefully taken from the Originals, which are preserved in Sir James Balfour's Collection of MSS. Advocates' Library. Had the Editor been earlier informed of Mr Gregory's proposed History of the Isles, &c. he would have left it to that gentleman to give the substance of them. It was, however, too late to cancel this Appendix; but indeed, this is the less to be regretted, as it is believed that Mr Gregory merely intends to give the spirit of such Papers as the present, and to incorporate the information conveyed, in the body of his work; which is all that is necessary for fuch historical purposes.]

##### I. DEPOSITION of *Sir James Makconeill*.<sup>3</sup>

AT the Castell of Edinburgh, the xv day of Januare, 1608, in prefence of my Lord Aduocat, and Mr William Hairt, Justice depute, and Sir Johnne Arnote, Thefaurare depute.

SIR JAMES M<sup>c</sup>ONEILL, knycht, fworne and demandit, How lang is it fen he hes bene detenit and haldin prifoner? Deponis, that he wes tane be his fader, in Kintyre, vpoun informatioun maid to his fader, that he wes to tak some courfe aganis him; and efter he had remanit ane certane fpace with his fader, he wes delyuerit be his fader to *Auchinbrek*,<sup>4</sup> be whome he wes detenit ane certane fpace; and

<sup>1</sup> It has already been stated, in the Notice prefixed to this Trial, that Sir James Makconeill was not executed; but that he again effected his escape, went to Spain, and returned in the reign of King Charles I, from whom he received a large pension, and died a natural death, in England, in 1626.

<sup>2</sup> The remaining Papers fall more properly under the proceedings against *Angus Oig*, Jul. 3, 1615, where they shall be inserted.

<sup>3</sup> From the Original, preserved among the Warrants of the Privy Council, General Register House.

<sup>4</sup> Sir Dougald Campbell.

thairefter delynerit to *the Erll of Ergyll*, who keipit him whill he wes chargeit be THE COUNSAILL to exhibite him; quhilk he did at Sanct Johnnestoun: ffra that, he wes fend to the Castell of Blaknes. Demandit, yf at ony tyme he had tane his fader? Deponis, that he tuke him in Kintyre, in ane houfe callit *Afkomilne*, the deponer haueing his bruther, young Angus, (and) a cumpany of the gentilmen of Kintyre with him. And that this wes about Candilmes, aucht yeir fyne, or thairby. Denyis that he rased ony ffyre in the houfe; and depones, that he hes Warrant of HES MAJESTIE, allowing<sup>1</sup> the taking of his fader as gude seruice.

Anent the interprise of his Breking of Warde furth of the Castle of Edinburgh, and demandit yf he wes the first mover to THE LORD MAXUELL, or yf *the Lord Maxwell* wes the mover thairof to him? Deponis, that vpoun Sunday at even, afoir the interprise, *Robert Maxwell of Dynwiddie* come to the deponer, and tauld him, that within few dayis he fould heir the best newis that he had hard this lang tyme bigane; and the deponer anfuert, that he wald fane heir gude newis. And the deponer insifting with Robert, diuers times thairefter, to haif vnderstand quhat gude newis these wes? Robert evir conceillit the mater, whill<sup>2</sup> Fryday thairefter, quhilk wes the day that thair interpryse wes putt in executioun. And grantis, that the said Robert cam to the deponer, about tua efter none, and putt him in remembrance of the wordis that he had spoken to him vpoun the Sunday preceding; and tauld him, that that nyght *the Lord Maxwell* wes to brek warde, and wald tak the deponer with him; and craved the deponeris opinioun, quhat he thocht of that mater? To whome it wes anfuert, be the deponer, that the executioun of that interprise wes fa suddanelie to be done, that the deponer could gif no awife thairin; and he thocht that *the Lord Maxwell* fould haif communicat that mater to him selff, yf he wald haif had him to be ane affister thairin. And depones, that schortlie thairefter, about foure efter none, *the Lord Maxwell* come in to the deponer, fatt doun besyde him, drank tua pypis of tabaca,<sup>3</sup> and spak no thing of his interprise to the deponer, quhill the deponer past to the windo, to haif maid watter. *The Lord Maxwell* come to him to the windo, and tauld him, that he wes resolued that nyght to eschape and brek warde; and desyrit the deponer to prepar him to go with him; for he had men-attending vpoun the yettis, to hald them oppin, and had horfes awaiting vpoun the feildis to carry thame away.<sup>4</sup> And the deponer anfuert to *the Lord Maxwell*, that fik ane interprise required goode advise and deliberatioun; and desirit him not to be suddane, bot to be weill advist and resolued thairin. To whome the Lord replyis, 'Tushe, man! sic interpryses ar nocht effectuat with deliberationis and advifments, bot with suddane resolutionis!' And then the Lord caufit fetche in tua quartis of wyne; and, haueing maid some confaitis of pastyme in the houfe, he desirit *William Simfone*, ane of the deponeris keiparis, to gif him his sward; whilk he refuseing to rander, he shored the said *William*, held ane drawin quinzear quhilk he tuke fra *William Maxwell*, avowing to haif his lyfe, yf he randerit nocht the sward; and sua, violentlie tuke the sward fra *Simfone*: Tuk ane vther sward fra *James Stewart*, ane vther of the deponeris keiparis; and tuke ane vther sward fra *William Arme strange of the Gyngellis*: And haueing the swardis, he then tauld planelie, that he wald brek warde; and sayd to *Young Clofburne*, 'Yee ar heir for a civile caus, yf it pleis yow to go, yee salbe welcome!' And *Clofburne* desifting, *the Lord Maxwell*, with *Robert of Dynwiddie*, *William of Kirkhous*, and the deponer, past out of the chalmer, and come to the yettis; quhair sum of the portaris wer hurte: Bot denyis that he hurte ony of thame him self. And sua, haueing forceit the yettis, they lap ouer the wall. Demandit yff *William Maxwell* delt with the deponer in this interprise? Deponis, vpoun his aithe, that he nevir delt with the deponer in that mater; and that he knawis no thing of *William*es doing; bot that he oppynnit the Nether-yett of the turnepyke, quhare the deponeris chalmer is.

(Sic subscribitur) S<sup>r</sup> J. MAKDONALL. S<sup>r</sup> T. HAMILTON. S<sup>r</sup> J. ARNOTE. M<sup>r</sup> W<sup>m</sup> HEART.

<sup>1</sup> Admitting, approving of, acknowledging.   <sup>2</sup> Until.   <sup>3</sup> This was a phrase in common use, shortly after the introduction of tobacco into Scotland. The Editor has seen the term 'quaff' similarly used, which may be the origin of 'whiff,' a vulgar phrase now in use.   <sup>4</sup> See the particulars of this desperate and admirably executed escape, in the Trial of John, Lord Maxwell, Jun. 24, 1609.



II. LETTER, *Sir James Mackoneill to the Duke of Lennox.*<sup>1</sup>

PLEIS YOUR GRACE,

I AM in verie greit misery, as this beirar can tell. Your grace knawis I hawe depended vpon your favor, befor I was put to this miserie; and now, I wil befeik your grace to gett his Ma<sup>tie</sup> power to taik ordour with me, at your graceis cuming heir. I am willing to axceptt quhatt his Ma<sup>te</sup> wil bestow on me, ather in my awin kyndly roume, or in oney vther pairtt of his Kingdwmes; and fall find causione for my obedience; quilk I will befeik your grace to report to his Ma<sup>te</sup>, and patt your grace will gett me patt favor as to be bainifhid, rather or I be in this miserie. As for my bastard brother, quha hes brokin your graceis ward, iff your grace taik ane doing for me, and taik me in your awin hand, I fall find pe way he falbe putt in your graceis reverance, as he was befor. Befeiking your grace to remember my miserie, and gett me libertie or banifmentt. I rest on your graceis favorable doing, quhatt I vrett anentt Archibald, Your grace will hald it quyett till your grace cum hame.

FROM ED<sup>a</sup> CASTELL,  
27 Junij, 1607.

Your graces serwand duiring lyfe,

S<sup>a</sup> J. MACDONALL.

To my very gud Lord, my Lord DUIK OF LENNOX.

III. LETTER, *Sir James Makoneill to the King.*

MY GRACIOUS SOVERAN,

MAY it pleis your Maieftie to apardoune my importunitie, being inforfid pairto, throw the grett misery q<sup>ik</sup> I aknawleg to hawe maift justly deseruid, for my bypast offences towardis God and your Ma<sup>tie</sup>: Zett my foueran, your Ma<sup>tie</sup> hes graciously forgiuein gretter offenceis; zea, the gretteft Trefon zatt euer was deuyfid aganst aney Prence, zour hienes hes forgiuein. For Chryftis caus, Sir, ance forgiue me my bypast offenceis, and with Godis grace I fall euer behawe my selff deutiffully heirefter; and fall find causione to obey quhatt your Ma<sup>tie</sup> will injune<sup>2</sup> to me; befeiking pat pe Declaratioun of your Ma<sup>ties</sup> will may be sent to pe Confall; seing, without pe same I can gett na ansuer of pair Lordschipis. Humblie kissing your Ma<sup>tie</sup> handis, I commit your Ma<sup>te</sup> ewer to Godis protectione.

Your Maiefties maift humble and pair subiect

FROM EDINBRUCHE CASTELL,  
28 of Junj (1607.)

to be imployid to dethe,

S<sup>a</sup> J. MAKDONALL.

TO THE KING HIS MAIST EXCELLENT MAIESTIE.

IV. LETTER, *Sir James Makoneill to the Earl of Caithnes.*<sup>3</sup>

MY VERIE HONOURABLE GUD (LORD,)

FEIRING that your lo., to whose fauor I am so much obifhid,<sup>4</sup> fuld not mistaik pe caus of this my last offence, in braicking of Ward, I hawe beine this<sup>5</sup> bauld to vrytt to your lo. the only motion quhilk, I protest to God, maid me to braik Ward. It is trew, my lord, patt *the Laird of Calder* said to honest men, wha can beir record, patt how foever my pairt was anent Donnoveg, zett he had ane Warrant patt be HIS MA<sup>ties</sup> hand, quhilkis pe *Confall* saw nott, to command pe *Confall*, presently efter pe ficht of patt Warrant, to putt me to exsecutioun; and how lytill refone I had to trust my lyfe to *Calder*, your lo. self and vthers of pe *Counfall* knawis; for, be his misreport, he did all he culd to have perallid my lyfe. And pis trewly was pe caus I fled with my avin lyfe, and for no mistrust I had in HIS MA<sup>ties</sup> clemence, or in *the Confallis* favor; nor zett, for oney feir I had off oney thing pay culd try aganes me, anentt Dunoveg; for as I said when I was in ward, I will say now; God is my vittnes, my pairtt, ever, anentt pe talking or keiping of Dunoveg aganes HIS MA<sup>ties</sup>, hes beine ever moft

<sup>1</sup> This and the following Letters are from the Originals preserved among the *Denmylne MSS.* Adv. Library. When procured from other sources, the circumstance is explained in the Notes. <sup>2</sup> Enjoin. <sup>3</sup> George, fifth Earl of Caithness. He married Jean, only daughter of George, fifth Earl of Huntley. <sup>4</sup> Obliged. <sup>5</sup> Thus.

honest and lyall;<sup>1</sup> and efter all just tryall, I will defy my onfreindis<sup>2</sup> prive<sup>3</sup> vtherwayis. And sence pe braik of Waird I maid with pe *Lord Maxwell*,<sup>4</sup> by<sup>5</sup> my expection, to pis night I brak Ward laft, be God him self, I was never privie nor a consenter to aney Platt aganes HIS MA<sup>TIES</sup> or my cuntre, I mein his MA<sup>TIES</sup> dominions. And now, seing my braik of Ward was nott, as God is my judge, for no defyre of Rebellion, nor no vther defing,<sup>6</sup> bott only for faitie of my avin puir lyfe, I will most humblé befeik your lo. speik such as is your freindis in *Confall*, patt HIS MA<sup>TIES</sup> might be moveid, nott to tak no hefte or violent curfe<sup>7</sup> aganis me, onto<sup>8</sup> the tyme thatt pair lo<sup>s</sup> will heir my Peticione. And give<sup>9</sup> your lo. will gett me pat favor that my Peticion falbe hard, and patt oney whom I fall fend with my Letters to your lo. fall nott be trubled; and I being advertesid by your lo., I will, be your lo<sup>s</sup> advyfe, do aney thing patt may best satisfe HIS MA<sup>TIES</sup> and *Confall*; my lyfe, and the lyfis of these patt helpid to saif my lyfe being faiff. So, with pe remembrance of my humble deute, I rest

Your lo<sup>s</sup> puir freind euer to serve you,

S<sup>r</sup> J. MAKDONALL.

To my verie honourable gud lord, my Lord ERLE OF CAITHNES.

V. LETTER, *Sir James Makconell to the Earl of Caithnes.*

MY VERIE HONORABLE GOOD LORD,

PLEAS your lo., the ondeserved fauour and courtesee which I refaued by your lo., in showing your felue my frend, that tyme at Court, when my onfrendes did misreporte of me to his Maieftie, makes me now this bold to befeek your lo. to continew my frend, according to my reasonable sute. And, in speciall, that your lo. will meane my caise to your frendes in Counfall; for I protest my beeng ten yeeres in warde in the Castle of Edinburgh, and the dispoing of my kyndlie landes, made me not so much to tak that haiftie resolution to esheap, as when I was assured, by his owine frendes reportes, that my lyf wes geven over in *the Larde of Caddelles* handis; who beeing, as your lo. knowes, nowife my frend, or one to trust my lyf to; alwise<sup>10</sup> now I befeek your lo., as yee shall till death have my poore service, try by the Counfall, yf vpon any conditiones, not diminishing his Maiefties comoditie,<sup>11</sup> I may have this peece of old possiounes, which is Illa, to susteane my felue and all my kinne that now folowes me; that his Maieftie may have his owine, with honour and ease, and wee to leeve in peace and offend no manne, and I, getting suretie of my lyff and of this peece land, shall find sufficient suiretie, both for my obedyance and good ordour, keeping by all my kinne and frendes. As your lo. learns in this, or can be hable to do me fauour in getting me his Maiefties peace, your lo. will aduertese me. And I befeech your lo., so far as you can, crosse *the Campbells* to gett any employmentes againes me—for they caire not how much they trouble the countree<sup>12</sup> and put his Maieftie to charges needles. As for the House of Dwnoveg, I tooke it from *Calderis* menne, in the speace of one day,<sup>13</sup>—killed parte of thame, vpon the Greene of the House,—chaifed in the rest,—tooke there watter and the two Barmkines<sup>14</sup> from tham,—and forced thame to yeeld in my will, the next morning. So I have the House, neuer to be gevin to these that is not worthie of it. But yett, his Maieftie may ever command it and my felue, I seeng how I may leeve with the assureance of my lyff and my poore frendes. So, abyding your lo. aduertement, with the remembrance of my humble seruice, I shall ever remaine,

Your lo. assured frend to serve yow,

ILA, 2 Julii.

S<sup>r</sup> J. MAKDONALL.

I BESEECH your lo. let me know how *my lord Secretar* is towards me?—Or who is most for *Calder*?—Or how he is now thoght of be HIS MA<sup>TIES</sup>?

TO THE ERLE OF CAITHNES.

<sup>1</sup> *Leal*, loyal.    <sup>2</sup> Enemies.    <sup>3</sup> Prove.    <sup>4</sup> See Lord Maxwell's Trial, Jun. 14, 1609.    <sup>5</sup> Against; contrary to.    <sup>6</sup> Design.    <sup>7</sup> Course.    <sup>8</sup> Until.    <sup>9</sup> If.    <sup>10</sup> At all events; nevertheless.    <sup>11</sup> Pecuniary interests; the King's Rental.    <sup>12</sup> Disturb the public peace.    <sup>13</sup> See p. 14, &c.    <sup>14</sup> Fr. *Barbacane*, i. e. *propugnaculum antemurale*; being the outer fortified works or ramparts of the Castle. There wer often several lines of circumvallation, to prevent surprises.

VI. LETTER, *Sir James Makconeill to the Earl of Caithnes.*

MY LORD,

GEVE *the Confall* be curius to knaw whom it was patt *Calder*<sup>1</sup> fend to, he had the Warand for taiking my lyfe. *The Pryar of Ardochattan*<sup>2</sup> and *M'kwoll*<sup>3</sup> his sone, *Allan M'dowgall* is my authours; and they will not, nor can not deny itt. Also *Calder's* avin agent, *James Movatt*, maid no secreitt pairof; for he tauld it both to *the Erle of Crawford*<sup>4</sup> and to *M'intois*.<sup>5</sup> I wald not nov, becaus I had nott ane beirar of my avin, haifart to vryt to pe *Secrettar*,<sup>6</sup> bott itt is only in your lo. and his lo. patt I trust. I know *Calder* and pe *Cambellis* wilbe buiffie to feik employment of fervice aganes me; bott the same fall nott be neidfull, for your lo. and my Lord *Secrettar* may better bring me to that quhilk falbe most to HIS MA<sup>TY</sup> commodite and pe quyetnes of pe contre, without bestoving oney chargis nor all pe *Cambellis* liveand may or can do by HIS MA<sup>TY</sup> fors, quhilk I will ever except; and honour, and respeck what your lo. wryttis to me, onles the *Confall* dereck one to me. Your lo. may fend your Letters to my lord *Tullibairne*,<sup>7</sup> to be sent be his lo. to the Officer of Lochaber, wha will fend pame to me whair ever I be. So abyding your lo. ansuer, I rest,

Your lo<sup>s</sup> ever to ferve you,

(Without date.)

S<sup>r</sup> J. MAKDONALL.

To my verie honourable gud lord, my lord ERLE OF CAITTNES.

VII. LETTER, *Sir James Makconeill to the Bishop of the Isles.*<sup>8</sup>

MY VERIE GUD LORD,

I DOUTT nott bott, or<sup>9</sup> now, your lo. hes hard of my braiking of Ward; and pe only caus quhilk maid me ventour pe fame, quhilk, as God knawis, was for no vther caus bott only for pe faifte of my lyfe, quhilk pe *Laird of Calder* said was in his will only. Allwayis,<sup>10</sup> prais to God, I am out of *Calder's* denger; and zett, geve<sup>11</sup> be oney meines I may have HIS MA<sup>TY</sup> graciuss pardon to my self and these gentill men patt asisted me, I will latt your lo. fe HIS MA<sup>TY</sup> commodite fall novayis be impaired, pe pace of pe contrie fall novayis be trublid, nor HIS MA<sup>TY</sup> putt to no chargis, be giveing employment to pe *Cambellis*, wha crawis ever to fish in drwmly<sup>12</sup> watters; and pairfoir, I pray your lo. deill with HIS MA<sup>TY</sup> and *Confall*, for a continewatioun of oney wiolent curfe<sup>13</sup> to be tane be HIS MA<sup>TY</sup> aganis me, ontill yow may gett one of your avin to cum to me; and with patt man, or with your lo. self, geve I know how to fie you, I fall fend fuch Offers as I hop fall content HIS MA<sup>TY</sup> and *Confall*. So, as my trest is and was ever in your lo., I pray you vryt to me, what I may luik for? As for pat erand of Dwnveg, God is my vittnes, I am inofent pairof; and I pray your lo. try pat erand, as geve I war in ward; and I trest ze will find my pairtt honest. So, luiking your lo. ansver, I committ you to God; and rest

Your lo<sup>s</sup> ever att command,

Junij 3.

S<sup>r</sup> J. MAKDONALL.

I PRAY your lo. gett me Lifence to fend ane man or boy with my Letters to your lo.

To my verie gud Lord, my lord BISHOP OFF THE IYLLIS AND RAPHO.

<sup>1</sup> John Campbell of Calder, or Caddell, as he was often styled.     <sup>2</sup> . . . Campbell.     <sup>3</sup> . . . M'Dougal of Dunollych, Laird of M'Dougal.

<sup>4</sup> David, eleventh Earl of Crawford.     <sup>5</sup> Sir Lauchlan MacIntosh of that ilk, whose father, Angus, had married Lady Jean Campbell, daughter of Archibald Earl of Argyle.—*Douglas*. He was heritable Steward of Lochaber, and one of the Gentlemen of the Bedchamber to Prince Charles; and married Agnes, daughter of John Grant of that ilk.     <sup>6</sup> Lord Binning, afterwards Earl of Haddington.     <sup>7</sup> William,

*second* Earl of Tullibardine, who, for his services to the King, in the affair of Gowrie's Conspiracy, Aug. 5, 1600, had the heritable Sheriffship of Perthshire. His second wife, Lady Dorothea Stewart, being eldest daughter of John, *fifth* Earl of Atholl, and the male line having become extinct, their eldest son John was created Earl of Atholl.

<sup>8</sup> From the Original, preserved among the *Denmyne MSS.* Adv. Library. Andrew Knox, Parson of Paisley, the first Protestant Bishop of the Isles, was translated to the See of Raphoe, in Ireland, but held both Bishoprics for some time. He assumed both titles.     <sup>9</sup> Ere; before.     <sup>10</sup> At all events; nevertheless.     <sup>11</sup> If.

<sup>12</sup> Who ever crave to fish in 'troubled waters.' A well-merited, though bitter, sarcasm.     <sup>13</sup> Course.

VIII. LETTER, *Sir James Makcneill to the Bishop of the Isles.*

MY VERIE GOOD LORD,

PLEIS your Lo. war not I hard your lo. was in Ireland, and could find no meanes to wreit to yow, I was not four nightes out of Edr, quhan I would have writtin to your lo. as to one quhom I haue euer found my friend. And now, my Lord, I protest, albeit I was xij zeires in waird, and all my kyndlie landis disponed to strangeres, my lyff left in his Maiefties handis, zett the same maid me not so mvche to braik ward as it did quhan I was offered be the Laird of Calderes awin freendis, quha can not deny it, that his Maieftie, be his secreit Warrant, had gevine ower my lyff in the Laird of Calderes handis. And now, my lord, I protest to God my defyre is not to rebell or truble the Esteat of the cuntrie, bot ferue his Maieftie with all humilitie, and mak my kin and freindis paceable men, iff I may haue his Ma<sup>ties</sup> pace, with the affurance of my lyff and the lyfe of my pur freendis, and some meanes to susteane ws rather nor to fors ws, for want, to opres otheres. Heirfoir I beseek your lo., feing my Race has bene tenne hundreth yeeris kyndlie Scottis men, vnder the Kinges of Scotland; and war I willing to leive vpoun ane pur pairt of that quhilkis our foirbeiraris had, and I to find gud fuirtie for all that becomes loyall subiectis to do, both for myself and my quholl kin that followes me, that 3our lo. will, as 3e euer did, interfeed for me at his Ma<sup>ties</sup> handis to sie quhat grace or fauour 3our lo. may obtain to me; and in speciall, to sie give, without diminifching his Ma<sup>ties</sup> commoditie, I may have the Iland to my self and my kin to susteine ws; wtherwayis that 3our lo. will get that fauour that no hefté curfe falbe taine againes me, be geveing employment to my onfreendis, till your lo. may have tyme first to speek with me; att quhiche tyme, albeit I gett not the Iland, zett, provyding his Maieftie will hauld it in his awin hand, I will thaw your lo. how his Ma<sup>ties</sup> commoditie heir may be increffed, and I to be satisfied, and this cuntrie to be frie of ony truble of me or my freendis.

As for this Houfe of Dunovege, I protest to God, give either his Maiefties Gaird or your lo<sup>s</sup> men war keepares of it, I wald neuer enter within it, albeit it war without keeping—bot finding in it fuche as serued them quha foght my lyf and landis, and quho crewally opprest this pur Iland in such fort, that I protest to God thair defing was rather to waift it, nor mak it able to pay his Ma<sup>ties</sup> rentes. The same maid me preferwe the hous; and albeit that Hous cost his Ma<sup>tie</sup> muche money in putting it in Calderis handis, it pleased God that, in one day (I took it), with the losé bot of one man. And now if your lo. may get me ony fauourable conditiones be his Ma<sup>tie</sup>, 3e may affuir 3our self I will give yow the Hous, provyding it be in your handis, and nane of the *Cambellis* to gett it. As your lo. does in this, or is lyk to do, adverteis me. And so, reposeing in your lo<sup>s</sup> constand freendschip, I committ your lo. to God, and restis

Your lo<sup>s</sup> ever affuired to command,S<sup>n</sup> J. MAKDONALL.

IN hope, with Goddis grace, I will geve 3our lo. zitt ane better propyne, I pray your lo. send me ane Inventare<sup>1</sup> with this bearer, for I am far from the clock.

S<sup>n</sup> J. MAKDONALL.

TO THE BISCHOP OF THE ILLIS.

IX. LETTER, *Sir James Makcneill to the Privy Counfall of Scotland.*<sup>2</sup>

MY VERIE HONOURABLE GUD LORDS,

PLEIS 3our lo<sup>s</sup>, my offence in braiking ward fuld mak me to be loth to presume to vrytt vnto 3our lo<sup>s</sup>, zett, feiring the mosioun quhilk maid me to eschep fuld be vtherwayis thocht be 3our lo<sup>s</sup> nor the trewth of my intencion, I am this<sup>3</sup> bauld to deleaite wnto 3our lo<sup>s</sup> the only caus quhilk maid me to braik ward; and this is itt. *The Laird of Calder* said to twa fewerall honest gentillmen, patt how

<sup>1</sup> This is from a copy. The word should be 'mounter,' Fr. *montre*, a watch. <sup>2</sup> In a Letter from Lord Binning to Lord Tullibardin, Jun. 13, 1615, he states that the Council would not forward such Letters to the King; and that 'so long as he remaynes within his Ma<sup>ties</sup> dominions, and hes societie and dealing with rebellis and broken men, I cannot expect that his Petitions can be received be his Ma<sup>tie</sup>, vnles he wold do such notable service aganis some principall Rebellis, as might perswade his Ma<sup>tie</sup> to think him wourthis of mercie!' <sup>3</sup> Thus.

foever my tryall past anent the erand of Dwnoveg, zett he had ane Warand, in his avin keiping, past be his MA<sup>ty</sup> quhilk pe *Confall* novayis did fie, commanding, immediatly efter the presenting pairf to putt me to exfecutione, butt<sup>1</sup> farther profes; and so, my lyfe as itt war gevin be HIS MA<sup>ty</sup> over in the hands of him wha had not only medlid with my kyndly lands, my frends lyfes, and withall pe only man who reportid warft of my self, to haue gottin my lyfe with my lands, pe only feir pairf maid me fie with my lyfe, and no desyre of Rebellion; nether aney mistrust I had of HIS MA<sup>ty</sup> clemencie, nor of your lo<sup>s</sup> favor; nether wald I braik ward for oney thing (they) culd try aganes me, anent pe erand of *Dunoveg*; for God is my vittnes I am inofent pairf. And I beseik your lo<sup>s</sup> try pe same, as giwe<sup>2</sup> I war in ward to be accusid, and I trest your lo<sup>s</sup> fall find my pairf, in all that buiffines, honest and loyall. And now I will, in all humilyté, beseik your lo<sup>s</sup> to pité my cace, and grant me patt fauor as to suffer me to send in ane humble Peticione to your lo<sup>s</sup>, be the quhilk I hop to give such satisfacion to HIS MA<sup>ty</sup> and your lo<sup>s</sup> as I may best, to satisfe his Ma<sup>tes</sup> will and your lo<sup>s</sup> in all thingis, my avin lyfe and these wha hes affistid me being faiffe. And, in pe meintyme, praye your lo<sup>s</sup> most humblé, befoir I be hard, not to wis<sup>3</sup> oney wiolent curfe aganes me, ether to putt his Ma<sup>te</sup> to exfpencheis, and me to disparatione. So, beseiking pe grett God to move HIS MA<sup>ty</sup> hartt and your lo<sup>s</sup> to pité me, according to the intencione I have to be ane peaceable man, with the affurance of my lyfe; only luiking your lo<sup>s</sup> will latt me knaw what fauor I may luik for, committing your lo<sup>s</sup> in Gods protexcione, I humbly taks my live, and rests

Your lo<sup>s</sup> humble servitour,

Junij 3.

S<sup>r</sup> J. MAKDONALL.

To my verie honourable gud Lords, my LORD CHANCELLAR of SCOTLAND, and the remenent of HIS MA<sup>ty</sup> honourable PRIVIE CONSALL.

#### X. LETTER, *Sir James Makconeill to the Earl of Crawford.*<sup>4</sup>

MY VERIE HONORABLE GUD LORD,

IT may be your lo. think it streng patt I obscurid my intencioun of braiking Ward, fra your lo., in regair of our luif and familiarité; zett I hop your lo. will excuis me. For pe reveilling pairf to your lo. nicht do you hairme, being whair ze ar, and no furtherance to my intencione. Allwayis, as God fall judge my faule, my braiking ward was nott throw aney mistrust I had in HIS MA<sup>ty</sup> clemencé, nor in the *Confalls* fauor, nor zett for feir of oney thing culd try aganes me, anent patt treson of *Dunoveg*; bott the only thing which moued me was only thatt I was credably informid, be honest men, patt *Calder* said it to (pame,) patt howsoever pe erand of *Dunoveg* zed,<sup>5</sup> he had ane Warand past be HIS MA<sup>ty</sup> patt com never in pe *Confallis* sicht, commanding to put me to exfecutione, immediatly efter pe presenting pairf. Your lo. self and *M<sup>r</sup>intois*<sup>6</sup> nicht heir *James Movat* fay pis; bott my authors ar better nor *James*. Allwayis,<sup>7</sup> as I said aft<sup>8</sup> to your lo. self, when I was in ward, I will now fay; patt, as God fall judge my faule, I was never airt nor pairt of the taking or keiping of *Dunoveg* aganes HIS MA<sup>ty</sup>, nor of no vther plaitt,<sup>9</sup> fence pe braik of ward pat I maid with pe *Lord Maxwell* till now, and give<sup>10</sup> efter such long misère of imprisonment, lose of lands, and kin, my braiking ward for pe faisté of my lyfe, be thocht be ze fenfuir of my onfrendis,<sup>11</sup> such ane offence as will not be pardonid, I most tak pacience; for I am better now, prais to God, nor<sup>12</sup> as I was; and I will, as long as I liwe, pray for HIS MA<sup>ty</sup> long and prosperus regne. Zett, seing give I be croft now, it cumis moir be my onfreinds nor be HIS MA<sup>ty</sup>, albeitt I will never preis<sup>13</sup> to liue long in HIS MA<sup>ty</sup> dominions, by<sup>14</sup> his hienes ovin will, altho I nicht; I wow to God, or<sup>15</sup> I liwe<sup>16</sup> pe contré, I, and moir nor I, fall ether lose our lyfes, or than I fall, God willing, liwe<sup>16</sup> ane remembrance to my onfreinds; I mein only fik of pe *Cambellis* as wilbe my onfreinds, patt itt falbe hard of when both they and I is deid and gone! I hop, to pair

<sup>1</sup> Without.      <sup>2</sup> If.      <sup>3</sup> Use.      <sup>4</sup> David, *eleventh* Earl of Crawford.      <sup>5</sup> Went.      <sup>6</sup> Sir Lauchlan MacIntosh of that Ilk.      <sup>7</sup> Nevertheless.      <sup>8</sup> Often-times.      <sup>9</sup> Plot.      <sup>10</sup> If.      <sup>11</sup> Enemies.   
<sup>12</sup> Than.      <sup>13</sup> Strenuously endeavour; press.      <sup>14</sup> In opposition to.      <sup>15</sup> Ere; before.      <sup>16</sup> Leave.

small commodité: Bott I had rather gett liwe<sup>1</sup> to live in pace, and find gud suirté for my obedience and gud ordour. I wish to God, with HIS MA<sup>ties</sup> contentment, 3 our lo. war ane fré man, both for your avin weill and þe weill of 3 our friendis; and seing itt lvis in your avin hand, better be fré nor liwe pair with sik crofis as I knaw men will have in patt place.<sup>2</sup> I heir maney of *the Keipers* of patt *Castell* ar putt in ward, for my braik;<sup>3</sup> bott, as God fall judge me, pair was nane of þe keipers of patt *Castell* pat ever I thocht to mak privé to my desing. I protest to God, I love þe gud *Constable* and all patt is pair. I haitt none of pame; bott I culd nott bott love my self befor. Thair is nane within patt *Castell* to whom I am adelbtet, pat salbe oney wayis intrest<sup>4</sup> be me, if God grant me HIS MA<sup>ties</sup> pace. I defyre *Petie Gilcrist* keip my stare.<sup>5</sup> Remember on our last discourse, patt same nicht I braik ward, anent *Margarett*. Sik newis as may nott be thocht offenceive, I pray your lo. vrytt to me. *My Lord Tuillibairne* and þe men of Atholl, on þat Fryday after I brak waird, perfewid me so hardly, patt I was almost tane. We lost our hors, and all our clais. His lo. maid me to gett mair speid on fuitt, in one hour, nor<sup>6</sup> I thocht to have gottin in ane 3eir, give<sup>7</sup> fik sudent medefin<sup>8</sup> had nott bein aplyid to me. Liewing<sup>9</sup> to truble your lo. with longer discurse, wishing 3ou ever all hap-pines, I rest

Your lo<sup>s</sup> avin euer to command,

S<sup>r</sup> J. MAKDONALL.

I PRAY your lo. as 3e do vther thingis, lovfe<sup>10</sup> my mvntour<sup>11</sup> fra *Pettfindie*, for 48 lib; and get my buiks fra him, and fra *Elizabeth Gib*. Sho hes twa buiks. Commend me to *Christiene*. When your lo. vrytis to me, send itt to my *Lord Tullibairne* to be sent to me. For sum of your lo<sup>s</sup> avin perticular, I wald glaidly fé your man *William Rattr*, or oney of 3ours; the erand tuichis only 3our self. To my verie honourable gud lord, my lord ERLE OF CRAWFURD.

### XI. LETTER, *Sir James Makconell to the Earl of Craufurd.*

MY VERIE HONORABLE GOOD LORD,

I WES not four nightes out of the *Castle* when I wrotte to your lo., but be not fure if your lo. hes reffaued my Letter. I have now wrotten thir few lynes, praying your lo. to remember me 3our promese and conferrence with me. As for my selue, I am well, praifed be God, and all my kyndlie men hes reffaued me most glaidlie. I will do all I can to have HIS MA<sup>ties</sup> peace, and find also good fuiretie for my obedience and yeirlie dewtie<sup>12</sup> as may suffice. And if my onefrendis crofe me, I trest in God, how so euer the mater go, to be evin with thame. I pray your lo. see if it be possible yee may gett outhir manne or boy to come speak with me, and aduertese me moir of all your avin estate and dyett, and of all such newes as occurs. Any of my bookes that your lo. can gett, send them to me, and vse your moyen to gett from the Erle of Atholl the bookes that wes tane from me at that onfett in Atholl. They gatt the thrie conversiones of England, Burnes book, and it that Phillip sett out on the controverted heades, it 3e saw Makcartney wrotte, the Mekle old Cornikle, in wrett. Ther wes other bookes that I remember not, bot your lo. may seek thame all to your selue. I pray your lo. gett me word from *Pittfindie*, and try if I will gett my mounter and chifter<sup>13</sup> to lovfe.

This wes the forme of the taking of *Duneveg*. We lay in ane buis<sup>14</sup> about the hous, till the Captane and tuelf of his best men com out. We perfewed ouer rashlie or they come far from the hous. The Captanes men fled, bot<sup>15</sup> him selue and three or foure, they wer slane. We 3eid in at the vtter *Barmkin* with the rest, but they clofed the 3ett of the inner *Barmkin*. Or tuelf hours we took the vatter,

<sup>1</sup> Leave. <sup>2</sup> This evidently alludes to a proposal for breaking ward; which, it may be conjectured, is the meaning of the Postscript. It is very probable that this and other of Sir James Makconell's Letters had been intercepted. <sup>3</sup> On suspicion of aiding his escape out of confinement. <sup>4</sup> It is left to the reader to settle whether this word is used for 'interested' or 'increased.'—It seems to signify that none of them could hope for reward from him; so that bribery was out of the question. <sup>5</sup> The word is written so as to read *stane* or *stare*. The article intrusted may therefore have been some precious stone or jewel, or an order of merit. <sup>6</sup> Than. <sup>7</sup> If. <sup>8</sup> Sudden or powerful medicine. <sup>9</sup> Leaving; ceasing. <sup>10</sup> Loose; release from pledge. <sup>11</sup> Watch. <sup>12</sup> Fr. *montre*. <sup>13</sup> Annual-rent. <sup>14</sup> Probably his coffer or chest. Old Fr. *chestron*. <sup>15</sup> Perhaps for *bush*, or thicket; or, more probably, it may be a slip of the pen for *ambush*. <sup>16</sup> Excepting; saving.

the vtter tour, and the tuo Barmkyns from thame, and fett fyre to the zett of the inner Barmkin, brunt it, killed and hurt some of there menne in with our shott; for we shott from four in the morning till ester tuelfue. Tuo of myne wes killed, a shouldiour and ane boy; tuo lighthie hurt. The hous wes promesed to yeeld or ten hours the morn. And so wes the Pryour and all that come out gatt thair lyff and there cloathes.

I trest in God that all the Campbelles in Scotland, without HIS MA<sup>tyes</sup> powar, shall not recouer it, so long as they live. I heare Patie Kilchrist is troubled for me; bot I protest to God he is innocent of my break, and all that is in that Castle. No more, but remember me to all frendes, specialie to Margrate, to Cristian, and all your owne frendes in the breathing; and also my homble seruice remembered, I rest  
Your lo. owin to command,

July 3, Fra Duneveg.

S<sup>r</sup> J. MAKDONALL.

TO THE ERL OF CRAUFURD.

## XII. LETTER, *Sir James Makconeill to Lord Tulliebardin.*<sup>1</sup>

MY VERIE HONORABLE GUD LORD,

TREULY the tyme hes beine, when I wald never a luiked patt your father sone suld persue me so hardly of my lyfe; for I protest I was never so hardly followid; and was so neir tane, patt your lo. self, and sum few with you, was within thre pair<sup>2</sup> to me. Bot I am much oblist to your lo., for in faith ze maid me to be ane better fuitt-man, in one hour, nor I thocht to hawe beine in ane gier. Allwayis,<sup>3</sup> feing itt was HIS MA<sup>tyes</sup> service your lo. did, I forgiwe you with my hart; and I with att God, my self had pe place to serue HIS MA<sup>tyes</sup>, quhilk in my hartt I fall ever do. And this offence quhilk I have now committitt, I protest to God, is nott for desyre of trubles or Rebellion, nether for oney mistrust I had in HIS MA<sup>tyes</sup> clemencé, or his honourable *Consall*, nor zett throw feir of aney thing patt can be tryed<sup>4</sup> aganes me, anent patt erand of Dwnoveg; bot, as God knawis, my braiking Ward was only for pe saifté of my lyfe; for it is sertan, and I will gett veré honest wittnessis, to whom *the Laird of Calder* said itt, patt he had ane Warrant from HIS MA<sup>tyes</sup>, quhilk *the Consall* never sawe, for to put me to present exsecutione, efter pe presenting of patt Warrant; so patt my lyffe was in *Calder's* will; and how lytill refone I had to trust to *Calder*, pairt of pe *Consall* self knawis; for, not only all vther vrangis he did me, he vrett both to HIS MA<sup>tyes</sup>, and vthers att Court and in *Consall*, shawing, I was giltie both of pe talking and keiping of Dwnoveg, pat pairby my lyfe nicht be tane. Bott now, pat pe world may se his mailish, whan I am, as I hop in God, out of his denger, I will say to your lo., as I fall ansvér to God, I am and was ever as inosent of pe talking or keiping of Dwnoveg aganes his MA<sup>tyes</sup> as your lo. is; and when all is tryid, I defy my onfreindis to try<sup>5</sup> vtherwayis, be oney just tryell. And pairfoir, feing, efter such long miseré, and pe los of all my kyndly<sup>6</sup> lands, I bott only fled with my awin lyfe, I hop pe *Consall* will evin pité me. And I beseik your lo. to be my freind, so far as ze may, without offence to HIS MA<sup>tyes</sup>; only, in moveing your freinds in *Consall* nott to be over hefté,<sup>7</sup> att ze desyre of my onfreindis, to tak oney violent curfis aganes me, whairbé thay may gett preferment, and cairis nott what may follow, in exspence to HIS MA<sup>tyes</sup>, or truble in pe cuntre; quhilk fall nott be neidfull: For, give<sup>8</sup> your lo. will gett me an assurance, pat HIS MA<sup>tyes</sup> honourable *Consall* will heir pe fame, I will give in such ane humble Peticione to pair lo<sup>9</sup> in fullfilling HIS MA<sup>tyes</sup> will, and pair lo<sup>9</sup> in aney thing posebill to me; my lyfe and libérté being only reservid: And give HIS MA<sup>tyes</sup> dispence with my lyfe, and offences, fall mak gud fuirté to truble no man, by<sup>9</sup> ordour off law. So luiking for your lo<sup>9</sup> ansvér, be pe *Barron Rid's* meins, committing your lo. in God's protexion, I rest  
Your lo<sup>9</sup> affuired freind to command,

Junij 2.

S. J. MAKDONALL.

To my verie honourable gud lord, my lord ERLE OFF TULLIBAIRNE.

<sup>1</sup> William, *second* Earl of Tullibardine. See No. VI. Note.      <sup>2</sup> Three pair of butts; three butts' lengths.  
<sup>3</sup> Nevertheless; at all events.      <sup>4</sup> Verified; proved; established.      <sup>5</sup> Prove; establish.      <sup>6</sup> The lands which he held as 'kindly Tenant' to the King.      <sup>7</sup> Precipitate; *hasty*.      <sup>8</sup> If.      <sup>9</sup> Contrary to.

XIII. EXTRACT OF A LETTER *from Sir Rorie Makcleud<sup>1</sup> to Lord Binning*  
(received June 30, 1615.)

Now, since I perfave *Sir James (Makoneill)* hes brocken warde, and come to Lochqubaber, and out of that come to Moror and Knoddort, where he took per force a young youth, the secund sone of *Glengarrie*<sup>2</sup> on a worfe,<sup>3</sup> and keepes him still in custodie; and the Captanes sone, a son of Donald McAllan McEan, Captain of the Clan-Ronald. And thereafter, come to Sleat, to *Donald Gorme's* bounds,<sup>4</sup> where he gott a bigg boat, with oares, faile, and taikleing; and intercomoned at lenth with *Donald Gorme* there; and a nomber of *Donald Gorme's* folkes of Sleat, called Clann Tarlich,<sup>5</sup> is gone with him. And thereafter, passed till the Yle of Egga, where he mett *Coill*<sup>6</sup> and his companee, togidder with his bafe sone, and a sone of *Sir James Makforle* of the Route.<sup>7</sup> And they ar in nomber, as I lerne, tuelfue or thretteinth score, at the present tyme. And whidder they go South or North I can not tell, at the writteing heerof. It is my advyse to your lo. and Counfall, that your lo. derect a ample command and charge, till all and findrie the Superiours of the Yles, till convocat thame selues in armes, with a full Commiffion till<sup>8</sup> everie one of ws, till perfew the said rebelles, by sea and land, with fyre and sword, in this form, in thrie severall armyes and companees. That is, *Makclaine of Doward*<sup>9</sup> and *Makcleane of Lochbuy*<sup>10</sup> in a companee and armie; *Donald Gorme* and *the Captane of Clann Ronald*<sup>11</sup> in a other armie; and I, *the Lairde of Coill*<sup>12</sup> and *Mackynnoun*<sup>13</sup> and *my Lord of Kyntaile's*<sup>14</sup> forces, in a other companee; and lett everie one of thir armyes endeavoire thame selues in HIS MA<sup>TIES</sup> service; and he that doeth best therein, have the greateft honour, and preferment, and reward of HIS MA<sup>TIES</sup> and Counfall. And becaus the said *Sir James* and his companee hes taken thame selues to the sea, in two barkes and findrie other boates, it were expedyent that your lo. and Counsell would fend me ane Commiffioun and powar to embark any ship I can apprehend, in thir Iles, to the better perfute of thame in thir Iles; otherwise, your lo. and Counsell till furnishe out two or three shippes, well provyded, to thir Iles; and derect one of thame to me, that I and they may concure togedder, in his highnes service. And I desyre the Iles Superiours to be devyded in three ffactions, for this caus. *Sir James* and the rebelles of the *Clanndonald* ar of kynne, blood, and alia<sup>15</sup> to *Donald Gorme* and to *the Captane of Clann Ronald*; and *Sir James* and his rebelles ar deedlie enemies to *Macklene* and his name, and they will never agree in a<sup>16</sup> companee and armee. And as for me, your lo. knowes verie well that I have geven a proof of my obedience and service to HIS MA<sup>TIES</sup> and Counsell allreddye, in taking, and apprehending, and delyuering my own name and blood, the rebellis of the Lews;<sup>17</sup> and in making these landis peaceable to HIS MA<sup>TIES</sup>. Lett the rest do the lyk service now to HIS MA<sup>TIES</sup>, and it is verie well knowen to HIS MAJESTIE and Nobilitie of Scotland, that my hous neuer rebelled, nor yett shall rebell. . . . .

Your lo. humble seruitor at powar,

DUNVEGANE, 18th of June, 1615.

S<sup>R</sup> RORIE MAKCLEUD.

XIV. LETTER, *Lord Tullibardine to Lord Binning.*

MY VERRIE HONOURABILL GOOD LORD,

I HAUE reffawit *McAllane McEan*, Capitane of the *Clan Ronald*, his ansuer of my Letter, quhair-

<sup>1</sup> Sir Roderick Makleod of that Ilk, and of Harris, called *Rorie More*, who married a daughter of Donald Mac-Angus MacAllister of Glengary. <sup>2</sup> Donald MacDonell, afterwards of Scothouse; who married Mary, daughter of Sir James Macdonald of Sleat. <sup>3</sup> Unawares. <sup>4</sup> Of Sleat in Skye. <sup>5</sup> Clan Tarlich, that is, the descendants of Charles. <sup>6</sup> Coill Makgillespik. <sup>7</sup> See Notice prefixed to this Trial. <sup>8</sup> To. <sup>9</sup> Hector Maclean of Doward, called Eachin Oig. <sup>10</sup> Hector Owr Maclean. He married a daughter of Lauchlan More, Maclean of Dowart. <sup>11</sup> Donald MacAllan MacEan. <sup>12</sup> Lauchlan Maclean of Coll; who married a daughter of Sir Roderick Macleod of Harris. <sup>13</sup> Lauchlan MacKinnon of Strathordill, Laird of Mackinnon. Strathordill is in Skye. He was knighted before his death. <sup>14</sup> Colin, second Lord Kintail, created Earl of Seaforth, Dec. 23, 1623. <sup>15</sup> Alliance by marriage. <sup>16</sup> One. <sup>17</sup> Lewis.



by I perceave þat he is nocht previe to *Sir James* his brekking of Waird, and is resolut nocht to mell<sup>1</sup> with þair courffis, ffor *Sir James* and *M<sup>c</sup>Ronnald* did all þat þai culd, be meffages, to haue met with him, vpone pretence to haue delyuerit him his sone; bot he onnawwis wald haue ony midling with þame, nor wald nocht refsaue his sone, becaus he wes in thair cumpany, without ane Warrant of your lo<sup>s</sup> of þe *Counfell*. Bot I heir þat fensyne, quhan *Sir James* tuik þe sea, he fend him frome him. *Sir James*, at his passing out of Lochabber, wes onlie accompaneit with fourtene men and boyis, and *M<sup>c</sup>Ronnald* followit him with sextene men and boyis. They past out þat to *M<sup>c</sup>Ean of Ardnamurchais*<sup>2</sup> cuntrie, quhair I heir þat *M<sup>c</sup>Ean* him selff, with all his cumpany with him; att þe leift, þair is an great pairte of þame. He gat sum boittis þair, and past þairfra, langis þe coift; bot he culd haue no landing, nather in *M<sup>c</sup>Allane M<sup>c</sup>Eane* his cuntrie, *M<sup>c</sup>clewd Hereis*,<sup>3</sup> nor *Donald Gormis* cuntrie;<sup>4</sup> ffor þai pat forcis on all þe sea-poirtis, to stop his landing; and I think þei had maid sum onfet on him, if þair boittis had not bene all funk of befoir, for feir of supprysing þame.

I heir he landit into þe Isles of Rowme and Eg, quhair *Coull M<sup>c</sup>Gillespic* did meit him with ane cumpany of hagbutteris, about þe number of sewin scoir of men. Thair forme of meiting, as I heir, wes this. *Sir James* and his cumpany stude in ane plaice be þame selffis, quhair þe wper with his cumpany went round about him, onis;<sup>5</sup> and at þe nixt going about, salutit him with þair wolly of schoittis;<sup>6</sup> and continowit sua schuitting and inviring<sup>7</sup> of him, for þe spaice of half ane hour; and þair-efter com to him euerie man, particularlie,<sup>8</sup> chapping handis.<sup>9</sup> Wpone þe morne, þai conuenit all þe haill bestiall, horse, and ky, to one plaice, quhilk þei thoct to haue slayne haill;<sup>10</sup> bot, vpone better aduyfement, þei flew onlie ane number of ky, for meat, quhilk þei caryit immediatlie to þair boittis; and þair-efter tuik þe sea,<sup>11</sup> to þe number of Thre hunder men, of all. *Cold*<sup>12</sup> brocht him tua crearis,<sup>13</sup> with sum wþir boittis þat *Sir James* him self gat in Ardmurche, and supprysit in wþir pairtis. It is thoct þat þei haue tane þair woyage to Ilay; and if þe cuntrie be vpone þair gaird, as þai suld, I think þai fall nocht proffeit mekill. The occasioun of my mannis stay; it wes long befoir he could get tryell<sup>14</sup> quhair *M<sup>c</sup>Allane M<sup>c</sup>Ean* wes; for he wes buffie, in gewing of ordour, þat *Sir James* suld nocht land<sup>15</sup> on any of his Isles; and abscuring<sup>16</sup> him selff, þat þei suld nocht get him. I vnderstand he hes fend him Letteres to the *Counfell*, quhilk I think your lo. knawis of befoir now. I will request your lo. to lat me vnderstand, quhat directioun is cumit zit frome HIS MA<sup>TIES</sup>, concerning *Sir James M<sup>c</sup>conneill*, and quhat conclusioun your lo<sup>s</sup> of *Counfell* hes taiken þairanent. Sua, hawing na farder at þis present, committis your lo. to þe protectioun of God; and restis

Your lo. euir affuirit freind and seruant,

PERTHE, þe 24 of Junii, 1605.

TULLIBARDINE.

I VNDERSTAND *Glengarrrie*<sup>17</sup> is presentlie in Ed<sup>r</sup>, and is trublit be *my Lord Lowatt*<sup>18</sup> in some actionis betuix þame. I wald request your lo. to be his freind and to forder him hame our; for I mynd to meit with him, in his by-cuming, and fall lay him rycht to any thing þat concernis HIS MA<sup>TIES</sup> seruice, to my power. And becaus he is dealler betuix me and *M<sup>c</sup>Allane M<sup>c</sup>Eane, Capitane of the Clan Ronnald*, pleas your lo. wret to me, quhat particular ze wald haue me to lay to thair chairge; and I fall do þe best.

The pretext þat *Sir James M<sup>c</sup>conneill* and *M<sup>c</sup>Ronnald* myndit to hane vfit, to haue persuadit *M<sup>c</sup>Allane M<sup>c</sup>Eane* and *Glengarry* to haue taikin þair pairte, is þis suld action þat *my Lord Lowat* hes

<sup>1</sup> Meddle; interfere; mingle. Fr. *meler*. <sup>2</sup> Macdonald of Ardnamurchan, Chief of the CLAN IAN of Ardnamurchan, a powerful branch of the Clendonald. <sup>3</sup> Sir Roderick MacLeod of that ilk, commonly called *Rory More*. He married a daughter of Glengarrrie's, and was the founder of the families of Talisker, Bernera, Muir-avenside, Hammer, Grisernish, &c. <sup>4</sup> See Note relative to *Donald Gorme*, (No. XXII.) III. 25. <sup>5</sup> Once. <sup>6</sup> Volley; *feu de joie*. <sup>7</sup> Encircling. <sup>8</sup> Separately; individually; one by one. <sup>9</sup> An impressive mode of swearing feudal obedience, and to live and die in his service. <sup>10</sup> Entirely; wholly. <sup>11</sup> Set sail. <sup>12</sup> Coill Makgillespik Macdonald. <sup>13</sup> A *crayar*, sort of large galley; or rather a bark or sort of sloop. Cray is used in O. E. in a similar sense. <sup>14</sup> Advice; satisfactory intelligence. <sup>15</sup> Should not be suffered to effect a landing. <sup>16</sup> Obscuring, concealing. <sup>17</sup> Donald Macdonald of Glengarrrie (*Donald MacAngus MacAlister*.) <sup>18</sup> Simon, seventh Lord Lovat. See *History of the Frasers*, by John Anderson, Esq. W.S.: a work of great ability and research.

aganis pame, and pe taking of *McAllane McEanes* landis our his head be *Sir James Stewart*. In my opinnioun, your lo<sup>s</sup> of *the Counfall* suld do weill to delay pe discussing of pir debaittis for ane quhyle till pir wper materis of *Sir James* war fetlit.

XV. LETTER, *Sir James Makcneill to Lord Binning.*

MY VERIE HONOURABILL GUDE LORD,

PLEIS your lo. I wald haue writtin to your lo. long or now, had not I culd find no bearer, becaus name of my awin dar go thair. Aluylf,<sup>1</sup> I will euer think myself bund for the fauour your lo. schew me at my being laft in *the Castell*,<sup>2</sup> whanne God knawis vtheris wes bent to wrong me be thair fals accusationis; whose feir, and the report they gave out that my lyfe was onlye in thair willis, was the onlye motione of the braik of ward; and no intentione nor desyre I had, or hes, to live as ane Rebelle or outlaw; whiche traid, the Lord knawes, I abhore; bot that I wald glaidlie live at libertye with my lyfe saif. And now, my lord, I befeik your lo., for the fauour of God and my perpetuelle seruice, pitie me and be my freind, that his Maiestie may be graciouslie moved not to zield to my vnfreindis, to ruit me and my whole race out, being fyve or sex hundreth zeiris possessouris, and now willing to obey and serwe his Maiestie, in all humilitie, I, feing how I and my pure freindis may live; and if your lo. culd find the meanis that HIS MA<sup>TIES</sup> and *Counfall* may be moved to let me posses this pure Iland, paying for it as anie vther may or hes zit offerit to do, and getting my pardone, sall find sufficient suretie, both for my zeirle dewtye and the peace and quyetnes of me and all that dwellis vnder me. Gif your lo. may or will do me any guid in this, I will not onlie be ane to do your lo. guid seruice, bot, with Goddis graice, let your lo. sie my thankfulnes. befeik your lo., for Goddis cause, be playne with me, and if HIS MA<sup>TIES</sup> may not be moved to let me haue this Iland, diminiffing nothing of HIS MA<sup>TIES</sup> commoditie, that your lo. will let me know, be your advise, be what vther meanis HIS MA<sup>TIES</sup> may be moved to grant ane generall pardone to me and all myne; and that we may haue to susteine ws in sum meafour, leif we be forcit, being without oure living, to opprefs vtheris. This abyding your lo. ansueir, committing your lo. to God, I rest

Julij 1.

Your lo. euir to command,

SIR J. MAKDONALL.

MY LORD, If HIS MAJESTIE be not willing that I sall be his heighnes tennent in Ila, for Goddis cause let HIS MA<sup>TIES</sup> hauld it in his awin hand; for that is certane, I will die befoir I sie a *Campbell* posses it. And HIS MA<sup>TIES</sup> haulding it in his awin hand, HIS MA<sup>TIES</sup> may haue ane thousand merkis mair be pat, nor *Calder* suld pay; I making it quyt of me and my kin, whiche I will do vpoun fuche reasonabill conditiones as I will schow your lo., if ze may assure me that ze may get HIS MA<sup>TIES</sup> brocht to this poynt, and in the meintyme no employment<sup>3</sup> be gevin aganis me, till your lo. sie how this may be brocht to pas. As for this *House of Duneveg*, which I tuik in four and tuenty houris from *Calderis* menne, your lo. getting me fauour of HIS MA<sup>TIES</sup>, the house salbe to serwe HIS MA<sup>TIES</sup>, and neuer to be keipit aganis his bienes. And if HIS MA<sup>TIES</sup> awin Gaird or *the Bischopes* had bein in the House, befoir God I wald neuer perfew it; bot finding these in it, who crewellie opprest the pure cuntrie, wes the onlie sutteris of my lyfe and landis, I wald I culd do thame mair disgrace! Referring all to your lo. consideratione and ansueir, I rest

Julij 1.

Your lo. euer to be commandit,

S<sup>r</sup> J. MAKDONALL.

TO MY LORD SECRETARE.

XVI. LETTER, *Sir James Makcneill to Mr James Knox.*

RIGHT WORSHIPFULL,

I HAVE, for some buffinesse, pairtly concerning your father, sent this bearer to Edinburgh; and geve

<sup>1</sup> At all events.    <sup>2</sup> Of Edinburgh.    <sup>3</sup> This is taken from a copy. The sense appears to be, that, in the interim, no one should be employed against him by Commission, or Letters of fire and sword.

my lord be gone to England, I pray yow fail not, as yee respect his lo. well,<sup>1</sup> to send his Letter to him, with suretie that it may com to his handes; for I have wrotten to his lo. the thing that I hope thall come to his lo. honour and credite; and there is none leaue and vnder his Maiestie that I will do mor to, till do be, and do him all the honour and credite I can. Heir I will entreat yow, give<sup>2</sup> 3e be in Ed<sup>r</sup>, and any of my Letters come to your hand, yee will deliuer thame to suche as I have wrotten thame to. And so, reposeing in your good will, and assuering you I am to serve and honour your father and your selue, I rest

Your assured friend to command,

FROM ILLA, 4 Julij.

S<sup>r</sup> J. MAKDONALL.

(*Postscript.*) Sir,

ALBEIT it be too great paines, yet in hope I will, God willing, do you yett more seruice, send any of your servandis with all the rest of my Letters to such as thay are directed to, and what answer bees gotten, geve it to the berar. I rest

Your assured friend,

S<sup>r</sup> J. MAKDONALL.

To MR JAMES KNOX, sone to my Lord Bishope of the Illis and Raupho.

XVII. LETTER *from Archibald Campbell<sup>3</sup> to Lord Binning,<sup>4</sup> 'anent his perfute of Sir James Makoneill.'*

RIGHT HONORABELL,

As I writt to your lo. from the Wode of Meffen, SIR JAMES M<sup>c</sup>CONEILL and M<sup>c</sup>RANALD went by pat way; and, as I was informed, he had staid Wednisday night and Thurfday in Murthlie. So I, heaving riddin Wednisday night and Thurfday all day, I wachit at Murthlie all pat night, bot pay maid no stay pair: Bot M<sup>c</sup>Ranald sent a man of his for a young boy of his awin pat he had in Murthlie, and convoyed him with him. On Wodnisday, at night, they were in a pure man's house in Strabrane; and on Thurfday, at night, pay wer in the East end of Ranoch, quhair I might haue bene sex houris before pame, gif I had bene sartane of thair way. *The Erle of Atholl<sup>5</sup>* was advertised by *pe Erle of Mar,<sup>6</sup>* and he followed pame. And on Fryday, in the morning, com in sight of pame; bot my lordis men had run so far, and his spayis pat went before him so wnpovedent, pat *Sir Jeames* and his companie wer advertised be *Strowan* his wyf,<sup>7</sup> quho is *M<sup>c</sup>Ranald* his dochter. They wer forssed to leive pair horffis and clothes, and teake pame to pe wodis. *The Erle of Atholl* apprehendit *Sir Jeames* his man, pat was with him in the Castell, and quho stayed efter him in pe Castell pat morning he brake ward, and too men of *M<sup>c</sup>Ranaldis*; bot my lord tels me he dismist pame all. My lord, so far as I culd learne, *the Erle* was exceiding willing in this perfute, bot pair was sum wronge done him, pat I beleive his lo. as zit knows not of. Those pat I send to be before pame ar not as zit returned, nor no word from pame. I hope in God your lo. fall heir pat pay haue mett; for pay can hardlie pas by pame. *The Erle of Atholl* assuris me pat pair cam a compane of men to meit *M<sup>c</sup>Ranald*. My lord, if pair wer bot too hunder men and ane honest commander on pe feildis, they wer not eabell to do any thing be land; nor culd pay haue tyme to mowe<sup>8</sup> any to follow pame: Bot in treuth, if pay be permittit, they will no dout grow stronge. *Sir Jeames* man pat *pe Erle of Atholl* apprehendit, told, pat pay resolutit to burne *Cadell<sup>9</sup>* his landis of Mukarne; and pat he thocht a grait many Illenderis ver on pair course.<sup>10</sup> My lord, so schune as I heir from those I directit estir pame, and pat I kno quhat course

<sup>1</sup> Weal; advantage. <sup>2</sup> If. <sup>3</sup> Son of Sir James, and brother of Sir John Campbell of Lawers. Afterwards Sir Archibald. <sup>4</sup> Sir Thomas Hamilton, afterwards Earl of Haddington, Secretary of State. <sup>5</sup> James, second Earl of Atholl, son and heir of John, sixth Lord Innermeath, who had obtained the Earldom, Mar. 6, 1595-6. He married Lady Mary Stewart, second daughter of John, fifth Earl of Atholl, by his stepmother, Lady Mary Ruthven, and died without issue, anno 1625.—*Wood's Peerage*. <sup>6</sup> John, seventh Earl of Marr, who had been intrusted with the education of Prince Henry, and was, in Dec. 1615, appointed Lord High Treasurer of Scotland. He married Anne, 2d daughter of David, second Lord Drummond, and died Dec. 14, 1634, set. 77. <sup>7</sup> Robert Robert-son of Strowan married a daughter of Macdonald of Keppoch. <sup>8</sup> Induce; persuade; move. <sup>9</sup> John Campbell of Caddell or Calder. <sup>10</sup> Were his abettors and maintained his cause.

*Sir Jeames* teakis firft in hand, or quibich way he teakis him to pe feie, I will, God willing, returne ; not douting bot *my lord Thefaurer*<sup>1</sup> will haue fome confideratioun of my peans,<sup>2</sup> as I fall be reddie at all occafions to adventur my felf in HIS MA<sup>TIES</sup> fervice ; I reft

FROM the FURD of LYON, pis Setterday  
at xij houris of pat day.

3our lo. ewer to ferue 3ow,

AR. CAMPBELL.

I pray 3our lo. adverteife Cadell, pat he may fend word to his men of Mackarney, to be war of pe rebels.

To pe right honorabell, and my fpefeall good lord,

MY LORD OF BINNING, Secreter, &c.

### XVIII. LETTER, *Lord Binning to Archibald Campbell.*

LOVING FREIND,

I RESSAVED your Letters of the 15 of this moneth, from Dunoveg ; bot now newes in thame ; becaus, vpone the 12 day, I hard the fubftance of all that your Letter beares ; quhilk that fame 12 day was written to Court be my Lord Chancellour. I am glad that my Lord is maifter of thefe ftrenthis, and forie that all the principall men are efaped, except *Coll*, who hes gottin conditions ; bot I hope that my lordis diligence, wiflome, and gud luk, fall owertak thame, and red HIS MA<sup>TIES</sup> and the cuntrie of thair cummer, for if it fould fall vtherwayes furth (as God forbid) yow know quhat conftitutions men wald mak of the great preparatioun maid be fea and land, at fo great charges to HIS MA<sup>TIES</sup>, without any effect, bot the wrak of the poore beggarlie tennentis of Ilay and Kintyre. For, fince *Sir James* and his fone, with *M<sup>r</sup> Rannald* and his fone, and *Glengarries* fone, and *M<sup>r</sup> Sorle*,<sup>3</sup> ar all efaped, and *Coll*<sup>4</sup> pardoned, I know not quhat ringleaders thefe ar, whome ye wryt 3e ar to bring in. Allwayes, it is gud that thair forces ar fcattered, without harme or danger ; yit, fo long as the heades ar all to the fore,<sup>5</sup> the Rebellioun will never be thought quenched. Quhairfor, I know my Lord will have fuch cair as agrieth with his honour and HIS MA<sup>TIES</sup> expectatioun. I have no certantie of *the Thefaurer deputes* dyet, bot I hope he will be heir about Hallowmes, and will affuredlie performe his promeis, yours being obferved, quhilk I hartelie wilhe. So, remembering my loving commendatiounis to your brother *Collin*, and praying you to prevent your curious nighbouris in the adverteifments of my lordis proceedingis, quhilk I wilhe may be prosperous, I reft

Your verie loving freind, at powar,

[BINNING.]<sup>6</sup>

### XIX. LETTER *from Sir Dougal Campbell of Auchinbrek to the Chancellor* (received Aug. 4, 1615.)

HONORABLE GOOD LORD,

MY humble dewtie remembrit, please 3our lo. to wit, that I am heer in the Tarbet, attending vponne our enemies coming farder in the cuntrie. 3our lo. fall vnderftand, fince my laft wryting to 3our lo., *Sir James* the traitour hes latlie directit out ane *fyrie croce*<sup>7</sup> from the heald of Lockerrane, quhair he makes his refidence for the tyme, to the Tarbart, vponne the pretence that all maner of man betuix the Mull of Kintyre and the Tarbart fould come and tak land of him. And to preveine this, that the cuntrie fould get no fkaith, I have directit for to get more affiftance of men throw Argyle and Lorne. 3our lo. fall know that I was not anfuerit, according to my Commiffioun. The monyest<sup>8</sup> that came to me was ane hundreth men ; the number of the hail thrie hundreth men. Wifhing 3our lo. to tak ourdour with the cuntries difobedience, for farder inconvenience ; quhilk I fear will come to more

<sup>1</sup> Sir Robert Carr, Earl of Somerset, held the office at this time. <sup>2</sup> A gentle hint that remuneration was looked for, to quicken his zeal. <sup>3</sup> A son of Sir James MacSorle of the Route, formerly mentioned, both in this Appendix and in the Introduction to this Trial. <sup>4</sup> Coll Macgillespick Macdonald. <sup>5</sup> In being ; existing. <sup>6</sup> From a copy, marked by Lord Binning himself. <sup>7</sup> See Notes to *Sir Walter Scott's Lady of the Lake*, &c. <sup>8</sup> Most ; greatest number.

faith, if they be not punischt for thair fault. I sall give vp in sorow to your lo. the particular disobeyars. These Rebels ar in readines with fyve nichtis provisioun and lone. Quhair they ar to mak thair onfet I know not; bot they ar mor in number than I wret to your lo. in my last Letter. I dowl not bot your lo. remembers the dait of my Commission, quhilk approchis neir to the sext day of August; quhairfor I thocht good to mak your lo. forfein of this, that your lo. may tak ane ordour farder with thir Rebels. So, not troubling your lo. with farder writ, committis your lo. to the protection of the Almighty God.

TARBART, 30 July, 1615.

Your lo. to be commandit to my powar,

AUCHINBRECK.

XX. LETTER, *Lord Binning to the Earl of Argyle, 5th Aug. 1615.*

MY MOST HONO<sup>LL</sup> GOOD LORD,

THINKING my self assured that your lo. wald, according to your promeis, contenit in your Lettre of the 24 sent to me, begin your journey homeward vpon the nixt day, and end it, at fardest, within ten or tuell dayes; I certified the *Counsell* pairof, and be Letteris to *Auchinbrek* and vtheris officeris, wndowtedlie that your lo. wald keip that dyet; but now, wnderstanding your lo. cairlesnes of that weightie charge, quhilk 3e have wnderstaine againis the *Tratoris*, who daylie growis in number, force, and presumptioun, becaus they find no resistance, far les perfute aganis them, quhairby they have left sum forces in Ila, to keip Duneveg and Lochgorne; and *Makoneill* self and sex hundreth with him, having maid thameselfis maisteris of Kintyre, ar so swelled in pryde, that they have sent the fyre-corfe<sup>1</sup> throw the cuntrie, and wairned all the inhabitants betuix *Tarbert* and the *Mull* of Kintyre, to tak their land of the *Traitour Makoneill*. We heir of so much boldnes in the rebels and fear in the cuntrie people, as we exspect daylie to heir of thair farder futing vpon your lo. cuntrie of Argyle; which your owne people does fearfullie apprehend. We ar assured of *Auchinbrekes* faithfulness to HIS MA<sup>T<sup>Y</sup></sup>, and your lo. do exceidinglie distrust his gouernement, in respect of his owne feiklines, the disloyaltie of many of the Irische people, and boldnes and subtiltie of the Rebels, too able to keip advantage of him. Nather will I conceall, that your lo. name<sup>2</sup> is envyed, your owne autoritie and wounted estimatioun infinitlie impared, be your absence and neglect of your cuntrie; and releiff of your freindis, engagded and wraiked for your debtis: And now, if your lo. sall kythe<sup>3</sup> cairles, or slouthfull and sluggishe in this great charge, 3e will increas the libertie of your ewil-willaris, who have boldlie spokin to your disadvantage and discredit, discourage HIS MA<sup>T<sup>Y</sup></sup> good subiects, embolden the Rebels, and mak your task more difficile nor<sup>4</sup> your lo. apprehends. My affection to my maisteris honour, and respect and good will to your lo. self, makis me to wryt more liberallie<sup>5</sup> in this mater nor vtheris will, which I hope and request your lo. may tak in good pairt; earnestlie beseking your lo., all empeschments removed, to come heir with all possible expeditioun and resolutioun, to go fordward with wisdom and diligence. Your lo. will find that your fallowing your owne will, aganis my opinioun, in purchaffing ane Commission in this service, to ane particular number of the *Counsell*, will do hinder to the buffines. Bot the nixt best must be done; nothing being able to remove all difficulties, but your lo. presence and diligence; which I recommend to your lo., as 3e affect your maisteris favour and your awne honour. So, luiking for your lo. extreame diligence, to amend bypast sleuth and ouersights, I commit your lo. to the protection of God.

Your lo. verie affectionat to serve you,

ED<sup>A</sup>, the fyft of August (1615.)

[BINNING.]

XXI. EXTRACT from *Minutes of Privy Council, Jun. 20, 1615.*<sup>6</sup>

THE *Marques of Huntlye*<sup>7</sup> hes gotten a verie ample Commission for perfute of the Rebelles, espe-

<sup>1</sup> The Fiery-cross so often described by Sir Walter Scott in *The Lady of the Lake*, &c.      <sup>6</sup> Clan Campbell.  
<sup>2</sup> Prove careles.      <sup>3</sup> Than.      <sup>4</sup> Freely.      <sup>5</sup> From the *Dennyline MSS.* Adv. Library.      <sup>7</sup> George,  
*sixth* Earl and *first* Marquis of Huntly, the same person who was concerned in the traitorous correspondence with Spain, the burning of *Dunblair*, and slaughter of the Earl of *Moray*, &c.

cialie of *Macronnald*<sup>1</sup> and his sone, who ar his owne tennentes; and the Counsale hes wrotten vnto him to send his sone *the Erle of Enyee*,<sup>2</sup> with diligence, to Lochquhaber,—to perfew the rebelles, to tak, demolishe, and destroy *Makronnaldes* houffes, to meddle with his whole goodes, and with the goodes of such as did ressett and supplie *Sir James Makdonald* and *Makronnald*, and not to come out of that countrie, whill he assure the countrey to be kept vnder his Maiefties obedience.

There is a Proclamation sett oute againes *Sir James Makdonald* and his sone, *Coill Macgillefpih*,<sup>3</sup> and some othres of the principall ringleadares in this rebellion; conteaneing a reward to any such persone or persones as will tak or slay onie of thame; to witt, for *Sir James M<sup>c</sup>Donald* there is a promese of fyve thousand pundis; for *Makronnald* and his sone and *Coill Makgillefpih*, fyve thousand markes a peece; and for some othres of the rebellis, thrie thousand markes. And there is a promese of pardon proclaimed to such of the rebels thame selues, as will tak, and exhibite, or slay onie of there owene companie, being of a better rank and qualitie nor thame selues.

*Sir James Makdonald* and *Makronnald*, in there going towards the Isles, took a sone and a seruant of *the Larde of Glengarries*,<sup>4</sup> information whereof being made to *Young Glengarrye*,<sup>5</sup> he, with such forces as he could mak vpon the suddane, followed thame to the sea fyd, and in a conflictt betweene thame, he hes taken two of the principallis of *Makronnaldes* companie, ffor whose releef *Makronnald* offerred delyuerie off *Glengarryes* sone; bot *Glengarrye* refused to delyuer his two prifoners, and hes promesed to exhibit thame heere within ten dayes.

*Donald Gorme*<sup>6</sup> and *the Captane of Clannronnald*<sup>7</sup> hes by there wryttings promesed to continew in there obedience, and to do the best of there endeoures in the persute of the rebelles.

## XXII. EXTRACT from 'The Historie of King James the Sext,' (published for the Bannatyne Club.<sup>8</sup>)

In the moneth of Maij (1615), *Sir James Makoneill*, eldest sone to umquhile *Angus Makoneill of Dunnevaig*, who was before condemnit for certain crymis committed be him, and for escaping furth of the Castell of Edinburgh, in cumpanie of *Johne Lord Maxwell*, as is before tauld, escapit furth therof; becaus it was constantly supponit that he had gevin counsell, be word and writt, for the violent keeping of that Castell; and fearing the cryme sould have bene tryit aganis him, be witnes, he tuik therefore tyme and occasioun to eschew unpuneift. This Castell of Dunnevaig was ombeset be certain of the Kingis ships, be sea, that nane of the Kepers sould escape that way, nor be furneift with viuers be sea. And *the knyght of Caddell*, brother-in-law to the said *Sir James*, took in hand to ombeset the same be land; as he did; and wan the same. Sum of the preasoners he put to death ther; uthers he convoyit saiflie to Edinburgh; and the greateft number escapit, be sea, and became Pirats. In the meane seasons, *the Erle of Argyle*, having maid long residence at Court, and understanding that *Sir James Makoneill* was destroyand his landis and tennents, maid narrative thairof to the King; and obtenit ane ample Commiffioun of his Maieftie, to pas aganis him, with fyre and sworde, and to apprehend him, ather quick or deid, as he best could; and so, haifted himself towart Scotland, with all speed, for the purpose. His voyage maid no good successe, as falbe, God willing, declairit heirefter, at mair lenth.<sup>9</sup>

<sup>1</sup> Alexander M<sup>c</sup>Donald or M<sup>c</sup>Ronald of Keppach or Gargavache. <sup>2</sup> George Earl of Enzie, afterwards second Earl of Huntly, who was beheaded at Edinburgh, Mar. 22, 1649. <sup>3</sup> Father of Alister M<sup>c</sup>Donald, Lieutenant to the great Marquis of Montrose in the civil wars. He was popularly styled *Coll Keitach*, i. e. Left-handed Coll, from which his son Alister took his designation of M<sup>c</sup>Coll Keitach, abridged to *Colkitto*. <sup>4</sup> Donald MacAngus of Glengarrie. <sup>5</sup> Alexander or Alister, father of the first Lord Macdonell of Arras. <sup>6</sup> Of Sleat, called *Sassenach*, having been educated in England. He married Mary, daughter of Hector MacLean of Dowart, leaving three sons. *Donald More*, the eldest, married Margaret, sister to Colin Lord Kintail; and dying, without issue, in 1616, his nephew, *Donald Gorme Oig*, son of his brother Archibald, by Margaret, daughter of Angus Macdonald of Dunnevaig and Glynnis, succeeded. See (Archdall's) *Lodge's Irish Peerage*, VII. 115. <sup>7</sup> Donald M<sup>c</sup>Allan M<sup>c</sup>Ean. <sup>8</sup> Edited by Thomas Thomson, Esquire, quarto, Edin. 1825, p. 388. <sup>9</sup> The author either did not live to fulfil this intention, or at least did not complete his History, which terminates abruptly, anno 1617.

XXIII. THE EARL OF ARGYLE'S REPORT TO THE PRIVY COUNCIL OF SCOTLAND of his Commission of Lieutenantry.<sup>1</sup>

(1615, Sep.) IMMEDIATLIE efter that the Erle of Ergyle had receavit HIS MAIESTEIS Comiffioun of Lieutennandrie over THE ILLIS, he adreffit him felf, with all convenient diligence, in Duntroone,<sup>2</sup> quhair the greateft pairt of his forceis did meete him. And being fuirlye informit, that the Traytour Sir James McConcill, and his complices, to the nowmer of fevin or aucht hundreth men of weere, for that present in KINTYRE, and of full intentioun thair to remane, quhill<sup>3</sup> they wer by the gitter power forcit out of it, his lo. refolut to mak ane onfett without ony delay, alfweill on thair vefchellis as on the Rebellis thame felfis; and thairfore commandit the Laird of Caddell, who had the conducting of the forceis of Lorne, to mak his onfet on thair vefchellis, quhair he could heir thame to be, ather in YLE OF GIGA, the ILE OF CARA, or on the MAINE-LAND OF KINTYRE. Lykewyfe fo, his Lordfchip gaif command to the Laird of Auchinbrek,<sup>4</sup> and to fome speciall of Auchinbrekis freindis, to merch over land to the Tarbart, with his lordfchipis forceis of Ergyle. My lord him felf, being accompaneid with the men of Coule,<sup>5</sup> went by Sea to the Tarbart, on the vther fyde of the Maine-land. My lord went from Duntroone on the day of September, and wes that night in the Tarbart; quhair Auchinbrek, with the men of Ergyle, did meete him that fame night. Coll Mcillefpik haiving<sup>6</sup> Coline Campbell of Kilberrie, fet out to him, come with fyftie men the foirfaid night to Loch Tarbert, quhair he apprehendit the faid Coline, and fome foure or fyve with him, quhome he maid his prifonairis. Airlie the nixt moirning, Coll Mcillefpik, being on his way bak agane, towardis the Ile of Cara, quhair he had left McRannald, and his fones, and Sorle McJames, who wer appointit to remane in Cara, for keiping of the Rebellis vefchellis; he being on his way, as faid is, perfautit my Lord of Ergyle his forces of Lorne, failling towardis Gigza; and fome of thame, haueing gone in the bak syd of Gigza, maid ane onfett on the Rebellis who wer in Cara, bot wer preventit<sup>7</sup> by fome of the Laird of Largy<sup>8</sup> his fervandis, who perfautit my lord of Ergyle his forces going towardis Ergyle, quhair the Rebellis wer, and fet on grite beikynis<sup>9</sup> to mak thame warr.<sup>10</sup> The foirfaid Ila not being diftant frome land above twa or thrie myllis of fea, git before the Rebellis could get away in thair boitis, thair wer fome of McRannald his men apprehendit and flane. Coll Mcillefpik, as faid is, being on his way to the Ile of Cara, wes adverteift be a fervand of the Laird of Largyis, that my Lord of Ergyle his forces had chaffit McRanald and thofe that wer with him out of the Ile of Cara, and had plantit thame felfis thair; fo he immediatlie was forcit to land in Kintyre. Some of the Erll of Ergyle his men, haueing forgadderit<sup>11</sup> with him in his landing, killit a fyftene or faxtene of his men, and took his foure vefchellis frome him. My lord of Ergyle, the foirfaid day, fend his forces of Couell and Ergyle, within twelf myles to the place quhair Sir James McConcill and his complices wer; bot he being adverteift that my Lord of Ergyle his forceis wer comeing, by fea and land, vpoun him, fled away to the Ile of Rachlie,<sup>12</sup> quhair he remanit twa nichtis, and thairefter went to Ila. My Lord of Ergyle being adverteift thairof, and heiring that his Ma<sup>te</sup>is fchippis wer arryvit at the Ile of M<sup>ach</sup>arunnik, his Lordfchip went with his forces of Lorne and fome of the men of Ergyle, who had thair vefchellis on that fyde of the Meane-land, towardis his Maieftis fchippis; quhair he was ftormestayd for the fpace of thrie dayis. And thairefter went to Loddummes in Ila, a harbour convenient for his Maieftis fchippis to abyd in, and good for landing of his lordfchipis forces, out of the danger of

<sup>1</sup> Presented to the Privy Council by 'Archibald Campbell,' (Brother to the Laird of Lawers,) 'seruitour to Archibald Erle of Ergyle,' Nov. 23, 1615. <sup>2</sup> Probably meant for *Dunoon*, of which the Duke of Argyll is still nominally the Heritable Keeper. The *Dun* on which the ancient Castle stood is all that remains to point out its site. <sup>3</sup> Until. <sup>4</sup> Sir Dugald Campbell. <sup>5</sup> Cowell, a district of Argyle. <sup>6</sup> Some words appear to be omitted here, such as 'set for,' or 'laid in wait for.' <sup>7</sup> Frustrated. <sup>8</sup> . . . . Macdonald, ancestor of Sir Charles Macdonald Lockhart. <sup>9</sup> Large beacons. <sup>10</sup> To make them aware; put them on their guard. Such beacons were usually large fires placed on the tops of the highest mountains or eminences, and carefully fed with tarred wood, &c. <sup>11</sup> Met; rencountered. <sup>12</sup> Rachlin or Rachrin.

truly not  
unopposed  
entirely in  
fact. The  
north of Dunoon

is about 12 miles  
from Loch Tarbat.

is on Loch Linnhe &  
the convenient place to  
show the forces -

being on the path of Erle & in Council.  
Dunoon is altogether too distant out of the way

the enemy. Haueing itayed thair twa dayis, for refrescheing of his men, and till he fould heir quhair *the Rebellis* wer, immediatlie being adverteist that *Sir James*, with his complices, wer in *the Rindes of Ila*, and in a little Ile neir by, called *Illannourfay*, my Lord maid onfet on thame, by sea; quhairin his lordschipis men wer preventit by some, who fet on beakynis in *the O of Ila*, quhairby *Sir James* was adverteist that my lord his forces wer comand on him, so as *Sir James*, *McRannald* and his sones, and *Sorle McJames* fled over that nicht to *Inchdachele*, ane Ile on the coast of Ireland. Coll *Mcillispik* haueing the keiping of the CASTELL OF DUNYVAIG and the ILE OF LOCHGORME, randerit thame bothe to *the Erll of Ergyle* and *Colin of Kilberrie*, quhome he had taikin captine; and apprehendit *Mciphie*,<sup>1</sup> on of the principallis who followit *Sir James*, and deliuerit him to *the Erll of Ergyle*; and I haue presentit him this day before your Lordschipis, with vther fyve of *Sir James* his complices. Efter that the Castell of Dunyvaig and force of Lochgorme wer taikin in, my Lord apprehendit fyftene of the principall men of Ila, who wer leadairis of the poore ones, to follow *Sir James*; whome he caufit be execute thair. And haueing deliuerit the foirfaid Castell of Dunyvaig and the force of Lochgorme to *the Laird of Caddell*, his Lordschip come frome *Ila* in his Maiesteis schipis, and arryved in *Loch-illcarrane*<sup>2</sup> on the sextene day of October last. His Lordschip no shoouer come thair, than thair come on of the faid *Sir James* his followaris who went with him to Ireland, and vndirtook to bring some of my lordis sermandis to the place quhair he left the faid *Sir James*; and gif he were not to be found thair, he wes suire to find him in the toun of Galloway, in Ireland, in *Vallentyne Blak* his house, or *Robert Blak* his house, thair; two, who are alledgeit to be ressettairis of Jesuitis. My Lord being thus fuirly informit of the faid *Sir James* his proceedingis, hes directit threttie of his men, in two onfettis, to Ireland, efter him. As to *Sorle McJames* and the twa and twenty that he had with him, thay ar in *the Route and Glennes of Ireland*.<sup>3</sup> It is alledgeit that the sub-officer thair hes gevin thame promeis of protection for two monethis. As to *McRannald* and his sones, thay ar fled to Loch-quhabir; and my Lord his forces ar in perfute of thame thair. As to *Glengarrie* his sone, he is ressat in his fateris boundis, and my Lord hes some of his sermandis efter him. At my Lord his coming to Kintyre out of Ila, he apprehendit some of the principallis thair, who had followit *Sir James*, and those who maid wairning to the Rebellis of *the Erll of Ergyle* his forces comeing to Cara. Lykwyfe his Lordschip dismissit *Capitane Wood*, *Capitane Monke*, with his Maiesteis Schipis, and the Bark quhairin his Maiesteis cannoun and munitioun wes, on the tent day of Nouember instant.

As alsua, the faid *Archibald Campbell* gaif in the ARTICLES following, quhaironto he craved the saidis Lordis aduise and ANSWER; off the quhilkis Articlis and Anfueris the tennour followis.

ARTICLES and ANSWERIS.

FIRST, to inquire, gif your lordschipis thinkis it not ane sufficient exoneratioun to the Erll of Ergyle, that *Sorle McJames* is in Ireland, and hes tua monethes Respett,<sup>4</sup> as is allegit?

ANSWER. *The Lordis thinkis that the Lieutenant hes done his dewtie, and fould be exonerat of Sorle McJames, gif he be in Ireland, as is alledgeit; seeing, his lordschipis Commissioun givis him nocht pouer to persew Sorle McJames, in Ireland.*

SECUNDLIE, to crave thair Lordschipis opinionis, gif thair Lordschipis thinkis it nocht sufficient, that gif *McRannald* his sones may nocht be apprehendit be my Lord of Ergyle his travellis, before my Lordis comeing to the Commiffionairis, that my Lord prove in quhais boundis thay haif had actual residence?

ANSWER. *Gif McRannald and his sones can nocht be had afore the Lieutenents comeing heir, gif the Lieutenant will verifie and prove quhair and by quhome they are resset, and within whose boundis thay haif thair actual residence, he dois his dewtie, in that point.*

THRIDLIE, to inquire thair Lordschipis, gif *Glengarrie* will nocht be obleigt for his sone, it being cleirlye provin, that he has actual residence within his fateris boundis?

<sup>1</sup> Mcaphie of Colonsay. The modern name is McFee.  
Mac-Sorle-Boye, mentioned in the Notice to this Trial.

<sup>2</sup> Loch-Kilkerran.

<sup>3</sup> The property of Sir James

<sup>4</sup> Respite.



ANSUER. Glengarrie *wilbe haldin to ansuer for his sone, it being prouin that he is reffet and hes his actual refidence within Glengarryis boundis.*

FOURLIE, to schaw thair Lordschipis, that *my Lord of Ergyle* findis the hail cuntry people of KINTYRE, ILA, COLONSAY, JURA, and EIGA, guiltie in being in cumpany, and beiring wapponis, and musturing with *Sir James M<sup>c</sup>conell*, at suche tymes as he appointit; and in geving of meite, drink, and harborie to him, his followaris; and for the most pairt thay neur left *Sir James*, nather in KINTYRE nor ILA, vntill he was constrayned to leive thame; yit *my Lord of Ergyle*, finding the nowmer fo grite, and that thay alledgeit that it was throwjust feir that thay went with him, or schew him ony fauour; thairfoir my Lord hes put to the knowlegeiment of ane Assyse, suche as had commandiement of companyis with him, who nicht haue done seruice on *Sir James* and his followairis, and haue left thame at thair pleafoure; and forbearis the rest, vntill he knaw the Commiffionaris pleafoure; altho' the extremitie of the law wald tak all thair lyveis.

ANSUER. The Lordis *ar of the Lieutenentis opinioun, concerning this Article; bot thay will first acquent the KINGIS MAIESTIE thairwith, and haue his Maiesteis will and pleafour thairanent, afore thay gif thair aduise to the Lieutenent.*

FYFTLIE, to schaw thair Lordschipis, that the CASTELL OF DUNYVAIG and the ILE OF LOCHGORME, being randrit to *the Erll of Ergyle*, he hes delyuerit thame to *the Laird of Caddell*; and deyris THE COUNSALLIS allowance of the same.

ANSUER. *At the comeing of the Lieutenent and of the Laird of Cadell heir, this Article fall refaue an ansuer.*

(SAXTLIE.) To schaw thair Lordschipis, that he who hes vndirtaikin to bring my Lordis servendis to the place quhair *Sir James M<sup>c</sup>Conell* hes residence in Ireland, shew my Lord, gif *Sir James* wer out of that place, quhair he houpit to find him, he wald fuirly be in the toun of Galloway, in Ireland, ludgeit ather in *Vallentyne Blakis* house, or in *Robert Blakis* house, for thay dwell in that toun—and hes a certane sowe of money payit vnto thame, yeirly, for reffauing of Jesuitis; and *Sir James* had his moyen maid, that be thair meanis, he sould be transportit out of the cuntry.

ANSUER. *The Lordis will wryte to the Lord Deputie of Ireland, concerning this Article.*

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### Treason — Breaking the King's Ward — Treasonable Murder, &c.

[JOHN, seventh LORD MAXWELL, of the ancient and distinguished family of Caerlaverock, and brother of the first Earl of Nithsdale, was a powerful but turbulent Border baron, and was one of those individuals, whom a daring and restless temperament, and their crimes, have 'damned to eternal fame.' He appears to have fallen a victim to an unhappy indulgence in those reckless and deadly feuds, which were alike the disgrace and the curse of the Scottish Nobles and gentry, for many centuries.

In order more clearly to comprehend the history and causes of his crimes, originating in disappointed ambition, to which at length Lord Maxwell fell a sacrifice, and account for the hereditary feud, which terminated in the perpetration of the disgraceful Murder for which he was eventually brought to the scaffold, it seems necessary to premise, that his father, John, *sixth* Lord Maxwell, Warden of the West Marches of Scotland, &c., had the address and fortune, shortly after the Execution of *the Regent Morton*, to obtain, as in right of his mother, *Lady Beatrix Douglas*, the Regent's second daughter, a Charter to the Earldom of Morton, Jan. 5, 1581. This grant he had also interest enough to get publicly ratified by Parliament, Nov. 19 thereafter. Lord Maxwell, however, did not long enjoy the title of Earl of Morton, and the domains annexed to it;—for, in Jan. 1585, the Attainder

was solemnly rescinded by Parliament,<sup>1</sup> and the title and estates were declared to revert to Regent Morton's lawful heir. Sir Walter Scott informs us,<sup>2</sup> that *the Laird of Johnstone* (John) was employed to apprehend Lord Maxwell, who had been declared his Majesty's rebel, on account of his Religion, &c. in 1585; and was intrusted with two bands of hired soldiers for that purpose, who were destroyed by the Maxwells. Johnstone himself was subsequently defeated and made prisoner, and his house of Lochwood taken and set on fire, 'that Lady Johnstone might have light to put on her hood!' This Laird<sup>3</sup> shortly afterwards died of grief, in April 1586;<sup>4</sup>—and to these circumstances we must unquestionably ascribe the origin of the deadly hate between the two Clans, and especially between their chiefs.

Maxwell, thus baffled in his aspiring hopes, was speedily imprisoned on account of his religious tenets, and for his share in the above-mentioned outrages. He was afterwards liberated, on condition of leaving the country; and being strenuously attached to the Religion of the Church of Rome, he shortly left Scotland, in the highest disgust. Having proceeded to Spain, he instantly offered his services to 'His Catholic Majesty,' who had, about that time, commenced active preparations for his threatened invasion of England and Scotland, which he arrogantly intended to overwhelm and subjugate, by means of his '*Invincible Armada*.' There, Lord Maxwell matured his plans; and after being furnished with pecuniary assistance, and having received full instructions from his new sovereign, he returned to Scotland, in 1588, and immediately commenced to levy men on the Borders,<sup>5</sup> where his influence was still indisputable. News of his Plot having reached Edinburgh, the most active preparations were made, and he was quickly surprised by the King in person, at Dumfries, made prisoner, and his Wardenship of the West Marches bestowed on his rival, *the Laird of Johnstone*, the son of the last Chief of that name, one of the most powerful of the lesser Barons on the Borders, and ancestor of the Noble family of Annandale.

SIR JAMES JOHNSTONE of that Ilk, the new Warden, besides being thus distinguished by the Royal favour, in being intrusted with so honourable and important an Office, was afterwards Knighted at the Queen's Coronation, in 1590. However, owing to some political reasons, and principally, the King's desire to conciliate his Roman Catholic subjects, by the display of a few popular acts of clemency, the Wardenship was restored to Lord Maxwell, on his submitting to certain reasonable conditions. The frequent transference of so envied a dignity, and that, too, upon powerful rival Chieftains, was unquestionably providing fuel to feed the fire of ancient jealousy, and more recent deadly feud, which had been rankling in the breasts of both parties, and only required the intervention of some such occurrence to be fanned into the fiercest flames.

Besides the occasional skirmishes with the Maxwells, it appears that the Johnstones, as well as Lord Maxwell, had given assistance to the Earl of Bothwell, in his numerous daring attempts in 1592, &c. It is probable that, on this account, Sir James had been warded in the Castle of Edinburgh, either for his own personal conduct, or as responsible for his Clan, and for failing to give security, &c. Nevertheless, it is certain, that (from whatever cause he was confined) he contrived to make his escape from the Castle, Jan. 4, 1693.<sup>6</sup> Through powerful mediation, the rival Chiefs were induced to enter into mutual alliance, and bound themselves to support each other in all their lawful quarrels. On the faith of this, the Clan of Johnstone concluded they had little to apprehend from the *justice* of the new Warden, provided they did not plunder any of the name of Maxwell. They accordingly made a descent upon Nithsdale, where they committed sundry depredations on the Lord Sanquhar, the Lairds of Drumlanrig, Closeburn, and Lagg, and killed eighteen persons, who had 'followed their own goods.' Counting upon the hereditary enmity subsisting between the two names, a Commission was given to Lord Maxwell, who was instructed to pursue the Johnstones with all hostilities. Being

<sup>1</sup> *Acta Parl.*      <sup>2</sup> *Tales of a Grandfather*, 2d Series, I. 93.  
appointed Warden of the West Marches and Justice in 1570.  
*Hist.* II. 357. *Redpath's Border Hist.* 672. *Moyse's Memoirs.*

<sup>3</sup> John Johnstone of that Ilk. He was  
*Wood's Peerage*, I. 73.      <sup>4</sup> *Robertson's*  
<sup>5</sup> See this Collection of Trials, I. 359.

informed of this, Johnstone obtained assistance from Annandale, and was joined by the Scots of Teviotdale, the Grahames and Elliots of Eskdale; and besides, according to the Records of the Privy Council,<sup>1</sup> 'diuers Englishmen, treffounnable brocht within this realme, armed in plane hostilitie,' &c. On the other hand, Maxwell, contrary to Law, entered into 'Bonds of Manrent' with the Lord Sanquhar, Drumlanrig, and others who had been pillaged by the Johnstones, wherein they bound themselves to maintain each other's quarrels; so that each party thus possessed a large force.

MAXWELL, in his capacity of Warden, and also as holding the King's special Commission, summoned the Laird of Johnstone to surrender; which he refused, on the ground of the illegal bonds into which Maxwell had entered. The Warden, therefore, without further parley, sent forward Captain Oliphant with some troops, to Lochmaben, to await his arrival in Annandale; but the Johnstones, marching suddenly upon them, killed the Captain and a number of his soldiers, and set fire to the Parish Kirk of Lochmaben, whither a number had fled for shelter, but were thus forced to surrender. In revenge, Lord Maxwell, intending to raise the inhabitants of the different towns in his aid, as his Majesty's Lieutenant, entered Annandale; but Johnstone, having obtained early information of his motions, suddenly attacked him, and overthrew his forces, and slew Lord Maxwell 'and sindrie Gentilmen of his name.'<sup>2</sup> This fatal affair took place, Dec. 7, 1593, and is well known by the name of THE BATTLE OF DRYFFE SANDS, having been fought close by the river of that name, near Lochmaben. Archbishop Spotswood remarks, 'The Lord Maxwel, a tall man and heavy in armor, was in the chafe overtaken and striken from his horse. The report went, that he called to Johnfton, and desired to be taken,<sup>3</sup> as he had sometime<sup>4</sup> taken his father; but was unmercifully used; and the hand that he reached forth cut off; but of this I can affirm nothing. There always<sup>5</sup> the Lord Maxwell fell, having received many wounds. He was a Nobleman of great spirit, humane, courteous, and more learned than noble-men commonly are; but aspiring and ambitious of rule.'<sup>6</sup>

The issue of the Conflict of DRYFFE SANDS, or battle, as it may almost be termed, (for Maxwell had above two thousand men on his side, and it is stated that Johnstone had not quite so many,) was evidently accomplished by manœuvre. Johnstone sent 'forth some prickers to ride and make provocation,' after the Border fashion, which succeeded in drawing out a number of the other side, 'who, encountering with a great company, were beaten and chafed back to the stall or main host; which, by their breaking in, was wholly disordered. Johnfton, that stood on a piece of high ground, beholding the issue of the skirmish, took the advantage of their confusion, and breaking upon them, without any resistance made, put them all to flight.'<sup>7</sup> The Maxwells suffered very severely, and in their retreat great numbers perished. They were pursued through the streets of Lockerby, where they were cut down in scores. Those who escaped bore on them, to their dying hour, marks of this fatal day, which occasioned the proverbial phrase of 'a Lockerby lick,' to denote a frightful gash over the face or skull. So dreadful was the carnage in this disastrous Conflict, that not fewer than *Seven Hundred* of the Maxwells and their adherents were slain! The routed enemy were pursued as far as the Gotterby-ford of the *Annan*, where many were drowned.<sup>8</sup> It is worthy of remark that there still exist, in the Holm of Dryfe, about half a mile below the old Church-yard of Drysdale,<sup>9</sup> two very aged Thorn-trees, with a tumulus at their base, called *Maxwell's Thorns*, evidently in commemoration of the fight, and probably marking the place where he fell.

It is evident, then, according to the sentiments of those times, imbibed from their earliest years, which

<sup>1</sup> See *Trials*, I. 305.    <sup>2</sup> *Ibid.* and I. 360.    *Marj. Annals*, p. 57.    *Balf. Ann.* I. 394.    *Birrell's Diary*, p. 19.  
<sup>3</sup> Viz. called or begged for quarter.    <sup>4</sup> Formerly or previously granted quarter to Johnstone's father, by taking him prisoner, instead of putting him to death.    <sup>5</sup> At all events; nevertheless.    <sup>6</sup> *Spots. Hist.* 407.  
<sup>7</sup> Whatever opinion may be entertained of the treasonable conduct of Johnstone, in thus openly resisting the King's Lieutenant, merely because he happened to be his personal enemy, it is impossible to withhold admiration at the masterly manner in which this skirmish was conducted, which showed military talents of a very high order.    <sup>8</sup> *Statistical Account*, IX. 424.    <sup>9</sup> Q. d. *Dryfe's-dale*.

'grew with their growth, and strengthened with their strength,' that natural duty and filial piety required such a feud should become hereditary, and behoved to be handed down from one generation to another! The attempts by the King and his Council to procure an effectual reconciliation, although strenuously made and often repeated, at length proved abortive. The re-appointment of the Laird of Johnstone to be Warden of the West Marches, in 1596,<sup>1</sup> appears to have served as a signal for the resumption of immediate mutual aggressions. Birrel records 'an feicht or combat betuix the Laird of Drumlanrick and the Laird of Johnstoun and thair affisteris,' Jul. 13, 1597;<sup>2</sup>—that, on May 27, 1598, 'the Laird of Johnstoun his pictor (was) hung at the Croffe (of Edinburgh) with his heid downwart, and declarit ane mansworne man; and upone the 5 of Junij, he and hes complices wer put to the horne and pronuncit rebellis at the Croffe, be opin Proclamation.'<sup>3</sup> This gossiping Chronicler farther informs us, that, on Jul. 2, 1600, he was 'restorit to hes honours, at the Croffe of Edr, be the Proclamatione of a Herald and four trumpettis.' It is likely that Sir James Johnstone did not long retain the Wardenship at this time; for, as may be seen in a former part of this Collection,<sup>4</sup> Thomas Armstrong, 'son to Sandies Ringane,' was condemned to be hung in chains, &c. for the Murder of Sir John Carmichael of that Ilk, Warden of the West Marches, in the month of June, 1600. How long Sir John had filled that office has not yet fallen within the Editor's observation. From the above announcement by Birrel, that Johnstone had been 'restorit to his honours,' it may be inferred that he succeeded Sir John Carmichael, and once more held the ill-fated dignity of Warden of the West Marches.

The principal parties, as well as their dependents and kinsmen, lived at such mortal and bloody feud, and the peace of the country was so much disturbed, that mutual friends, for their own personal safety and comfort, suggested the expedient of an amicable and private meeting between Lord Maxwell and Sir James, for finally arranging all their differences. At length, they were prevailed upon, under solemn pledges, to meet at a particular spot, each having one attendant, on Apr. 6, 1608, when the principals, with Sir Robert Maxwell of Orchardton, (Sir James's brother-in-law,) as a mutual friend, having removed to some distance, to converse apart, a quarrel arose between the two attendants. Sir James, having turned about to separate them, or to admonish them to keep the peace, Lord Maxwell suddenly and traitorously drew his pistol, fired at him, and shot him through the back with two bullets. There is some reason to suspect that this rencontre between the attendants had been plotted by Lord Maxwell, and arranged before the parties came upon the ground. From the evidence adduced, it is evident that no provocation was given, but that Maxwell, without any previous intimation, drew his pistol, and instantly shot Johnstone dead.<sup>5</sup>

The perpetration of *treasonable Murder*, as 'Slaughter under trust' was then termed, was one which, in any circumstances, but especially in such a country as Scotland, at the beginning of the seventeenth century, could not be pardoned. Accordingly, notwithstanding Lord Maxwell's great connexions, (having married Lady Margaret, only daughter of John, first Marquis of Hamilton, and being related to many of the principal nobility of the kingdom,) the strictest search was made, and Lord Maxwell was at length committed to ward, in the Castle of Edinburgh.

His admirably contrived, and boldly executed, escape from this fortress, is fully detailed in the Appendix to this Trial. He was denounced rebel for breaking his Majesty's ward and failing to underlie the law for the treasonable Murder of Sir James Johnstone. After this, his lordship took refuge abroad, where he remained till 1612, when he returned to Scotland; but so hardly was he pressed, in the Borders, that he had instantly to prepare for embarkation to Sweden. His kinsman, *George, fifth Earl of Caithness*, dissuaded him from this project; and easily prevailed on him to accept of his pro-

<sup>1</sup> *Rymer's Fœdera*, XVI. 60 D.    <sup>2</sup> *Birrell's Diary*, 44.    <sup>3</sup> *Ib.* 46.    <sup>4</sup> Vol. II. 363, Nov. 4, 1601.  
<sup>5</sup> *Ib.* 49.    \* For a number of extremely interesting and minute particulars, the reader is referred to *Tales of a Grandfather*, Second Series, which the Editor had not had the advantage of perusing, until this Notice was written. The difficulty of procuring minute and authentic information on such points of history is best known to those who have made the attempt; and even after the most laborious research, the most anxious enquiries often prove fruitless.

tection. He lured him to Castle Sinclair, under the pretence of affording him shelter and secrecy until he could conveniently prepare for his voyage. The real motive of this treacherous Noble, however, was, that he might obtain favour at Court,<sup>1</sup> by delivering up so great an offender.

The Countess of Caithness, (*Lady Jean Gordon*, only daughter of George, fifth Earl of Huntley,) who was Lord Maxwell's cousin, and greatly interested in his safety, was likewise deceived by her husband, who had told her that a report was spread abroad that it was already known at Court that Lord Maxwell was in hiding in Caithness; and that it was necessary, for their mutual safety, to set off for Edinburgh, to explain the matter; and thus, time would be afforded for Lord Maxwell's escape. The unfortunate Maxwell, then in poor health from his great exertions, was trained to leave Caithness, and pass through *Sutherland*, in order that he might be taken there; and thus spare the Earl the imputation of having so basely violated the laws of hospitality! But so anxious were his servants to execute their commission, that Maxwell was actually taken within the county of Caithness, conducted to Thurso, where Captain George Sinclair<sup>2</sup> was impatiently awaiting his arrival, and carried him back a prisoner to Castle Sinclair, where he had so lately been apparently a favoured and honoured guest.

By command of *the Lords of Privy Council*, Lord Maxwell was shortly afterwards delivered up; and was, upon May 21, 1613, beheaded at the Cross of Edinburgh. It may be gratifying to know that the Earl of Caithness obtained no reward for his most traitorous conduct;—but, on the contrary, his treachery served as a source of constant reproach to him and his family.

A variety of interesting DOCUMENTS are appended, which throw great light upon this matter, and upon the extraordinary state of the country at that period. If the Editor has been too minute or prolix, it is hoped that the singular interest and importance of this remarkable passage of History will prove his best excuse; especially, when it is considered that the previous materials were so very meagre and unsatisfactory.]

[*APUD EDINBURGH, Jun. 24, 1609, per Georgium Comitem Mariscalli, Virtute Commissionis, de data apud Grenwitche, Jun. 6, 1609, et per omnes Regni status; vnacum Jacobo Stewart pro Mariscallo, Wilhelmo Hay pro Constabulario, M. Roberto Lermonth pro Vicecomite de Ed', et Dauide Lyndesay, Adiudicatore.*]

Jun. 24.—JOHNNE LORD MAXWALL.

Sir Thomas Hammyltoun of Bynnie, knyght, aduocat to our fouerane lord, producit, lykas he did diuerse tymes ofbefoir, ane fummondis of Treaffoun, rafit and perfewit be oure fouerane lord and be his hienes Aduocat, aganis John Lord Maxwell, to haue anfuert to the pointis of the said fummondis and to the crymes of Treaffoun and lese-majestie contenit thairintill, the quhilk fummondis, and reassones and causses thairin contenit, being first red in presens of the Lordis of Articlis of this present Parliament, they fand the samyn fummondis relevant: And thaireftir, this infant day, the samyn fummondis of Treaffoun being red in

<sup>1</sup> In June, 1612, the Earl got in bad odour at Court by creating a broil on the High Street of Edinburgh, where he assaulted George Lord Gordon; and great slaughter might have been committed, but for the extreme darkness of the night, owing to which the parties could hardly distinguish their own friends.

<sup>2</sup> This person was bastard nephew to the Earl, and afterwards raised 150 men, and joined the unhappy expedition of Colonel Ramsay and Captain Hay, who had volunteered to assist the King of Sweden, in his war against the King of Denmark. 'They were all miserable cut in peeces by the bours,' in their journey thither through Norway.—*Gordon's Hist. of Sutherland*, p. 289.

prefens of the said lord Commiffionar and of the haill eftaittis of this present Parliament, the said Lord Maxwell, being thryfe callit at the tolbuthe windo, to haue anfuerit to the said fummondis of Treaffoun; and compeirit nocht, the saidis haill Eftaittis ffand the saidis fummondis, rafit be oure said fouerane lord and his hienes Aduocatt, aganis the said Lord Maxwell, and the haill thrie reffones and cauffes thairin contenit, and euerie ane of thame relevant: And thairfoir admittit the famyn to the said aduocattis probatioun. And immediatlie thaireftir, the said Aduocat, for preving of the pointis of the said fummondis of Treaffoun and haill reffones and cauffes contenit thairin, Repetit all the Depositionis of the Witneffes, examinat befor the lordis of Articlis, and lordis of Secreitt Counfaill, of befor, ffor preving of the saidis haill thrie reffones and euerie ane of thame; togidder with diuerfe Actis of Parliament, lawes and constitutionis of this realme, Sir James M'Coneillis Convictioun<sup>1</sup> for braking of waird ffurth of the Castell of Edinburgh; Lettre of Horning aganis the said Lord Maxwell, for nocht compeirance befor the Lordis of Secrete Counfaill, to anfuer befor thame, for his breking of waird furth of the Castell of Edinburcht, for the Burning maid be him at Dalfeble, and for Slauchter of the LAIRD OF JOHNSTOUN; with diuerfe vtheris wryttis and probatiounes producit be the said lord Aduocatt, for preving of the foirfaid fummondis of Treaffoun, and haill thrie feuerall reffones and cauffes contenit thairin, and euerie ane of thame; and renuncit forder probatioun: And thairvpoun the said Aduocat askit Instrumentis. AND lykwayes, the said Aduocat producit, in prefens of the said lord Commiffionar and haill eftaittis, Lettres of Relaxatioun, beirand the said Johne Lord Maxwell to be relaxit, be James Dowglas, meffinger, fra the proces of all Horningis, at the marcatt croces of Lochmaben, and Dumfreife, vpoun the xv day of March 1609 yeiris, and at the marcat croce of Edinbur<sup>t</sup>, be Johne Moncur, meffinger, vpoun the xxiii day of Marche, the yeir of God abonewrittin: As at mair lenth is contenit in the saidis lettres of Relaxatioun, fufcryuit be James Primrofe, clerk to the Secrete Counfaill, of the date the fext day of Marche laftbipaft, and regiftrat in the clerk of Registeris buikis, the xxij day of Marche, 1609 yeiris: And vpoun the production of the saidis Lettres of Relaxatioun, the said Aduocat lykwayes askit Instrumentis, and defyrit the said proces of Foirfaltour to be advyfit be the saidis haill Eftaittis.<sup>2</sup>

SUMMONS OF *TREASON and FORFEITURE, &c. againft John Lord Maxwell.*

JACOBUS, Dei Gratia, Magne Britannie Francie et Hibernie Rex, fideique defensor; dilectis noftris Leoni Regi armorum, Ilay, Albanie, Rofs, Rothesay, Snawdoun, Merchmont, heraudis; Dauid Bryfoun, Alexandro Dowglas, Jacobo Chalmeris et M. Willelmo Stewart, clavigeris; Ormont, Bute, Vnicorne, Carrik,

<sup>1</sup> See May 13, 1609, in the preceding Trial, Vol. III, 1, &c.

<sup>2</sup> See *Acta Parl.* 1609, 414.

signiferis, nuntiis, et eorum cuilibet, coniunctim et diuisim, vicecomitibus nostris in hac parte specialiter constitutis, Salutem. Mandamus vobis et precipimus, Quod summoneatis legitime et peremptorie, coram testibus, JOANNEM DOMINUM MAXWELL personaliter, si eius personalem presentiam commode habere poteritis; sin minus, per publicam proclamationem apud Cruces forales burgorum nostrorum de Edinbur<sup>t</sup> et Drumfreis, et apud Arces de Carlaverok et Drumfreis, et domicilia dicti Joannis Dominum Maxwell, ante suam a legibus fugam et rebellionem; necnon apud portum vulgo *lie schore and peire of Leith*, aliaque loca necessaria, super premonitione sexaginta dierum, quia extra regnum nostrum Scotie esse existimatur; quod compareat coram nobis nostroue Commissionario et Justiciario ac regni nostri Scotie ordinibus, in Parlamento nostro apud Edinburgh, vel vbi nos dictumve nostrum Commissionarium et Justiciarium, ac dicti regni nostri status pro tempore convenire contigerit, tenendo duodecimo die mensis Aprilis proxime futuri, hora causarum, cum continuatione dierum, ad respondendum nobis nostroue Commissionario et Justiciario, in prefato Parlamento; necnon ad instantiam dilecti et fidelis consiliarii nostri Thome Hammyltoun de Bynnie militis Aduocati nostri, pro nostro interesse, pro ipsius Joannis nefarijs, sceleratis, et proditorijs Lese Maiestatis criminibus infra scriptis, per ipsum et alios eius mandato, persuasione, consilio, auxilio, et ratihabitione perpetratis et commissis; ac quarum conscius, particeps, ars et pars fuit et est: Necnon dictus Joannes Dominus Maxwell ad videndum et audiendum per nos nostrumve Commissionarium et Justiciarium, ac dicti regni nostri Scotie ordines, decerni se crimina Lese Maiestatis infra scripta modo subsequente commisisse, penasque illas constitutas, vitæ, scilicet, terrarum, et bonorum omnium, mobilium et immobilium, dignitatum, officiorum, jurium, aliorumque omnium, infra dictum regnum nostrum ad se pertinentium, vel que villo modo ad illum spectare vel pertinere poterunt, amissionem incurrisse; ac dicta omnia bona, predia, terras, tenementa, officia, dignitates, jura, et commoda quecunque, illi infra dictum regnum nostrum competentia, vel que ad illum villo modo spectare poterunt, nobis Forificasse; eaque ad nos pertinere et nobiscum in perpetuum remanere, juxta leges et Regni nostri consuetudinem; ob causas et rationes subsequentes. IMPRIMIS, quod non solum charissimi quondam avi nostri Jacobi V. Regis illustrissimi constitutione, in Parlamento suo, anno 1528 promulgata, sed etiam lege per nos in Parlamento nostro anno 1567 lata, cautum est, quod quecunque homines infra domicilia sua comburunt, omnesque incendiarii edificiorum et frumentorum, omnesque alii voluntarii et maligni incendiarii, dictum crimen certo proposito et deliberato consilio committentes, Lese Maiestatis rei erunt. AC certum est, quod dictus Joannes Dominus Maxwell, ab ipsa juventute ad contumaciam, rebellionem, legum et autoritatis nostre contemptum, tum natura et prava consuetudine deditus,

quum plurimis literis nostris, in annis 1598, 1599, 1600, 1601, et 1602, sub pena rebellionis ei imperatum fuisset, vt redditus prediorum fuorum de Duncow, Trive, Grange, et molendini eiusdem, que pars domini coronie nostre vnite et annexate sunt, et per dictum Joannem Dominum Maxwell et predecessores suos tanquam emphiteutas feudifirmarios et tenentes nostros possesse fuerunt, perfolueret : Necnon vt rationes nobis de aliis redditibus et taxationibus infra senescallatus nostros Vallis Annandie et Kircudbricht, predictis annis, multisque alijs precedentibus, nobis debitis, tanquam dictarum provinciarum et limitum Senescallus, vt ei ex officio incumberebat, nobis et nostris Scaccarii auditoribus redderet ; et dictos redditus, deuorias taxationes, aliasque pecuniarum summas, vbi debuerat, sub pena rebellionis perfolueret : Ac etiam, vt coram Consilij nostri dominis, per se, in dictis annis compareret, ad respondendum pro variis suis contemptibus, rebellionibus, carcerum nostrorum effractionibus, et violentis extra custodias nostras eruptionibus, aliisque delictis et maleficijs per ipsum commissis et perpetratis : ILLE tamen, omnia nostra imperia et mandata pertinaciter contemnens, easque ob causas multasque alias rebelliones ad cornu nostrum existens, quo tamen omnem venie sibi a nobis spem prescinderet, et flagitiosissimis criminibus extremas legum penas mereretur, . . . die mensis Februarij, aut eocirca, anno 1602, comitatus Carolo Maxwell vocato de Kirkhous, Roberto Maxwell de Dunwiddie, et aliis suis satellitibus et criminum socijs, ad numerum viginti hominum illegitime convocatorum, galeis, lanceis, loriceis, bombardis, sclopis, alijsque armis prohibitis munitorum, pro inveterato odio et malicia, diu ante per dictum Joannem contra quondam *Gulielmum Johnestoun* fratrem Wilkini Johnestoun de Elcheschellis, et *Joannem Johnestoun* fratrem Jacobi Johnestoun de Hissliebray, concepta, ob capitales inimicitias inter MAXWELLIOS et JOHNESTONES, accessit ad villam de Dalfibbil, infra parochiam de Kirkmichaell et vicecomitatum nostrum de Drumfreis jacen. ; ibique, per seipsum, dictosque Carolum Maxwell vocat. de Kirkhouse, Robertum Maxwell de Dunwiddie, aliosque seruos et socios suos, dictum Willelmum Johnestoun, in dicta villa de Dalfibbill quiete et pacifice degentem, nullasque iniurias, infidias, aut invasionem suspicantem, immaniter et maliciose aggressus, eundem infra habitationis sue domum in dicta villa de Dalfibbill fugauit ; vt omnis salutis spes ei auferretur, dicti Willelmi domum, certo proposito et per industriam, proditorie incendit et flammis vastauit ; cumque ignis violentia dictum Willelmum erumpere coegisset, crudeliter eum interfecit : Ac statim ad domum *Cuthberti Brattene*, in eadem villa existentem, accedens, eam pariter maliciose, crudeliter, consulto et deliberato animo, proditorie incendit ; ac dictum quondam *Jacobum Johnestoun* vocat. de Briggis infra eandem vivum combuffit ; domumque dicti Cuthberti incendio penitus consumpsit. Eaque proditoria crimina ipsius Joannis Domini Maxwell consilio, mandato, auxilio, et rati-



habitione, perpetrata sunt; dictusque Joannes Dominus Maxwell eorum ars et pars, vulgo *airt and pairt*, fuit et est, et dictas penas Proditionis et Lese Maieftatis iisdem criminibus, de jure constitutas, subire et perferre debet. SECUNDO, quia per nos et dicti regni nostri Scotie ordines in Parlamento nostro vndecimo statutum est, quod Homicidium alicuius subditi nostri, quando is qui trucidatur existit sub fide, fiducia, affecuratione, et potestate occidentis, vulgo *vnder the trust, credit, assurance, and power of the slayer*, omne tale Murthurum et Homicidium imposterum committendum, Lese Maieftatis crimen erit; et qui illius criminis legitimo juris ordine convictus fuerit, vitam, terras, et bona omnia nobis forisfaciet: Atque verum est, quod dictus Joannes Dominus Maxwell, vndecimo die mensis Junii, aut eocirca, anno 1605, coram Dominis Secreti nostri Consilij, in gratiam et amicitiam cum quondam DOMINO JACOBO JOHNSTOUN de *Dunskellie* milite rediit, ac omnium preteritarum inimicitiarum oblivionem sancte promittens, in signum sincere reconciliationis et future amicitie fidem, et dextram ei dedit, et ab omni iniuria, damno, invasione, et periculo, a se, parentibus, affinis, amicis, clientibus, feruis, alijsque omnibus assistentibus suis, imposterum inferendo, se dictum quondam D. Jacobum saluum et incolumem prestiturum, magno interposito sacramento, promisit; et Reconciliationis literas, vulgo *ane Letter of Slaynes*, manu sua signatas, ad premissorum testimonium et confirmationem dedit: Quarum fiducia illectum, dictum quondam D. Jacobum, quum negligentius et incautius se gerere dictus Joannes Dominus Maxwell intelligeret, summa fedissime vindicte cupiditate flagrans, consilium cum dicto Carolo Maxwell vocato de Kirkhouse, in mensibus Martio et Aprili proxime preteritis, iniit, quibus potissimum dolis dictum quondam D. Jacobum Johnstoun in infidias pertrahere et proditorie occidere possit; tandemque concluderunt D. Robertum Maxwell de Spottis militem, nominibus vtrique charum et fidum, ad dictum D. Jacobum in infidias pertrahendum maxime idoneum futurum; ideoque vocato ad se dicto D. Roberto, dictus Joannes Dominus Maxwell diligenter cum eo egit, vt dictum quondam D. Jacobum ad colloquium ad se pertraheret, vt et arctiorem amicitiam et familiaritatem contrahere, et dicti D. Jacobi opera criminum suarum veniam obpredictarum rebellionum, multarumque aliarum, propter Literarum nostrarum in annis 1603, 1604, 1605, 1606, 1607, et 1608, contra se, sub pena rebellionis et ad cornu nostrum denunciationis, directarum contemptum, a nobis obtinere possit: Quod quum dictus D. Robertus revera expeti existimaret, dicti Joannis hortatu, fide prius ab eo data, congressum dum tutum et regressum pacificum et indemnem futurum, cum dicto quondam D. Jacobo sepius egit, eidemque tandem persuasit vt dictum Dominum Maxwell vno tantum comitatus amico, se arbitro, ad effectum predictum pacifice conveniret, sancte promittens, nomine et mandato dicti Joannis Domini Maxwell, accessum et recessum ei securum, tutum, et incolumem.

futurum ; quibus adductus persuasionibus et promissis, dictus quondam D. Jacobus, sexto die mensis Aprilis vltime elapsi, accito secum *Gulielmo Johnestoun* vocato *de Lockerbie*, gladio, sine vllis alijs armis, accinctus, dictum D. Robertum Maxwell secutus ad moram inter Arthursane et Trailflat pervenit, vbi duos equites adventum suum operientes percepit, dictique D. Roberti hortatu paulatim in eo loco substitit, donec D. Robertus progrediens dictosque duos equites Joannem Dominum Maxwell et Carolum Maxwell vocat. de Kirkhous esse perspiciens, adduxisse se dictum D. Jacobum Johnestoun ad destinatum colloquium declaravit, a dicto Domino Maxwell jurisjurandi privs dati, pro dicti D. Jacobi et Gulielmi Johnestounes incolumitate, salvoque et tuto accessu et recessu a dicto colloquio, renouationem exegit ; et Dei nomine et Numine interposito, a dicto Domino Maxwell pro seipso et dicto Carolo Maxwell obtinuit : Sicque dictum quondam D. Jacobum Johnestoun, tot promissis et juramentis fidentem, ad locum colloquio destinatum ad dictum Dominum Maxwell aduxit, et mutua data et accepta, vt inter amicos fieri solet, salute, detectis capitibus congressi, dicto Carolo Maxwell et Gulielmo Johnestoun imperarunt vt seorsum subsisterent, ipsique ad colloquium ita progressi sunt, vt, D. Roberto Maxwell medio, vnus ei ad dextram, alter ad finistram obequitaret : Dumque de rebus ob quas convenerant pacifice et vti videbatur amanter colloquerentur, dictus Carolus Maxwell, ita vti prius inter eum et dictum Joannem Dominum Maxwell convenerat, ad dictum Willelmum Johnestoun, contra quem constitutum erat, accessit ; et vt discordie et rixe ansam nacisceretur, adeo ingratum sibi illum congressum esse affirmavit, vt si illius causam prius intellexisset, ei se haud affuturum profiteretur. Respondenti vero Gulielmo, sperare se colloquii illius finem dictis nobilibus viris amicisque et clientibus eorum gratum et vtilem futurum : Id fieri non posse Carolus asseruit, dictumque D. Jacobum, omnesque alios Johnstones, latrones et proditores vocavit. Gulielmus autem, ne sua culpa discordie initium preberetur, dixit se quamlibet iniuriam passurum, potius quam duorum colloquium disturbaturum ; et quamvis, tanta dicti Gulielmi patientia frustratus, Carolus nullam pugne occasionem inveniret : Illud tamen quod prius intenderat omnino peracturus, dictum Gulielmum, nec verbo nec facto provocatus, crudeliter et proditorie parato sclopo invasit, et pallium et vestes eius duobus globalis transmissit ; cujus fragore, et Gulielmi voce proditorie vim vite sue inferri clamantis, turbatus quondam D. Jacobus Johnestoun, ab eo se convertens, et que tam fedi facinoris causa esse rogans, dictus Joannes Dominus Maxwell, a tergo, dicto quondam D. Jacobo Johnestoun, nil tale metuenti, imminens sclopo, quem sub palio clam paratum habebat, in dictum D. Jacobum, proditorie directo, per humerum duabus glandibus plumbeis venenatis<sup>1</sup> in corpus et

<sup>1</sup> This circumstance of the TWO lead BULLETS having been previously POISONED, is a very strong fact against Maxwell ; and if borne out by the evidence, satisfactorily proves the deadly intention of

vitalia eius addictis, eum inhumaniter, crudeliter, fede, et proditorie occidit; ac sub fide, fiducia, affecuratione, et potestate sua, vulgo *vnder his trust, credit, assurance, and power*, trucidavit; contra fidem datam et amicitiam initam coram dictis Confilij nostri dominis, et dicti D. Roberti Maxwell, interventio sepius juramento, per dictum Joannem Dominum Maxwell renovatam. QUORUM crimum dictus Joannes Dominus Maxwell est conscius, et particeps, ars et pars; ideoque penas Lese Maieftatis iis jure constitutas, vt antea dictum est, subire et perferre debet. TERTIO, quia, tam Communi gentium omnium quam Civili Romanorum Jure, et regni nostri Legibus statutum, et vltra omnem memoriam recepta et approbata consuetudine observatum est, eum qui Maieftatem publicam leserit, cuiusue opera, consilio, dolo, malo, consilium initum est, quo quis contra Rempublicam arma ferat, aut qui Lese Maieftatis reum in vincula conjectum dimiserit, Maieftatis teneri: Ac vero manifestum est, dictum Joannem Dominum Maxwell, in Arcem Edinburgenam, quia nostris Confilii nostri mandatis obtemperare pertinaciter recusauerat, in custodiam missum, consilium cum JACOBO M'CONNELL *de Dwnyveg milite*, in eadem Arce, ob multa Lese Maieftatis et Proditionis crimina in vinculis detento, inisse; quibus potissimum rationibus de dicta custodia violenter et proditorie, in Maieftatis nostre manifestum contemptum et lesionem, erumperent, et affito in sceleris conscientiam dicto ROBERTO MAXWELL *de Dunwidie*, conspirasse, ereptis custodum armis illis, sibi exitum e dicta Arce per vim proditorie parare; quod vt facilius perfecerent, . . . die mensis Decembris, anno 1607, ad hilariorem et liberio rem computationem novitatis, invitatis custodibus, gladiisq. illorum per vim ereptis, ipsos deinde custodes in cubiculum obseratum inermes incluserunt, et ad interiorem dicte Arcis januam armati accedentes *Alexandrum Strutheris* ejus custodem, quia pro sua in nos fide eos exitu prohibere conatus est, multis vulneribus, in capite, brachio, manu, alijsque corporis partibus, faucium et prope exanimem prostraverunt; et ob parem causam *Margareta Philop*, vxore eius, barbare et crudeliter etiam vulnerata, per dictam januam interiorem ad mediam Arcis portam pervenerunt, vbi *Archibaldum Cunyng-hame* illius custodem, claves tradere recusantem, proditorie etiam invaserunt, et in brachio crudeliter vulnerato claves ei violenter eripuerunt; et aperta per vim porta proditorie erumpentes, muro qui Portam vrbis Occidentalem pertingit transenso, dicti Joannes Dominus Maxwell, et D. Jacobus M'Connell, proditorie et

Lord Maxwell, who, in appointing this meeting, had unquestionably predetermined the destruction of his rival. On the other hand, it seems clear that the Laird of Johnstone, his attendant, and Sir Robert Maxwell, their mutual friend, were only possessed of their side-arms, the distinguishing mark of a Gentleman at that period. It is well worthy of remark, that Sir Walter Scott relates, that 'while the gallant old knight lay dying on the ground, Maxwell rode round him, with the view of completing his crime; but Johnstone defended himself with his sword, till strength and life failed him.' It is unnecessary, here, to enter into any detail on these points, as such copious illustrations have been given in the Notice and Appendix to this Trial.

violenter aufugerunt ; donec sub Castellam nostri et aliorum fidelium subditorum insequentium diligentia, captus et in carcere retractus est, dictus Jacobus M'Connell ; dicto Joanne Domino Maxwell celeri fuga euadente : Sicque, Joannes Dominus Maxwell Maieftatem nostram lefit, eiusque opera, consilio, dolo, malo, consilium inicum est, quo arma contra nos per seipsum et dictos Jacobum dominum M'Conneill et Robertum Maxwell de Dunwiddie lata sunt, ac etiam dictum Jacobum M'Conneill militem Maieftatis reum in vincula coniectum dimisit, dictorumque omnium Lese Maieftatis criminum conscius, et particeps, ars et pars fuit et est, et penas iis a jure constitutas subire et perpeti debet. ET PROPTEREA, dictus Joannes Dominus Maxwell ad videndum et audiendum, per nos, dictumve nostrum Commissionarium et Justiciarium, ac dicti nostri regni Scotie ordines, decerni et ordinari, se, predicta Lese Maieftatis crimina, per seipsum et alios ipsius mandato et persuasione, consilio, auxilio et ratihabitione comisisse et perpetrasse ; ac eorum conscium et participem, vulgo *airt and pairt*, fuisse et esse ; ideoque penas dictis Proditionis et Lese Maieftatis criminibus eompetentes ferre et subire debere, vite, scilicet, et bonorum omnium, mobilium et immobilium, terrarum, tenementorum, dignitatum, officiorum, jurium, aliorumque omnium ad se spectantium, amissionem et confiscationem ; dictasque terras, predia, bonaque omnia, mobilia et immobilia, dignitates, officia, jura, aliaque omnia ad dictum Joannem Dominum Maxwell spectantia et pertinentia, vel que ad illum spectare et pertinere villo modo potuerunt, nobis confiscari, ad nos pertinere et perpetuo nobiscum in proprietate permanere : ET vterius, in premissis respondendum et juri parendum : Intimando dicto Joanni Domino Maxwell, quod siue, dictis die et loco, cum continuatione dierum, comparuerit, siue non, nos tamen dictusue noster Commissionarius ac Justiciarius, et dicti regni nostri ordines, in premissis, justitia mediante, procedemus et procedent. Insuper summoneat ad comparandum coram nobis, nostroue Commissionario ac Justiciario, et dictis regni nostri statibus, in dicto Parlamento, dictis die et loco, hora causarum, cum continuatione, ad perhibendum fidele testimonium in premissis, sub pena legis : Et presentes literas debite executas et indorfatas earundem latori reddatis. Et vos qui presentes executi fueritis sitis ibidem dictis die et loco, cum continuatione dierum, coram nobis dictoue nostro Commissionario et Justiciario, ac tribus regni ordinibus, portantes vobiscum vestre summonitionis testimonium, in scriptis, pro premissis aut ipsos testes. Ad quod faciendum, vobis et vestrum cuilibet, coniunctim et divisim, vicecomitibus nostris in hac parte, nostram plenariam virtute presentium committimus potestatem. Datum sub testimonio nostri magni Sigilli, Apud Edinbur<sup>t</sup> vigesimo sexto die mensis Januarii, anno domini millesimo sexcentesimo nono, et regni nostri annis quadragesimo secundo et sexto.

THE quhilk summondis, with the executiounes and indorfatiounes thair of,

being this instant day red, in presens of our souerane lordis Commiffionar and Estaittis of Parliament, first in Latine and thaireftir in Scottis, the said Johne Lord Maxwell, being oft tymes callit of new at the tolbutth window of the said burcht of Edinburcht, to haue compeirit, &c. And he nocht compeirand to haue defendit in the said mater, and to haue answerit to the said summondis, the said Sir Thomas Hammyltoun of Bynnie, kny<sup>t</sup>, Aduocat to our souerane lord, defyrit the saidis Estaittis declaratioun, gif the reffounes of the said summondis wer relevant aganis the said Lord Maxwell. The quhilkis Estaittis fand the said summondis, and the reffones and causses thairin contenit, and euerie ane of thame relevant. Thairfor the said Aduocat, of new, for preving of the foirsaidis thrie reffounes and euerie ane of thame, beirand and contenand as is aboue writtin, repetit all the Depositiones of the Witnesfes, examinat befor the saidis Lordis of Articlis, and Lordis of the Secrete Counsaill, respectiue, with diuerse Actis of Parliament, Lawes and constitutionis of this realme, Sir James M<sup>c</sup>Coneillis Convictioun, &c. with all vtheris wryttis and probatiounes productit of befor, this instant day, be the said Aduocat, ffor preving of the foirsaidis summondis of Treassoun, and hail thrie reffounes and causses contenit thairin, and euerie ane of thame; and defyrit the saidis Estaittis of Parliament to advyse the probatiounes foirsaidis led and deducit in the said mater, and to pronunce thair Sentence of Parliament thairintill, according to the famin probatiounes, and thair consciences: And thaireftir, the hail wryttis, Depositiones of Witnesfes and probatiounes being red, sene, and confiderit be the saidis hail Estaittis of Parliament, and they thairwith being ryplie advyfit,

**VERDICT,** The saidis Lord Commiffionar and Estaittis of Parliament, ffindis, decernis and declaris, that the said Johne Lord Maxwell Committit and did oppin and manifest Treassoun, in all the pointis, articlis and maner contenit in the said Summondis: And thairfoir, it wes gevin for dome, be the mouth of Daud Lyndfay, dempster of Parliament, in maner and forme as followes:

**SENTENCE.** This Court of Parliament schawes for law, the said **JOHNE LORD MAXWELL** to haue committit and done all the foirsaidis crymes of Treassoun and Lefemajestie, be him self, and vtheris of his causing, command, assistance and ratihabitoun, aganis oure said souerane lord and his authoritie; and that he is and wes giltie and pairtaker, airt and pairt, of the famin crymes of Treassoun; all in maner at lenth contenit in the reffounes of the said summondis: And thairfoir, Decernis and Declairis, that the said Johne Lord Maxwell aucht and fould vnderly and suffer the paynis competent to the saidis crymes of Treassoun and Lefemaieftie, to wit, the tynfall and confiscatioun of his lyfe, and all his guidis, moveable and vnmmoveable, landis, tenementis, digniteis, offices, richtis, and all vtheris thingis belanging to him; and all the saidis landis, rowmes, and all guidis

moveable and vnmoveable, digniteis, offices, richtis, and all vtheris belanging and pertening to the said Johne Lord Maxwell, and quhilkis may ony way belang and pertene to him, to be confiscatt, to pertene to our said fouerane lord, and to remane with his Maiestie for euir in propertie. And this I gif for dome.

APPENDIX OF ORIGINAL DOCUMENTS, ILLUSTRATIVE OF THE TRIAL OF  
JOHN LORD MAXWELL.

I. DEPOSITIONS taken before THE LORDS OF PRIVY COUNCIL, relative to the  
*Escape of LORD MAXWELL and SIR JAMES MAKONEILL from the Castle  
of Edinburgh.*<sup>1</sup>

(1.) DEPOSITION of *Archibald Cunynghame, Master Porter of the Castle of Edinburgh.*

AT the Castell of Edinburgh, the xv day of Januar, 1608.

ARCHIBALD CUNYNGHAME, Maister porter of the Castell, sworne and demandit what he knawis of the mater foirfaid of the breking of Warde? Deponis, that he, being sittand in his chalmer in the yett,<sup>2</sup> he fend his boy to haue fetchet him a drink: In the meantyme, Williame Maxuell of Kirkhous come to the deponer and defyrit him to oppin the yett; and that immediatlie *the Lord Maxwell* him self come and cryed, 'ffals knave, oppin the yett!' And the deponer refuseing, and begynnand to haue spokin to the Lord, he cryed agane, 'ffals knaif, oppin the yett!' And with a drawin fwerd gaif the deponer ane greit straik vpoun the arme; and mynting<sup>3</sup> again to haif struckin the deponer, he wes stayed be Williame Maxwell of Kirkhous, who threw the keyis frome the deponer, efter that he wes hurte, and oppynit the yett. And deponis, that the Lord Maxwell wald haif slane the deponer, wer nocht he wes stayed be Williame of Kirkhous.

(2.) DEPOSITION of *Alexander Struthers, Porter of the Castle of Edinburgh.*

ALEXANDER STRUTHERS, Porter, sworne and examinat vpoun his knowlege of the interprife foirfaid, deponis, that Williame Maxwell of Kirkhous come to the yett,<sup>4</sup> and cryed, 'Porter, oppin the yett, and latt me oute!' And the deponer having oppynit the yett, Williame Maxwell past oute,<sup>5</sup> and then patt his bak to the wickett of the yett, to haif stayed the deponer fra closing of it: And the deponer preafing to haif clofit the yett, *the Lord Maxwell* and *Sir James M'coneill* and Robert of Dynwyddie come to the yett; and the Lord Maxwell, with a drawne swerde, straik the deponer vpoun the hand, and Sir James gaif the deponer ane straik with ane swerd vpoun the heid: And thay haueing past oute at that yett, the deponeris wyffe meiting with thame betuix the yettis, and trying to haue relevit the deponer, hir husband, the said Sir James gaif hir ane straik vpoun the heid; and that scho ressaued fundrie vther fraikis, bot knawis nocht who gaif thame.

(3.) DEPOSITION of *Sir James Makoneill, knight.*

AT the Castell of Edinburgh, the xv day of Januare, 1608, &c.<sup>6</sup>

(4.) SECOND DEPOSITION of *Archibald Cuninghame, Master Porter of the Castle of Edinburgh.*

APUD ED<sup>2</sup>, xx Junij, 1609. WITNESSES *producit be the Advocat, for preving of the Third Ressoune of Treffoun anent the Breking of Ward furth of the Castell of Edinburgh.*

ARCHIBALD CUNNINGHAME, Porter of the Castell of Edinburgh, of the aige of lxij yeiris, or thair-by, deponis, that vpoun the fourt day of December, the yeir of God 1607 yeiris, this deponar for the tyme, about fyve horis befoir supper, sittand in the myd Porter-hous of the Castell of Edinburgh, and

<sup>1</sup> The following Depositions are taken from the Originals, preserved in his Majesty's General Register House, Edinburgh. <sup>2</sup> In the Guard-house, at the inner gate. <sup>3</sup> Essaying. <sup>4</sup> Viz. the second gate, kept by the under Porter, or 'Keeper of the Inner-yett.' <sup>5</sup> As a visiter permitted to see his friends in ward. <sup>6</sup> See his Trial, May 13, 1609, Vol. III. page 10, where this Paper is given at length.

the key being in the wicket of the said mid-3ett, Williame Maxwell of Kirkhous cummis furthe of the Castell, and defyris this deponar to oppin the wicket; and as the deponar was villing to haif oppinnit the said wicket, the Lord Maxwell come vpoun this deponar with ane drauin fuerd, faying, 'Fals knaif! oppin pe 3ett, or ellis I fall hew the all in bladdis!' The deponar anfuert, 'Schamit theif! quhat ar ze doand heir?' And then the Lord Maxwell incontinent straik at this deponar with his drawin fuord, and mwtilat him of his left arme; and gif the said Williame Maxwell had nocht favit the deponar from the said Lord Maxwellis furie, he had slane the deponar. Then the Lord Maxwell oppinnit the wicket, and he and Sir James Makconeill pafte furthe thairof, and pafte to the vest Castell vall that gois to the West-port of Edinburgh, and haveing clwme that wall, the said Lord Maxwell eschapit with fuitht<sup>1</sup> flycht; and the Constable of the Castell, with vtheris keparis thairof, apprehendit Sir James Makconeill, and brocht him bak agane and pat him in the irnis; and Williame Maxwell left the Lord Maxwell at the vtter 3ett, quhair he was lykwayis tane by the Constable; and hard nocht quhen Alexander Strutheris, kepar of the Inner-port, was forcit and hurt be the Lord Maxwell; and nevir hard any tumult quhill the Lord Maxwell come vpoun him self.

(5.) SECOND DEPOSITION of *Alexander Struthers, Keeper of the Inner Yett.*

ALEXANDER STRUTHERIS, kepar of the Inner-3ett of the Castell of Edinburgh, of the aige of 1<sup>3</sup> 3eiris, or thairby, mareit, deponis, That vpoun the ferd day of December, 1607 yeiris, this deponar, about fyve horis at night, sittand in the Inner-porter-hous of the Castell of Edinburgh, and haveing the keyis of the Inner-3ett hyndand<sup>2</sup> vpoun his arme, Williame Maxwell of Kirkhous, feruand to the Lord Maxwell, come to this deponar and defyrit him to oppin the 3ett, and the deponar haveing oppinnit the inner weiket, and the said William haveing pafte furth thairof, the said William stayit the deponar to cloife and loik the weiket of the Inner-3et, and in the mentyme of the stryiff, Johne Lord Maxwell, Sir James Makconeill, and Robert Maxwell of the Tour, all thrie with drawin fuordes in thair handis, come to this deponar, and the Lord Maxwell with his fuord first straik at the deponar, and cuttit his left hand: Thairefter Sir James M<sup>c</sup>coneill and Robert Maxwell, ilkane of thame, gaif him bluidie straikis in his heid, and the deponar cryand 'Fy! Tresfoun!' Margaret Philp, his vyiff, come furthe to help the deponar, (quha was lykvyis voundit be the foirfaidis personis,) and gat four bluidie straikis in his bodie: And in the mentyme, quhill Robert Maxwell and this deponar war in gryppis and stryiff, the said Lord Maxwell and Sir James M<sup>c</sup>coneill pafte furthe of the said Inner-3et, the quhilk Inner-3et this deponar than lokit and held in the said Robert Maxwell, quha incontinent thairefter lap the said Castell vall, and eshapit furthe thairof; and within ane hour thairefter this deponar saw Sir James M<sup>c</sup>coneill brocht within the said Castell be the Constable, quhair he 3it remanis, lyand in irnis.

(6.) DEPOSITION of *Thomas Home, Constable of the Castle of Edinburgh.*

THOMAS HOME, Constable of the Castell of Edinburgh, of the aige of lx yeiris, or thairby, mareit, deponis, That vpoun the said ferd day of December, 1607 yeiris, the twa Inner-portis of the Castell of Edinburgh being forcit and opinnit be the Lord Maxwell and Sir James MacConeill, efter that thai had hurt the tua portaris, and had loppin the wall aboue the Vest Port. This deponar, vpoun the cry of the wechemen, followit tham with diligence; and as he cam neir the Barres,<sup>4</sup> certane men at the West Port tauld to this deponar, that ane of tham that had brokin ward was lyand in ane meiddane,<sup>5</sup> and had irnis vpoun him: And thairefter this deponar brocht Sir James M<sup>c</sup>coneill bak agane to the Castell of Edinburgh, quhair he yit lysis in irnis. And the deponar saw the saidis tua Portaris bayth hurt, quhen he come in with Sir James M<sup>c</sup>coneill to the Castell of Edinburgh agane.

(7.) DEPOSITION of *William Symfone, soldier in the Castle of Edinburgh.*

WILLIAME SYMSONE, ane of the fuldaris of the Castell, of the aige of xxvj yeiris, or thairby, mareit, deponis, that vpoun the ferd day of December, 1607 yeiris, about fyve houris, befor supper, the Lord

<sup>1</sup> Hasty, precipitate.    <sup>2</sup> Fifty.    <sup>3</sup> Hanging.    <sup>4</sup> The *Hastiludium*, or 'Barras,' under the Castle, where, for a long series of years, the Tilts and Tournaments had been held. It was situated near what are still called the King's Stables, at the West Port of the city.    <sup>5</sup> A *midden*, or dunghill.

Maxvell come to Sir James M<sup>c</sup>coneillis chalmer to pas his tyme, according to his custome; quhair war present, for the tyme, the Lord Maxwell, Sir James, Young Cloifburne, Robert Maxwell of the Tour, William Maxwell of Kirkhous, William Armstrang of the Gingillis; and efter that the Lord Maxwell and his colligis had marchit throuche the chalmer, he way of pastyme, for the tyme, he come to this deponar, quha than was speciall kepar of Sir James M<sup>c</sup>coneill, and haveing put his hand within this deponaris faord gardis, preiffit to haif drawin the famin, bot being impedit be this deponar, the Lord Maxwell tuik from William Maxwell his quhinger, and held the famin to this deponaris breift, fueiring with ane great ayth, that gif he lat nocht the fuord cum, he suld stik him with that quhinger. Then this deponar, for feir of his lyiff, deliuerit his fuord with the scabert to the said Lord Maxwell, and thairefter the Lord Maxwell come to James Stewart, his awin kepar, and William Armstrang, and tuik from thame ilkane of their fuordis; and gaif ane of the fuordis to Sir James M<sup>c</sup>coneill, the vther to Robert of the Tour, and keptit the thrid to him self, vtterand thir wordis, 'All gud fellowis that luiffis me, follow me! For I fall ather be furthe of the Castell pis nycht, or ellis I fall loife my lyiff!' And then the Lord Maxwell and his colligis haveing past furthe of the said Sir James chalmer, he clofit within the famin chalmer, Young Cloifburne, William Armestrang, James Stewart, and this deponar, and feschyntit the famin dure with the catbande, that thai mycht nocht oppin the famin; saying, he vowit to God, that, 'Gif ony of them suld cry, he suld cum bak agane and tak thair lyiffis!' And this deponar haveing maid the dure fast within, cryit furth at the Southe vyndow towardis the West Port, 'Treffoun! Treffoun!' And be that cry the men of the West Port come and apprehendit the said Sir James M<sup>c</sup>Coneill.

(8.) DEPOSITION of *William Armestrang in the Chengillis.*

WILLIAM ARMESTRONG in the Chengillis, of the aige of xxx yeiris, or thairby, mareit, deponis *conformis immediate preceden. Gulielmo Symfoun, in omnibus; reddens eandem caussum scientie*; becaus that famin nycht that the Lord Maxwell and Sir James M<sup>c</sup>coneill past furthe of the Castell of Edinburgh, this deponar was present in Sir James M<sup>c</sup>coneillis chalmer, in cumpanie with the Lord Maxwell and remanent perfonis foirfaidis, all myrrie be drinking of wyne. This deponar saw the Lord Maxwell tak the thrie fuordis from the foirfaidis thre perfonis, and past furthe of the dure, and clois the famin efter him, saying, 'Gif ony of tham cryit, he suld tak thair lyiffis!' And this deponar was ane of tham that was clofit within the chalmer, be the Lord Maxwell; be ressonne that he refusit to accompanie the Lord Maxwell, in breking ward.

II. DEPOSITIONS taken before the Lords of Privy Council, relative to the *Treasonable Murder of SIR JAMES JOHNSTONE of that Ilk.*

(9.) DEPOSITION of *Sir Robert Maxwell of Spottis.*

AT Edinburghe, the xxvij day of Aprile, 1608, In prefence of the Lords of Secrete Counsaill.

SIR ROBERT MAXWELL of Spottis, sworne and examinat vpoun the forme and maner of the Slaughter of the Laird of Johnstoun, and of the said Sir Robertis awne cariage and behaviour, in that mater; Deponis as followis: *Firß*, that the Laird of Johnstoun desyrit the deponar, being in his house of Lochwood for the tyme, to speik the Lord Maxwell, quhen he fand the oportunitie, to sie yf the deponar could mak a good in the materis betuix thame. To quhom the deponar ansuerit, that he wes a feiklie man, and had no credite at the Lord Maxwellis hand; becaus the Lord Maxwell haid evir a mislyking of him, becaus he maryed Johnstones sutter. And deponis, that he said to the Laird of Johnstoun, that he had no will to mell in that turne, becaus it wes so weghtie a mater; and the Lord was a perellous man to haif ado with! And denyis that evir he proponit that mater to the Lord Maxwell, in the Laird of Johnstonis name, as haveing directioun from him. DEPONIS, that aucht or nyne dayis afoir the Slaughter of the Laird of Johnstoun, the Lord Maxwell fend Edward Maxwell,



sone to the Laird of Tynwall, to the deponer, to desyre him to ' come and speik with his lordship.' And the deponer, mislyking the messinger, refusit to gang to my Lord, saying that he stood in that estait that he nicht not weill speik with him. And yit the principall caus that movit the deponer to refuse to go with him, wes the mislyking of the messinger, fering that he sould reveill it. Thairefter, that same day, the deponer send Johnne Maxwell, his awin servand, to my lord, to vnderstand his l. will and pleasour, and desyre his l. to schaw ony thing he had to say to the said Johnne, als yf the deponer haid bene present: And that my lord refusit to schaw ony thing to Johnne, quhill he mett with the deponer him self; and willit Johnne to tell the deponer, that he desyrit to meitt with him at ester none. Quhairvpoun the deponer raid to him to Kirkennane hill; and at thair meeting, my lord sayd to the deponar, ' Cofine, it wes for this caus I send for 3ow. 3e see my estait and danger I stand in; and I wald crave 3our counsell and avise, as ane man that tenderis my weill.' To quhom the deponer anfuerit, that the mater wes so far past, as hardlie could he gif his l. ane counsell; and gif he haid a counsell, he wald gif him the best he could. The deponeris opinioun wes, that he sould keipe him quiet, and do no thing quhilk nicht offend the Kingis Maiestie farder nor he had done; and that he wald move the noblemen, who wer his freindis at Court and Counsell, to report the best of him to his Maiestie and Counsell. And the Deponer sperit at him ' In quhat estait his l. and his nichtbouris, the Barones of the countrey, stood into?' His anfuer wes, that he could not weill tell that him self. Vpoun thir speiches, thay fell in speiking with the Laird of Johnnstoun; and my lord desyrit to gett him knowledge, yf the Laird of Johnnstoun had bene ane platter aganis him, fen thair aggreement? And quhat he nicht look for att his handis in tyme comeing? The Deponeris answer wes, that he knew no thing of that mater, whill he haid spokin with Johnnstoun, or gottin his anfuer, in wryte; and at that tyme he could not meete with him, becaus he wes to ryde to Edinburgh for some of his awne adois. And my lord desyrit the deponer to wryte in his awne name to the Laird, to vnderstand quhat certantie my lord nicht haif of him. And my lord promesit to send to the deponer, in wryte, the headis quhairvpoun the deponer sould forme his bill to the Laird, the nixt morneing; quhilk my lord did. And the deponer said to my lord, ' Yf this be a mater that 3our l. thinkis, in 3our hairte, 3e can tak vp and remett to the Laird, I will very willinglie travell in the mater and do the best I can; vtherwise, I desyre nocht to mell in it.' To quhom my lordis anfuer wes, that of all evillis the least wes to be tane, seing he had at the Kingis commandment done it alredy. Yf he saw ony willingnes in the Laird to do his dewytie to him, he wald willinglie pas it over, and if he ressaunt ane ressonable answer of the Laird, he wald be content to meete with him, at ony convenient place: And promest, that he sould keepe honnestlie, for his pairt and these that wer with him, providing it war keepit quiet, for both their weillis. AND upoun the morne, the deponer ressaunt the headis in a Tickett sent to him to his awne housse; quhairvpoun my lord desyrit him to wryte to the Laird; quhilk the deponer thinking mistie, the deponer wryte bak agane to my lord, and send his Tickett clofit in hes awne Bill, schawing my lord that he wald not deale in that turne, quhill he spak with his lordship, and that he haid the Heidis mair cleirly fett down. Quhairvpoun my lord write bak to the deponar, and desyrit him to meit his lordship at the Kirk of Butill: And the deponar comeing thair and missing my lord, and persaving some personis attending to meit his lordship, the deponer raid away, and wald not meit with him at that tyme; and left ane servand to tell my lord that he haid bene thair, and was riddin away: And that same nicht, my lord causit the deponeris man come bak to the deponer, and desyre him to meit him, about the setting of the sone, besyd the place of Butill, at the water syd; quhilk the deponar did: And the deponer asking of him quhat he meant be these Articles and headis he had sent vnto him? My lord anfuerit, that he wes not a good wreater, and wald not commit the trust of this to ane vther; alwise, his meaning wes, that the deponer sould desyre the Laird to cleir him self that he had not bene a dealer aganis him in tyme bigane, and to lat my lord vnderstand quhat he nicht look for at his handis in tyme comeing. According to the quhilk, the deponer wryte to the Laird, and get his

answer within tua or thrie nichtis. AND deponis, that he promiseit to my lord, yf his lordschip wer in these fieldes, that he fould gett his lordschipis ane (*own*) anfuere, and bring it to him; bot yf his lordschip wes not in these fieldis, the deponer fould be in Terriglis vpoun Monunday thairefter, quhair my lord fould find him. According to the quhilk, my lord appointit his man, Johne M<sup>c</sup>brair, to attend the deponer at Terriglis; and efter the deponer lichtit (*alighted*), Johne M<sup>c</sup>brair defyrit him to go and speik with my lord, who attendit him besyd Haliewode. And deponis that thay mett in the wod, quhair the deponer lute my lord see the Lairdis answer in wryte; quhilk he red, and (*was*) weill content thairwith. And thairefter, the deponer takand my lordis faithfull promiseis, with my lordis hand strekit in the deponeris handis, that he, nor the man he fould bring with him, fould do no wrang, bot keepe honnestlie, quhidder thay aggreit or not, my lord, with the deponer, sett down the tryift to be vpoun Wodnifday thairefter, beyond the House of the Beal, betuix thrie and four efter none; quhair ather pairty fould come accompanied with one onlie, and na vtheris to be present bot the deponer: And my lord promiseit to bring Robert Maxwell of the Tour with him, or ane vther quhom the deponer fould lyk als weill of, for quhom my lord fould be anfuerebill. And, pairting with his lordschip, the deponer, vpoun the morne, raid down to the Laird of Johnnstoun, and tauld him of the appointing of the tryift; who being verie willing to it, and his faithfull promiseis to keepe honnestlie, for his pairte, he, with the deponer and Willie Johnnstoun of Locurbie, come, vpoun the morne thairefter, agaitward to the tryift, within a myle or thairabouts to the place appointit; and in the way, the Laird fay<sup>1</sup> to the deponer, that quhatevir course he tooke with the Lord Maxwell, he wald ever reserve his dewitie and allegeance to the Kingis Ma<sup>tie</sup>, and that he wald counsell my lord to begyn with Sir Williame Cranstoun, to be at ane point with him, that by his meanis and procurement the Erll of Dunbar might be intreatit to interceid for his lordschip, at the Kingis handis; and sua, comeing within a myle to the place appointit, the deponer lute the Laird sie quhair my lord wes; and the deponer caufit the Laird stay thair, and he raid fordward to my lord, who wes attending at the place appointit, as said is, and tauld my lord that the Laird was come, according to the appointment; and that he reposit so grite traift and confidence in my lord, that he wes onlie ryding vpoun ane amling naig; and that Willie of Lockarbie wes with him and na mae, as his lordschip himselff saw. And than the deponer of new took my lordis promiseis for keeping of his former promiseis and credite, and quhilk my lord frielie gaf: And my lord desirit the deponer to tak Charlis Maxwellis promiseis lykwise, who wes with him; quhilk the deponer refuifit to do; and wes verie miscontit (*miscontent?*) that Charlie wes thair. And than my lord promiseit to be anfwereable for him. Sua the deponer raid bak to the Laird, and broght him fordward, and took the lyk promiseis of the Laird that he fould be anfwerebill for his man Willie Johnnstoun: And afoir the deponer come from my lord, baith my lord and the Laird commandit Charlie Maxwell to ryd af theme, and not to go towardis Willie Johnnstoun. And the deponer and the Laird gaf the lyk command and directioun to Willie Johnnstoun to ryd af them, and not to go toward Charlie Maxwell. AND sua, my lord, the Laird, and the deponer mett; and mutuall salutatiounis paff betwix thame, and they raid togidder, the deponer in the midis, my lord on his left hand, and the Laird on his richt hand; and efter some speiches, my lord directit his langwage to the deponer, and the Laird and the deponer directit thair langwage to my lord; and ryding thus way, and thair bakis to the vther tua, the deponer lookis about and saw Charlie Maxwell go fra the place quhair he wes appointit to stay, directlie towardis Willie Johnnstoun, and efter some few speiches betwix thame, quhilk the deponer hard not, the deponer saw Charlie Maxwell schoote a pistolett at Willie Johnnstoun; quhairvpoun Willie gaf a schoute and cryed. And thairefter the deponer clappit to my lord, and preift to haif tane him be the brydle-renzeis, and, missing his renzeis, gat ane grip of his klok, quhilk he pullit to him—and cryed to my lord, ‘Fy! my lord! Mak not your selff a Tratour and me both!’ To quhom my lord anfuereit, ‘I am wytyles!’<sup>2</sup> With this, the Laird of Johnnstoun slip-pit af<sup>3</sup> the deponer, and wes ryding for relief of his awne man; and my lord followit him, and behind

<sup>1</sup> For *said*.<sup>2</sup> Free of *wyte* or blame.<sup>3</sup> Slipt or stole away unperceived.

his bak, shot him—and raid his way : And the Lairdis horfe making some sturr,<sup>1</sup> his girdis <sup>2</sup> brack, and the Laird fell ; and efter his fall gat vp agane on his feitt : And Charlie come agane, and offerrit findrie straikis ; bott gat not leave to do any harme.

ROBERT MAXWALL OF SPOTTIS.

*Tenet cum principali,* J. PRYMOIS.<sup>3</sup>

(10.) DEPOSITION of *William Johnston of Lockerby.*

APUD ED<sup>a</sup>, *decimo nono Junij*, 1609. WITNESSES *producit for preveing of the Secund Reffoun of Treffoun anent the Slaughter of the Lard of Johnestoune.*

WILLIAME JOHNSTOUN, callit of Lockerbie, of the aige of xl yeiris, or thairby, mareit ; deponis, that vpoun the sext day of Aprile, the yeir of God 1608, this deponar cumming to the place of Lochwod, about ane efter none, THE LARD OF JOHNSTOUN tuik this deponar to the clois, and said to him, ‘ Ze ar velcum, for I haif ane gitar turne ado with you nor ewir I had befor this day ; I am to meit with the Lord Maxwell, and ze fall go with me, and loip on vpoun your horse, and raik fordward to Lytill Lochwod, quhill I owirtak you, and let name ken quhair ze ar rydand to.’ Immediatlie thairefter the Lard of Johnestoun and *Sir Robert Maxwell of Spottis* owirtuik this deponar within ane myle from the Lochwod ; and thei raid altogidder towartis the place appoyntit, quhill thei come to the Cowart-croce, quhilk was within a myle quhair THE LORD MAXVELL and *Charlis Maxwell* was huifand <sup>4</sup> on horfbak togidder. Then Sir Robert Maxwell directit the Lard of Johnestoun and this deponar to stay thair, quhill his returne to thame, or ellis that he gif thame ane fing to cum fordward, quhilk was be haldin vp of his nepkyn vpoun his wand end.<sup>5</sup> Schortlie thairefter Sir Robert Maxwell cumming from the Lord Maxwell, about the mydway betwix the saidis pairteis, the said Sir Robert held vp his nepkyn vpoun his wand end ; and vpoun that finge the Lard of Johnestoun and this deponar raid fordward to the said Sir Robert. At thair meting the said Sir Robert shew to the Lard of Johnestoun, that the Lord Maxwell, accompaneit with Charlie Maxwell allane, war awayting vpoun thair cumming, and that the Lord Maxwell inquiryt of Sir Robert quho was with the Lard of Johnestoun ? The quhilk Sir Robert anfuert, that he had tauld to the said Lord Maxwell, that this deponar was onlie in companie with the Lard of Johnestoun ; and that the Lard of Johnestoun, for secrecie of the tryft, was rydand vpoun ane naig, and had left his best hors behind him. Then the Lard of Johnestoun anfuert, that he was weill content that Charlis Maxwell was rather thair nor ony vther, be ressoun he was Johne Murray of Cokpullis sifter-sone ; and at that samyn tyme, Sir Robert tauld to the said Lard of Johnestoun, that he had tane the Lord Maxwellis ayth and promeis, vpoun his fayth and honour, that he fuld meit fairlie, and depairt fairlie. And that the Lord Maxwell desyrit the said Sir Robert to tak Charlis ayth thairvpoun ; the quhilk Sir Robert refufit to do, saying, that ‘ he wald haif na promeis bot the Lord Maxwellis awin promeis for his man.’ Lyk as, at that samyn tyme, Sir Robert tuik the Lard of Johnestounis ayth and promeis, be his hand laid in his, that he fuld meit fairlie and depairt fairlie with the Lord Maxwell, quhidder thei aggreit or nocht. Immediatlie thairefter Sir Robert raid to the Lord Maxwell, the Lard of Johnestoun and this deponar followand adreiche,<sup>6</sup> and thairefter, Sir Robert haveing an short space spokin with the Lord Maxwell, they turnit towartis the Lard of Johnestoune, and the Lard of Johnestoune towartis thame ; and eftir salutatioun, the Lord Maxwell, the Lard of Johnestoune, and Sir Robert, raid togidder to and fro, the said Sir Robert being in the myddis ; bot quhat thei spak togidder kennis nocht, be ressoun the said Charlis and this deponar stayit about ane pair of but-landis, or thairby, from thame, as Sir Robert Maxwell had directit thame of before : And schortlie eftir that the said Charlis and this deponar had stayit pairt and findrie,<sup>7</sup> the said Charlis Maxwell cummis first to this deponar, and said to this deponar, ‘ Gif I had knawin of this tryft, the Lord Maxwell nather culd nor fuld haif brocht me heir.’ The deponar anfuert, ‘ I hoip in

<sup>1</sup> Growing restive.      <sup>2</sup> Girths.      <sup>3</sup> Clerk to the Privy Council.      <sup>4</sup> Riding ; literally, *hoofing*.  
<sup>5</sup> The end or point of his riding switch.      <sup>6</sup> Leisurly, loiteringly.      <sup>7</sup> Apart and separate, or asunder.

God, Charlis, 3e fall nocht rew of 3our cumming heir! For pir twa noble men hes bene lang in variance, and I hoip now pai fall aggrie.' Then Charlis anfuert, that 'The Lard of Johnstoune was nocht able to mak ane amendis, for the great skayth and injurie he had done to tham!' This deponar anfuert, that 'The Lard vald cum in vill, and do to his powar to fatisie the Lord and his freyndis.' Charlis anfuert, that 'The said thryift was onlie maid to the prejudice of the said Charlis and his freyndis, for that man' (luikand towartis the Lard of Johnstoune) 'had focht his wraik; and thairfor we suld nocht haif met 3ow, for 3e ar all Traitouris!' The deponar anfuert, 'Charlis, fay quhat 3e will pis day, I will mak no anfuert thairto, be resoun of my maitteris pomeis.' Then Charlis said, that '3e ar all Traitouris! be resoun 3e slew Francie of Carlile vnder trest.' Then this deponar anfuert, 'Say quhat 3e will this day, I will gif 3ow na anfuert; bot within ane day or twa, gif 3e will send 3our man to me, I fall fatisie 3ow.' And incontinent vpoun that last speiche Charlis schott ane pistolet at this deponar, and shoit him throuche the cloik; and than this deponar preiffit to haif shoit his awin pistolet, and it misgaif, cryand 'Tressoun!' And the Lard, vpoun that cry, raikit fordwart from the Lord Maxwell; and then the Lord Maxwell, with his pistolet, shoit at the Laird of Johnstoune behind his bak; at the quhilk shoit the Lard shortlie thaireftir fell, and incontinent Charlis shoit ane vther shoit at the Lard and this deponar, being bayth standing togidder: And this deponar, preiffand to haif put the Lard vpoun this deponaris meir, quha throuche waiknes vas vnhable to loup on, the deponar fett the Lard vpoun the grund; and the deponar halding the Lard vp, and inquiring quhat he had to say, the Lard luikand vp to hevins and said, 'Lord haif mercie on me! Chryft haif mercie on me! I am diffavit.' Then the Lord Maxwell cryit to Charlis, 'Cum away.' Then the said Charlis anfuert, 'My Lord, will 3e ryid away, and leif this bludie theif behind 3ou?' Then the Lord anfuert, 'Quhat rak of him—for the vther hes anewche!' And then thai bayth raid away togidder.

III. (11.) CONTEMPORARY NARRATIVE *of the Escape of LORD MAXWELL and SIR JAMES MAKONEILL from the Castle of Edinburgh, taken from MS. History of Scotland.*<sup>1</sup>

Now, my Lord Maxwell being put in ward, in the Castell of Edinbrughe, and nocht feing how he was to be releiffit, dewyffis with Schir James M<sup>c</sup>Coneill and Robert Maxwell of Dinwiddie, quhat way he and thay mycht escheap. And on the fourt of December, he callis ane gritt number of the Keiparis of the Castell into his chalmer, quhair he drinkis theme all fow;<sup>2</sup> and defyryng quhilk of thame voir the best fuord, he gaif ane fuord to Schir James M<sup>c</sup>Coneill, and heaffand ane him selff, drawis to the Chalmer dur and lokis them all in. And thay thrie passis fordwartt to the zett, quhilk he had cauffit ane seruand of his to keip the zett fra nocht cuming to;<sup>3</sup> bot the porterris, nocht being willing to lett thame go, maid resistance: Bot my Lord Maxwell, being resolwit to departt, strak the Maister porter, and wondis him in his airme; and also findrie of the rest; and ane woman, that maid sum resistance, thay hurtt also: And vinnand out at the inner-zett, he loppis the wall. Schir James, heaffand the irnis<sup>4</sup> on him, he, lowpand the toun wall, hurttis his leg; quhairby he was nocht abill to steir; and so was tane and brocht bak in the Castell. Bot the Lord Maxwell, heaffand horfe prepairitt, raid his wayis, and Robert Maxwell of Dunwody with him. Quhairat the King was werray far offenditt; and maid Proclamationne, that nane sould refett him, wnder the payne of deathe. Bot Maxwell remaynand in the cuntry, thocht that the Laird of Johnstoune had the wyt of all his trubill: And feing that thair was (na) meanis to gett the Kingis gude will, bot be the Laird of Johnstoune moyane, quha had slayne his fader, as 3e have hard, and had cauffit the King compell him to tak him be the hand, he was in ane grit reade aganis the Lard of Johnstoune, bot buir the same within him selff. And on the wther pairt, the Laird of Johnstoune, thinking that this wes the best tyme to

<sup>1</sup> Advocates' Library, A. 4. 35.

<sup>2</sup> Drunk, intoxicated.

<sup>3</sup> From closing or shutting.

<sup>4</sup> Fetters.

winne the hairt of my Lord Maxwell, giff (be) his meanis and trawell he mycht purches his Maieftieis gude will to his lordfchip: Quhairwpone, he fendis to Schir Robert Maxwell of Orchortt-toune, kny<sup>t</sup>, quha had mareyit the Laird of Johneston's sifter, as, alfo, Johnestoun had mareyit his sifter, to trawell with Maxwell, to fie gif he wald speik with him: And quhat he wald direct him, in that turne, he wald do to the wttirneft of his power. The quhilk the faid Schir Robert did, and brocht thame to ane meitting, the sext day of Apryll, the 3eir of God 1608; and Chairlly Maxwell with my Lord, and Williame Johnestoun of Lochirbie with the Laird of Johnestoun. Thay mett on the hill beyde the pleace of Ellifcheillis, the faid Schir Robert being with thame; quhair thay, being mett, the tua ferwandis rydis a pairt off thame, leaffand my Lord and the Laird and Schir Robert; bot, or euer thay had conferrit ony fpeace, the tua ferwandis fallis in wordis, and alfo in fchottis of piftollattis, the fame cuming be this Chairlly Maxwellis motioune: The quhilk, quhen the nobill menne feis, Johnestoun cryis, 'Fy! Red!'<sup>1</sup> and spurris to thame. And my Lord, being ryding with piftollattis, cumis behind Johnestoun and fchuttis him throw the hartt, quhairof he fallis: And yit his curradge maid him to draw his fuord; bot being fchott neir to the hairt, he fallis deid. The Lord Maxwell, feing him fallyn deid, giffis him na ma fraikis, bot rydis his wayis. Bot albeit he had gottin his lyff, zit he gat the fame with fchame, it being gottin wnder tryfting. Quhairfor the King eftemeit the fame as Trefoun, being done vnder tryft.

IV. LETTERS *from* THE KING *and* Privy Council of Scotland *relative to*  
LORD MAXWELL.

(12.) LETTER *from* THE KING *to* THE PRIVY COUNCIL OF SCOTLAND, *as to the escape of Lord Maxwell from the Castle of Edinburgh.*<sup>2</sup>

RIGHT trustie and weilbelouit coungis and counfallouris, We greitt 3ou weelle. The leatt escheap of THE LORD MAXWELL furth of our Castell of Edinburgh, haveing gevein to ws moir nor just caus of discontentment at his foly, We have thocht meitt heirby to direct 3ou how to proceid aganes him. And first, We will this Proclamatioun, heirwith sent, to be publeiffed at all placeis neidfull; and that 3ou pairefter tak ordour for tryall of all reffeattares and suppleares, and caus the extreametie of the law to be profequit aganes thame. And alfo 3ou fall, upon reffait heirof, presentlie fend chairges of Tref-foune, for the randerig of his Castellis and houffis, and 3ou fall put garefounes and keiparis in everie one of the fame, to be interteined vpon the rentis belonging to the houffis, wnto fuch tyme as We doe tak farder ordour thairwith. And als, our will is, that 3ou give particular directione to fuche as fall reffave the Castell of Lochmabene, that thay mak delyverie of the fame to our rycht trustie coifing and counfallour the Erll of Dumbar, or to ony wther quhome the faid Erll of Dumbar fall direct, with our wther Warrant, for reffaveing pairof. Furthermore, 3ou fall caus chairge the principallis of the faid Lord Maxwell his name and followaris, being ony way men of mark, to find cautione and fuertie, wnder gritt pecuniall panes, that thay fall noway reffaitt, fupplie, nor intercommoune with him. 3ou fall in lyk maner geve speciall ordour to our garifoune, wnder the Lord of Scones command, and als to that wther, wnder Sir W<sup>m</sup> Cranftounes charge, that thay mak speciall fearches, for the faid Lord Maxwell his taking and apprehending. And heirof, willing 3ou to be cairfull, and to omit nothing that may haiften ane exemplar pwneifment vpon him, for his prowde contempt, We bid 3ou fairwelle. FROM our Court at ROYSTOUNE, this 14 of Dec. 1607. [JAMES R.]

To our rycht trustie and weilbeloveit coungis and Counfallouris, the Erll of Dumfermling, our Chancellor and remanent Lordis and otheris of our PRIVIE COUNSALL in that our Kingdome of SCOTLAND.

<sup>1</sup> Agree; separate; make up your quarrel.

<sup>2</sup> From a Collection of State Papers formed by the first Earl of Haddington (at that time Sir Thomas Hamilton), preserved in the General Register House.

(13.) LETTER from Sir Thomas Hamilton to the King.<sup>1</sup>

Please your most sacred Maiestie,

KNOWING that your Maiestie will expect and requyre of me ane dischaarge of my dewtie, in performing your Maiesties commandement, genin for perfewing the LORD MAXUELL and SIR JAMES MAKONEILL, for thair treasonabill breaking wairde furth of your hienes Castell of Edinburgh, becaus I have hard that sum, whois opinion may have place in sum of the circumftances of thair tryell, inclynes to juge, that, vnles the crymes for the whilk thay wer imprifoned have bene treasonabill, that thair break of wairde can not import Treafoun, I have bene the more solist to inqyre of thair vther offensis, which may be found treasonabill of the law: And albeit the Examination and re-examination of Sir James Makoneill I have had small aduantage, in respect of his resolution to deny all the poyntis of his crymes, at the Slaughte of his vnle, and taking of his parentis, whilkis might infer Treafoun; yet I hope that sufficient information fall verie schortlie cum, of the trewth of his most heynous and vnnatural factis, from those to whom my Lord Chancelar hes writtin, to that effect. As to the Lord Maxwell, I have hard of his raising of fyre at Dalibbill, whan he slew Willie Johnestoun, callit of Eschie-schiellis and ane vther Johnestoun; bot becaus he hes fenfyne had the honour to be admitted to your Royall presence, I wald not presume to summond him for that fact, whill first I fould know your Maieftis mynde thairanent; the knaulege whairof fall lead me to proceid or desist. The progres of the Commissionars at the mynes<sup>2</sup> I hope your Maieftie hes hard from thameselfis, and what I know I have writtin to my Lord of Dumbar; becaus I fand him most desyrous to vnderstand the succes of that whilk concernit your Maiefties seruice and contentment. Swa, attending most humblie your Maiefties farder pleafour for my directioun, I pray God long to bleffe ws with the continuance of your most gracious regne, and your Maieftie with all honour and wiffed contentment. ED<sup>3</sup>, this 28 Januar, 1608.

Your most sacred Maiefties most humbill and bundin seruand,

S. TH. HAMILTON.

(14.) LETTER from THE KING to the Privy Council to apprehend Lord Maxwell.<sup>3</sup>

RIGHT trustie and veilbeloveit counfines and Counfallouris, We great 3ow weell. We ar informed that, notwithstanding of the trefsonable fact committit be the Lord Maxwell in eschaiping fourth of our Castell of Edinburghe, and in forceing and hurting of the keipares and poirtaris of the same, and of our speciall commandis and Proclamatiounes send doune for his taking and apprehending, that, nevertheless, in plane contempt of our autoritie, that he oppinley travellis throuche the countrie, accompaneid with no fewar than twentie horse, and hes mead his repaire, at syndrie tymes, to our burgh of Drumfreis; quhiche insolence is no way tollerabill, and skairse excuffabill one 3our partis, that ony of our declarit tratouris fould assume to theme selfis so mutche libertie, without controlment. And thairfoir, our pleafour and will is, that vpoun resfait heirof, 3ow direct that our Gaird, vnder the command of the Lord of Scoone, to repair to the burgh of Dumfreis, and thare, with that Gaird, vnder Sir W<sup>a</sup> Cranftounes charge, to make a present diligent searche for the said Lord Maxwell, and either to apprehend him or put him out of thois boundis. Thairwith also the Baillies of Drumfreis wald be chairgit to compeir befoir 3ow, and if 3ow can try any thing of thair knowlege of the said Lord Maxwellis being in thair toune, We ar to will 3ow to inflict ane exemplare pwneishment vpon thame, baith by fynning and warding. And als, 3ow ar to proceid in rigoure, according to the warrant of our lawis aganes all resfattareis and accompaniaris of the said Lord, that so wtheris may be affrayed frome coming within the compas of the lyk contempe. And, remitting those matteris to 3our speciall cair, We bid 3ow fairweill. AT our Palice of QUHYTHALL, the 2 of Feb<sup>rj</sup>, 1608. [JAMES R.]

<sup>1</sup> From the original, preserved among the *Denmylne MSS.* Adv. Library. <sup>2</sup> At this period the King was deluding himself as to the discovery of silver mines, &c. <sup>3</sup> From *Hadington MS.* General Register House.

(15.) EXTRACT from *Letter, the Privy Council to the King*,<sup>1</sup> relative to Lord Maxwell, &c.

MOIST SACREID SOVERAGNE,

We have hard, to our gritt greiff and forrow, by the report of 3our Ma. Secretare and be the In-  
structionnes committit be 3our moist sacred Ma. to his credeit, how far 3our bienes is discontented  
with the governament of this Estaitt, as of the hail miffordouris and accidentis that fallis out heir. . . .

As to the particular profequiting of the Lord Maxwellis reffettares, thair is a nwumber of thame  
callit, fynned, and wairdit. The rest ar summondid to particular dyettis, and falbe pwneifschid. As  
to the particular Slauchter of Cowhill, that feid is weall knawin to 3our Ma<sup>tie</sup>, and no complent of it  
maid by ony to the Counfall, and these brether of Kirkhouse had alwyis favour, bot not for the Coun-  
fall; and the committer of it is come in England. And quhairas 3our Ma. is informed, that these who  
wer appoynted to profequit the Lord Maxwell hes keipit companie with him, theafe that hes com-  
mandement of 3our Ma<sup>e</sup> Guairdis humlie craves tryall of that calumnie; as alfus, that that Cove,  
quhilk is the allegit place of his reffeat, may be designe; for we cannot find any countrie man that  
knewis any place in Nithifdail or Galloway that careyis that name. . . . .

The tryall of that royat, at Drumfres, wes wnder tryall befor 3our Ma. directionne cam, and falbe  
profequited with all regour.

The buriall of the Lord Maxwell wes a calumnie quhairwith many mo (than) 3our Ma. is impor-  
tuned; for he lvis still wnburiid quhair he wes. And lykwayis the slauchter of Johnestoune of How-  
gill ves alyk falfe.<sup>2</sup>

AL. CANCELL. LOTHEANE. VCHILTRE. BALMERINOCHE. SCONE. HALIBUDHOS.  
S. T. HAMILTOUNE. BEULIE. COMPTROLLER. JO. PRESTOUN.

(16.) LETTER, *the Privy Council to the King, for Instructiones*.<sup>3</sup>

MOST GRACIOUS SOUERANE,

ACCORDING to 3oure Maieftis direction, We wryte for the Laird of Johnnstoun, his moder and  
goode dame, to vnderstand of thame, gif thay wald perfite in the perfute of that Petitioun, exhibite vnto  
3our Maieftie in thair names, whairby thay craved iustice to be execute vpoun the fforfeyted Lord  
Maxwell, for the Slauchter of the laite Laird of Johnnstoun? They come all to this burgh, and the  
Laird of Johnnstoun, with his moder and Tutour, presentit thame selfis before ws, and declairit that  
they wald infit in that perfute and profequitioun of that mater, according to the tennour of thair  
Petitioun. The auld Lady Johnnstoun, through feiknes and inhabilitie of hir perfone, being vnable to  
compeir before ws, haueing, with grite difficultie, come to this burgh for this fame errand, we directit  
and fend the Bishop of Caithnes, the Lord Kildrymmie and Lord Preuey Seale to hir, to vnderstand  
hir will and pleafoure in this mater; vnto quhome scho declairit, that scho come heir purpofelie for that  
mater, and that scho wald infit, according to the tennour of the Petitioun; sua that now thair restis no  
farder bot 3oure Maieftis will and pleafoure to be declairit, quhat forder 3oure Maieftie will haif to  
be done; wherein, althocht the conclusioun of 3oure Maieftis Lettre beiris, that we fould proceed to  
the administratioun of iustice, zitt, in respect of a worde caffin in the preface of the Lettre, beiring  
that 3our Maieftie had not as zitt gevin a direct anfuer to thair Petitioun, we haif presomed, first, to  
acquaint 3our Maieftie afoir we proceed ony forder; and whateuir it fall pleis 3our Maieftie to direct,  
in this mater, falbe immediatlie and without delay execute. Thair was a Petitioun gevin in this day  
vnto ws be Robert Maxwell, bruthir to the faid laite Lord, with some offeris to the pairtie; bot, becaus  
the mater concernit not ws, we wald not mell thairin; alwyfe, we haif heirwith fend the fame to 3oure

<sup>1</sup> From the *Hadington MS.* General Register House. The remainder of the Letter (which is very long) relates to a great variety of subjects, entirely unconnected with each other. <sup>2</sup> The date of this Letter is omitted, but it must be between Apr. 28 and May 9, 1608. <sup>3</sup> From Original *Denmylne MSS.* Advocates' Library.

Maieftie, to be confidderit of as your Maieftie fall think goode. So, praying God to bliffe your Maieftie with all happynes and felicitie, we rest

ED<sup>a</sup>, 28 Aprile, 1613.

Your Maiefteis maift obedant fubiectis and feruitouris,

AL CANCELL<sup>r</sup>. HAMILTON. MAR. GLENCAIRNE. ALEX<sup>a</sup> HAY. LINLY<sup>g</sup>W. GLASGOW. KINGORNE.

TO THE KING his most sacred and excellent Maieftie.

V. (17.) OFFERS OF SUBMISSION *by* LORD MAXWELL *for the Settlement of all differences between him and the surviving relatives of* SIR JAMES JOHNSTONE *of that Ilk, knight.*<sup>1</sup>

THIS OFFERRIS following ar maid be me, Johnne, sumtyme Lord Maxwell, for my selff, and in name of my kyn and freindis, to \_\_\_\_\_, now Laird Johnstoun, and his Tutouris and Curatouris, Dame Sara Maxwell Ladie Johnstoun, 3ounger for the tyme, his mother, Dame Margaret Scott Ladie Johnstoun, elder, his guddame, and to thair kyn and freindes, for the vnhappie Slauchter of vmq<sup>le</sup> Schir James Johnstoun of that Ilk, kny<sup>t</sup>, committit be me.

IN THE FIRST, I humblie confes my offens to God, the Kingis Maieftie, and to the foirfaidis perfonas, for the said vnhappie slauchtir, and declairis my selff to be maift penitent thairfoir; craueing first, mercie at the Almichty God for the same, nixt, favour and grace of the Kingis Ma<sup>tie</sup>, my souerane lord, and forgifnes of the great offens done to the foirfaidis perfonas; testifeing be my soleme aith, vpon my saluatioun and condempnatioun, that the foirfaid vnhappie slauchter was nawayis committit be me vpon foirthocht fellonie or sett purpois, bot vpon meir accident: Lyk as, for cleiring thairof, I am content to purge my selff be my greit aith in publict, quhair it pleiffis the parteis to appoint, and do quhat farder homage salbe thocht expedient.

SECUNDLIE, I am content, not onlie for my selff, bot for my hail kyn and freindis, to forgiff the slauchter of vmq<sup>le</sup> Johnne Lord Maxwell, my fathir, committit be the said vmq<sup>le</sup> Laird of Johnnestoun and his complices, and to mak all perfonas quha wes ather gyltie, culpabill, or airt and pairt of the said slauchter, in securitie thairfoir, sua that thai nor nane of thame fall nevir be trublit for the same be me, nor be nane of my kyn and freindis, directly nor indirectly, in tyme cuming; and, for that effect, fall mak sik forme of securitie as fall agrie with reafoun.

THRIDLIE, becaus . . . Johnstoun, dochter to the said vmq<sup>le</sup> Sir James, wes, by the suddant and vnhappie Slauchter of hir said vmq<sup>le</sup> fathir, left vnproudyt of ane sufficient tocher, and for the better avoyding of all inimitie that may arryfe betuix the houffis of Maxwell and Johnstoun, and for mair fuir establisching of freindschip amangis thame in tyme cuming, I am content to marie and tak to my wyffe the said . . ., without ony tochir.

FOURLIE, I desyre that the Laird of Johnstoun may be mareit to Dame . . . Maxwell, eldest dochtir to Johne Lord Hereis, and sifter dochtir to me, quha is a perfon of lyke aige with the Laird of Johnstone. Lyk as, I salbe obleift to pay to the said Laird of Johnstoun, in name of tochir with my said sifter dochtir, tuentie thowfand merk Scottis; and quhat farder salbe thocht expedient, be the sicht of freindis.

FYIFTLIE and last, I am content, for the farder satisfioun of the houe of Johnstoun, to be Banischt his Maiefteis dominions, for the space of sevin 3eiris, and farder at the will and plefour of the Laird of Johnstoun.

Thir Offeris to be augmentit, at the sicht and discretioun of newtrall freindis, to be chofyn to that effect. Vnder protestatioun alwayis, that thir Offerris befor wryttin, maid vnto the partie, be nawayis offensue to the Kingis Maieftie, nor to his hienes Counfall.

<sup>1</sup> From *Sir James Balfour's MS. Collections*, Advocates' Library.



VI. (18.) SUPPLICATION *by* ROBERT MAXWELL, *brother to John, sometime Lord Maxwell*, to THE LORDS OF PRIVY COUNCIL, *to intercede with* THE KING, *and with the private prosecutors, &c.*<sup>1</sup>

MY LORDIS OF COUNSAILL, vnto your l. humblie menis and schawis your l. seruitour, Robert Maxwell, brothir to Johnne, sumtyme Lord Maxwell: That quhair, it is not vnknawin to your l. the miserabill estait of my said brothir, be the offences committit be him, to his God, the Kingis Maieftie, to the Marques of Hammiltoun and that name, and to the Laird of Johnnestoun and his freindis, beyde manifald vperis misbehaviouris; for pe quhilkis (being now, throw his miserabill estait, brocht to pe knowlege pairof) he moift humblie cravis mercie of God, favour and grace of his Maieftie his Prince, and forgifnes of his offence done to the Marques of Hammiltoun and his freindis, and to the Laird of Johnnestoun and his freindis: Lyk as, for cleiring of his penitencie for pe offence committit be him in Slauchter of pe Laird of Johnnestoun, he, with all humbilnes of mynd, is maift willing to mak satisfactioun to the pairtie; vnder protestatioun, that the offer of satisfactioun to pe pairtie suld nawayis be offensive to his Ma<sup>te</sup> nor your l. And his hail freindis haifing, for pat effect, causet pen certane Offeris in his name, to haif bene presentit to the Laird of Johnnestoun, his mopir, and guddame, and for presenting thairof, haifing desyrit and eirnistlie entreitit certane of pe Ministrie of Ed<sup>r</sup>, and sum of the Bischopis to haif presentit the same; thai and all vper men of qualitie hes alluterlie refusit pe same, without pai had your l. Warrand for pat effect: Sa pat now pair restis na menis quhairby pe Offeris may cum to pe pairteis handis, except your l. will athir appoint sum perfones to present the same, or vperwayis that your l. wald convene pe pairtie befor your l., that pe same, in your l. audiens, may (be) red and delynerit to pame. HEIRFOIR, I maift humblie beseik your l. to haif consideratioun of pe premiffes, and pat your l. wald gif directioun to sum of pe Ministrie of pis burgh to present pe said Offeris, or vperwayes, that your l. wald call pe pairtie in your presens, to pe effect foirlaid. And siclyk, that it micht pleis your l. to acquent pe Kingis Maieftie, our souerane, of pe willingnes of my broper, boith to satisfie pe pairteis offendit, and maift humblie, and with all dewtifull obediens, to submit him selff in his Maiefteis handis:—And your l. anfuer.

VII. NOTICES *relative to* LORD MAXWELL'S EXECUTION, *his behaviour and dying Confessions on the Scaffold, &c.*

(19.) ACCOUNT *taken from the Denmylne MSS.*<sup>2</sup>

VPOUN the xvij<sup>o</sup> of this monethe adverteifment being maid be the balgies of Ed<sup>r</sup> to the late Lord Maxwell, that vpon the nixt Fryday, xxj of this Maij, justice wes to be executed vpon him, at the mercat croce of this burghe of Edinburghe, and he willed to prepair his conscience and dispoise him selff to die, he professit to thame his willingnes to abyde the pleasour of God and his Prince, and obtenit Licence of the Counfall that suche ane number of his freindis micht hane access to speik with him, as he suld requyre, by name. He had diuerse conferences with sindrie of them, in presens of ane of the Balgies, bot refusit to ressaue ony assistance or confort from the Ministeris, professing him selff not to be of thair Religioun, bot ane Catholik Romane; wherby, it being foirfene be the balgies of the toun and wtheris, that gif he suld at his death enter in any discourse of that subiect befor the people, it micht breid offence and sclander, he wes desyrit, and yelded to bind him selff, be promeis, to forbear at his death all mentioun of his particular opinioun of Religioun, except the professioun of Cristianitie; whiche he sensyne repented, as he declared to the balgies, when they wer bringing him to the scaffald, whare he declared that as he had iustlie deseruit his death, so he wes reddie patientlie to suffer it, asking mercie of God for his finnis, and hartlie wifhing that his Maieftie micht be gratioullie pleased to

<sup>1</sup> From the *Denmylne MSS.*, Advocates' Library.

<sup>2</sup> Advocates' Library.

accept his lyf and blood as ane different<sup>1</sup> punishment of his offences ; and to relent, and remoue his wrathe from his brother and hous, being pleifed to restore his brother to the rank and place of his predeceffoure, where he micht, and, as he hoped, wald, do his Maieftie guid and faithfull seruice, as his foirbearis had done to his Maiefties Royall progenitouris. Nixt, he askit forgiuenes of the Laird of Jhonestoun, his mother, grandmother and freindis, acknawelegeing the wrong and harme done to theme, with protestatioun that it wes without dishonour or infamie (for the worldlie pairt of it—for so wer these his wordis reported to me.) He lykwayis crawled pardoun of Polloke, Calderwode, and his wther freindis, being present, acknaweleging, that whare as he was borne to haue bene authour of thair honour and faistie, he had procured to thame hairme and discredit. And then he retired him selff neir the block, and maid his prayeris to God ; which being ended, he tuike his live of his freindis, and of the balzies of the toun ; and, suffering his eyes to be covered with ane handcourchef, offered his head to the axe, and suffered deathe, the xxj of Maij, at four a cloke in the efternone.

(20.) NOTICE from *Minutes of the Privy Council*.<sup>2</sup>

MAY 18, 1618. Ane Warrant past and exped to the Proneft and Balzies of Edinburghe, to tak the lait Lord Maxuell to thair mercat croce, vpoun the xxj of this instant, and thair to caus strik his head from his body. The delay of tua dayis wes thocht meit to be grantit, to the effect he micht haue leafer to be resolued ; and that the Ministeris micht haue tyme to confer with him, for his better resolutionn.

(21.) NOTICE *preserved by Calderwood*.<sup>3</sup>

THE Lord Maxwell was beheaded at the mercate crosse of Edinburgh, betuixt three and four after noone. He died confortlesse, having none of the Miniftrie present to pray for him, or make exhortation to him or the people. He desired them not, neither was he content to receive informatione from them touching his Religione. This executione was procured be the Laird of Johnstons friends, specially be Sir Robert Ker, Erle of Rochester, the chief guider of the Court at that time. Papists, nevertheless, tooke boldness to professe their Religione, in sundry parts of the country ; for it was well known to them, that Maxwell suffered not for his Papiftry.

(22.) NOTICE by *Sir James Balfour*.<sup>4</sup>

THE 21 day of this mounth, Johnne Lord Maxwell of Caerlauerock, was takin from the Tolbuith of Edinburghe to the mercat Crosse of the same, quher, on a scaffold, he had his head chopped offe from his bodey, for the slaughter of the Laird of Jhonstone.

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### Slaughter.

Jun. 28.—HENRIE BLAK, Capitane of the Castell of Kirkwall (Orkney), William Kirknes, Robert Hammiltoun, Williame Daidfoun, alias *Lieriecock*, Magnus Bankis, alias *Jhonestoun*, Ar<sup>d</sup> Dundas, Magnus Draver, Gilbert Brabner, fudartis,<sup>5</sup> and keiparis of the hous of Grenecroft ; Johnne Reid in Selfkarie, Gilbert Blak in Farray, Malcolme Mowat in Etha, and James Mowat, thair.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>16</sup> Donald Grote, (of Wairis,) Walter Grote, and James Stewin, all in Duncanisbey.

<sup>1</sup> Sufficient ?      <sup>2</sup> Minutes of Privy Council Proceedings, *Denmylne MSS.*, Adv. Library.  
<sup>3</sup> *M.S. Church History*, Adv. Library.      <sup>4</sup> *Balf. Ann.* II. 42.      <sup>5</sup> Soldiers.

Williame Sinclair of Etha, oftymes callit, as cautioner for reporting the Letteris duellie execute and indorfate and perfewing thairof, purchest be Margaret Grote, the relict of vmq<sup>le</sup> Donald, Malcolme, his sone, Johnne Grote, brother to vmq<sup>le</sup> Walter, and Allafter Stewin, as brother-sone to vmq<sup>le</sup> James Stewin.

Compeirit Mr Johnne Mansoun, seruitour to my Lord of Kathnes (Caithnes), and producet ane Warrant of the Lordis of Secreit Counfall, anent the deserting of this dyet; quhair of the tennour followis.

JUSTICE, Justice clerk and your deputis. Forfamekill as the xxvij day of Junij instant is appointit to Henrie Blak, Malcolme Mowat, Williame Kirknes, and certane vperis pair complices, tennentis and servandis to þe ERLE OF ORKNAY, for pair compeirance befor 3ow, to vnderly the law for þe Murthour of vmq<sup>le</sup> Donald Grote of Wairis, and sum vtheris, tennentis and servandis to þe ERLE OF CAITHNES: And feing, all differences and questiones standing betuix the saidis Erles of Orkney and Caithnes ar reconciliat and agreit, except þe said Murthour, the perfute quhair of, be baith the saidis Erles consentis, is continewit to ane vper dyet, to be perfewit, aper befor þe Justice or his deputis in the bur<sup>t</sup> of Ed<sup>t</sup>, or in Caithnes. Thairfoir, theas ar to command 3ow to desert þe said dyet, and desist fra all proceeding pairin; dispensing with the personall compeirance of þe pairtie. Quhairanent thir presentis falbe 3our Warrant. Subscryuit with our handis, ATT ED<sup>a</sup>, þe xxvij day of Junij, 1609.

AL. CANCELL<sup>arius</sup>. DUMBAR.

The Justice Defertit the said dyet: Quhairvpoune the said Mr Johnne askit instrumentis; and protestit for the said Williame Sinclair of Etha, his releif of his cautionerie; quhilk the Justice admittit.

### **Burning the Place of Littlegill — Slaughter — Stouthreif — Horse and Cattle-Stealing, &c.**

Aug. 9.—THOMAS JARDANE of Birnok, and Vmphra Jardane his sone.<sup>1</sup>

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Tuedie of Southwoid, . . . Broun of Coulter, Williame Campbell of Walwoid: And certain other crymes of Thift, &c.

PERSEWARIS, Elspeth Bailzie, mother to vmq<sup>le</sup> Johnne Tuedie; Bessie and Sibilla Tuedeis, his sifteris; Robert Tuedie, his brother; Williame Broun, brother to vmq<sup>le</sup> Robert Broun; Williame Broun, as sone to the said Robert; Mathow Bailzie, brother to vmq<sup>le</sup> Alexander Bailzie; and as fader to vmq<sup>le</sup> Rachaell Bailzie, perfewis Vmphra Jardane allanerlie; Charles Campbell of Horfleuch, neir kynfman to vmq<sup>le</sup> Williame Campbell of Walwoid; Hew Campbell of Garallane, for himself; Johnne Farquhar in Cavill, for himself; George Slowane in Knokburne, for himself; Williame Campbell, as sone to the said vmq<sup>le</sup> Williame; Charles Murray, for himself. Sir Thomas Hammiltoune of Bynnie, kn<sup>t</sup>, Aduocat to our fouerane lord, for his hienes entreis.

PRELOCUTORIS for the pannell, The Laird of Lammyngtoun, The Laird of Carmichell, The Laird of Covingtoun, Williame Carmichell of Rownetricorfe, Mr Johnne Ruffell, Aduocat.

#### *DITTAY against Thomas Jardane.*

FOR airt and pairt with the said Vmphra, his sone, of the tressonabill Raifeing of ffyre, burning and distroying of the Place of Littilgill, with the hail offices, houffes, barnes, insicht and pleniffing, being thairintill, worth the fowme of ffyve thowseand pundis; committit vpone the saxt day of July, 1<sup>m</sup>.V<sup>c</sup>.

<sup>1</sup> See Jul. 30, Aug. 9, and Nov. 5, 1605.

fourfour nyne zeiris: And of the tressonabill burning to deid, at that same tyme, within the said Place, of vmq<sup>le</sup> Alexander Bailzie of Littilgill, Rachael, dochter to Matthow Bailzie, now of Littilgill, Andro Achiefoun and Katharene Forrest, ordiner servandis to the said vmq<sup>le</sup> Alexander, within the said place. ITEM, ffor airt and pairt of the Slauchter of the said vmq<sup>le</sup> Robert Broun in Coulter; committit be the saidis Thomas and Vmphra, in the moneth of Junij, the yeir of God I<sup>m</sup>.V<sup>c</sup>. fourfcoir faxtene yeiris, vpone the Grene of Coulter, with schottis of hagbuttis and pistolettis. ITEM, ffor airt and pairt of the steilling of the hors, pryce of the peice ane hundreth pundis; with ane grit ox, pryce thairof fyftie merkis, pertening to Williame Broun in Coulter; committit be him and the said Vmphra, his sone, at Mertines, or thairby, in the yeir of God I<sup>m</sup>.V<sup>c</sup>. fourfcoir faxtene yeiris. ITEM, ffor airt and pairt of the Slauchter of Johnne Tuedie of Southwoid, committit be the said Thomas and Vmphra his sone, vpone Harlaw-mure, besyde St Ninianes Kirk, in the moneth of July, I<sup>m</sup>.Vj<sup>c</sup>. yeiris. ITEM, ffor airt and pairt of the Steilling of faxtene scheip furth of the landis of Scorefeld, pertening to . . . . . Johnnestoun, put be him vpone the saidis landis in girfeing; committit be the said Thomas and Vmphra his sone, in the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. yeiris. ITEM, ffor airt and pairt of the thiftious Steilling, at the leift refetting of faxtene stowin scheip, stowin at his command be vmq<sup>le</sup> James Thomefoun his man, in the moneth of November, in the yeir of God I<sup>m</sup>.V<sup>c</sup>.lxxxix yeiris. AND ffor Cowmoun Thift, and Cowmoun Refset of Thift, fra land to land, fra cuntrie to cuntrie, baith of auld and new; preceeding the nynt day of Maij, I<sup>m</sup>.Vj<sup>c</sup>. and fyve yeiris.

*DITTAY against Vmphra Jardane.*

INDYTIT, accuset and persewit of the crymes perticulerlie aboue writtin: And als, accuset and persewit of the crymes *respectiue* and perticulerlie following, viz. FOR airt and pairt of the Steilling of ellevin nolt, price of the peice ten pundis, pertening to Johnne Farquhair in Cavill, furth of his duelling hous thairof; committit be the said Vmphra and his complices, in the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and tua yeiris. ITEM, ffor airt and pairt of the Steilling of ane hors and ane meir, price of the peice ane hundreth merkis, fra George Slowane in Knokburne, furth of his duelling hous thairof; committit be the said Vmphra and his complices, vnder silence and clud of nycht, in the moneth of Junij, the yeir of God I<sup>m</sup>. sax hundreth and foure yeiris. ITEM, ffor airt and pairt of the taking fra William Craufurd in Silliehoillis, furth of his duelling hous in Silliehoillis, of ane naig, pryce thairof fyftie pundis; committit be him and the said Thomas his father, in the yeir of God I<sup>m</sup>. sax hundreth and thre yeiris. ITEM, ffor airt and pairt of the thiftious Steilling, be way of maisterfull Thift and Stouth-reif, fra Charles Murray, of tua hors, price of the peice, ane hundreth merkis; togidder with his cloik, suord, pistolettis, steilbonet, and purse, with threfcoir pundis, being thairin; committit be the said Thomas and Vmphra Jardanes, vpone the Brokin-calfay, betuix Davieschaw and Littilgill, in the yeir of God I<sup>m</sup>.V<sup>c</sup> fourfcoir sevintene yeiris. ITEM, ffor airt and pairt of the steilling fra Hew Campbell, sone to Hew Campbell in Garallane, furth of his landis of Eiftmark;<sup>1</sup> committit be the said Vmphra and his complices, in the 3eir of God I<sup>m</sup>.V<sup>c</sup>.lxxxix yeiris.

For the quhilkis crymes respectiue aboue writtin, the saidis Thomas and Vmphra Jardanes tuik thameselfis to our souerane lordis Remiffioun, producet be thame, vnder his hienes Grit seill, of the dait the nynt day of May, the yeir of God I<sup>m</sup>. sax hundreth and fyve yeiris. Quhilk Remiffioun the Justice admittit:

LYK AS, the said *Thomas Jardane*, elder of Birnok, being indytit and accuset,

FOR putting handis in vmq<sup>le</sup> James Thomefoun, his man, binding of him hand and fute; and at his awin hand, bot<sup>2</sup> ordour of Law or ony Commissioun gevin to him, drownet and execute to daith the

<sup>1</sup> The articles stolen are not detailed in the Record.    <sup>2</sup> Without.

saïd v<sup>m</sup>q<sup>le</sup> James Thomefoun, his man, in Robertoun burne; and sa, is and was airt and pairt of his daith and slauchter; committit in the moneth of November, the yeir of God I<sup>m</sup>. fyve hundreth fourfoir nynetene yeiris. ITEM, ffor Cowmone Thift, Cowmone Reffet of Thift, outputing and inputting of Thift, fra land to land, fra cuntrie to cuntrie, at dyuerse tymes, sen the moneth of May, in the yeir of God I<sup>m</sup>. sax hundreth and fyve yeiris; quhilk is the dait of his Remiffioun. AND SICLYK, the saïd *Vmphra Jardane* his sone, being indyttit and accuset, ffor airt and pairt of Steilling of ane broun horfe of four yeir auld, price ane hundreth merkis, fra Andro Slowane in Laneheid, furth of the landis of Watterheid in Cumnok, in the moneth of Junij, I<sup>m</sup>.Vj<sup>c</sup>. and fyve yeiris. ITEM, ffor airt and pairt of the Steilling fra Williame Rankene of ane gray hors, pryce thair of I<sup>c</sup> li. furth of the landis of Boigcorroche; committit in the moneth of Junij, I<sup>m</sup>.Vj<sup>c</sup>. and fyve yeiris. ITEM, ffor airt and pairt of the steilling of fourfoir hogis,<sup>1</sup> price of the peice fyftie schillingis, furthe of the landis of Woulfcruikis, within the barronie of Douglas, pertening to the Erle of Angus and his tennentis; committit in the moneth of October, the yeir of God I<sup>m</sup>.Vj. and sax yeiris. ITEM, ffor airt and pairt of the Slauchter of v<sup>m</sup>q<sup>le</sup> Williame Campbell of Walvoid; committit be him and his complices, at the Kirk of Douglas, be hurting him, deidlie, in his heid and vtheris partis of his body, in the moneth of October, or thairby, I<sup>m</sup>.V<sup>c</sup>. and four yeiris; at the leift, sen the yeir of God I<sup>m</sup>. fyve hundreth fourfoir sevintene zeiris; qubair of he depairtit this lyfe, in the moneth of . . . . I<sup>m</sup>.Vj<sup>c</sup>. and sax yeiris thairefter. ITEM, ffor Cowmone Thift and Reffet of Thift, &c. sen the dait of his saïd Remiffioun, viz. the nynt day of Maij, I<sup>m</sup>.Vj<sup>c</sup>. and ffyve yeiris.

THE pannell and thair preloquoutouris declarit thay will nocht seik delay, nochtwithstanding thay ar nocht summond, and hes nocht gottin ane copie. Quhairvpoun my Lord Aduocat askit instrumentis.—The pannell askit instrumentis, that na partie competent to perfew thame, bot the personis aboue writtin.

The Advocat allegit that Mr Johnne Ruffell can nocht be hard to compeir and defend, becaus the pannell ar att the horne.—It is anfuerit, that *defensio est juris naturalis*; and thay haif obtenit ane delyuerance of Relaxatioun (from the horn) —The Aduocat in the contrar, becaus he producet Hoirning aganis the pannell. —The Aduocat passis fra the allegiance.

The pannell allegis, that na proces can be led aganis thame, for ony cryme committit be thame, preceding the moneth of Maij Vj<sup>c</sup>. and fyve; becaus his Maiestie hes grantit thame ane Remiffioun, for all crymes committit be thame before the saïd moneth. Quhilk Remiffioun thay produceit; and tuik instrumentis thairvpoun; and this but<sup>2</sup> preiudice of thair defence aganis ony vther cryme.—Allegis the Aduocat, this Remiffioun can nocht fatisfie for the Slauchter of v<sup>m</sup>q<sup>le</sup> Johnne Tuedie; becaus it is gewin only to Alexander Jarden; nixt, becaus it is grantit vpoun ane fals cause, viz. vpoun satisfioun of partie, quhilk is nocht; for the mother, or brother, and the fisteris of Johnne Tuedie ar nocht satisfeit. —The Aduocat askis instrumentis, that the pannell v<sup>is</sup> the Remiffioun for the hail crymes contenit in the Dittay, preceding the dait of the Remiffioun.

It is allegeit, that the Remiffioun is null, be Act of Parliament, quhair the pairtie is nocht satisfeit; and na cryme contenit in the Remiffioun is satisfeit.—

<sup>1</sup> Young sheep of a year old, or unshorn.

<sup>2</sup> Without.

The Pannell anfuersis, that the Remiffioun standis ; and thay ar content to find Cautioun to fatisfie the pairtie.

Allegis the Aduocat, the Remiffioun can nocht be extendit to Williame Campbell ; becaus it is provydit, that itt fould nocht extend to ony Slauchter, bot thais quhilk ar committit fen the fourfcoir auchtene yeiris.<sup>1</sup>—The Aduocat askis instrumentis, that Mr Johnne Ruffell grantis the Slauchter ; bot it wes committit befoir the fourfcoir and auchtene yeiris.—It is allegeit, that the Slauchter of Williame Campbell can nocht be putt to ane Affyse ; becaus thay offer to prove that he levit tua yeiris eftir his hurting ; and that he fall offer to be verifeit to the Affyse, that he reparit to kirk and mercat, be the fpace of twa yeiris eftir his hurting.

The quhilk day, Sir Alexander Jardene of Apilgirth, togidder with Thomas Jarden of Birnok, and Vmphry Jarden becom fouerteis, coniunctlie and feuerallie, to fatisfie all parteis for the quhilkis the saidis Thomas and Vmphry vfit Remiffioun, as Law will.

The Aduocat takis instrumentis of the fweiring of that poynt of Dittay, anent the Slauchter of Williame Campbell ; fuorne be Williame Campbell his fone.

QUHILKIS feuerall crymes, aboue writtin, being nawayis comprehendit vnder the said Remiffioun, and haillilie<sup>2</sup> denyit be the said Thomas and Vmphra to be of verritie, the Justice referrit to the knowlege of ane Affyse of the perfones following.

ASSISA.<sup>3</sup>

James Tailziefeir, in Strangcleuch, <sup>4</sup>	Williame M <sup>c</sup> Call of Boighous,	Mairtene Mure, in Boigend,
Williame Wallace of Wallacetoun,	George Dunbar of Knokfchyn-	Williame Chamlay, in Nethirtoun,
Johnne Broun, in Schaw,	noche,	Mungo Reid of Drumfork,
James Tailziefeir, in Abingtoun,	Anthone Couthird, 3ounger, in	Johnne Robfoun, in Craigheid,
James Wallace of Boigheid,	Nethirtoun,	Johnne Wilfoun, in Cruik,
Jo. Makmorrane, elder of Glaspen,	Williame Craufurd, in Creoche,	Johnne Thomefoun, in Bankend,
Ja <sup>s</sup> Makmorrane, y <sup>r</sup> of Glaspen,	Dauid Durie of Hielare,	Patrik Wilfoun, in Craig.

The Aduocat askis instrumentis of the fweiring of the Affyse ; lykas, the perfewaris and defendaris, *hinc inde*, Proteftis aganis the Affyse for Errour, gif thai follow nocht thair knowlege in this matter.

VERDICT. The Affyse, be the mouth of the said Dauid Durie of Hiellar, chancellor, in prefens of the Justice and Lordis of his Maieftis Previe Counfall, thair present, ffand, pronunceit and declairit, be pluralitie of voittis, the said *Thomas Jardane elder of Birnok*, to be ffylet, culpable and convict of airt and pairt of the drowning and puting to daith of the said James Thomefoun, his man, committit be him in maner and at the tyme specifeit in his Dittay : AND the said *Vmphra Jardane* to be ffylet, culpable and convict of airt and pairt of the Slauch-

<sup>1</sup> Since the year 1598.

<sup>2</sup> Wholly.

<sup>3</sup> This Assise, *nineteen* in number, is one of the largest which the Editor recollects to have observed as being sworn and officiating on any Criminal Trial, in Scotland.

<sup>4</sup> 'Strankla,' in another place.

ter of vmq<sup>16</sup> Williame Campbell of Walwoid, committit fen the yeir of God I<sup>m</sup>.V<sup>c</sup>. fourfcoir fevintene yeiris ; in maner contenit in his Dittay : AND ficlyk, ffand, pronuncet and declairit the saidis Thomas and Vmphra, to be Clene, Innocen t and Acquit of the remanent crymes contenit in the said Dittay, nocht comprehendit vnder the said Remiffioun, viz. of the Steilling of the said Andro Slowanes broun hors, of the quhyte-gray hors pertening to Williame Rankene, and of the fteilling of the saidis fourfcoir hogis ; in maner, and at the tyme contenit in the said Dittay : And ficlyk, of Commone Thift and Cowmone Reffet of Thift, &c. fen the said nynt day of May, I<sup>m</sup>.Vj<sup>c</sup>. and ffyve yeiris.

SENTENCE. For the quhilkis tua Slauchteris, contenit in thair convictioun aboue specifiet, committit be thame, as said is, the Justice, be the mouth of Johnne Laufone, dempfter of Court, decernit and ordanit the saidis Thomas and Vmphra to be tane to the mercat croce of Edinburghe, and thair heidis to be ftrukin frome thair bodeyis ; and thair haill guidis, geir, inficht and pleniffing, to be efcheit and inbrocht to his Maiefteis vfe, as culpable and convict of the tua Slauchteris aboue specifiet. Quhilk was pronuncet for dome.

#### Namesucken—Remembratton.

Sep. 14.—ANDRO HENDERSONE, fone of vmq<sup>16</sup> Johnne Henderfoun, merchand burges of Edinburghe.

Dilaitit, accuset and perfewit of the crymes contenit in the DITTAY vnderwrittin.

FORSAMEKILL, as ye, haifing confauct ane deidlie feid, rancour and malice aganis Williame and Adame Montgomeris, tua honest men, merchandis burgeffis of Edinburghe, for concuring, affifting, mantening and fortifeing of David Johnneftoun, ane of the Bailleis of the said bur<sup>t</sup>, in the executioun of his office, in the taking and apprehending of yow at your motheris hous, about ten oulkis<sup>1</sup> fyne or thairby, for the crewall and schamefull hurting and wounding of . . . Harper, than your motheris fervand, in the heid, to the grit effufioun of hir bluid ; ye, in revenge of the Law, haveing ferchet and focht the said Williame Montgomerie dyuerfe tymes at the yet<sup>2</sup> of his duelling hous, be way of Hamesuckin for his slauchter, leitlie, vpoun the fecund day of September instant, being bodin in feir of weir,<sup>3</sup> with ane grit battoun and ane fuord, awaittit the saidis Williame and Adame Montgomeris in Libertones-wynd-heid, at the yet of the said Williames duelling hous thair, as thay war, in fober and quyet maner for the tyme, cumand frome thair mercheand-buthes, a littell afoir aucht houres at evin, hame, towardis the said Williames duelling hous, dreidand na evill, harme, iniurie, or perfute of ony perfones, within sic ane reformet toun, bot to haif levit vnder Godis peax and our fouerane lordis : And thair ye, vnder nycht, fet vpone thame, and crewallie invaidit thame for thair Slauchter, strak at the said Adame with the said battoun, preiffing to haif ftrukin him thairwith in the heid, and to haif fellit him : Quhilk ye had nocht failzeit to haif done, war nocht, be the Providence of God, he drew his dager, for defence of his lyfe ; vpone the quhilk<sup>4</sup> ye brak the said battoun. And finding yow difapoyntit of your first intentioun, quhilk was to haif ftrukin the said Adame in the heid with ane battoun, ye thaireftir drew your fuord, and of new sett vpone him, and crewallie invaidit him for his slauchter, hurt and woundit him thairwith in the left hand, to the effufioun of his bluid in grit quantitie ; and

<sup>1</sup> Weeks.

<sup>2</sup> Gate.

<sup>3</sup> Arrayed or provided in warlike manner.

<sup>4</sup> Upon which dagger.

hes demembrit him of thre fingaris of his left hand; committit be way of Hamefuckin and brigancie, vnder filence and clud of nycht, vpon set purpos, prouisioun, precogitat malice and foirthocht fellonie: And ye ar airt and pairt of the saidis crymes, committit in maner foirsaid: In hie and manifest contemptioun of our soverane lordis authoritie and lawis, in evill exampill of vtheris to commit the lyk barbarus, crewall and inciull crymes and offences, within ane reformat citie, gif ye be nocht rigoroullie pwneift thairfore, be ane seuir and examplarie pwneifhment, conforme to the lawis and practik of this realme. To the taikin,<sup>1</sup> ye, eftir the committing of the said crewall fact, fled vp the Hie-gait to the Over-bow,<sup>2</sup> quhair ye was apprehendit with the drawin bludie suord in your hand, and was committit to ward, within the Tolbuth of Edinburgh, quhairin ye haif remanit, in the irnes, quhill now that ye ar brocht to the bar, to be tryit and pwneifchet as said is.

PERSEWARIS, Adame Montgomerie, Williame and Alex<sup>r</sup>, his brothers, Sir Thomas Hammiltoun, &c.

PRELOCUTORIS in defence, Mr Johnne Ruffell, Mr Oliver Colt, younger, Mr James Halyday.

My Lord Aduocat passis fra that poynt of Dittay of Mutilatioun, *pro loco et tempore*; and infistis vpon the Dismembring.

It is allegit, that the dismembring of ane finger, tua, or thre, aucht not to be put to the tryell of ane Assyse, *quia non est crimen; et digitus non est membrum, sed tantum pars membri*; and for verificatioune thairof, allegit the lawis and textis of Julius Clarus, and the Ciuill Law.—It is anfuert, aucht to be repellit, in respect of the Dittay and daylie practik of this judgement.

THE Justice ffindis proces; and repellis the allegeance.

The pannell acceptis the Dittay; and takis instrumentis of the conclusioun of the Dittay, beirand puneifchment conforme to the lawis of this realme.—It is allegit, that gif ony dismembring was done be the pannell, (nocht granting the samyn,) that the samyn was done in his awin defence; in sa far as thair was tua persewaris of him, viz. Adame Montgomerie and his brother, the ane haifing ane battoun, and the vther ane dager; and thairfoir, the fact lybellit, done be the pannell, was lauchfull.—It is anfuert be the Aduocat, aucht to be repellit, in respect of the Dittay.—The pannell desyres the persewer, present at the bar, to geve his aithe, quhidder the pannell did the hurt to him in the pannellis defence; or gif the pannell persewit him first; quhairupoun the Aduocat askit (instrumentis.)

*Adame Montgomerie*, present, vpon his grit ayth, declairit, that Andro Henderfoun was the first fetter vpon him, in his brotheris clofe, at his ganging hame to his hous; quhair, with ane battoun, he inuidit the deponer, of purpos to haif fellit him thairwiith; quhilk the deponer foirseing,<sup>3</sup> drew his dager and kepit<sup>4</sup> the straik of his battoun thairupoun: And thairupoun and thaireftir, Andro Henderfoun steppit bak and drew his suord; at quhilk tyme, the deponer tuik vp Henderfones cloik, quhilk he cuift about his left airme and left hand, of purpose to gaird himself thairwith: And that the said Andro thaireftir, with his

<sup>1</sup> In proof or testimony.

<sup>2</sup> Up the High Street to the Over or Upper Bow, now called the West Bow.

<sup>3</sup> Perceiving, *foreseeing*.

<sup>4</sup> Caught the blow; *keppit* the stroke.



fuord, gaif him ane ftraik vpon his left hand, and throw the cloik, tua ply,<sup>1</sup> cuttit the deponer, and ftrak fra him his thre fingeris.

The Aduocat takis instrumentis of the sweiring of the Dittay be the perfewar, in presens of the Assyse; and protestis for Wilfull Errour, gif thay acquit.—Mr Johne Ruffell producet ane tiket of fax perfones, as witneffis, quha can declair to the Assyse, that the pannell was perfewit be the tua brether, the tyme contenit in the Dittay; and that the hurt was gevin to Adame, be the pannell, in his awin defence; and thairupoune askit instrumentis.—The Aduocat anfuert, that thair is na necessitie to the Assyse to reffau ony witneffis, becaus thai ar witneffis thame selfis,<sup>2</sup> and duellis within this burgh, and vnderstandis that this fact was committit be the pannell, in maner contenit in the Dittay; and protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse, be the mouth of Daudid Fergushill, mercheand, Pro-veist of the burcht of Air, chancellor, all in ane voce, ffand, pronunceit and declairit the said Andro to be Giltie, culpable and convict of the dismembring of the said Adame Montgomerie of thre fingeris of his left hand; committit at the tyme contenit in the Dittay, vpon fet purposis, prouifoun and foirthocht felony.—Efter publicatioun of the quhilk Convictioun, THE JUSTICE ordanit the said Andro to be tane bak agane be the Magiftratis of Edinburgh to his waird, within thair tolbuith thairof; thairin to remane in fure keiping, in the ernes, as ane convict perfone, quhill he war forder advyset anent his dome and pwneifchment.

(1610, April 18.)—THE pannel was presented at the bar, by ‘Robert Bannatyne, ane of the Bailleis of Edinburgh,’ by virtue of an Act of the Privy Council, dated at Edinburgh, April 12, 1610; in consequence of his Majesty, ‘in his princelie wifdome,’ having signified to them his Will.

SENTENCE. FOR obedience of the quhilk act and ordinance, the Justice, be the mouthe of Johnne Laufoun, dempfter of Court, decernit and ordanit the said Andro Henderfoun to be Baneift our fouerane lordis haill dominionis, during his lyftyme; and nocht to returne agane within the samyn, vnder the pane of deid: And thaireftir, ordanit the said Andro to be tane bak agane to his waird, be the Magiftrattis of Edinburgh, to the tolbuith of the said burgh, thairin to remane with the remanent wairdouris, quhill he be reddie to imbarque; and that ordour be tane for convoy and tranpourt of him to his fchip.

<sup>1</sup> Two folds thick. Lat. *plica*. <sup>2</sup> This is a strong illustration of the anomalous office of an Assisor or Juryman, in early times. From the peculiar mode in which he was chosen, from among those of the pannel’s peers, who were resident nearest the spot, and knew the common report of the country, he was himself presumed to be a witness; and, in many instances, *de facto*, was a witness of the whole circumstances of the case;—but it is obvious that this very circumstance must have frequently proved a real disqualification to the honest discharge of so important a duty. For the history of the ancient modes of choosing Assises, &c. see the valuable Commentaries of *Baron Hume*, *Burnet* on the Criminal Law, *Maclaurin’s* Trials, &c.

[*Mr Alexander Coluill, Justice-Depute.*]  
**Slaughter of Alexander Lord Spynie.**

[SIR ALEXANDER LINDSAY, LORD SPYNE, whose life unhappily fell an untimely sacrifice to 'one of those deadly feuds, which the demon of domestic strife then too frequently, indeed almost universally, stirred up in the breasts of our Scottish Nobility and Gentry, of all ages and ranks, urging them to the commission of the most frightful excesses and crimes, and whose wrath and rancour, even the nearest ties of relationship could not appease,—was the fourth son of David, *ninth* Earl of Crawford. Having accompanied King James VI. to Denmark, in his matrimonial expedition, and enjoying his Majesty's intimate personal friendship, the King, on his return to Scotland, in fulfilment of a promise then made, erected the lordship of Spynie, Kinnedder, Raffart, and other lands in the shires of Elgin, Banff, and Inverness, formerly pertaining to the See of Moray, into a free Barony, and conferred upon him (then designed 'Vice Chalmerlane to oure fourane lord') the title of Baron of Spynie,<sup>1</sup> May 6, 1590. This Letter is so extremely characteristic, that the Editor needs no apology for transferring it from the original to this Collection.<sup>2</sup>

'SANDIE,

'QUHILL<sup>3</sup> youre goode happe furneis me with sum better occasion to recompence youre honest and faithfull service, utterid be your diligence, and cairfull attendance upon me, speciallie at this tyme, lett this assure, in the inuiolabill worde of your awin Prince and maister, that quhen God randeris me in Skotlande, I fall irrenocable, and with consent of Parliament,<sup>4</sup> erect you the temporalitie of Murraye in a temporall Lordshipp, with all honouris thairto appartaining: and lett this serue for cure of youre present diseafe. FROM the Castell of Croneburg, quhaire we ar drinking and dryuing our, in the aulde maner. J. R.'

He also obtained another Charter, creating him a Peer of Parliament, Apr. 17, 1593.<sup>5</sup> This distinguished Nobleman married Jean, *eldest* daughter of John, *tenth* Lord Glamis, she being also the relict of Robert, Master of Morton, and of Archibald, Earl of Angus. It is probable that this marriage took place on the suggestion, or through the influence, of the King, who thus notices the Countess in one of his Letters;—'Mind *Jean Lyon*, for her auld tout will make you a new horn!'

In order to arrive at the facts relating to this feud, a few quotations shall be made from contemporary sources, the only authentic and satisfactory mode of treating such a subject in a Work of this description. We are informed by *Birrel* and by *Sir James Balfour*, that previous to the fatal skirmish, when Lord Spynie was slain, there had been a similar rencontre, also on the streets of Edinburgh, on the 17th day of June, the same year; which the authorities and the citizens had been wholly unable to put down. That affair is thus related, in the expressive language of the day.

'THE 17 of Junij, (1605,) ane Combat or tulzie foughten at the Salt-tron of Edr, betuix the *Laird of Edzle*, *zounger*, and hes complices, and the *zoung Laird of Pitarrow*, *Wischart*. The faucht lastit frae 9 hours at night till 11 at night, twa hours! Thair wer fundrie hurt one both sydes, and ane *Guthrie* slaine, which was *Pitarrow's* man; ane verie prettie *zoung* man. The 18 day they wer acufit befor the Counsell, and wardit.<sup>6</sup>—'THE 17 day of Junij, a combat betuix the *Lairdes of Edzell* and *Pittarrow*, one the Heighe Streite of Edinbrughe! The fight lasted from 9 in the night till almôst 2 in the morning, befor they wer separted! In this fight diuers wer hurte; and one only killed. They wer fumond to compeir befor the Lordes of his Maiesteis Priuey Counsaill, and wer bothe of them committed to priffone.<sup>7</sup> Sir Thomas Hamilton, then Lord Advocate, preserves the following interesting notices in his Minutes of the proceedings of the Privy Council,<sup>8</sup> which tend to throw much

<sup>1</sup> *Reg. Mag. Sig. Lib.* xxxvii, No. 415. <sup>2</sup> It has been published before. See *Dalyell's Fragments*, App. 83. *Wood's Peerage*, II. 517. And a *fac-simile* of the Letter has been given by Mr J. T. Gibson Craig, in his Contribution to the Bannatyne Club, being 'Papers relative to the Marriage of King James the Sixth.' <sup>3</sup> Until. <sup>4</sup> *Acta Parl.* III. 650. <sup>5</sup> *Reg. Mag. Sig. Lib.* cxxxix, No. 140. *Robertson's Proceedings*, p. 426. <sup>6</sup> *Birrel's Diary*. <sup>7</sup> *Balfour's Annales*, II. 7. <sup>8</sup> *Lord Hadington's MSS.* Adv. Library, A. 4. 22.

light on the matter. 'EFTIR the Combat in Edr betuix *Young Pittarro* and *Mr Alex Lindsay*,<sup>1</sup> vponne the xvij day of Junij, vponne the morne thairefter, *Auld Pittarro* and his sone, and *my lord Chancellaris* message, be his servand, is send to thame to keip pair houffis, and certane pair bairnes thairin; and that thair not obeying and doing pairof gif occasiune of the skaithe and slauchter that followed: Thairfoir thay wer commandit to enter in the Castell of Edr; and furthe pairof, *Pittarro elder* and *younger* to the Blakness, and *Edzell* to Dunbartane. That same day, or the nixt day thairefter, vponne *the Laird of Edzellis* Supplicatioune, beand, that he wes informed, that the Lordis, haveing respect to the Slauchter of *William Guthrie*, feruitour to *Pittarro*, had commandit him to waird, albeit he vnderstude pe said *Guthrie* to have reffaued na woundis, bot to have been smored<sup>2</sup> in the throng; at his desyre, thay send for *David Pringall*, pat had handlit him, and examined him vponne his woundis, and quhidder thay war deidlie or not? And also directed *David Bailzie* and twa vther chirurgions to vesie the corps, and hand pair report; quhilk monie thocht ane strange and extraordinar forme.'

The occasion of this preliminary quarrel probably arose out of some family difference, which, it would appear, the heads of the respective Houses could not prevent. SIR DAVID LINDSAY, YOUNGER of Edzell and of Glenesk, married Margaret Wishart, who, likely, was sister of young Pittarrow.

The cause of the second quarrel, which unfortunately resulted in the death of Lord Spynie, can be more satisfactorily accounted for. 'DAVID LINDSAY, younger of Edyel, seeking to revenge the slaughter of his Uncle, *Mr Walter Lindsay*, whom *David, Master of Crawford*, had killed, as he lay in wait of the said *Master*, (who was then, by the decease of his father, succeeded in the Earldom,) through a pitiful mistake, did invade *Alexander Lord Spynie*, and killed him instead of the other! 'The Nobleman's death was much regrated, for the many good parts he had, and the hopes his friends conceived, that he should have raised again that noble and ancient *House of Crawford* to the former splendor and dignity; all which perished with him. He that was in place, and escaped the peril, being a base unworthy prodigal, and the undoer of all, that, by the virtue of his ancestors, had been long kept together.'<sup>3</sup>—'THE 5 day of July, in rewedge of the Slachter of *Sir Walter Lindsay, the young Laird of Egell* fettis for *the Master of Crawford* in the hie toune of Edinbrughe; the Lord of Spynie being with the Maister, quha was trauelland betuix thame, to haue had thame agreitt, *the Maister* being his broder-sone, and *Eagill* his sifter-sone; and being bayth *Lindsayis*, had grit reffone to mowe (him) to reweill to haue them at concord;<sup>4</sup> bot this perfruit being betuix nyne and ten houris at nycht, thay culd nocht knaw ane be ane wther; *Egell* being the number of aucht men, in geir; and thair being nane with *the Maister* bot *my Lord of Spynie* and *the Laird of Drumlaynerig*,<sup>5</sup> quha being all hurt with schottis and fraikis, *the Maister* hurt and *my Lord of Spynie* with mony fraikis, thay had gottin ane *Drumeldry* schott throw the airme; *Eagell* passis his wayis in saiftye, and his folkis with him. *The Lord of Spynie* depairtit off the said hurttis, the 16 day of Julij; bot *the Maister* recowerit his heathe, bot with grit los of his blade.'<sup>6</sup>

This unhappy Feud was kept alive for many years, and was productive of mutual misery to every member of these families. The diet was not finally deserted against the Earl (formerly the Master) of Crawford, until Jun. 9, 1613.<sup>6</sup>

Before closing this Notice, it is proper to state, that SIR DAVID LINDSAY, ELDER, was called *Lord Edzell*, from the circumstance of his being one of the Ordinary Lords of Session, having succeeded his brother, Sir John Lindsay of Balcarras, the Parson of Menmure (Lord Menmure), on the appoint-

<sup>1</sup> This Notice is preceded, in *Lord Hadington's Minutes*, by the following remark. 'EDZELL and *Pittarro* committed to waird; becaus thair neglecting to conteane thair sones in thair houses (as thay war commandit be *my Lord Chancellare*) was the occasion of tumult and slauchter. At desyre of *my Lord of Edzell*, the deid corpses of *William Guthrie* wes visited be the *Bailzeis of Edinbur* and the Chyrurgians, that saw him examined, gif his woundis wer mortall, and gif he died of thame?' <sup>2</sup> Smothered; suffocated. <sup>3</sup> *Spotswood's Hist.* p. 504. <sup>4</sup> Had great reason to move him to rule (or exercise his authority) to reconcile them. <sup>5</sup> Sir James Douglas of Drumlanrig, ancestor of the Marquis of Queensberry, a powerful baron, who was most active in suppressing disturbances on the Borders. <sup>6</sup> *Ason. Hist. Scot.* MS. Adv. Library, A. 4. 35. <sup>7</sup> See this Collection under that date.

ment of that distinguished person to the office of Secretary of State, Feb. 23, 1597.<sup>1</sup> He was the eldest son and heir of David, *eighth* Earl of Crawford; to which title Lord Edzell would have succeeded, had not his father generously conveyed back the title to David *ninth* Earl of Crawford, the grandson of David the *seventh* Earl, who had disinherited his sons for their 'unnatural barbarity' to him.<sup>2</sup> In order to cement that transaction, and to preserve the most intimate terms with the House of Crawford, Sir David married Lady Helen Lindsay, the daughter of the person who had thus obtained the Earldom on his father's voluntary resignation, viz. David *ninth* Earl of Crawford, who had been a steady adherent to the interests of Mary Queen of Scots; and who married Margaret, daughter of Cardinal Beaton, in April 1546. However piously this respectable man was inclined to preserve the most friendly terms, the deadliest passions seem to have rankled in the bosoms of his son, the Young Laird, and of David, Master of Crawford, the only son of David the *tenth* Earl,<sup>3</sup> who had succeeded his father previous to Dec. 11, 1581,<sup>4</sup> and died, Nov. 22, 1607. At the date of this Trial, therefore, THE EARL OF CRAWFORD, alluded to in these proceedings, and in the Letters, &c., is the *eleventh* Earl, who, at the time of the skirmish on the streets of Edinburgh, was *Master of Crawford*. 'THE YOUNG LAIRD OF EDZELL' was Sir David Lindsay, younger of Edzell, and of Glenesk, and as has already been remarked, married Margaret Wishart, one of the family of Pittarrow. His father having been interdicted from giving him harbour, in any of his houses, 'he built for himself a small Castle called Auchmull, in the parish of Edzell, and another, called Innermusk, in Lochlie, as lurking holes, while he was forced to skulk several years, for the murder of Lord Spynie.'<sup>5</sup>

The Appendix of Original Papers which follows, contains all the additional information on the subject of this deadly Feud, which the Editor can at present obtain.]

Sep. 19.—SIR DAVID LYNDSEY of Edzell, kny<sup>t</sup>, (LORD EDZELL,) ane of the Senatouris of our souerane lordis College of Justice, and Mr Alexander Lyndfay of Canterland, his sone.

Dilaitit for the Slauchter of vmq<sup>le</sup> Alexander Lord Spynie.<sup>6</sup>

Compeirit and producet ane Act of the Secreit Counfall, extract furth of the buikis thairof, be James Prymrois, ordiner clerk, of the dait the tent of Auguft laftbypaft, beirand, that this fix of September instant was appointit to David Erle of Craufurd, of his awin consent, for him self, and takand the burding on him for the remanent perfonas contenit in the Act, to perfew the said Sir David and his said sone, for the foresaid allegit Slauchtir. Accoirding to the quhilk Act, and tennour thairof, the said Sir David and Mr Alexander his sone offeris thame reddie to abyde tryell for the said allegit Slauchter, quhairof thai ar alto-gidder innocent. And proteftis, becaus na partie compeiris to perfew, that thai never be hard heireftir to infist in the perfute for the said allegit Slauchter; and thairupoune askit instrumentis.

<sup>1</sup> *Wood's Peerage*, I. 165; but according to *Lord Hailes' Catalogue*, Feb. 23, 1598. He was afterwards one of the Commissioners of Treasury and Exchequer, called from their number *the Octavians*, Jan. 5, 1595; and was in Mar. 1595 appointed Lord Privy Seal; and, likewise, was Chancellor of the University of St Andrews, &c.

<sup>2</sup> *Peerage*, *ibid.* and I. 379. <sup>3</sup> Who married Lady Grizel Stewart, eldest daughter of John *fourth* Earl of Atholl.

<sup>4</sup> *Wood's Peerage*, I. 380. *Reg. Mag. Sig.* xxxv. 467-769, &c. <sup>5</sup> *Statistical Account of Scotland*, X. 102, which asserts that 'THE CASTLE OF EDZELL' is one of the most magnificent ruins any where to be met with. It consists of two stately Towers, evidently in different styles, and built at different periods. These are connected by an extensive wall; and large wings went backwards from the Towers. Tradition says that the square Tower, the most ancient, was built and possessed by the Family of *Stirling*, from whom it descended to Lindsay of Glenesk.

<sup>6</sup> See Jul. 8, 1607, and Jun. 2 and 9, 1613. It appears that he died of his wounds, July 16, 1615. See the foregoing Notice prefixed to this Case.

Compeirit Gilbert Rynd, feruitour for the tyme to vmq<sup>le</sup> Alexander Lord Spynie, and in name and behalf of the Lord Spyneis bairnes, protestis, that quhatfumeuir be done in this Judgement and Justice Court this day, preiudge nocht the perfute to be movet at the instance of the said vmq<sup>le</sup> Lord of Spyneis bairnis, for thair fatheris Slauchter : And thairupoun askit instrumentis.

APPENDIX OF DOCUMENTS illustrative of the preceding Case.

I. LETTER, *the Laird of Edzell to the King.*<sup>1</sup>

MAIST SACRED SOUERANE,

IT MAY pleise your Ma<sup>tie</sup> albeit I hawe stayit hier in Ed<sup>r</sup> ane yeir and three moonthis bygane, craving ewer to be tryit of the onhappie Slachter of my wmq<sup>ll</sup> LORD OF SPYNIE, quhair of I protest befoir God and your M<sup>te</sup> I am maist innocent, *my Lord of Crawford*<sup>2</sup> will nather call me thairfoir, nor stave, baith privatlye and pwbliklye, yea in face of yo<sup>r</sup> M<sup>ties</sup> ho<sup>ll</sup><sup>3</sup> Priwye Counsell, to caluminat me : Quhairfoir, seing my modesté moowife<sup>4</sup> nocht *my Lord of Crawford* rightlye to consider my innocencye, I maist humilye pray your M<sup>te</sup> to direct yo<sup>r</sup> Thesaurar and Advocatt to call and pwt me to ane honest and onsuspect Triall ; and being tryit innocent, that I maye hawe suretye to liewe in peace, to serwe y<sup>r</sup> M<sup>te</sup>. I hawe swfferit manye injureise, specialye fyiwe of my servitouris schott with pistoillis and hwrt, yit hes nocht complenit ;—my self also, during the space foirsaid, nocht wairdit onlye, bot banishit from my verteu ; and yit *my Lord of Crawford* his insolence no<sup>t</sup> moowit nor stayit from feiking of my wraik. Praying yo<sup>r</sup> M<sup>te</sup> to consider and to cause ordour be pwt to the premissis, I pray God to grant y<sup>r</sup> M<sup>te</sup> ane lang and prosperus reigne, and to bliss yo<sup>r</sup> Royell progenie. Sa kissing humilye y<sup>r</sup> handis, I rest ewer,

ED<sup>a</sup>, 1608. 16. Aug. Yo<sup>r</sup> Sacred M<sup>ties</sup> maist humill and obedient subiect and servitour,  
TO HIS MAIST SACRED M<sup>tes</sup>. EDZELL.

II. EXTRACT from LETTER, *the Privy Council of Scotland* ' TO THE KING *his most sacred and excellent Ma<sup>tie</sup>, Mar. 28, 1609.*'<sup>5</sup>

THAIR wes a Petitioun presentit vnto ws, in name of THE LAIRD OF EDYELL, complaining that THE ERL OF CRAUFURDE, vnder the pretext and cullour of a Commiffioun granted be your Maiesteie to some of his domestiquis and seruandis, for perfute of the Criminallis for THE LORD OF SPYNEIS SLAUCHTER, intended to perfew and assedge his HOUSE OF EDYELL, wherein his mouablis and euidentis<sup>6</sup> ar, and his ludgeing in this burgh whair he presentlie duellis ; and sua, vnder the pretenfe of Law, and of your Maiesteis auctoritie, to execute his privat revenge aganis him ; and thairfoir, he craved, that this Commiffioun, and the executioun thairof, aganis him and his Houffis, myght be suspendit and dischargeit. We could not judge vpoun the tennour and natour of this Commiffioun, becaus it wes never shawne nor presentit in Counsaill, and, as we ar informed, it is nouthir regiftrat nor signett ; and we wold not presome nor tak vpoun ws to discharge your Maiesteis Commiffioun, without your heynes awne allowance ; alwayes,<sup>7</sup> becaus Edyell hes found caution not to resset thir bornaris in his saidis Houffis, vnder the pane of ten thousand merkis, we haif suspendit the executioun of the said Commiffioun aganis the saidis tua Houffis, allanarlie,<sup>8</sup> vntill the tent day of Aprile nixtcome, that in the meantyme we may know your Maiesteis will and pleafour thairanent, and in all vtheris Commiffionis of the lyk nature, not presentit nor showne in Counsaill.

<sup>1</sup> *Denmylne MSS.* Adv. Library.      <sup>2</sup> David *eleventh* Earl of Crawford, who, at the date of the rencontre at which Lord Spynie was killed, was *the Master of Crawford*.      <sup>3</sup> Honourable.      <sup>4</sup> Moves.      <sup>5</sup> *Denmylne MSS.* Adv. Library. The Letter, which is very long, craves instructions on a great variety of subjects.      <sup>6</sup> Title-deeds of his property.      <sup>7</sup> Nevertheless.      <sup>8</sup> Only.

III. LETTER, *the Laird of Edzell to the King.*<sup>1</sup>

MAIST SACRED SOVERANE,

IT MAY pleife your Maieſte, Being advertesit that THE ERLE OF CRAWFWRD hes ſent expreſs to your hienes of that certane Lettres as written be me to my ſone, and recoverit be him within the Howſe of Auchinwll, quhair my ſone was wont to dwell; quhilkis informis, it was my will and command to ſlaye the wmq<sup>11</sup> *Lard of Spynie*, and ſa, plotter and contriver of that vnhappye and wyilld ſlauchter; thinkand thairbye to awert your Maieſtes woontit fawor from me, and to diſgrace me at the hands of all honeſt men; I hawe chofine and prefumit to tak the hardiment humblye to pray your hienes nocht to giwe credit to anye cople of anye Lettre cwming from the handis of my enemyis, wnto the tyme the principall be tryit<sup>2</sup> to be wrettin, ſubſcriwit, or directit be my ſelf; for I proteſt, in preſence (of) God, I newer had anye ſick innaturall and ongodlie interpryſe in my hart, mekle leſs directit the doing thairof. And to mak this mair manifeſt to all the world, I have inventit<sup>3</sup> Improbatione, that all liwing may know howe injuſtlye I am vſit be *the Erle of Crawford*, and howe he quha was the beginner of all thir trowblis, be the Murder of my wmq<sup>11</sup> brother *Sir Walter*<sup>4</sup> onder traift, wald nowe eik<sup>5</sup> craft to his cruelteis; and in place of repentance, be fals calumnyes, wald alſo bereawe me of my fame and lyiff, albeit I hawe ewer beine, and yit am maift willing to abyed all ordinar tryell of Lawe. Farther, I moſt alſo regrait that the ſaid Erle, being laitlye at Cowrt, hes privelye obtinit ane Commiſſione wnto ane numer of hes rioteris and defenderis, for ſerching of my ſone; and onder colour thairof, hes intentit nocht onlye to ſurpryſe my howſe of Edzell, quhair my haill ewidentis, and of vther freindis yit remanis, bot alſo to herawe me of my lyiff within my awin lwdging in Ed<sup>6</sup>. And to the effect foirſaid, wearis daylye piſtollettis and hagbwttis, prohibitit be your Maieſteis Actis, alledging ewer they ar ſeiking Rebellis. For remeid quhairof, and my awin ſecuritie, in reſpect of the reaſonis foirſaidis, ſpecialye, becauſe your Maieſties honourabill Priwe Counfell hes alreadye grantit ane verie ample Commiſſioun, excepting onlye my Howſe of Edzell, within the quhilk I hawe fwnd Cautione nocht to recept<sup>6</sup> my ſone, nor anye of theiſe Rebellis, onder the paine of ten thouſand merkis, *toties quoties*, I will maift humilye praye your Maieſtie to direct ane Warrant to your hienefs Priwe Counfell of this countrie, to ſuſpend the laſt priwatlye obtinit Commiſſione, as your Maieſtie will hawe me free of that ſchaddowe,<sup>7</sup> be the quhilk my ondeſerwit enemye crawis<sup>8</sup> my lyiff and land; for vtherwayis, the Counfell, for the reverence they carye to that Commiſſione feygnd be your hienefs, will nocht mell<sup>9</sup> thairwith. Hoping for your Maieſteis woontit protectione, nowe, ſa mekle the rather that I am ſo onkyndlye, onnaturalye, and without deſerwing, trwblit be that Howſe,<sup>10</sup> of the quhilk ewer of ald, nocht onknowin to your Maieſtie, in thair trowblis, I hawe ſa weill meritit vtherwayis. Yf I find nocht ſecurite hier, I wilbe forcit, altho' be ſea, in reſpect of my aige and inhabiltye, vpon my kneiſe to beg the ſaming<sup>11</sup> at your hiechneſs ſelf. Thws, maift humblye kiſſing your hienefs handis, and praying the Eternall lang to preferwe your Maieſtie and Royell progenie, I reſt ewer,

Your Sacred Maieſteis maift humble and obedient ſubiect and ſerviteur,

Ed<sup>6</sup>, 1609. Penult. Mar<sup>11</sup>.

EDZELL.

**Slaughter of James Lord Corthorwald.**

[THE following Trial, in addition to the preceding Case of the feuds of the Lindsays, affords another, among the many melancholy instances, of the 'deadly feuds' which unhappily existed in Scotland at

<sup>1</sup> *Dennyne MSS.* Adv. Library.      <sup>2</sup> Judicially proved.      <sup>3</sup> Should be *intentit*; raised.      <sup>4</sup> Sir Walter Lindsay of Balgavies, who was murdered betwixt Brechlin and the Place of Edzell, Oct. 25, 1605. See Jun. 2 and 9, 1613, &c.      <sup>5</sup> Add; join.      <sup>6</sup> Resett.      <sup>7</sup> Pretence; mockery.      <sup>8</sup> Craves.      <sup>9</sup> Meddle; interfere. Fr. *meler*.      <sup>10</sup> Viz, the House of Crawford.      <sup>11</sup> Same.

this period. The arrogant CAPTAIN JAMES STEWART of *Bothwell-muir*, second son of Andrew Lord Ochiltree, well known as the EARL OF ARRAN, and who had been successively Governor of the Castles of Edinburgh and Stirling, Lord Privy Seal, and Lord Chancellor of Scotland, was, in the year 1596, slain, in revenge for his rigorous procedure against his uncle, at Symontoun, near Douglas, in Lanarkshire, by Sir James Douglas of Parkhead, nephew of the Regent Morton. Archbishop Spotswood thus notices these remarkable events.

‘ A little before these stirs with the Church, *Captain James Stewart* (who had been sometime Chancellor, and carried the title of *the Earl of Arran*) was killed by *James Douglas of Tortherald*. This man, after he was put from Court, had lived obscure, in the North parts; and was entertained by the Lady Salton, his sister-in-law. Being in hope to come again by the office of Chancellery, which was yet void, by the death of *Lord Thirlestean*, he came South, and had a long conference with the King, which did greatly encourage him; but till matters might be better prepared, he took purpose to visit his friends in Kyle. Taking his journey by Symington, nigh unto Douglas, he was advised by his friends in those parts to look to himself, and not ride so openly, because of *Tortherald*, that lived not far off, whose uncle he had followed (as he spake) to the death. His reply (as he was a man proud and disdainfull) “ that he would not leave his way for him, nor for all the name of Douglas ! ” being overheard by a fellow, and reported to *Tortherald*, did so inflame him, the old ulcer remaining uncured—as he avouched, “ to have his life, at all hazards ! ” So, getting intelligence that he had taken horse, he made after him, with three of his servants; and overtaking him in a valley called *Catflack*, after he had stricken him from his horse, did kill him without resistance. It is said, that when *Captain James* saw the horsemen following, he asked, “ How they called the piece of ground on which they were ? ” And when he heard the name of it, he commanded the company to ride more quickly—as having gotten a response to beware of such a part ! He was a man full of violence; and, when he was in place of rule, executed it with much cruelty—which was now paid home in the end ! <sup>1</sup> *Mr Wood* <sup>2</sup> relates, that ‘ his head was cut off, and carried on the point of a lance, in a kind of triumph, through the country; and his body was exposed to dogs and swine before it was buried ! ’ In accordance with the usual feelings of those times, dictated by a blind and barbarous revenge, (which was, in those days, considered merely as indicating proper spirit in a man of *gentle blood*,) Sir James was, in his turn, murdered on the streets of Edinburgh !

Two contemporary writers thus briefly state that fact to have occurred, simply, as a matter of course : — ‘ THE sewint of Julij, *James Douglas of Torthorwall* slayne be *William Stewart*, sone of Sir William Stewart, in rewendge of Captane James slaucher. <sup>3</sup>— ‘ The 14 day of Julij, this yeire, *James Douglas of Torthorwall* was killed, one the Heighe streeit of Edinbrughe, betuix 6 and 7 houres in the morninge, by William Steuart, sone to Sir William Steuarte; quho escaped. <sup>4</sup>— ‘ The 18 day of this same mounth (May, 1613,) the Lord Ochiltreie solemlie, by his grate othe, purged himselfe (in prefence of the Lordis of his Ma<sup>ties</sup> Priney Counsaill,) in being airte or pairt, ore aney wayes accessorey to the Murthour of the Lord Torthorell’s father; and so thay war reconceilled by the Lordes, hartily chapen handes, and mutually embracing one ane another. <sup>5</sup>

A very interesting LETTER from the Privy Council to the King, taken from the *Hadington MSS.*, General Register House, is appended. It gives the most authentic account of the matter which can now be procured.]

Sep. 20.—ANDRO LORD STEWART of Vchiltrie, and Andro Stewart, his fervand.

Dilaitit of the Slaucher of vmq<sup>le</sup> James Lord Torthorell. Compeirit and producet ane Act of Secreit Counsaill, extractit furth of the buikis thairof, vnder

<sup>1</sup> *Spotswood’s Church Hist.*, 433.  
Adv. Library. 28.

<sup>2</sup> *Wood’s Peerage*, I. 123.

<sup>3</sup> *Anon. Hist. Scot. MS.*,

<sup>4</sup> *Balf. Ann.*, II.

<sup>5</sup> *Ibid.* 42.

the figne and subscriptioun of James Prymrois, Clerk of Counfall, of the dait the tent day of August lastbypast; beirand, that Williame Lord Douglas and James Lord Torthorrell compeirit personallie befor the saidis Lordis, and promeist in thair prefens, that betuix and the tuentie day of September than nixtocum, quhilk is this day, thay sould ather perfew the said Andro, criminallie, befor his Maiesteis Justice and his deputis, in the Tolbuthe of Ed<sup>r</sup>, ffor airt, pairt, red and counfall of the Slauchter of v<sup>m</sup>q<sup>l</sup> James Lord Torthorrell, or ellis, that thai sould reconceill thame selffis with the said Lord Vchiltrie, and be agreit with him.—And in respect, that thai tuik betuix and this day to perfew him, quhilk is the last day contenit in the Act; thairfoir, the said Lord Vchiltrie, for tryell of his innocencie of the said allegit cryme, now compeiris, and offeris him reddie to abyde the tryell of the law, for airt, pairt, red and counfall of the said Slauchter; quhairof he is altogidder Innocent, disassenting to all maner of continuatioun; protesting, that the said Williame Lord Douglas and James Lord Torthorrell, nor na vtheris persones be hard to perfew him for the said allegit cryme, in ony tyme cuming; in respect that thai nor nane of thame compeirit to infit in this perfute.

And lykwayis, the said Lord Vchiltrie askit instrumentis, of the entrie and productioun to the Justice of *Andro Stewart*, his servand, to abyde quhatsumeur tryell can be laid to his charge, for the said allegit Slauchter. Lykas, the said Andro Stewart, for himself, being personallie present, offerit himself to the tryell of the law, for the Slauchter aboue specifit; quhairof he declairit himself to be maist Innocent; disassenting to all continuatioune; and thairupone askit instrumentis.

LETTER, *the Privy Council to the King, anent the Slauchter of the Lord Torthorwall.*<sup>1</sup>

MOST SACREID SOUERAYNE,

THAIR hes ane wnhappie accident fallin out heir, this morning, betuix fex and sevin of the klok, by the slauchter of *James Douglas of Torthorwell*, committit be *W<sup>a</sup> Stewart*, sone to *w<sup>m</sup>q<sup>l</sup> Sr W<sup>a</sup> Stewart*, quho, althocht the principall pairtie had agreied with the said *w<sup>m</sup>q<sup>l</sup> James*, and reffaveit Affythment and satisfactioun to his awin contentment, the said *W<sup>a</sup>* misknew this agreement, past to the horne for not geving assurance, and awaittit the occasioun of this morning; quha, finding the said *James* simplie accompaneid vpon the Hie Streit, a littill beneth Croce, he disparatlie sett upone him, and, with ane straick, slew him; and the gaitt<sup>2</sup> being quyett, he escheapid. We have cauffit chairge the partie compeire and ansuer, and fall prosequut and follow out all wther ordinarie courfe of law and justice quhilk is vsuall and accustumed in the lyk caiffis. And, in cais of his not compeirance, fall caus denunce him, and pairvponne fall direct Commissiounes to the ordinarie Magistratis of the country for the perfute of him, with Proclamatiounes, conteneing a promes of rewaird to ony persones quho will tak him. Quhairof we haif thocht meitt to mak your sacred Ma<sup>tie</sup> acquainted, and in all reverence fall conforme our selffis to quhatsumevir forder directionne it fall pleis your hienes to give in this mater.

<sup>1</sup> From the *Earl of Hadington's MSS.*, General Register House.

<sup>2</sup> Street.



And sua, praying God to grant wnto your sacreid Ma. a long, happie, and prosperous regne and eternall felicitie, we rest  
 Your Ma. moift humbill and obedient subjectis and servitouris,

A. CANCELL<sup>r</sup>. DUMBAR. CRAFTURD. LOTHEANE. LOVAT. BLANTYRE. BALMERINOCH.  
 HALIROODHOUS. BURLY. R. COKBURNE. S. J. SKRYMGER of Dudop. S. T. HAMILTOUN.

[DATE not preserved; but Jul. 7 (or 14) 1608.]

### Child-Murder.

Nov. 9.—BEATRIX WEIR, spous to Johnne Ferrie, buikbinder.

Dilaitit of airt and pairt of the distructioun of an infant bairne, procreat in Adulterie.

Compeirit James Hammiltoun, seruitour to my lord Aduocat, and productet ane Warrant of the Secreit Counfall; quhair of the tennour followis.

JUSTICE, Justice Clerk and your deputtis. Forfamekill as the nynt day of November instant is appointit to Beatrix Weir, spous to Johnne Ferrie, buik-binder, and Bessie Pook, dochter to Williame Pollok, for pair compeirance befor zow, to vnderly the lawis for the crewall, barbarus and detestable Murthour of the said Beatrix bairne, procreat be hir in Adulterie: And feing the said Beatrix constantlie abydis be hir denyell of that odious and vyld fact, thinking pairby to eschew pwneifchment, althocht the said Bessie Pollok hes confessit pe fact and Murthour to haif bene committit be pame two, and constantlie standis be hir Confessioun.—It is our Will pairfoir, and We command zow, to continew the said dyet for a fyftene dayis, to pe effect, in this meayne tyme, the tua women may be confrontit, and fuche ordinarie meanis as may discouer and bring to licht the certane treuth of that matter: And that zow gif ordour and directioun for committing thame bothe to strait waird, within the Tolbuth of Ed<sup>r</sup>, thair to remane quhill the nixt dyet to be appointit for pair tryell: ffor doing quhair of, thir presentis fall be your Warrant. Att Ed<sup>r</sup>, the sevint of November, 1609.

JO. PRESTOUN. S<sup>r</sup>. R. COKBURNE. L. CRAIG, Cl<sup>r</sup> Reg<sup>r</sup>.

Conforme to the quhilk Warrant, the Justice committit the said Beatrix Weir to Waird, &c.<sup>1</sup>

### Witchcraft — Administering Enchanted Drink.

Nov. 9.—JAMES MURE in Mynniehagen.<sup>2</sup>

Dilaitit of airt and pairt of Bewitching of Margaret Wicht in Dalmellingtoun, and taking fra hir of hir Wittis, be ministrating to hir of ane Inchantit drink.

PERSEWAR, Margaret Wicht. PRELOCUTOR for the pannell, Joseph Myller, Aduocat.

The pannell takis instrumentis of his entrie, and offeris him self to the tryell of the Law, disaffenting fra all continuatioun; and protestis for releif of his caution.

THE JUSTICE, in respect thair is na sufficient number of Assyse compeirand this day,<sup>3</sup> continewis this dyet to the 3 day of the (Justice) air (of the shire of Air), or soner, vpon xv dayis wairning, to vnderly the law for the said cryme, vnder the panes contenit in the Actis of Parliament; quha fand Sir Johnne Wallace of Carnell, kny<sup>t</sup>, cautioner for his entrie, to the effect foirsaid.

<sup>1</sup> No entry appears to show the result of this matter. <sup>2</sup> A depender of the *Mures of Auchin-drane* and Minihagan. See their Trial for Murder, Jul. 17, 1611, &c. <sup>3</sup> All the Assisers absent, eighteen in number; 'ilk ane of thame vnlawit in the pane of ane hundreth merkis.'

(1610, Feb. 7.)—For the relief of his cautioneris, and tryell of his awin innocencie of the saidis alegit crymes,<sup>1</sup> he now compeiris, and maift willinglie offeris him self to the tryell of the law for the samyn, difaffenting fra all continuatioun. And in respect that the said Margaret nor na vtheris compeiris this day to infist in his perfute, for the saidis allegit crymes, and that this is the secund dyet keipit be him, for abyding tryell thairof, haifing cum threscoir myles, or thairby, to that effect; and that the samyn perfute is bot malicioullie inventit aganis him, be the said Margaret, for hir awin previe advantage, be raising of Letteris aganis him; and the perfonnes summond be hir vponne his Assyse, of quhome scho hes resflaut grit fowmes of money in compositioun, to abyde at hame: Protestis, in respect of the premiffes, for (Sir) Johnne Wallace of Carnall his releif of his cautionerie, and that he be nocht callit, trubellit, or perfewit, at the instance of the said Margaret, or ony vther partie, for the alleget crymes aboue specifit; rather yit that my lord Justice suffer Letteris to be direct aganis him to that effect, in ony tyme cuming: Quhilk protestation the Justice admittit, &c.

[*Sir Williame Hairt, Justice-Depute.*]

**Hurting and Wounding — Shooting of Pistolets.**

Nov. 17.—ALEXANDER FRENCH, brother to Johnne Frenche, Tutour of Thornydikis.<sup>2</sup>

Dilaitit of airt and pairt of the Hurting and Wounding, with schottis of pistolettis, of George Home of Bassinden and Andro Home, his brother, as in the following DITTAY.

FORSAMEKILL as it is expresse provydit, statute, and ordanit, be the Actis of Parliament, that na manner of persone nor perfonnes tak vponne hand to beir, weir, or schute with hagbuttis or pistolettis, or have the samyn in thair cumpanies, oppinlie, outwith houffis, vnder the pane of cutting of thair richt hand; as the saidis Actis of Parliament at lenth beiris: And trew it is, that the said Alexander French, accompaneit with Johnne French, Tutour of Thornydykis, his brother, and vtheris thair complices, nocht only hes borne and worne pistolettis vponne thair perfonnes and in thair cumpaneis, oppinlie and avowedlie, within dyuerse partis of the boundis of the scherefdome of Beruik, and bailzerie of Lauderdaill, thir dyuerse yeiris bygane, daylie and continuallie, as thair ordiner wappones; bot also, the said Alexander and Johnne, his brother, being surelie informet, that the said Andro Home was to cum furth of the said Place of Bas-

<sup>1</sup> Having been summoned to appear before the Justice this day.      <sup>2</sup> The pursuers passed from the pursuit of 'Patrik Cranftoun of Corbies, Robert Ker of the Schaw, Patrik Tait, and Williame Cranftoun, his tua servandis, Johnne Frenche, callit *the Bastard*, lone naturall to Robert Frenche of Thornydykis; and Thomas Erkyn.'

finden to Reidpeth, for doing of certane his necessar effairis and buffines; thay, vpon the xxv day of September lastbypast, being bodin in feir of weir, with secrettis, plait-flevis, lances, hagbuttis and pistolettis, lay at await in the said Andro his hie way, besyde Fawnes-furd, and thair fet vpon him, and crewallie invaidit him for his Slauchter, schot and dilaschet<sup>1</sup> thair hagbutis and pistolettis at him, hurt his horse, and chaifit him self to the Place of Carolesyde; contravening thairby the tennour of the said Actis of Parliament. Be occasioun of the quhilk perfute, thay being raifit in the cuntrie, and the bruit passand, that the said Andro was flane and tane in to Carrolesyde, and the samyn haifing cum to the said George knowlege, he, to try the certantie thairof, lap on vpon horsebak, and cam ryding to the Place of Carolesyde, in sober maner, him self allane, lipning for na harme, iniurie or perfute to haif bene done to him,—the said Alexander French, accompaneit with his said brother, and vtheris thair complices, nochtwithstanding of the former iniurie done as said is, being bodin in feir of weir, with hagbuttis, pistolettis and vtheris wappones, *invafue*, convenit thame selfis at the Chapel-wallis besyde Corrbie and dykis<sup>2</sup> thairof, quhair thair lay darnit<sup>3</sup> in secreit maner, awaiting, gif ony wald cum and revenge the former deid; and thair, at the Chapell-dykis, in the said George cuming to the said Place of Carolesyde, vmbiefet his hie-way, and maist crewallie invaidit him for his Slauchter, schot and discharget thair pistolettis and hagbuttis at him, quhairwith thay schot sewin bullettis in his left thie, hurt and woundit him thairwith, to the effusioun of his bluid in grit quantitie: And the said Alexander is airt and pairt of the saidis crymes; and hes thairthrow incurrit the panes and punisshment prescryuit be the said Act of Parliament.

PERSEWARIS, George Home of Bassindene, Alexander Home, his brother; Sir Thomas Hammiltoun.

PRELOCUTOR for the pannell, Mr Williame Oliphant.

It is allegit aganis the first article of the Dittay, anent the generalitie of the beiring and weiring of pistolettis, that the samyn is nocht relevant, nocht condiscending the speciall tyme and place, quhair and quhan the samyn war borne or worne. The Aduocat declairis he persewis the pannell for beiring and schuiting of hagbuttis and pistolettis, the tyme lybellit, outwith the boundis of his duelling houffis, cloiffis and yairdis. Andro Home, ane of the persewaris, declairis, that in his perfute be the Tutour of Thornydykis, Alexander his brother was in company with him, with ane lance; the Tutour haifing pistolettis, and schuiting at him thairwith.

It is allegit be Alexander French, that this Dittay can nocht be put to the knowlege of ane Assyse; under protestatioun, that he nawayis grantis the Dittay, becaus the samyn was done within the Place of Corrbie, and yairdis thair-

<sup>1</sup> *Deslascher*, Old Fr. to discharge, to let off.    <sup>2</sup> Walls, stone fences.    <sup>3</sup> Hidden, concealed.

of.—It is anfuerit be my lord Advocate, aucht to be repellit, in respect of the fummondis and place thairin defignit, viz. outwith the Place of Corfbie; nather yit was the Place of Corfbie the said Alexander Frenches duelling place.

It is allegit for the said Alexander, vnder protestatioun foirfaid, that the said Alexander, the tyme lybellit, and the space of the moneth befor, duelt and maid his residence within Corfbie; lyk as, the persewar, George Home, affistit with some perfonen, bodin in feir of weir, with hagbutis and pistolettis, persewit and inuidit the said Alexander, and schot thair hagbuttis and pistolettis at him, he being then ganging within the corne yaird of Corfbie, at the barne-dur thairof; of the quhilk schot the barne-dur can yit record: And vnder protestatioun, that he nawayis grantis ony schuting, as he schot nocht, he aucht nawayis to be put to the knowlege of ane Inqueist for the said cryme lybellit, becaus he mycht haif lauchfullie borne and worne pistolettis, and vset thame for his awin defence, within his awin duelling place, he being persewit, as said is.—Anfueris, vnder protestatioun, that I nawayis grant Corfbie to be the defenderis duelling place; that he aucht to be put to the knowlege of ane Assyse, becaus the fact lybellit was committit outwith the place of Corfbie and yairdis thairof, in the place lybellit; nather is hagbuttis or pistoletis wappones of lauchfull defence.

THE JUSTICE ferrit the samyn to the knowlege of ane Assyse.

George Home of Bassinden, be his aithe, declairit, that Alexander French, being outwith the dykes of Corfbie, schot ane pistolet at his serwand Johnne Baird, the tyme contenit in the Dittay. The said Andro Home, his brother, lykwayis fuorne, declairis, that he, being persewit be Johnne French, Tutour of Thornydikis, with hagbuttis and pistolettis, the tyme lybellit, the said Alexander Frenche, his brother, followit him with ane lance in his hand, being vpone fute, and persewit him. The said George Home, be his ayth, declairis, that Alexander French, this tua yeir bygane, hes borne and worne pistolettis, as his ordiner wappones; contrair the Actis of Parliament.—Upone the quhilkis Declarationis, be the perseweris athis, gevin as said is, askit instrumentis.

VERDICT. The Assyse, be the mouth of Johnne Cranftoun in Bassinden, chancellor, for the maist part, Clenges the said Alexander Frenche of beiring, weirring and schuitting of hagbuttis and pistolettis; and of schuiting of hagbuttis and pistolettis at Andro Home, brother to George of Bassinden; and of the tua first articles of Dittay foundit thairupoun: AND all, in ane voce, ffindis the said Alexander to be Giltie of his being in cumpanie with Gilbert Cranftoun; quha, the tyme contenit in the Dittay, schot ane hagbute or pistolett at George Home of Bassinden, and hurt him thairwith in his left thie; quhilk schote was schote be the said Gilbert, outwith the barne-yaird-dykis of Corfbie, the said Alexander being remaning within the barne-yaird for the tyme.

THE JUSTICE ordanit the said Alexander Frenche to be committit to waird, within the Tolbuth of Edinburgh, thairin to remane vpon his awin expenffis, vnto the tyme he war advyfet with the Counfall, anent his dome, to be pronuncet thairupone.

**Hurting and Wounding — Shooting of Pistolets.**

Nov. 17.—JOHNNE FRENCHÉ, Tutour of Thornydikis, and Gilbert Cranstoun, father-brother to Patrik Cranstoun of Corsbie.

THE JUSTICE ordanit Laurence Symfoun of Craighous and James Sandilandis of Gillifwallis, cautioners for the said Johnne, to be in amerciament in the pane of ij<sup>c</sup> merkis, for his nocht entrie; and Robert Hepburn in Eist Fentoun, brother to the Laird of Craig, as cautioner for the said Gilbert, in the pane of ij<sup>c</sup> merkis: And siclyk, that the said Johnne and Gilbert sould be denuncit rebellis and put to the horne, and all thair moveabill guidis to be escheit, &c.

**Resetting and Maintaining Alexander Ruthven — Gowrie's Conspiracy.**

Nov. 17.—DAVID SPALDING of Effintullie

Compeirit with M<sup>rs</sup> Williame Oliphant and Henrie Balfour, his prelocoutouris, quha enterand him self vpon pannell, exponit and declairit, that fforfamekill as, vpon finifterus informatioun gevin to the Lordis of Secretit Counfall, command was gevin be thair lordschipis to Sir Thomas Hammiltoun of Bynnie, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes entreis, to perfew him befor the Justice or his deputis, for the allegit tressonable Ressetting, supplieing, and maintaining of Alexander Ruthven, burges of Perth, his Maiesteis declarit tratour, within his duelling places of Effintullie and Enoche, at the tymes particulerlie fet doun in the said informatioun; lyk as, criminall Letteris being direct at the said Aduocattis instance, aganis the said Daud, be the quhilkis he was charget to find caution actit in the buikis of Adiornall, that he sould compeir befor the Justice or his deputis, this day and place, and vnderly the Law for the saidis allegit crymes, and vtheris contenit in the Letteris direct thairupoun, quhairof he is altogidder innocent: ffor obedience quhairof, vpoun the fourt day of July lastbypast, he fand Harie, Lord St Colme,<sup>1</sup> cautioner for his compeirance this day, &c.; for quhais relief, and tryell of his awin innocencie, he now compeirit; disaffenting fra all maner of continuatioun: And in respect our souerane lordis Aduocat, nor na vtheris his lordshipis informeris wald infist in his per-

<sup>1</sup> This Nobleman was the second son of James, Lord Down, and brother of James, Earl of Moray. He had the monastery of St Colme's Inch and lands belonging thereto, erected into a temporal lordship, with the title of a Peer of Parliament, as Lord Saint Colme. He died Jul. 12, 1612.

fute, tuik instrumentis, &c. ; and protestit for his said cautioneris relief ; and that he him self fould nocht be callit, trubillit, nor perfewit for the allegit crymes aboue mentionet ; bot that he fould be affoilzeit *simpliciter* thairfra, in all tyme cuming.

**Striking a Person within the Tolbooth of Edinburgh, During the Sitting of the Lords of Session.**

Nov. 18.—Mr JOHNNE KERR, sone to Andro Ker of Mylnerig, and George Lokhart, seruitour to the Laird of Corstorphin, younger.

Dilaitit, accuset and perfewit, be DITTAY, of the Crymes following.

FORSAMEKILL as, be Act of our souerane lordis threttene Parliament, his Maiestie and estaittis ordanit, that quho enir fould strek or hurt in any tyme thaireftir, any persone within the Vtter-Tolbuth of Ed<sup>r</sup>, the tyme that the Lordis of Sessiou suttis for administratioun of Justice, sal incur the pane of daith ; and fall be accused criminallie thairfor : Without regard quhairof, and of that respect and reuerance quhilk it became the saidis Mr Johnne and George, or ather of thame, to haif borne to the Lordis of Sessiou, being conuenit in the Inner Tolbuthe of this burcht, for administratioun of Justice to his Maiesties legis, and thairby representing his Maiesties persone and autoritie ; the said MR JOHNNE, vpon the aughtene day of November instant, cam to the Vtter-hous of the said Tolbuth, callit the Mid-hous, and feing the said George Lokhart, seruitour to the Laird of Corstorphin, Younger, following his msister, in companie with my Lord of Kilfith,<sup>1</sup> desyrous to enter within the said hous ; and he beiring grudge and malice aganis the said George, vpon sum former discoirdis betuix the said Mr Johnnes father, him self, and his vmq<sup>le</sup> brother Andro Ker and the said George Lokhart, the said Mr Johnne staid in the said dur, and wald nocht suffer him peceable to pas by, bot forceable rusched the said George, in the bygoing, and had almost strukin him to the grund ; and immediatlie thairefter, drawing his dager, inuidit him thairwith, and strak at him for his Slauchter ; and strak the said George throw the cloik, within the said hous, and had nocht faillit to haif slane him, gif the said Mr Johnne had nocht bene stayit and red be sum gentilmen being present for the tyme, quho wer commandit be my Lord of Kilfith to red<sup>2</sup> thame ; and tuik the said Mr Johnne to waird, for his said offence : Quhairby he hes transgressed the said Act of Parliament, and incurrit the panes contenit thairin. LYK AS, the said GEORGE LOKHART, vpon the said aughtene day of November instant, about nyne houris, or thairby, befoir none, haifing of lang tyme of befoir confaut ane deidlie feid, haitrent, and malice, aganis the said Mr Johnne Ker, sone to the said Andro Ker of Mylnerig, for certane iniurious langage past betuix thame, and for the said George hurting of Andro Ker, brother to the said Mr Johnne, in the hand ; and this day, finding the said Mr Johnne standing in the dur of the Mid-hous of the said Tolbuth, quhilk cumis in frome the bak-turnepeck thairof, the said George violentlie rusching the said Mr Johnne fordward within the said dur, immediatlie thaireftir drew his dager, and strak at the said Mr Johnne thairwith, for his slauchter, vpon the heid, with the said dager ; and had nocht faillit to haif slane him, gif the said George had nocht been stayed be sum gentilmen, being present for the tyme, quha entred betuix thame, and be commandiment of my Lord of Kilfith, in quhois prefence the said cryme was committit ; quha causit apprehend the said George, and put him in waird : Quhairby he hes lykwayis transgressit the said Act of Parliament, and incurrit the panes thairin contenit.—To

<sup>1</sup> Sir William Livingston of Kilsyth, one of the ordinary Lords of Session, and afterwards a Privy Councillor, &c.

<sup>2</sup> To separate them ; by no means a safe or easy office in those times, when ' quingaris' and ' pistolets' were the swift messengers of vengeance. The *redder's* portion, in an affray of this sort, became proverbial—for both parties often joined in punishing his temerity ! Hence, the *redding-straik* was frequently one of the deadliest in the ' *tuilzie*.'

the takin, the said Lordis of Seffioun, haiffing callit thame, and ather of thame, befor thair Lordschipis, for tryell of the said cryme, thay, be the saidis perfones awin Confessioun, and Deposition of dyuerse famous witnesse, fand that the saidis Mr Johnne and George, and ather of thame, had contravenit the said act; and Ordanit thame to be put to ane Tryell for the samyn.

Eftir reiding of the quhilkis tua Dittayis, and accusatioun of the said Mr Johnne Ker and George Lokhart, be vertew thairof, our souerane lordis Aduocat, for verifeing thairof, producet the said Mr Johnne and George awin Confessioun, togidder with certane Depositiones of dyuerse famous<sup>1</sup> Witnesse, fuorne and examinat in prefens of the Lordis of Seffioun, in the said matter.

The pannell, Mr Johnne Ker, denyis that poynt of Dittay, quhair he was 'within the Tolbuth,' the tyme of the committing of the cryme; bot was vpone the stair and entrie of the dur. Lyk as, the saidis perfones on pannell, being inquyret, judiciallie, be the Justice, Gif thai had any thing to say, quhy the saidis Dittayis producet aganis thame sould nocht be put to the knowledge of ane Affyse? ffor ansuer thairto, maist humlie acknowlegit and confessit the premisses to be of veritie; and referrit thame selffis in his Maiesteis will for the samyn. In respect quhairof, the Justice Ordanit the saidis perfones to be tane bak to ward to the Tolbuth of Ed<sup>r</sup>, thairin to remane quhill his Maiesteis will war schawin thairanent.

#### **Jamesucken—Murder under trust.**

Nov. 22.—JOHNNE STEWART, sone to vmq<sup>le</sup> James Lord of Doun, (brother-german to Harie Lord St Colme.)<sup>2</sup>

Dilaitit of airt and pairt of the murthour of vmq<sup>le</sup> Johnne Gib in Over Lef-foddie; committit in the moneth of Junij 1608 yeiris.

PERSEWARIS, Bessie Dik, the relict of vmq<sup>le</sup> Johnne Gib. Sir Thomas Hammiltoun.

THE said Johnne Stewart, being accuset of the said slauchter, maist humblye, vpone his kneysis, in prefens of the Justice and Lordis of Secreit Counfall, Confessis the slauchter, and craves God and the Kingis Maiestie pardoun; And offeris to the partie quhat satisfacioun he is able to content thame with, be the advyse of his frendis. Quhairupoun the Aduocat askit instrumentis.

The Aduocat producet the DITTAY, following.

JOHNNE STEWART, sone to vmq<sup>le</sup> James Lord Doun, 3e ar indytit and accuset: Forfamekill as 3e, haing confauct ane deidlie feid, haitrent, and malice, aganis vmq<sup>le</sup> Johnne Gib in Over Lef-fodie, causles, without ony occasioun gevin be him to 3ou; bot only, for ane suddane discord falling furth betuix 3our horse-boy and servand, quhairof the said Johnne was sltgidder innocent and ignorant, 3e, vpone the . . . day of Junij, the 3eir of God I<sup>m</sup>.Vj<sup>e</sup>. and aucht 3eiris, drinkeand at Keltieheuch, in the hous of Johnne Greve pair, avowit maist crewallie and maliciously to bereif 3e said vmq<sup>le</sup> Johnne Gib of his lyfe: And for performeing pairof, being instantlie bent to seik him at his awin hous, and 3e being stayit be James Craufurd, and sum vtheris quha hapnit than to be in 3our company, 3e, to red

<sup>1</sup> Persons of good fame and credit.

<sup>2</sup> So described in the second diet. See Note to Nov. 17, 1609.

3our self of pat impeschment,<sup>1</sup> faythfullie promittit and gaif 3our hand<sup>2</sup> to the said James Craufurd, that 3e fould nocht pat nycht go towardis the said Johnne Gibis hous, bot pat 3e wald ryd towardis the brig of Gairny: Nochtwithstanding quhairof, sa sone as 3e gat 3our horse, 3e raid in all haift to 3e said vmq<sup>le</sup> Johnne Gibis hous, in Over Lessodie, about pe glomyng of the nycht,<sup>3</sup> and chopping<sup>4</sup> at pe dur, and calling vpon him be his name, he being than lyand in his naikit bed, takand the nychtis rest, and feiring na iniurie, invasioun, nor harme to haif bene done to him, be any perfonas, and speciallie by 3ow, quha in all tyme preceeding had bene in professit freindschip with him, and had ressaunt dyuerse plesouris and gratitudis of him, sa sone as he hard 3our voce, instantlie raise in his fark,<sup>5</sup> and oppint his dur to 3ow; quhair 3e, without ony caus, vpgiving of freindschip, or adverteising him of his skaith or danger, straik him with 3our dager in the breift, neir the heart, and gaif him pairwith ane deidlie wound, vnder trest, freindschip and credeit: Of the quhilk wound he depairtit this lyfe within les nor fourtie aucht houris pairefter. AND fua, 3e maift crewallie and vnmerciefullie slew the said vmq<sup>le</sup> Johnne Gib, vnder clud and silence of nycht, within his awin hous, be way of Hame-suckin and vnder trest; to pe grit contempt of our fouerane lord, his hienes auctoritie and lawis, &c.

TO THE TAIKIN,<sup>6</sup> that, incontinent paireftir, 3e returnet bak to the said Johnne Grevis hous in Keltieheuch, and calling furth vpon Nicoll Rowane, inquiryet of him, 'quhais man<sup>7</sup> Johnne Gib was?' Quha anfuert, that 'he was my Lord Chancelloris man;' 3e said, 'and<sup>8</sup> he war the Devillis man, 3e had gevin to him the thing that wald slaik<sup>9</sup> him!' To the taikin also, pat vpon pe morne paireftir, 3e, cuming in, in the moirning, to ane house in Aberdour, quhair James Baveredge, in Keltieheuch, and Alex<sup>r</sup> Kellok war drinking, 3e demandit at James Baveredge, 'Quhat newis?' Quha anfuering, that 'He hard na newis that was guid!' and, 'That 3e mycht haif bene in 3our bed that nycht, quhan 3e gaif that hurt to Johnne Gib, quhairof he wald die!' 3e, taking out 3our bludie dager, said, 'he could nocht be the war,<sup>10</sup> becaus 3e had gevin him bot ane po<sup>r</sup>!'<sup>11</sup> To the taikin lykwayis, 3e, being charget to find caution, to compeir befor the Justice, at ane certane day bygane, to haif vnderlyne the law for the said cryme, past to pe horne; quhairat 3e haif lyne continuallie fenfyne.

THE JUSTICE continewis this matter, anent Johnne Stewartis tryell, to Fry-day nixt, quhill<sup>12</sup> he be advyfet with the Counsell.

(Nov. 24.)—THE JUSTICE Ordanis the pannell to be put to ane Assyse; nochtwithstanding his becoming in Will, the last dyet.

## ASSISA.

William Trumbill of Airdrie; Johnne Dunbar of Mynnieweik; William Cuming of Ernefyde; The Laird of Partoone, 3ounger; Johnne Johnnestoun of Raiecleuch, tutour of Johnnestoun.<sup>13</sup>

THE pannell of new agane Confessis the Dittay, and craves Godis mercie, &c.

VERDICT. Eftir accusatioun of the said Johnne Stewart, be Dittay, and the said Johnnes Judicial Confessioun, maid in presens of the Justice and Assyse, granting the said fact; and maift humblie, vpon his kneis, craveing God, our fouerane lord the Kingis Maiestie, and the partie, pardoun thairfoir; the said Assyse, be the mouth of the said Johnne Johnnestoun, chancellor, all in ane voce,

<sup>1</sup> Hindrance, old Fr.    <sup>2</sup> A solemn mode of affirmation and promise, still used amongst the peasantry of Scotland; and considered as sacred and binding as an oath.    <sup>3</sup> Twilight.    <sup>4</sup> Knocking at the door.    <sup>5</sup> Night-shirt.    <sup>6</sup> In *token*; proof, or testimony of the above.    <sup>7</sup> Feudal vassal.    <sup>8</sup> If; *an'*.    <sup>9</sup> Literally, quench; *sloken*, or *slake*.    <sup>10</sup> Worse.    <sup>11</sup> Probably for *power*, only one blow or stroke. 'Purr' is still used, to denote a push made by a bull or an ox, &c. when he runs at and gores another.    <sup>12</sup> Until.    <sup>13</sup> The rest were 'mercheandis,' and persons of no note.



ffand, pronuncet, and declairit the said Johnne Stewart, accoirding to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the crewall Murthour and slauchter of the said vmq<sup>le</sup> Johnne Gib: committit in maner, and at the tyme specifcit in his Dittay.

SENTENCE. To be tane to the place of his Executioune, and thair his heid to be struckin from his body; and all his moveabill guidis to be escheit and inbrocht to his hienes vfe, as convict of the said cryme. Quhilk was pronuncet for dome.

### **Wearing of Hagbutts and Pistolets—Perjury.**

Nov. 22.—ROBERT JOHNNESTOUN, seruitour to my Lord Forbes.

Dilaitit of the beiring and weiring of hagbuttis and piftolettis, contrair the Actis of Parliament; and of Periurie, as the Dittay beiris.

PERSEWAR, Sir Thomas Hammiltoun of Bynnie, kny<sup>t</sup>, Aduocat to our souerane lord.

PRELOQUUTOURIS for the pannell, Mr Alexander King, Mr Johnne Ruffell, Mr Robert Learmonth.

My Lord Aduocat produceit ane Decreit of the Lordis of Counfall, decerning the said Robert to haif contrauenit the Actis of Parliament, in bering and wering of hagbutis and piftolettis; of the dait, at Ed<sup>r</sup>, xxvij of Junij. The Aduocat infiftis vpoun the beiring and weiring of hagbutis and piftolettis, quhairupoun the pannell askis instrumentis. My Lord Aduocat produceis his Maieftis Letter, as Warrant of this perfute.

It is allegit be Robert Johnnestoun, that he can nocht be put to ane Affyse, for weiring of hagbuttis and piftolettis, lybellit; becaus, be Act of Parliament, in November, 1600 yeiris, it is speciallie provydit, that sic personis as fall be perfewit befor his hienes and Lordis of Secret Counfall, and tryit be probatioun of Witnesfes, giltie of bering and wering of hagbuttis or piftolettis, fall nocht incur the corporall punifchment in the former Actis, be amputatioun of the rycht hand; bot only to be puneifchit, be wairding of thair personis, escheit of thair guidis-moveabill, or payment of sic pecuniall fowmes of money as his hienes and lordis of Secret Counfall fall declair: And trew it is, that in the perfute, intentit be my lord Aduocat, quha is now perfewar aganis Airthour Lord Forbes, for the particuler factis contenit in the perfute intentit thairupoun; bot speciallie, of his Lordfchip being accompaneit with Dauid Forbes of Petlethie, his brother, Williame Garioche, younger of Kinfair, and the said Robert, now enterit vpone pannell, was challanget *per expreffum*; in maner as is contenit in the said Decreit: Be the quhilk Decreit, the saidis Lordis of Counfall, nocht only tuik tryell anent the said Lord Forbes, for him felf, bot also anent the saidis Williame Garioche and Robert Johnnestoune thair beiring and weiring of hagbuttis and piftolettis; and finding thame giltie thairof, ordanit the said Robert Johnne-

ftoun and Williame Garioche to be committit to the tolbutth of Ed', and that for weiring and beiring of piftolettis, in the tyme contenit in the Dittay: And thairfore, the faid Robert Johnneftoun can nawayis be put to ane Affyfe. And for verificatioun, producet the Act of Parliament, with the Decreit of Counfell.— It is anfuerit, be my lord Aduocat, that the Act of Parliament ordanis na procefles intentit befor the Justice for weiring of hagbutis and piftolettis to ftay, bot quhair the faidis defenderis has been perfewit befor the Lordis of his Maieftis Secreit Counfell, be his Maieftis Thefaurer or Aduocat: And the Decreit of Secreit Counfell produceit beiris na actioun to haif bene intentit or perfewit, be his Maieftis Thefaurer or Aduocat, befor the Counfell, aganis the pannell, for the cryme contenit in the Dittay. Thairfoir, the Decreit of Counfell producet can nocht ftay proces.

It is allegit, that the Justice can nocht proceed aganis the pannell, for the Periurie, in refpect thair is na Warrant gevin for his perfute thairfoir. And forder, the Warrant producet refolues only anent the puneifchment to be inflicted, be amputatioun of his rycht hand, he being convict of beiring and weiring of piftolettis.—To the quhilk, it is anfuerit, be my lord Aduocat, aucht to be repellit, in refpect of the Warrant gevin to him be the Lordis of Secreit Counfell to perfew the pannell, baith for the beiring and weiring of piftolettis, and for the Periurie contenit in the Dittay.

THE JUSTICE continewis this matter to the xxiiij *instantis*, quhilk is Fryday; and ordanit the pannell to be tane bak agane to waird.

(Nov. 24.)—THE JUSTICE, haifing acquentit the Lordis of his Hienes Secreit Counfall with the proces perfewit be his hienes Aduocat, aganis the faid Robert Johnneftoun, for bering and wering of hagbutis and piftolettis, and with the haill allegeances and defenffis proponit *hinc inde* be thame, and anfueris maid thairto; Eftir reding of the Act of Parliament and Decreit of the faidis Lordis of Secreit Counfall, quhairupoun the defenderis alledgeances and defence is foundit, and producet for verificatioun thairof; ffindis, with expres auife of the faidis Lordis of Secreit Counfall, that this mater aucht nocht to be put to the knowledge of ane Affyfe, in refpect of the foirfaid Act of Parliament, and Decreit of the faidis Lordis of Secreit Counfall, produceit: And Ordanis the faid Robert to be tane bak agane to the Tolbuthe of Ed', thairin to remane, vpon his awin expenffis, quhill he fatisfie his hienes Thefaurer, accoirding to the Counfall modificatioune.

### Slaughter.

Dec. 29.—WILLIAME GUTHRIE of Ravinftie.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Patrik Gairdin of that Ilk; committit in Maij I<sup>m</sup>.V<sup>c</sup>. lxxviiij.

PERSEWERIS, Robert Gairdin, oy<sup>1</sup> to the defunct, Mr Tho<sup>o</sup> Henderfon, substitute to the Lord Aduocat.  
PRELOCOUTOUR for the pannell, Mr Thomas Hoip.

The pannell takis instrumentis of his entrie ; and producet ane Respett, vnder the Previe Seill, of the dait, Jan. 24, 1600, maid and grantit for the space of xix yeiris : And, in respect thair of, allegit that the Justice could nocht put him to the tryell of ane Assyfe.—It is anfuert, that the Respett is null ; in respect, conform to the Act of Parliament, he fould haif satisfeit the pairtie, and schaw ane Letter of Slanes thairupoune.

THE JUSTICE admittis the Respett producet ; and Ordanis the pannell to find cautioun to satisfie the pairtie ; quha fand Alexander Guthrie, ffear of that Ilk, cautioune with himself, to satisfie the pairtie ; conforme to the lawis of this realme.

[*Sir Williame Heart, Justice-Depute.*]

ASSESSORES JUSTICIARIO.

Mr Johnne Prestoun, President,<sup>2</sup> Walter Lord Blantyre, My Lord Previe Seill,<sup>3</sup> My Lord Kilsyth.<sup>4</sup>

**Barbarous Murder—Shooting with Hagbuts, &c.**

Feb. 2, 1610.—JAMES GORDOUN, in Over Auchinrath, eldest sone to Johnne Gordoun of Liechestoun, and Alexander Gordoun of Oxhill.<sup>5</sup>

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Alexander Abircrumbie of Pitmedden.

PERSEWERIS.

Hectour Abircrumbie of Westhall, Adame, M<sup>c</sup>Walter, and Robert Abercrumbie, all sones ; Williame Abercrumbie, as oy ; Sir Thomas Hammiltoun of Bynnie, kny<sup>t</sup>.

PRELOCOUTOURIS for the pannell, Mr Alexander King, Mr Thomas Mawer, The Laird of Lefmoir.

DITTAY *against the Pannels.*

FORSAMEKILL as the saidis JAMES GORDOUN and ALEXANDER GORDOUN, with thair complices, with convocatioun of our souerane lordis legis, to the number of fytene perfones, or thairby, all bodin in feir of weir, with jakis, secrettis, steil-bonnettis, lance-flalfis, fuordis, lang culveringis, dagis, and piftolettis, expresse prohibeit to be borne, worne, vsed, or schote with, be the Actis of Parliament, vnder the panes mentionat thairintill ; vpone the tuelff day of Marche, the yeir of God I<sup>m</sup>.V<sup>c</sup>.lxxxiiij yeiris, haifing consauet ane deidlie feid, rancour, and malice aganis the said vmq<sup>le</sup> Alexander Abercrumbie of Pitmedden, set vpone the said vmq<sup>le</sup> Alexander, at the Mofs of Cokstoun, lyand within the scherefdom of Elgyn and Forres, quhair he was passand his tyme at the halking, but<sup>6</sup> ony company, except his falconeris, in sober and quyete maner, dreidand na evill, harme, iniurie, or perfute of ony perfone, bot to haif leuit vnder Godis peax and our souerane lordis ; and thair, expres contrair the tennour of the Actis of Parliament, schot and dilaschet<sup>7</sup> tuentie schote of hagbuttis and piftolettis at the said vmq<sup>le</sup> Alexander ; quhairby thay schote dyuerse and findrie bulletis in dyuerse pairtis of his body : And haifing circuit him round about, that he was nocht abill to escaip, thay thairefter pat violent handis in his perfone, tuik frome him his awin horse, and cuift him vpone ane bachillane naig,<sup>8</sup>

<sup>1</sup> *Oe* or *Oye*, grandson.

<sup>2</sup> Of Fentonbarns, President of the College of Justice.

<sup>3</sup> Sir Richard Cock-

burn of Clerkington.

<sup>4</sup> Sir William Levingston of Kilsyth, one of the Ordinary Lords of Session.

<sup>5</sup> The

case was argued before the Justice-Depute on Jan. 31 ; and in consequence of objections being started to the production of a Remission in favour of Alexander Gordon, and of a Relaxation granted to James Gordon by the Duke of Lennox, &c., the Justice continued the diet to this day.

<sup>6</sup> Without.

<sup>7</sup> Old Fr. *delascher*, to discharge, &c.

A founded jade of a horse ; selected, no doubt, for the greater dishonour, and to give greater pain to the wounded man by its unsteady and jolting motion. *Shauchilland* has a similar signification.

qahairvone thay convoyit him, as ane captine and priffoner, the space of ane myle, or thairby, fra the said Mofs, towardis the Place of Liechestoun : And being the lenth of ane half myle to the said Place, ane of the personis that war of thair companie, of the speciall knowlege of the rest, haifing ane charget hagbut in his hand, charget with thre bullettis, preparit for the purpos, at thair speciall command and directioun, behind the said vmq<sup>o</sup> Alexanderis bak, schot him with thre bullettis throw the body ; and thaireftir, maist barbarullie and crewallie, with thair drawin suordis, cuttit him all in peces ; and, as monfteris in nature, lest nocht sax inche of his body, airmes, legis, and heid vndevidit, and cut afunder : And sa, was maist monstroullie and crewallie flane and Murthorit be the personis foirfaidis : And thay and ilk ane of thame ar airt and pairt of the said crewall slauchter ; and aucht and fould be puneist thairfoir, and for contravening of the Actis of Parliament, in beiring, weiring, schuitting, and slaying with hagbuttis and pistolettis, in maner foirfaid.

The said James and Alexander Gordoun tuik thame to tua feveral REMISSIONES, producet be thame, for the crymes aboue writtin. The ane, grantit be our fouerane lord, vnder his hienes Grit Seill, to George Marqueis of Huntlie Erle of Enzie Lord Gordoun and Badzenoche, Sir Thomas Gordoun of Glwne, kny<sup>t</sup>, the said James and Alexander Gordones, and dyuerse vtheris perfones, thair affisteris and pairt-takeris, for thair tressonable cuming, in opin hostilitie and armour, to the landis of Auldquhannoch and Glenlivat, aganis Archibald, Erle of Ergyle, his Maiesteis Lieutennent for the tyme, and aganis his Maiesteis oift and cumpaneis, vnder the said Erles leiding and command, in the moneth of October 1594 yeiris ; and for the Slauchter of quhatfumeuir perfone or perfones, committit aganis his Maiestie or his hienes Lieutennent foirfaid, quhais names ar haldin as for expreffit, in the said Remiffioun ; and namlie, for the Slauchter of vmq<sup>o</sup> Robert Frazer, his hienes Herald, &c. As the said Remiffioun, of the dait at Halyrudhous, the secund day of Apryle, 1603 yeiris, in the self proportis. —The vther of the saidis Remiffiounes, grantit be Ludovick, Duik of Lennox, his Maiesteis Lieutennent and Justice, ouer the North partis of this realme, for the tyme, Remittand Johnne Gordoun of Lichestoun, the said James appeirand thairfoir and Williame his fones, Alexander Gordoun in Fernauchtie, and Williame Ewin, servandis to the said James ; ffor thair tressonable being in cunpanie, affisting, airt and pairt-taking with George, sumtyme Erle of Huntlie, ffrances, sumtyme Erle of Errole, and certane vtheris his Maiesteis declairit traitouris and rebellis, at the lait Conflict aganis Archibald Erle of Ergyle, &c.

It is allegit, befoir Interlocutour, be Mr Alexander King, that now he may compeir for James Gordoune, becaus he is relaxt ; quhilk relaxatioun he producet. —It is allegit, be my lord Aduocat, the Relaxatioun is null ; becaus it is execute at Ed<sup>r</sup>, and nocht at the mercait croce of the head bur<sup>t</sup> of the schyre. —It is ansuerit, the Relaxatioun is guid aneuch at the mercait croce of Edinburghe.

It is allegit that the perfones on pannell can nocht be put to ane Assyse, becaus thay haif obtenit Remiffioun fra the Duik of Lennox, quha had Commiffioun of his Maiestie to that effect ; quhilk Remiffioun he producet. It is alle-

git, that the Remiffioun is null, gevin be the Duik of Lennox; becaus his Commiffioun gevis him power to grant Remiffioun, be advyfe of his Counfall; lyk as, the Remiffioun producet beiris, 'with advyfe of his Counfell,' and yit nane of his Counfell hes fubfcriuit the famyn. It is anfuerit, that thair is na speciall perfones nominat Counfallouris in the Remiffioun, and thairfoir thair is na neceffitie of thair fubfcriptioun; and haldis him at his Remiffioun, quhilk he referris to the Lordis. It is forder allegit, that the Remiffioun is nocht pafte the Seillis, and is exped be ane quha had na place in the office of Thefaurer for the tyme; and forder, the faid Remiffioun has pafte the Register, and thairfoir fould pafte the Seillis.—It is anfuerit, thair is na neceffitie of paffing the Seillis, feing it is grantit be his Maieftis Commiffioun.

THE JUSTICE, with advyfe of his Affeffouris, appointit be the Lords of Secret Counfall, ffindis, that this matter can nocht be put to the knowlege of ane Affyfe, in refpect of the Remiffiones producet. And ordanis the pannell to find caution, for fatisfacioun of the partie perfewaris, accourding to ordinance of the Lordis of Seffioun.

Quhairupoun the perfones on pannell askit instrumentis: And ffind my Lord Saltoun and the Laird of Lefmoir cautioneris, conjunctlie and feuerallie, to fatisfie the parties: And the Laird of Lefmoir become obleift to warrand my Lord Saltoun.

The perfewaris proteftis, that this perfute now intentit be thame, and Interlocutor aboue written, gevin thairupoun, be nawayis preiudiciall to thame in ony vther perfute movet aganis the pannell, in ane vther nature or qualitie, in ony tyme cuming: Quhilk the Justice admittit.—Lyk as, the pannell proteftit in the contrair; and askit instrumentis thairupoun.

### Slaughter.

Jul. 25.—WILLIAME GUTHRIE of Ravinsbie, lauchfull fone to vmq<sup>le</sup> Alexander Guthrie of that Ilk.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Robert Gairdin of Tullois; committit vpon the Mure callit Carbundow-mure, in the hie-way betuix Brechin and Dundie, in the moneth of Nouember, 1589; vpon fet purpois, prouiffioun, and foirthocht felony.

PERSEWARIS, Robert Gairdin, as only fone to vmq<sup>le</sup> Robert Gairdin of Tullois; Mr Robert Gairdin, appeirand of Blairtoun; Commiffar Clerk of Aberdene, as neir kinsman; Mr Robert froullis, fubfstitute to our fouerane lordis Aduocat.

PRELOCUTORIS in defence, Mr Johnne Ruffell, The Laird of Guthrie.

The faid Williame Guthrie tuik him to our fouerane lordis Refpett, gevin and grantit to him be his Maieftie, vnder the Previe Seill, for the faid Slauchter, for

the space of nyntene yeiris eftir the dait thairof; quhilk is of dait, at Halyrudhous, the xxiiij day of Januar, I<sup>m</sup>.Vj<sup>c</sup>. yeiris; and in respect thairof, allegit, that the said Dittay could nawayes be put to the knowlege of ane Assyse, for the said Slauchter.—To the quhilk it was anfuert be the Aduocat, that the Respett is null, becaus, conforme to the Act of Parliament, na Respett nor Remiffioun can be grantit without satisfioun of partie; and this perfewar nocht being satisfeit, the Justice aucht to put the pannell to the knowlege of ane Assyse.

THE JUSTICE, nochtwithstanding of the Aduocattis anfuert, eftir reiding of the Dittay and Respett aboue specifeit, Admittis the said Respett; and ordanit the pannell to find caution to satisfie the partie perfewar, conforme to the lawis of this realme; but preiudice alwayis of his lauchfull defensis: Quha, for obedience of the said Justice ordinance, ffand, with him selff, Alexander Guthrie ffear of that Ilk, cautioneris, &c.

### High Treason — Tyrannical Oppression of the Inhabitants of Orkney and Zetland, &c.

[As the subsequent Trials of PATRICK, *second* EARL OF ORKNEY,<sup>1</sup> and of ROBERT STEWART<sup>2</sup> and others, contain the most ample information relative to the infamous and almost unparalleled cruelties and oppressions committed by this tyrannical individual, against the unoffending Inhabitants of Orkney and Zetland, it is unnecessary, in this place, to anticipate the extraordinary circumstances which are there detailed. The Editor has been at much pains to procure the most authentic Documents, in illustration of these very remarkable Trials; to which the reader is referred. They contain the fullest and most minute accounts of the shocking atrocities committed by this savage and relentless Noble, whose life, estates, and honours, were at length forfeited, in atonement, so far, for his frightful crimes. He was beheaded at the market-cross of Edinburgh, Feb. 6, 1614.]

Aug. 2.—PATRIK EARLE OF ORKNAY LORD ZEITLAND, &c.

Dilaitit of certane Tressonable crymes, at lenth specifeit and sett down in our fouerane Lordis Letteris, vnderwritten:

FOLLOWIS *the tennour of the Letteris* (DITTAY.)

JAMES, be the grace of God, King of Grit Britane, ffrance and Ireland, defender of the faith. To our Louittis [Johnne Blinfell, Ilay Herauld] Messengeris, our schereffis in that part, coniunctlie and feuerallie, speciallie constitute, greting. fforfamekill as it is humlie meanit and complenit to ws be our trustie and weilbelouit counfalour Sir Thomas Hamiltoun of Bynnie, kny<sup>t</sup>, our Aduocat, for our intreis, vpone PATRIK, EARLE OF ORKNAY, Lord Zeitland, &c.: THAT quhair, it is expresse statute, ordanit, and obseruet, be our lawis and Actis of Parliament of this our realme, and be the Cowmoun Law and consuetude inuolabillie obserued in all Christiane and ciuile Nationes, that quha euir

<sup>1</sup> See Feb. 1, 1615.      <sup>2</sup> The Trial of Robert Stewart, 'hase sone to vmq<sup>le</sup> Patrik, lait Erle of Orknay,' and others, will be found under Jan. 5, 1615, of the present Collection.

dois Treafone aganis the Kingis perfone, or his Maieftie; or vſurpes vpone thame his fouerane authoritie, in poyntis of royall foueranie, falbe pwneifched as Tratouris. AND trew it is, and of verritie, that the ſaid Patrik, Erle of Orknay, altogidder vnmyndfull of that dewtie, quhilk, be the bandis of nature, ſubiectioun, and allegeance, he aucht<sup>1</sup> to ws, and infinite fauouris and benifeitis reffaut be him frome ws, hes, be him ſelff, and vtheris in his name, of his cauſeing, command, reffet, aſſiſtance, and ratihabitoune, in contempt of ws and our auctoritie royall, committed and perpetrat the moſt (cruel) and trefoneable crymes following, at the tymes and in maner vnderwritin: And was and is airt and pairt of the ſamyn. IN the firſt, the ſaid Patrick, Erle of Orknay, be him ſelff, his deputis, Magiſtrattis, and Judges, appointed and depute be him, in the offices of Schereſchip, Stewartrie, and Bailzerie of our ſcherefdome and biſchoprik of Orknay, and lordſchip of Zeitland, *reſpectiue*, of his cauſing, command, aſſiſtance, and ratihabitoune, monethlie and ilk moneth, in the yearis of God I<sup>m</sup>.V<sup>c</sup>. fourſcoir nyne, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, and ane thouſand fax hundreth and ten yeiris, at the leiſt in ane or vther of the ſaidis monethis and yeiris, perſewed, accused, proceidit, and pronunced dyuerſe decreittis and ſentences aganis vmq<sup>le</sup> Sir Patrik Bellenden of Evie, kny<sup>t</sup>, . . . . . Balfoure of Montquhanie, Robert Menteithe of . . . . ., Williame Bannatyne of Gairſay, . . . . . Sinclair 3ounger of Etha, . . . . . Bruce of Cwltmalundie, Henrie Wardlaw his ſervand, Adame Mudie,<sup>2</sup> with mony vtheris our faithfull and obedient ſubiectis of the countreyis of Orknay and Zeitland, accoirding to lawis treſſonabillie maid and practized be him ſelff, direct contrair and repugnant to the lawis of our realme, and Actis of our Parliament, maid be ws and our maiſt noble progenitouris, Kingis of this our realme, to quhome only the power to mak lawis belongis, as ane peculiar poynt of our and thair regall foueranie; and thairby decernit thame to haif committit capitall and treſſonable erymes; and of his awin preſumptioun and vſurpatioun of our authoritie royall, without ony warrand of ws, hes treſſonabillie diſpenſit with the poyntes of death, and ordanit the ſaidis perfones quha war convict and condemned, in maner foirſaid, only to be baniſhed furth of the ſaidis boundis of Orknay and Zeitland; and hes treſſonabillie adiudget thair landis, guidis and geir to be fforfaltit and eſcheit to him ſelff. AS ALSO, the ſaid Patrik, Erle of Orknay, be him ſelff and his foirſaidis, in the monethis and yeiris of God foirſaidis, att the leiſt, in ane or vther of the ſaidis monethis and yeiris, treſſonabillie perſuadit, induced, counfallit, and commandit Williame Sinclair of Etha, Henrie Sinclair of Tenquhie, Mr Robert Henderſoun, Williame Irwing of Saba, and mony vthir gentilmen of the ſaidis countreis of Orkney and Zeitland, to

<sup>1</sup>Owes.<sup>2</sup> A blank of about ſix lines is left here in the Record.

subscryve and delyuer to him ane Band callit Band-mutus,<sup>1</sup> and thairby obleife thame selffis and thair airis, that thai fould serue and mantene him aganis quhat-fumeur persones, without ony referuatioun of ws;<sup>2</sup> and that thay fould nevir heir nor knaw his hurt or skaith, bot fould reveil it within tuentie foure houres, without ony exceptioun of impossibilitie or distance of place, contrarietie of wind, wedder, or vther impediment; vnder the pane of tynsell<sup>3</sup> of lyfe, landis, and guidis; contening also this clause, 'that gif it happin that þe contravening of this Band, be ony of the saidis subscryveris, fould (fall) nocht cum to þe said Erles knowlege, quhill<sup>4</sup> eftir the committeris deceise, it fould (fall) be leifum to him to try the samyn eftir þair daithis aganis þair airis, and pwneise þair saidis aris as he mycht haif done the principall offendour: And that the said probatioun of þair contravening of the said Band fould (fall) be sufficient be tua witneffis: Bindand lykwayis the saidis Gentilmen and vtheris of the cuntrie to be judged be the said Erle; and nevir to feik to King, Counsell, nor Sessioune!' Quhilk Band the said Erle hes debaited to be lauchfull, and hes confest the ressaueing and haveing thairof; althocht it be maist vnnaturall, uniuft, tyrannicall, impossible, and trefsonable; bindand men to impossibilities, and inioyneing to thame, in caice of contraventioun, the paynes of Treasone, ffor naiked conceilling and nocht reveilling his skaith, generallie, in ony matter; it being of verritie, that no man hes power to prescryve or exact such paynes, bot only fouerane poyntes, and that in matteris treasonable allanerlie. Quhairby, the said Erle hes manifestlie and treasonable usurped vpon him our royall authoritie and princelie power, in poyntis of our absolute fouerantie. LYK AS, the said Patrik Erle of Orknay hes trefsonable tane vpon him, in the saidis yeiris and monethis, at the leift in ane or vther of thame, to call and perfew befoir him and his pretendit deputtis and Judges, in his pretendit Jurisdictiones of Orknay and Zeitland, Adame Mudie, and many vtheris our frie and obedient subiectis; and eftir his pretendit maner, haifing accused and convicted thame of dyverse crymes, hes nocht only pronounced aganis thame the Sentence of Banishment, and fforfaltour to him selff of thair landis and guidis; bot thaireftir componed, transacted, and agreid with thame, and treasonable vsurped our royall authoritie and fouerane power, be Remitting to thame the saidis capital crymes; quhilk no man hes power to do, within this our realme, bot the King and fouerane of the same. AS LYKWAYIS, the said Erle, bereifing our faithfull subiectis of the benifeit of

<sup>1</sup> Query, *Band-mutus*? A bond for mutual protection and defence, secretly and solemnly binding the obligants to maintain each other, in their quarrels, 'against all deadly.' These illegal engagements were formally put down by various Acts of Parliament; as 'Bonds of Manrent' were the principal means of encouraging and keeping alive those deadly feuds which disgraced the country, and rendered the state of society in Scotland very insecure, and in many instances almost intolerable. <sup>2</sup> Without even reserving their lawful allegiance to the king. <sup>3</sup> Loss. <sup>4</sup> Until.



our pease and generall protectione, and the fredomé of thair travelling and traffique be sea and land, hes, in the yeiris and monethis foirfaidis, att the leift in ane or vther of thame, discharged the passageis and ferreis of Orknay and Zeitland, that nane sould haif entreis or outgoing furth thairof, without his Passport and Licence; and did incarcerat, in stokis and irnes, the servandis of James Stewart of Gramesay, for transpoirting of Robert Menteithe his guidbrother,<sup>1</sup> without his licence; and caused incarcerat the servandis of Frances Mudie, for transpoirting thair said maifter;—the men of Sowna, for transpoirting Williame Bannatyne;—and the men of Flottay, for transpoirting of . . . . ., thair maifter; held and detenet thame captiues and priffoneris, in irnes, stokis, clois-priffone and firmance, dyuerse dayis and oulkis;<sup>2</sup> vfurpeing thairby, most tressonable, our autoritie royall, and bereifing our lauchfull subjectis of the vse and benefite of thair natiue libertie, dew to thame, in thair frie passage and traffique, vnder our pease and protection, throw all the pairtis of this our kingdome, be sea or land. AND nocht content thairwith, the said Erle, leifing na soirt of extraordiner Oppressioun and tressonable violence vnpractized aganis the saidis Inhabitanes of Orknay and Zeitland, at the tymes perticulerlie aboue reherfet, at the leift in dyuerse of the monethis and yeiris foirfaidis, hes compellit the maift pairt of the gentilmenis tennentis of the saidis contreyis of Orknay and Zeitland to work to him all maner of work and laubour be sea and land, in rolling<sup>3</sup> and sailing his schipis and boittis, working in the stane-querrel,<sup>4</sup> wyning and beiring furth thairof stanes and red furth thairof, laidning his boittis and schelopes<sup>5</sup> with stane and lyme, and loifeing the same, biging his park dykes, and all vther soirtis of serveill and paynefull laubour, without ather meit, drink, or hyre.<sup>6</sup> AND, to conclude the vtter rwyne of the possessouris of the saidis landis and Yles, hes, in the saidis yeiris and monethis, att the leift in dyuerse of the same, imposed, exacted, and tressonabillie vplifted frome thame, dyuerse grit and exorbitant taxationes and impositiones, quhilkis na man may lauchfullie do, within this our realme, bot We, of our souerane power allanerlie; vfurpeand thairby, maift tressonabillie, vpone him, our autoritie royall. FINALLIE, the said Erle, in the saidis monethis and yeiris, at the leift in ane or vther of thame, hes tressonabillie discharged the saidis Inhabitanis of Orknay or Zeitland, to by or sell meill, malt, meit, drink, fische, flesche, butter, nolt, schein, or ony vther commoditeis, without his Licence, vnder grit penalteis; lykas, he

<sup>1</sup> Brother-in-law.  
<sup>2</sup> Weeks.

<sup>3</sup> Rowing with oars.

<sup>4</sup> Stone quarry.

<sup>5</sup> Shal-

lops; small vessels.

<sup>6</sup> This inhumanity of the Earl of Orkney appears, by existing documents, to have been carried to the most frightful excess—and the lives of the unfortunate natives rendered utterly wretched, worse than the condition of galley-slaves, or that of the Christian captives in Barbary—being only paralleled by the ‘ Egyptian bondage and oppression of the children of Israel, under King Pharaoh!’ Reference may be made to the Trials and Documents before quoted.

hes oft and dyuerse tymes, with all rigour, exacted the saidis penalties aganis findrie of the saidis Inhabitantis, for thair lauchfull bying and selling of thair commoditeis and necessaris without his licence. **QUHILKIS** Treasonable crymes aboue writtin, and ilk ane of thame, war done, committed, and perpetrat be the said Patrik Erle of Orknay, be him selff and his complices, and vtheris in his name, of his causeing, command, assistance, and ratihabitoune : And thairby, the said Patrik Erle of Orknay hes committed Treafone aganis Ws, and hes trefoneabillie usurped vpon him the poyntis of oure souerantie, and inseperable pairtis of our Royal power and authoritie : And he is airt and pairt thairof : And aucht and fould be pwneifched thairfoir, be the paynes of Treafone, with all rigour ; in example of vtheris to attempt the lyke, gif sa be. **OURE WILL IS HEIRFOIR**, and We charge yow straitlie, and command, that incontinent thir our Letteris sene, ye pas, and in our name and authoritie command and charge the said Patrik Erle of Orknay, committer of treafoneable crymes aboue writtin, in maner foirsaid, vpon fourtie dayis wairning, to find sufficient and responfall cautioun and fouertie, actit in our Buikis of Adiornall, that he fall compeir befoir our Justice or his deputis to vnderly our lawis for the samyn, in our Tolbuth of Edinburgh, the secund day of August nixtocum, in the hour of caus, vnder the paynes contenit in our Actis of Parliament : And that ye charge him personallie, gif he can be apprehendit, and failzeing thairof, at our Castell of Edinburgh, quhairin he hes his remaning for the present, and be oppin proclamatioun at the mercat croce of our burgh of Edinburgh, to find the said fouertie actit, in maner foirsaid, within sax dayis next aftir he be charget be yow thairto ; vnder the pane of rebelloun, and putting of him to our horne. The quhilkis sax dayis being by past, and the said fouertie nocht being fundin, that ye incontinent thaireftir denunce the said Patrik Erle of Orknay our rebell, and put him to our horne, and escheit and inbring all his moveabill guidis to our vse, for his contemptioun ; and caus Register thir our Letteris, with your executiones thairof, within fyftene dayis thaireftir, conforme to our Act of Parliament made thairanent : And gif he find the said fouertie, that ye summond ane Affyse heirto, nocht exceiding the number of fourtie five perfones, quhais naimes ye fall ressaue, in Roll, subscriuit be the compliner ; ilk persone vnder the pane of ane hundreth merkis. Accoirding to Justice. As ye will anfuer to ws thairvpoun. The quhilk to do, We commit to yow, coniunctlie and feuerallie, our full power, be thir our Letteris, delyuering thame be yow, deulie execute and indorfate agane to the beirar. **GEVIN** vnder our Signet at **EDINBURGH**, the fourt day of Junij, and of our regnne the aucht and fourtie thre yeiris, 1610.

*Ex deliberatione Dominorum Consilij.*

*J. BANNATYNE.<sup>1</sup>*

<sup>1</sup> Writer to the signet, and nearly related to the now celebrated George Bannatyne.

FOLLOWIS *the tennour of the EXECUTIUNE<sup>1</sup> of the saidis Letteris.*

VPOUN the tuentie day of Junij, the 3eir of God I<sup>m</sup>. sax hundreth and ten 3eiris, I JOHNNE BLINSELLIS, Yla Herald, past, at command of thir our souerane lordis Letteris, within writtin, to his Maiesteis CASTELL OF ED<sup>m</sup>; and thair, with my displayit coit of airmes, and be found of trumpet, foundit be Siluester Ramsay, trumpeter, I commandit and charget PATRIK, ERLE OF ORKNAY, personallie apprehendit, within the said Castell, and delyverit to him ane just and autentik coppie of the saidis within writtin Letteris, subscryuit with my hand, to find sufficient and responfall caution and fouertie to the Justice Clerk and his deputtis, actit in the buikis of Adiornall, that he fall compeir befor the Justice or his deputis, day and place within specifeit, in pe hour of caus, and vnderly the Law for the tressonabill crymes within reherfit; with'in sax days nixt estir this my charge; vnder the pane of rebelloun and puting of him to the horne. This I did, estir the forme and tennour of thir our souerane lordis Letteris, in all poyntis; befor thir Witneffis, George Kirkwoid, Albanie herald, Robert Logane, messinger, Siluester Ramsay, trumpeter, and Williame Dalglesche, post in Ed<sup>m</sup>, with dyuerse vtheris. And for the mair verificatioun of this my Executioun, subscryuit with my hand, my signet is affixt.

JOHNNE BLINSELL, Ilay Herald. (L. S.)

Thaireftir, my Lord Aduocat producet ane Warrant of the Lordis of his Maiesteis Secret Counsaill, direct to my Lord Justice, ffor continuation of the said dyet, to the nynt day of August instant. Off the quhilk Warrant the tennour followis.

JUSTICE, Justice Clerk and 3our deputtis. fforfamekill as the secund day of August nixtocum, being appointit to PATRIK, ERLE OF ORKNAY, for his compeirance befor 3ow, to vnderly the Lawis, for certane crymes specifeit and contenit in the Letteris raised pairanent: Neuertheles, for some speciall consideratiounes of his Maiesteis seruice, it is oure Will, and we command 3ou to continew the said dyet, to the nynt day of the said moneth of August nixtocum; conforme to the ordour obseruet in the lyk caiffis: Whearant, thir presentis salbe 3our Warrant. AT EDINBURGH, the xxvij day of July, 1610.

AL. CANCELL<sup>r</sup>. DUMBAR.

THE JUSTICE, for obedience of the said Ordinance, continewit the said dyet to the said nynt day of August instant.

My Lord of Orknay takis instrumentis of his compeirance, and declairis quhat

<sup>1</sup> The Legal antiquary will peruse this curious document with much interest. The 'pomp and circumstance' of Ilay Herald, arrayed in his tabard, and attended by Albany Herald, and their respective Pursuivants and Witnesses, after a flourish by one of the trumpeters attached to the Herald's College, personally *apprehends*, as it is legally termed, the Earl of Orkney, and formally charges him, by virtue of the Royal Letters. The present unmeaning and empty form employed by Messengers-at-Arms (being still attached to the Lion King-at-Arms College) bears traces of this ancient ceremony; and still, in the event of the party being *denounced rebel*, the instrument bears this to have been done, 'after three several blasts' of a horn or trumpet, at the market-cross of the head burgh where the rebel (*fictione juris*) resides, or where his usual domicile is situated. If 'furth' of Scotland, the ceremony is *supposed*, by a practical fiction, to be denounced at the market-cross of Edinburgh, pier and shore of Leith; but in truth, it is effected by the Messenger sitting snugly in his chamber, perhaps up eight or ten pair of stairs, signing an attestation, which is also subscribed by two witnesses, termed *concurrents*. It is in the recollection of some practitioners of the Law, that a few Messengers, of the old school, actually went to market-cross, pier and shore, and in these 'good old times,' every man was 'his own Trumpeter!' A rigidly conscientious person of this class, actually carried a model of a horn in silver, regularly perforated, and at each of the places requisite gave 'three several blasts,' by breathing through this curious instrument, much to the edification of the bystanders, who naturally inferred the man to be insane! But he sternly performed his duty, 'through good report and through bad report,' in despite of all such taunts; and was, moreover, the best employed Messenger of his day.

evir allegit cryme is fett down in his Dittay, he had sufficient power and authoritie grantit to him to do the same; nocht granting thame to be crymes: As fall be justifeit be him, in the awin<sup>1</sup> tyme and place.

(Aug. 9.)—MY Lord Aduocat producet ane Warrant of the Lordis of his Maiesteis Secreit Counsell, anent the continuatioun of this dyet appointit for my Lord Orknayis tryell, to the saxtene day of August instant.<sup>2</sup> The Erle of Orknay askit instrumentis of his entrie; and offerit him selff to the Tryell of the law, for the allegit crymes contenit in the Letteris, nochtwithstanding of the said continuatioun.

(Aug. 16.)—THE JUSTICE Ordanit this dayis dyett, appointit for tryell of my Lord of Orknay, &c. to desert; in respect that my Lord Orknay was nocht presentit upone pannell.

(Nov. 22.)—MY Lord Aduocat producet the fummondis, &c.<sup>3</sup> Thaireftir my lord Aduocat producet to the Justice, ane Warrant of the Secreit Counsell, direct to him, anent the continuatioun of this dyet to the nyntene day of December nixtocum.<sup>4</sup> My Lord of Orknay takis instrumentis, &c.

(Dec. 19.)—ANOTHER Warrant is produced for continuatioun of the trial to Mar. 8, 'nixtocum,' dated Dec. 19, 1610: and is signed 'Al. Cancell'. Jo. Prestoun. Blantyre. R. Cokburne. Kilfythe.'

[*Mr Robert Cokburne, Justice-Depute.*]

(1611, Mar. 8.)—A WARRANT, dated March 7, 1611, is again produced, continuing the Trial to 'the fyftene day of May nixtocum,' signed by the Chancellour, 'Jo. Prestoun. A. M. Elphingstoun. R. Cokburne.'—My Lord of Orknay takis instrumentis of his entrie, and nochtwithstanding of the quhilk Warrant of the Counsell, offeris him selff to the Tryell of the Law, for ony crymes that can be laid to his charge; disassenting *simpliciter* to all forder continuatioun.

THE JUSTICE Ordanit the said Erle of Orknay to be returnit back agane to his waired.<sup>5</sup>

[*Sir Williame Hairt, Justice-Depute.*]

### Creason—Declining the Jurisdiction of the King and Privy Council.

Aug. 29.—MR ANDRO CREICHTOUN, brother to the Laird of Innernytie.<sup>6</sup> Dilaitit of the Declyning of his Maieftie and Lordis of Secreit Counsal Judgement; and thairby committing Treafoun, contrair the Actis of Parliament.

<sup>1</sup> In its *own*, or in its proper time and place. <sup>2</sup> The Warrant is *verbatim* the same with the former; and is subscribed by the Lord Chancellor and Earl of Dunbar. It is dated Aug. 9, 1610. <sup>3</sup> The Letters and Execution are repeated. <sup>4</sup> In same terms as the others. Dated Nov. 20, 1610, and signed by 'E. Glencairne. Sanctandros. Blantyre. Jo. Prestoun. R. Cokburne.' <sup>5</sup> An attested copy of the above proceedings, by Sir John Cokburn of Ormestoun, knight, Clerk of Justiciary, is preserved in the General Register House, with various other papers relative to Orkney. <sup>6</sup> See Arnot's *Crim. Trials*, p. 37, 67, and 328. The Case of Ogilvie the Jesuite, 1615, in this Collection, &c.

*DITTAY against the Pannell.*

MR ROBERT CREICHTOUN, broper to the Laird of Innernytie; 3e ar Indytit and accuset: for-famekill as, 3e, being takin, be directioun of the Lordis of his Maiesteis most honourabill Previe Counfall, and broght befoir pame, vpon the saxtene day of August instant, to be examinat vpon sum materis concerning his Maiestie and the estait of this his Kingdome, and requyred be thair Lordschipis to geve 3our aith to thame, that 3e sould faithfullie and treulie ansuer to thame, and declair the veritie of fuche thingis as sould be demanded of 3ow, 3e treasonabillie refused to acknowledge his Maiestie and the saidis Lordis of his most honourabill Previe Counfall to be 3our Judges, bot maist treasonabillie declyned pair judgement: And efter pat pai had put 3ow in remembrance of pat dentie and subiectioun quhilk 3e aucht<sup>1</sup> be our said souerane lord, both in respect 3e was his naturall borne subject within pis realme, and pat 3e war now actuallie resident within pe samyn: And that, be Act of Parliament, maid in pe moneth of May, the 3eir of God I<sup>m</sup>.V<sup>c</sup>. four scoir four 3eiris, our said souerane lord was declairit, be him selff and his Counfall, to be Judge competent to all perfonis his hienes subjectis, of quhatfumenir degre, functioun or conditionn thay be of, spirituall or temporall, in all matteris quhairin thay or ony of thame sould be summond or charget to ansuer to; and that nane sould tak vpon hand to declyne the Judgement of his hienes and his successoris, or pair Counfallis, in the premisses, vnder pe pane of Treason. Lyk as, for 3our better informatioun and resolutioun, pe said Act of Parliament was than schawin and red to 3ow: 3e neuerpeles, vnnaturallie, rebelliouslie, and treasonabillie persisting in 3our mischevous purpois, still refused to acknowledge pe Jurisdiction of his Maiestie and his Secret Counfall. Lyk as, vpon the xxiiij day of August instant, 3e being of new broght befoir pe saidis Lordis of Secret Counfall, and admonished and exhorted to acknowledge and amend 3our treasonabill offence, and to acknowledge his Maiestie to be 3our superiour, and his hienes and pe Lordis of Secret Counfall to be 3our lauchfull Judges, and to haif jurisdiction over 3ow, 3e ansuered, as ofbefoir, that 3e was nawayis better resolued, bot that 3e still abaid be 3our former Deposition and ansueir, that his Maiestie and the Lordis of Secret Counfall was nocht 3our superiouris or Judges. And sua, 3e haif treasonabillie contemned and declyned the authoritie of our said souerane lord and pe Jurisdiction of his hienes and Lordis of his Secret Counfall; and pairby haif incurret and sould suffer the paynes of Treason, to be executed aganis 3ow, in 3our body, lyfe, landis, guidis, fame, and memorie; in example of vtheris: Quhilkis 3e can nocht deny; in respect of your Depositiones, extant, and heir productet in Judgement, subscryuit with your hand, most cleirlye verifeing all pe premisses.

Eftir reiding quhairrof, and accusatioun of the said Mr Andro, be vertew of the same, and Confessioun maid be the said Mr Andro, in judgement, to the Justice, granting the treuth of the said Dittay, and abyding still at his former Depositiones; quhairupone instrumentis was tane be our said souerane lordis Aduocat, the Justice ferrit the said Dittay to the knowlege and tryell of ane Assyse of the perfonis following: Thay ar to say;

## ASSISA.

James Stewart of Grameslaw, Robert Menteith of Eglisbaw, Thomas Lyell of Murchill, Vthreid M<sup>c</sup>dowell of Mondork,<sup>2</sup> Mr Robert Henderfoun of Holland, Mr Gilbert Gordoun of Chirnes.<sup>3</sup>

Quhilkis perfonis of Assyse being chosin, sworne, and admittit, eftir accusatioun of new agane of the said Mr Andro Creichtoune, be Dittay, of the said treasonable cryme, quhilk in the said Justice and perfonis of Assyse awin pre-

<sup>1</sup> Owed.<sup>2</sup> Chancellor of the Assize.<sup>3</sup> The rest of the Assize, 'mercheandis,' &c.

fens and audience of new agane was grantit and confest, judiciallie, be the said Mr Andro to be of verritie; the said Sir Thomas Hammiltoun, for forder verificatioun of the said Dittay, producet the said Mr Andro Creichtones Depositiones, subscryuit with his hand, in presens of the Lordis of his Maiesteis most honourabill Previe Counfall, and repeittit thairwith the Act of Parliament, the pannellis Judiciall Confessioun, maid in presens of the Justice and Assyse; and thairupoun askit instrumentis; and protestit for Wilfull Errour aganis thame, gif thai acquit him.

**VERDICT.** That the said MR ANDRO was Culpable and convict of the trefsonable Declyneing of his Maieftie and Lordis of his hienes Secret Counfall to be his Judges, accoirding to his accusatioun aboue writtin, contenit in his Dittay, sufficientlie verifeit to thame be his Depositiones, produceit to thame, subscryuit with his hand; as also, be his Judiciall Confessioun, maid in the Justice and thair presence.

**SENTENCE.** To be tane to the mercait croce of the burgh of Ed<sup>r</sup>, and thair to be hangit and demanit as ane Tratour; and all his landis, heritages, tenementis, annuelrentis, takis, steidingis, &c. to be fforfalt and escheit to our souerane lordis vsf, as culpable and convict, &c.<sup>1</sup>

[*Mr Alexander Coluill, Justice-Depute.*]

(1611, Feb. 27.)—THE quhilk day, Mr Andro Creichtoun being, at command of the Counfall, brocht furth of waird out of the Tolbuth of Ed<sup>r</sup>, and presentit vpone pannell, to heir Dome of new agane pronuncet vpone him, the Justice ordanit the Counfallis Warrant vnderwrittin, delyuerit to him be my Lord Chancellor, to be oppinlie red in judgment, viz.

**JUSTICE,** Justice clerk, and your deputtis. Forfamekill as althocht Dome and Sentence was pronuncet aganis Mr Andro Creichtoun, proper to be Laird of Innernytie, ordaning him to haif bene tane to the place of his Executioun, and pair to be hangit and vperwayis demanit as ane tratour, for his trefsonabill declyneing of the Kingis Maieftie and his Counfallis judgement, and for certane vtheris trefsonabill crymes specifeit and contenit in the Sentence and Dome of Convictioun pronuncet aganis him: Neuertheles, it hes now plefit the Kingis Maieftie, out of his accustomed gracious dispositioun to clemencie and mercie, to mitigat the rigour of the Sentence pronuncet aganis the said Mr Andro, and to Ordane him to be Banischet his Maiesteis haill dominions; and nevir to returne agane within the same, during his lyve tyme, vnder the pane of deid, to be execute vpone him without forder dome or Sentence to be pronuncet aganis him. **THAIRFORE,** 3ow fall, vpone be sicht heirof, appoint and set ane Justice Court, caus be said Mr Andro to be exhibeit befoir 3ow, and pronounce new Sentence aganis him, conforme to his Maiesteis gracious fauour, clemencie and mercie, Ordaning him to be **BANISHED** his Maiesteis haill dominions, and nevir to returne agane within the samyn, during his lyftyme, vnder the payne to be Hangit quhill he be deid, without ony forder dome or Sentence to be pronuncet aganis him; and that, for contravening of his present Sentence. **EFTIR** the pronouncing quhairof, 3ow fall caus returne him bak agane to his waird, thairin to remane, quhill the commoditie

<sup>1</sup> Md. The Dittay, with the pannellis Depositiones, gevin vp to my Lord Aduocat the day foirsaid.

be had of some schip going out of the cuntrie; quhairby he may be caryed to hir be pe Magiftratis of Ed<sup>r</sup>, and sua fend away. And this 5ow failt nocht to do: Whearrant pir presentis fall be 3our Warrant. AT ED<sup>r</sup>, the xxvj day of Februar, 1611.

JAMES R.

The Justice, for obedience of the command thairin contenit, be the mouthe of Alexander Kennydie, dempster of Court, decernit,<sup>1</sup> &c. Whilk was pronounced for Dome.

[*Sir William Heart, Justice-Depute.*]

**Slaughter — Intercommuning with Rebels — Treasonable Theft and Stouthreit, &c.**

Sept. 6.—WILLIAME DOUGLAS of Lyncluden and Grenelaw,<sup>2</sup> (callit *Williame of Pinzerie*,) eldest sone and appeirand air of Williame Douglas of Baitfurd.

Dilaitet of dyuerse crymes of Slauchter; beiring and weiring of pistolettis; and of the tressonabill crymes of thift committit be him, he being ane landit Gentilman; in manner specifit in his DITTAY, vnder writtin.

FORSAMEKILL as 3e, haifing confaut ane deidlie feid, rancour, and malice, without ony caus, aganis vmq<sup>le</sup> Thomas Softlaw, burges of Dumfreis, vpone the fyft day of Apryle, or pairby, the 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and sewin 3eiris, and haifing convocat with 5ow Johnne Cunninghame, 3our seruand, and vperis deboifchet men, 3our complices, to pe number of tuentie perfones, or pairby, all bodin in feir of weir, with lance-stalfis, fuordis, quhingeris,<sup>3</sup> and with hagbuttis and pistolettis, prohibeit to be borne or worne be dyuerse Actis of Parliament, came to the Brigend of Dumfreis, quhair the said vmq<sup>le</sup> Thomas was, in quyet and sober maner, vnder Godis peax and the Kingis; and pair, 3e fearcelie fet vpone him, and perfewed him for his slauchter, hurt and woundit him with 3our pistolettis, and vtheris wappones foirfaisid, in pe heid, and dyuerse vperis partis of his body; to the effusioun of his bluid in grit quantitie; off the quhilkis straikis and woundis he schortlie paireftir depairtit this lyfe; and sa, was crewallie and vnmerciefullie flane, be 3ou, and 3our saidis complices, of 3our causing, command, affistance, and ratihabitioun; and 3e ar airt and pairt pairrof. To the taikin,<sup>4</sup> that 3e, and 3our saidis complices, being charget to find caution to compeir befor pe Justice, and vnderly pe law for pe said Slauchter, 3e past twyse to the horne for pe said cryme, as the Letteris of Hoiring heirwith producet verifeis.—ITEM, 3e ar indytit and accused, as airt and pairt of pe crewall and fellone Slauchter of vmq<sup>le</sup> Eduard Maxwell of Croftoun, committed at pe Brigend of Dumfreis, vpone the . . . . day of September, or pairby, the 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and aucht 3eiris, be 3ow pe said Williame Douglas of Lincluden, Johnne Schitlingtoun, 3our seruand, Johnne Greir, fuordflipper at the Brigend of Dumfreis, and Johnne Dempster in the College of Lincluden, quho of 3our speciall causing, sending, hounding out, airt and pairt-talking, reffet with the bludie hand, affistance, and ratihabitioun, with pair fuordis, lances, and vperis wappones, *invasiue*, inuaidit and perfewit pe said vmq<sup>le</sup> Eduard Maxwell, for his Slauchter, and hurt and woundit him in pe heid, and dyuerse partis of his body, to pe grit effusioun of his bluid. Off the quhilkis woundis he nevir thaireftir convalessed; bot lying in extreame and deidlie payne, be pe space of fyve or sax dayis, in end, vpoun the . . . day of September,

<sup>1</sup> The words of the warrant repeated.

<sup>2</sup> The family of Douglas of Penzire was descended from George Douglas, the third son of Sir William Douglas of Drumlanrig, who was killed July 22, 1484, near Lochmaben. William of Penzire married Agnes, second daughter of John, sixth Lord Maxwell, (the father of John the seventh Lord Maxwell, whose Treason, escape, &c. form part of this Dittay,) by Lady Elizabeth Douglas, second daughter of David, seventh Earl of Angus. This circumstance explains satisfactorily that part of the Dittay which refers to his resetting, and other transactions with Lord Maxwell, his brother-in-law.

<sup>3</sup> A short sword or hanger; a

kind of cutlass. <sup>4</sup> In token, proof, or testimony whereof.

or pairby, the geir of God 1608 zeiris foirfaid, he depairtit this lyfe; and sua, was crewallie slane be zou and your saidis complices, of your causing, command, reffet, assistance, and ratihabitoun: And ze ar airt and pairt pair of; ffor pe quhilk, ze haif lyne at pe horne thir tuo zeiris bygane. Ze ar also Indytit, fforfamekill as pe said Johnne Greir, being tane with the bludie hand, and immediatlie efter pe committing of pe said crewall Slauchter of pe said vmq<sup>10</sup> Eduard Maxwell, being committit to Waird for pe same, in our souerane lordis ordiner Priffone and Pledge-chalmer of Dumfreis, and pair keptit priffoner in the irnes, be the space of foure dayis, the said Johnne Schitlingtoun, your servend, at your command, and be your speciall convoy and assistance, haveing provydit him self of gavillokis,<sup>1</sup> craw-irnes,<sup>2</sup> fyles, and vperis work-lowmes,<sup>3</sup> furneist and prepairit to him be zou and your meanis, come vpon the . . . day of pe said moneth of September, or pairby, and zeir of God foirfaid, and in the nyght seasoun brak pe vout and pend<sup>4</sup> of pe said priffone, and schure<sup>5</sup> af pe irnes, quhairin the said Johnne Greir was loked, and violentlie and forceable relevit him furth of our souerane lordis Priffone foirfaid, and cayreid him to your duelling hous in Lyncluden, wher ze reffet, keiped, and interteneid him dyuerse dayis, nychtis, and oulkis<sup>6</sup> paireftir: And sua, ze ar airt and pairt of the contemptuous, insolent, and violent breking of our souerane lordis priffone, and taking furth pair of, violentlie and perforce, of the said Johnne Greir, giltie and captiue for pe said crewall Slauchter of pe said vmq<sup>10</sup> Eduard Maxwell of Corstoun, and of pe wilfull reffet, supplie, and intertenement of pe said Johnnie Grier, giltie and fugitiue for pe said crewal Slauchter; and aucht and fould be pwneifched with the lyk and self same paynes quhilk pe law hes prescryved aganis pe said principall malefactor, for his crymes foirfaidis. To the taikin,<sup>7</sup> that pe said Johnne Grier and ze war bothe fugitives, and at pe horne, for pe cryme foirfaid.—ITEM, Ze ar indytit of your treaffounabill Intercowmoning with JOHNNIE sumtyme LORD MAXWALL,<sup>8</sup> in the toun of Dumfreis, and in the Castell-zaird pair of, and dyuerse vtheris places within the scherefdomes of Nyddisdail, Annandaill, Kirculdubrycht, and Galloway; and for Resfeting and suppleing him in your hous of Lyncluden, and vperis your duelling places, in pe moneth of December, the 3ear of God I<sup>m</sup>.Vj<sup>c</sup>. and fevin zeiris, and in pe monethis of Januar, ffebruar, and remanent monethis of pe zeir of God 1608 zeiris, at pe leift dyuerse dayis and nychtis of pe said zeir, estir that he had committed nottour and manifest Treasone, be his violent and forceable breking Waird furth of pe Castell of Edinburgh, vpon the fourt day of December, or pairby, pe zeir of God I<sup>m</sup>.Vj<sup>c</sup>. and fevin zeiris, and persewing the Porteris and Keiperis pair of for pair Slauchter, hurting and wounding dyuerse of pame in findrie partis of pair bodeis, to pe grit effusioun of pair bluidis, and perrell of pair lyves; and preiffing, so far as in him lay, treasoneabillie to relief SIR JAMES M<sup>c</sup>ONEILL, detenit in irnes and strait priffoun within pe said Castell, for dyuerse odious and treasoneabill crymes;<sup>9</sup> ffor pe quhilkis manifest Treasones, the said Johnne Lord Maxwell was nocht only denuncet rebell and tratour, and all our souerane lordis legis discharget, be Proclamatioun, to intercowmone with, reffet, or suplie him, vnder pe panes of law; bot also, he fforfaltit, be Decreit of Parliament, for pe samyn. To the taikin, that ze, being dyuerse tymes charget to compeir befor pe Counfell, to ansuer for pe saidis crymes of Resfett, supplie, and intercowmoning with pe said Johnne, sumtyme Lord Maxwell, ze, knawing your awin giltines, difobeyit the charge, and past to pe horne; at the quhilk ze haif lyne continuallie sensyne vnrelaxit.—ITEM, Ze ar indytit and accuset, fforfamekill as Johnne Lord Hereis, being directed be pe Lordis of his Maieftis Secret Counfall to tak and apprehend your and Eduard Maxwell of Craigtoun, ane nottour rebell and fugitiue, for Thift, Stouth-reif, ffyre-raifing, suppleing and assisting my Lord Maxwell, and dyuerse vtheris treasonable crymes, quhilk pe said Eduard him self declared vnto your; the said Lord Hereis, vpon the fyftene day of August lastbypast, cuming, for executioun

<sup>1</sup> A lever used by quarriers of stone, a *pinch* or *prize*.    <sup>2</sup> Crowbar.    <sup>3</sup> Tools.    <sup>4</sup> Vault and arch.  
<sup>5</sup> Literally *sheared*, as with a reaping-hook.    <sup>6</sup> Weeks.    <sup>7</sup> In testimony or proof whereof.    <sup>8</sup> See May 13 and Jun. 24, 1609, &c. That nobleman was beheaded, at the Cross of Edinburgh, May 21, 1613. See also Appendix.    <sup>9</sup> See his Trial, III. 1, &c. Jun. 24, 1609.



of the said directione, to the hous of Johnne Couthird, in Reid-Castell, whear ze, with pe said Eduard, and dyuerse your complices, war then assemblit, and he him selff, and his servandis, commanding zow and pe said Eduard, in our souerane lordis name, to be tane with him, and to randir your selfis and your wappones, ze treasonabilie disobeyit pe said charge, and with your suortie, pistolettis, and vperis vnlauchfull wapponis, invaidit and persewed the said Lord Hereis and his servandis for pair Slauchter, hurt and woundit Johnne Geddes, Johnne Couthird, and dyuerse vtheris of thame, in sindrie partis of pair bodeyis, to the grit effusioun of pair bloudis, violentlie and forceable hinderit thame to tak the said Eduard Maxwell, rebell, releisit him fra pame, and gaif him meanis and occasioun to escaip furth of the said hous; and sua, violentlie and treasonabilie withstuid the said Lord Hereis, haifing the Counfallis command and directioun to tak zow and pe said Eduard Maxwell, standing rebell for Treasone, as said is; and assistit and tuik pairt with him, in his treasonable withstanding of the said Lord Hereis, and in his treasonable persewing of pe said Lord and his companie, for pair Slauchter, and had ane pistolet vpone zow at pat tyme: And ze ar airt and pairt pair of; as your awin Depositionn, subscryuit with your handis, and pe Depositionn of sum of thais that war present at your apprehensioun, cleirlye verifeis. ITEM, Ze pe said Williame Douglas of Grenelaw and Lyncluden, eldest sone and appeirand air of James Douglas of Baitsfurd, ze ar indytit and accused, forsakemkill as ze, being ane landit Gentilman, and heritable proprietor of the saidis Landis of Grenelaw and Lyncluden, and dyuerse vperis landis and heritages, haif committed the treasonable crymes of Thift and Stouthe-reif vaderwrittin, be your self and your complices, and vperis in your name, of your causing, command, reffett, assistance and ratihabitoun, quhair of ze war and ar airt and pairt, that is to say, ffor your coming to David Welches chalmer, in the place of Grenelaw, and tressonahill breking vp, perforce, of his lettrone<sup>1</sup> pair, and steilling furth pair of xxxv li. money, or pairby, quhair of pair was tuo half ducattis, pertening to the vmq<sup>le</sup> Proveist of Lyncluden, his maister, quhair of ze sone pairestir wiffillit<sup>2</sup> ane half ducat with Alexander Gordoun, violor in Wigtoun, for fyve merkis; quhilk being tryit and maid nottour to all pe Proveistis servandis and hail nychtbouris in the countrie, and cuming at last to the Proveistis awin knowlege, he was so heichlie offendit with zow for pe same, that he boisit<sup>3</sup> aper to dronn<sup>4</sup> zow, or at leist to put zow af pe cuntrey, and nevir to do zow any benefeit or guid; quhilk ze heiring pair of, be pe counsell of the said David Welsche, past in to pe Proveist chalmer in Grenelaw, quhair he was lyand in his bed, and pulling your breikis and schankis<sup>5</sup> af your kneysis, ze sat doun befor him vpone your bair kneysis, cravet God and him pardoun and forgevenes, for pat your offense, and swoir and promiseit to him nevir to do pe lyk thairestir. Quhilk treasonable Thift was committed be zow, about nyne zeir syne, or pairby; quhilk ze can nocht deny; lyk as the samyn is cleirlye verifeit be pe Depositionnes producet. ITEM, Ze ar indytit and accused for pe trefonable Steilling, conceilling and away-taking frome Thomas Fergusoun, seruitour to pe said vmq<sup>le</sup> Proveist of Lyncluden of an Angell of gold, and sum siluer, furth of his purse, in the zeir of God I<sup>m</sup>.Vj<sup>c</sup>. and tua zeiris, or pairby. ITEM, Ze ar indytit and accuset for the treasonable Steilling, conceilling and away-taking, vnder silence and cloud of nycht, of tuentie-aucht pecis of gold fra Johnne, sumtyme Lord Maxwell, committed be zow in the place of Langholme, quhair ze war lyand in the chalmer with the said Lord Maxwell, in the zeir of God 1605 zeiris, or pairby. To pe taikin, ze wiffillit ane of pe saidis peces of gold, being ane double-doubill pistolet, in an oisler-hous besyde the Langholme; and ze was pairestir apprehendit, and challanget wiffelling sum vper of pe saidis peces, in Dumfreis: ffor pe quhilkis crymes, ze war indytit and arreistit to pe Justice Court haldin be my Lord Erle of Dumbar, his Maiesteis Heich Commiffioner, in the Middile schyres, in July, 1609 zeiris; and was

<sup>1</sup> Literally a reading-desk or pulpit where prayers are read, from O. Fr. *letrin, lectrin, lutrin*. It is frequently employed to signify a box, chest, or desk for holding papers, &c. <sup>2</sup> Exchanged; 'changed,' sometimes spelt *quhissellit*. <sup>3</sup> Threatened, as Lord of the Regality, and entitled to sit as Criminal Judge on his trial. <sup>4</sup> A common punishment, in the inferior Judicatories, for Theft, &c. <sup>5</sup> A kind of long hose.

fugitive pairfoir. ITEM, 3e ar indytit and accuset for 3our treasonabill breking of Johnne Grahame, in the Gait, his kift,<sup>1</sup> vnder clud and silence of nycht, and maisterfull and thiftious Steilling and reveing, furth of pe said kift, of sfourtie-foure pundis, being all foure-merk-peces, pertening to pe said Johnne, committed be 3ow in pe 3eir of God 1601 3eir. ITEM, 3e ar indytit and accused for 3our tressonabill airt and pairt of pe steilling, reifing, and away-taking and conceilling of ane kow, pertening to Meg Miller in Croftis, with pe haill infight of hir hous; committed be 3ow in Julij lastbypast: To the taikin, 3e brocht ane kift full of meill to (and?) ane lynning wob of hiris,<sup>2</sup> and sauld (thame?) in Johnne Grahames of the Gait. ITEM, 3e ar indytit and accuset for 3our treasonable Stouth-reif of ane naig, pertening to Robert Symontoun at pe Mylne of Corsemichell; committed in July 1610, lastbypast: To pe taikin, 3e wald nocht restoir pe naig eftir he was tryit vpon 3ow, quhill<sup>3</sup> 3e gat fyve pundis money frome pe said Robert for pe samyn. ITEM, 3e ar indytit and accuset for 3our Maisterfull and treasonable Stouth-reiff of ane naig from Johnne M'gill in Grenelaw, in August, 1610: To pe taikin, 3e was rydand on him, immediatelie befor 3e was tane. ITEM, 3e ar indytit and accuset for 3our treasonable Stouth-reif of ane kow, frome Robert Welfche in Dillovodie; committed three 3eir syne, or pairby; quhilk was than instantlie flane and disponit vpon 3our hous. ITEM, 3e ar indytit and accused for 3our tressonabill Stouth-reif from Johnne Johnnestoun in Lyncluden, of ane kow, tua 3eir syne, or pairby; and causit flae and dispone vpon hir, in 3our hous, at 3our plesour. ITEM, 3e ar indytit lykwayis, for contravening of our souerane lordis Actis of Parliament, in beiring and weiring hagbuttis and pistolettis vpon 3our persone, and in 3our companie, oppinlie, outwith houffis, within pe scherefylome of Drumfreis and stewartrie of Kirkculdbrie; and pat monethlie and daylie; at the leift, in ane or vper of pe monethis, in pe 3eir of God Im.Vj<sup>e</sup>. fevin, 1608, 1609, 1610 3eir: To the taikin, 3e was tane with ane pistolet vpon 3ow, quhilk 3e presentit to Johnne Geddes at 3our talking. ITEM, 3e ar indytit for Cowmone Thift, Cowmone Resfett of thift, outputing and inputting of thift, fra land to land, fra cuntrie to cuntrie, baith auld and new, notourlie knowin. Bz the quhilkis Treasonable crymes aboue writtin, and ilk ane of them *respectiue*, committed be 3ow, and vperis in 3our name, of 3our causing, command, assistance and ratibabitoun, as said is, and quhair of 3e war and at airt and pairt, 3e haue deseruet and incurrit the paines of Treasone, quhilkis sould be execute vpon 3our body, lyfe, landis and guidis: And 3e haif sforsaltit to the Kingis Maiestie, 3our haill landis, steidingis, rowmes, possessiones, takis, contractis, bandia, reuerfiones, richtis, securiteis, hoip and apperance of successioun, and all vperis landis, rychtis, guidis and geir quhatfumeuir, moveabill or vnmovabill, quhilk 3e had, or quhilk 3e mycht haif appertenit, or ony wayis haif befallin to 3ow, and pe samyn sould be adiudget to haif befallin to our said souerane lord, and to appertene to his hienes, and to remane with him, his croun and successouris, now and in all tyme cuming.

Eftir productioun of the said Dittay, be our said souerane lordis Aduocat, the said Williame Douglas was put to the tryall of ane Assyse of the perfonis following, viz.

## ASSISA.

Williame Creichtoun of Ryhill,	Thomas Hunter in Burne,	George M'ne in Lyncluden,
Alexander Maxwell of Logane,	Williame Douglafs of Lache,	Thomas Welfche thair,
Johnne Broun of Mullennis,	James M'cRerik of the Kerne,	Niniane Myller in Ryhill,
James Mairtene in Airdis,	Johnne Greirfoun of Ingliftoun,	Hew Douglas of Belliebocht,
Jo <sup>r</sup> Fairies in Carfe of Kynneill,	Johnne Carmichell elder in Spothie,	Rodger Padzeane of Newtoun,

My lord Aduocat askit instrumentis of the sweiring of the Assyse. (1.) My lord Aduocat producet the tua Letteris of Hoirning for the Slauchter of vmq<sup>l</sup> Thomas Softlaw, togidder with ane Dittay aganis the pannell, and publicatioun

<sup>1</sup> Box, chest.<sup>2</sup> Hern.<sup>3</sup> After you was publicly accused of the theft, until you got L.5, &c.

of his absence, and Declaratioun of his being fugitiue fra the Justice Court, haldin at Drumfres be my Lord Dumbar, for the said Slauchter. (2.) Lykwayis, my lord Aduocat producet tua Hoirningis aganis the pannell, for the Slauchter of Eduard Maxwell of Trostoun. (3.) For verificatioun of the *thrid* Article of Dittay, respecttis the tua Hoirningis producet. (4.) ffor verifeing the fyft (*fourth*) Article, my lord Aduocat repeittis the notorietie of my Lord Maxwellis fforfaltour, and producet tua Hoirningis aganis the said Lord Maxwell, togidder with Letteris of Publicatioune aganis all our souerane lordis legis, that nane sould resset him: As also producet Letteris direct aganis the pannell, quhairby he was charget befor the Counfall, and past to the horne for disobedience. (5.) ffor verificatioune of the *fyft* Article, repeittis the Judiciall Declaratioun maid be my Lord of Dumbar, anent the Warrant gevin to my Lord Hereis, for apprehending of the pannell and Eduard Maxwell of Craigtoun: And sicklyk, producet Letteris of Hoirning, beiring the said Eduard Maxwell to be fugitiue. (6.) Repeittis, for verifeing the *saxt* Poynt, the notorietie of the cryme with certane Depositiones. (7.) ffor verificatioun of the 7 Poynt, producet his Depositiones, togidder with his Indytement at the Justice Court of Dumfres, and of his being fugitiue thairfra. (8.) ffor verificatioun of the Pistolettis, repeittis his Deposition producet. (9.) ffor verificatioune of the quhilkis thiftious crymes, tressonable committit be the pannell, and that thairin he hes committit Tressone, my lord Aduocat producet the pannellis Infestment of the Landis of Lyncluden, togidder with ane Contract subscryuit betuix him and the Lard of Lochinvar, subscryveing him self to be 'ffear of Lyncluden;' and repeittis that Act of Parliament, beiring Landit Gentilmen, committing Thift, to incur the cryme of Tressone.

Eftir reiding of the hail poyntis of Dittay, the pannell confessis the samyn to be of veritie, for ffeir of his lyfe; and thairfoir becumis in his Maiesteis Will.— My Lord Aduocat repeittis the writtis producet, and the Act of Parliament maid against the committeris of Thift, be(ing) landit Gentilmen; and in respect thairof, Protestis for Wilfull Errour against the Assyse, gif they will acquit.— My lord Aduocat declairit to the pannell, that nochtwithstanding of the admitting of the Assyse, he is content, gif it be admittit be the Justice, that the pannell fall be reponit to his defenssis, and haif the assistance of his prelocoutouris to that effect; and lykwayis, to obiect aganis the persones of Assyse, gif he hes ony lauchfull exceptioun to propone aganis thame, albeit it be nocht the forme of this Judgement: And thairupoun askit instrumentis. Nochtwithstanding of the quhilk offer maid be my lord Aduocat, the pannell offeris him self in his Maiesteis Will, for the hail crymes contenit in his Dittay.

VERDICT. The Assyse, be the mouth of Williame Creichtoun of Ryhill, chancellor, ffind, pronuncet, and declairit the said Williame Douglas of Lyncluden, to be ffylet, culpable and convict of the Resset with the bludie hand of Johnne

Greir, principall committer of the Slauchter of vmq<sup>le</sup> Eduard Maxwell of Trof-toun, immediatlie eftir the committing thair of: And ficlyk, to be ffylet, culpable and convict of the hail crymes of Treafone, and vtheris crymes at lenth fpecifeit and fett doun in his Dittay, aboue mentionet.

SENTENCE. The Juftice, be the mouthe of Alexander Kennydie, dempfter of Court, decernit and ordanit the faid Williame Douglas to be tane to the Mercat-croce of Edinburgh, and firft, his richt hand to be ftrukin frome his body; and thaireftir, the faid Williame to be hangit at the Mercat-croce vpone ane gibet, quhill he be deid: And all his landis, heritages, &c. to be fforfaltit and efcheit to our fouerane lordis vfe, as giltie and culpable of the faidis treffonabill crymes: —Quhilk was pronuncet for dome.

### Sorcery — Witchcraft — Murder.

Sep. 7.—GRISSELL GAIRDNER, relict of vmq<sup>le</sup> Johnne Baird, burges of Newburgh.

Dilaitit of certane crymes of Witchcraft and Sorcerie, committit be hir, in maner and at the tymes fpecifeit in hir DITTAY following.

PERSEWARIS, Mr Robert Foullis, fubftitute to our fouerane lordis Aduocat; Alexander Wentoun in Newburgh, for himfelf, and as Informer.

PRELOCUTOR for the pannell, Mr Johnne Ruffell, (Advocate.)

IN þE FIRST, for on-laying, be Witchcraft and Inchantment, of ane grevous difeas and feiknes vpone the faid Alexander Wentoun; quhairin he lay in a feirful madnes and ffurie, þe fpace of ten oulkis<sup>1</sup> togidder; and in end, for af-taking of þe faid difeas and grevous feiknes af him, be certain directiones gevin, and vperis devillifche practizes vset be hir, for his recoverie; committit be hir in the moneth of Februaire laftbypaft. ITEM, for hir devillifch Sorcerie and Witchcraft, practizet be hir, in laying on the lyk feirfull difeas and vnknawin feiknes vpone Williame Anderfoune, wricht in Newburcht, for certane allegit injuries done be him to Andro Baird, hir fone; in the quhilk grevous feiknes he continewit the fpace of ten dayis togidder, tormentit in maift feirfull maner; and af-taking of þe fame feiknes, be hir, be repeiting thryfe of certain woirdis, quhilk fcho termet prayeris. AND ficlyk, for Bewitching of ane kow, pertening to þe faid Williame, quhairthrow þe hail milk that fcho paireftir gaif was bluid and worfam;<sup>2</sup> committed be hir devillrie and Inchantment, in the monethe of Maij laftbypaft. ITEM, for þe Bewitching, be hir devillrie and Inchantment, of James Anderfone, fone to Margaret Balfour in Newburcht, in on-laying of ane grevous feiknes and difeas vpone him; quhair of, in ane grit ffurie and madnes, within foure dayis eftir on-laying þair of, he deceiffit; and þairthrow, for airt and pairt of his Mur-

<sup>1</sup> Weeks.

<sup>2</sup> Blood and corrupted or purulent matter.

thour and deid,<sup>1</sup> committed be hir, in þe 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and fyve 3eiris. ITEM, for ane cowmone and notorious Witche and abufear of þe people, by laying on of feiknes vpon men, wemen, bairnes, and bestiall; and be geving of drinkis, and vfeing of vper vngodlie practizes, for af-taking of þe saidis feiknesfis and diseases; and be consulting with the Devill, and feiking of responffis fra him, at all tymes this fourtene or fyftene 3eir bygane, for effectuating of hir devillifch intentiones.

It is allegit be Mr Johnne Russell, as ordiner prelocutor, as he allegit, for my lord (Archbishop) of St Androis,<sup>2</sup> that my Lord Justice can nocht proceed in this matter, aganis the pannell, vnto the tyme a Precognitioun be tane of the cryme of Witchcraft, for the quhilk this pannell is to be accuset; conforme to ane Commiffioun gevin to my Lord of St Androis, and certane Nobill men, to that effect.—It is anfuerit be my lord Aduocat, that thair is na sic Commiffioun grantit, nather is the Commiffioun product; and albeit thair war ony sic Commiffioun gevin, the samyn is nawayis derogatorie to my lord Justice Jurisdiction; bot that the pannell man be put to ane Assyse, for the crymes lybellit.

It is allegit be the pannell, that the first part of the Dittay is nawayis relevant; nather is the samyn relevantlie qualifeit, bot altogidder friuolus and generall; and thairfoir, can nocht be put to ane Assyse. It is anfuerit be the Aduocat, that the allegiance is nawayis relevant, bot man be repellit, in respect of the Dittay and circumstances thair of.

THE JUSTICE remittis the Dittay to ane Assyse, to be cognoscet and tryit be thame.

The Aduocat askit instrumentis of the chefing and fwering of the Assyse; And protestis for Wilfull Errour, in caice thay acquit hir; in respect of the notoriety of the Dittay, and takinnis<sup>3</sup> gewin to ilk poynt of the Dittay, and of the fwering of Alexander Wentoune.

It is allegit that *Stevin Philp* can nocht be ressaute vpon this Assyse, becaus Philpis wyfes guidame<sup>4</sup> and the persewar Alexander Wentounes mother war fisteris.—The said Stevin Philpis ayth being tane thairupoune, declairit thai war sib,<sup>5</sup> bot knawis nocht how neir of kyn thai war.—*James Durie* repellit be the Justice, af this Assyse, in respect of his declaratioun and ayth gevin thairupoun, that he buir the pannell at na guid will.—It is allegit aganis *Robert Allane*, that he can nocht be admittit Assysfour, becaus Anderfones wyfe, quha is pairtie offendit in the Dittay, and Allane are thridis of kyn,<sup>6</sup> as was reknit.

THE JUSTICE admittis *Allane* vpon this Assyse, for the hail poyntis con-

<sup>1</sup> Death.      <sup>2</sup> George Gladstones, who was translated from the See of Caithness, anno 1606; but was not consecrated Archbishop, until 1610.      <sup>3</sup> Proofs.      <sup>4</sup> Grandmother.      <sup>5</sup> Of kin, consanguinity, or relationship by blood.      <sup>6</sup> Within the third degree of consanguinity.

tenit in the Dittay, except vpoun the article confaut in preiudice of Anderfone's wyfe allanerlie.<sup>1</sup>

It is allegit that *George Henderfone* can nocht be admittit vpoun this Assyse, becaufe the pannell hes Letteris of Lauborrus againft him, quhairupoun fcho hes gevin hir ayth of hir bodelie harme.—Anfueris, nocht relevant, becaus the Letteris ar raiffit fen<sup>2</sup> the pannellis apprehenfoun for the fact lybellit, and fen the Counfallis ordinance, appointing hir to be tryit.

The pannell, befoir the outpaffing of the Assyse, takis instrumentis, that na poynt of the Dittay is fuorne to the Assyse, bot<sup>3</sup> the firft Article, anent Alexander Wentoun, allanerlie.

The Aduocat defyres, for forder informatioun to the Assyse of the pannellis Giltines of the hail crymes lybellit, that the Ministeris<sup>4</sup> Declaratioun, anent hir lyfe, tred<sup>5</sup>, and converfatioun; as also, David Orme, Bailzie of Newburcht, ayth and declaratioun of that pairt of the Dittay, concerning Anderfones wyfe and bairnis, be reffaut.—It is anfuerit be Mr Johnne Ruffell, that thair Declarationis can nocht be reffaut, except thai war infert as perfewaris in the Summondis.

The pannell proteftis that the Declaratioun to be maid be Mr Johnne Caldcleuche, Minister, in this matter, quhairupoune fcho is dilaitit, be nawayis respectit or advertit vnto be the Assyse.—*Mr Johnne Caldcleuch, Minister*,<sup>6</sup> being fuorne maift folemnellie, be the Justice, Deponis, that a fourtene yeir syne this Griffell Gairdner was than suspect to be ane wicket woman, and ane Sorcerer; and be the Depositiones of the Witches execute for Sorcerie and Witchcraft, at Abernethie, Falkland, and Newburcht, fcho was reput to be ane manifest Witch; bot becaus thair was na precedent fact qualifeit aganis hir, the Presbiterie thairfoir delayit hir Tryell and accusatioun. And as concerning hir lyfe and converfatioun fen syne, fcho hes bene suspect to be ane verrie evill woman; and for hir privat revenge aganis sic as fcho buir ony malice vnto, hes vset devillifche and vngodlie meanis, be Sorcerie and Incantatioun, to lay on dyuerse grevous diseaffis on thame; and speciallie, on the perfones fet down in hir Indytement; quhairthrow the cuntrie and parochin<sup>7</sup> quhairin fcho duellis, hes bene gritlie sclanderit, in suffering sic ane perfone vnpwneift: For the quhilk caus, the Presbiterie, efter tryell of the former offences done be hir, alfweill to the perfones contenit in hir Dittay as vpone dyuerse vtheris that ar nocht nominat thairin, direct the Deponer, as thair Moderatour, to notifie the treuth of the premisses to the Counfall, that sum ordour might be tane anent hir Tryell and pwnifchment.—Quhairupoun my lord Aduocat askit instrumentis.

<sup>1</sup> Only, alone. This remarkable decision of the Justice, however inconsistent with modern practice, was by no means infrequent during the reign of King James VI. <sup>2</sup> Since. <sup>3</sup> Excepting.

<sup>4</sup> Clergyman of the parish of Newburgh. <sup>5</sup> Trade; employment; occupation. <sup>6</sup> See the King's Letter to this Minister, relative to Gowrie's Conspiracy, in this Collection, II. 317. <sup>7</sup> Parish.

**VERDICT.** The Assyse, for the maift pairt, be the mouthe of Williame Ramfaye, burges of Newburgh, chancellor, ffand, pronuncet, and declairit the said Griffell to be ffylet, culpable, and convict of the haill crymes aboue mentionat.

**SENTENCE.** The Justice Decernit and ordanit hir to be tane to the Castell hill of Edin', and thair to be wirreit<sup>1</sup> at ane staik quhill scho be deid; and thair-efter hir body to be brunt in asches; and all hir moveabill guidis and geir to be escheit and inbrocht to our soueran lordis vfe.

### Horse and Cattle-stealing.

Oct. 23.—GEORGE BROUN, sone to James Broun, in Cokpen.

Dilaitit, accuffet, and persewit be Dittay, at the instance of Robert Erle of Louthiane, and Mr Thomas Henderfone, Aduocat, substitute to our souerane lordis Aduocate, of airt and pairt of the steilling of ane waith naig<sup>2</sup> a tua yeir syne, or thairby. **ITEM,** of steilling of ane naig<sup>3</sup> furth of the Park of Newbottill, pertening to Mr Alexander Ambroise, Minister; and of ane staig,<sup>4</sup> pertening to Thomas Stewinsoun, foster<sup>5</sup> of the said Park; committit ane yeir and ane half syne, or thairby. **ITEM,** for the steilling of ane blak meir,<sup>6</sup> pertening to Johnne Fyndlasone, furth of the croftis of Leslie; togidder with ane blak staig, pertening to James Clerk; and ane little soirdy<sup>7</sup> staig; committed vpone the xxvij and xxix dayis of September last. **ITEM,** for the steilling of thre oxin, pertening to my Lord of Louthiane, furth of Newtoun-maynes; committit the xxvij day of September lastbypast.

**VERDICT.** The Assyse, be the mouth of Barnard Borthuik in Caringtoun, chancellor, ffand, pronuncet, and declairit the said George Broun to be ffylet, culpable, and convict of the haill crymes of Thift, contenit in his Dittay aboue specifreit.

**SENTENCE.** To be tane to the Park of Newbottill,<sup>8</sup> and thair to be hangit vpone ane gibbet quhill he be deid; and all his landis, heritages, annuelrentis, heritabill bandis, and vtheris his guidis and geir quhatfumeuir pertening to him, or quhairvnto he is provydit, to be fforfaltit and escheit to our souerane lordis use, as convict and culpable of the saidis thiftious and tressonabill crymes.

Compeirit Mungo M<sup>c</sup>Call, bailzie of Edinburgh, and eftir convictioun of the said George Broun, and pronunceatioun of his Dome, askit instrumentis of his entrie vpone pannell; and that he was delyuerit af the toun of Edinburgis handis, be the Justice, to my Lord of Lothiane, to be execute, conforme to his dome.

<sup>1</sup> Strangled.      <sup>2</sup> A *strayed* horse; or perhaps a horse kept for *waithe* or hunting. It may be stated, however, that the general acceptation of the term '*waithe horse*,' is a stallion who escapes from pasture, and wanders in quest of mares; but in this instance, he seems to have been *wayf*, or strayed.      <sup>3</sup> Riding horse.      A young unbroken *horse*; a stallion.      <sup>5</sup> Forester.      <sup>6</sup> Mare.      <sup>7</sup> Sorrel-coloured; reddish.      <sup>8</sup> The practice of executing Criminals near the spot where their crime was committed, did not seem to be much attended to at this period; but this is one among the few instances of a pannel, tried in Edinburgh, being carried to some distance and executed for the greater example.

**Theft, &c.—Following the Gipsies, &c.**

Nov. 30.—ELIZABETH WARROK, dochter of . . . Warrok in the Potterrow, [Edinburgh].

Dilaitit of airt and pairt of the thifteous Steilling, conceilling, reffetting and away-taking of ane filuer mazer,<sup>1</sup> pertening to Quintene Bouftoun, mercheand burges of Edinburgh, a thre yeir fyne or thairby. ITEM, for ane cawmone Vagabund and follower of the Gipseis, and taking pairt with thame in all thair thiftis and juglareis this ten yeir bygane, contrair the Actis of Parliament. ITEM, for ane cawmone reffetter of Thift.

VERDICT. Fylet, culpable and convict of the saidis crymes.<sup>2</sup>

(Dec. 8.)—SENTENCE. The Justice Ordanit hir, togidder with GEORGE RAMSAY, sone to Nicoll Ramsay in Lefuaid, (quha become in will, for certane 30wis<sup>3</sup> stowin be him furth of the landis of Libertoun, pertening to the tennentis thairrof, quhilkis war restorit bak agane to the awneris, &c.) to be SCURGET throw the Burgh of Edinburgh: And to be BANISCHET the hail liberteis thairrof, and nevir to be fund within floure myles thairto; vnder the pane of deid, viz. The said George Ramsay, vnder the pane of Hanging, but<sup>4</sup> forder Dome; and the said Elfpeth, vnder the pane of Drowning,<sup>5</sup> but forder Dome or Law, to be haldin or pronuncet aganis thame.

**Piracy, &c.—‘The Englische Pirattis’—Oppression, &c.**

[THE transactions of the bold and lawless men, whose trial ensues, and the violence and murders perpetrated by other Pirates, natives of both countries, but chiefly Englishmen, after the accession of King James to the British throne, excited the liveliest interest at the time, both in Scotland and England. Instead, however, of entering into a lengthened detail of the crimes and the punishment of these desperadoes, the Editor will content himself by giving the result of pretty laborious searches, in an Appendix of Original Documents, which sets the matter in the clearest point of view. The sources from which these various and highly interesting Papers have been procured, are, as usual, noted.]

Dec. 8.—PETER LOVE, borne in Lewis,<sup>6</sup> in Suffex; Johnne Cokis, borne in Walderfweik in Suffolk; Williame Hollane, callit ‘the Batifman,’ borne in Suffolk; Daudid Howart, Welchman; Nicolas Phillopes, borne in Waillis; Jasperd Staffurd, Irifchman; Anthony Colenis, borne (in Tregwne) in Cornel-scyre,<sup>7</sup> in England; and Abrahame Mathie, Inglichman.

Dilaitit of the crymes of PIRACIE, contenit in thair Dittay, viz.

<sup>1</sup> *Mazer*, or drinking cup. Mazers were usually, of old, made of the maple-tree. <sup>2</sup> The sentence is not recorded. <sup>3</sup> Ewe-sheep. <sup>4</sup> Without farther sentence or trial. <sup>5</sup> The usual punishment of death inflicted upon women for theft, &c. In cases of Treason they were beheaded—and for Murder, Witchcraft, &c. burning at the stake was adjudged. It seems to have been then considered barbarous, as well as indelicate, to *hang* females, for any crime. <sup>6</sup> Most probably Lowestoffe, Suffolk, which was likely pronounced *Loves* or *Lewes*, by popular corruption. <sup>7</sup> Tregony, in the county of Cornwall, navigable by barges from Falmouth.



FORSAMEKILL as from 3owr verrie 3outh, as pernicious and wicket Impes of the Devill, being gevin ower to all soirtis of villaneis, robereis, and oppreffiones, nawayis to be allowed within any Christiane cowmone-welth, schaiking af all lauchfull tredis and callingis, but<sup>1</sup> feir of God, reuerence to the Kingis Maiestie or his hienes lawis, 3e betuik 3our selfis to pat damnable tred of Pirracie, as rooges, thevis, and sea-robberis, pillieing<sup>2</sup> and oppreffing all maner of people, of quhatfumeuir natioun or cuntrie, cuming within þe compas of 3our mercieles power : And namelie, be committing of the perticuler Pirraceis, heirschipis,<sup>3</sup> and barbarus Oppreffiones vnderwritin, quhair of 3e and ilk ane of 3ow ar airt and pairt, in manner as followis. In þe first, 3e and ilk ane of 3ow, being in compagnie with Capitane Cowart, Capitane Barret, and dyuerse vtheris 3our complices, notorious Pirattis, Revearis,<sup>4</sup> and Sea-robberis, in the monethis of Maij and Junij lastbypast, lowfed af Ireland,<sup>5</sup> in þis schip callit þe Pream,<sup>6</sup> quhairin 3e was takin and apprehendit, be Neill M<sup>c</sup>Cloud of Lewis and his clan, &c. ; 3e faillit towardis þe French coist, quhair 3e, be way of Pirracie, faucht, assailzeit, buirdit, and be plane force tuik, þe number of sax schipis and tua boittis; the first pairof, being ane Inglisch schip of þe toun of Bastable;<sup>7</sup> the nixt, ane French schip; the thrid, ane French schip; the fourt, ane Inglisch schip; the fyft, ane pink<sup>8</sup> of Dunkirk; the saxt, ane Dutch schip; and þaireftir, tua fischer boittis; ffurth of þe quhilkis schipis, and speciallie furth of þe French schipis, 3e pilleit, maisterfullie staw,<sup>9</sup> rest and robbed sevin hundreth Indiane hydys, with tua hundreth pundis Sterling of gold and money; and siclyk, tuik þe said Dutche schip, quhilk 3e brocht with 3ow as ane pryfe to Ireland, laidnit with ane hundreth kiftis<sup>10</sup> of succour,<sup>11</sup> tua kiftis of silverplait, ane kift full of ryellis of aucht;<sup>12</sup> togidder with ane box of Jewallis, the box being of filuer and moþer-of-perle, of tua fute lang, and coverit with reid crammasie veluet, in þe quhilk was four baifer-stanes,<sup>13</sup> with certane bloode-stanes and dyuerse dyamontis and precious stanes of grit valew. LYK AS, 3e pilleit and robbed furth of Thomas Snellingis bark, in South-Hamptoun, tua kiftis of quhyte succour, tua pakis of cannell,<sup>14</sup> ane hundreth littill barrellis of conferves, tua grit barrellis of pepper, fourtene bagis of ginger, ane barrell of cuscheneill<sup>15</sup> of ane hundreth wecht; quhilk box with þe xxix filuer plait, with þe cannell, gynger, pepper, cuscheneill and hydys aboue writtin, 3e turnet out of þe saidis schipis vnto þe Pream, and cayreit þe samyn to þe Lewis,<sup>16</sup> quhair þe samyn was tane, within this present schip, be þe Hieland men. LYK AS, 3e, in þe monethis

<sup>1</sup> Without.    <sup>2</sup> Pillaging.    <sup>3</sup> Plunderings.    <sup>4</sup> Persons who live by plunder, who bereave others by violence of their property.    <sup>5</sup> Loosed and set sail off the coast of Ireland.    <sup>6</sup> Priam?  
<sup>7</sup> Barnstable, in Devonshire.    <sup>8</sup> A small ship built with a round stern, the bends and ribs compassing so as that her sides bulge out very much.—Bailey.    <sup>9</sup> Stole.    <sup>10</sup> Chests, boxes.  
<sup>11</sup> Sugar.    <sup>12</sup> Rials, or Pieces of eight.    <sup>13</sup> Bezoar-stones, supposed to be an antidote against poison.    <sup>14</sup> Cinnamon.    <sup>15</sup> Cochineal, a scarlet dye.    <sup>16</sup> The Island of Lewis, one of the Western Islands of Scotland, the property of the Clan M<sup>c</sup>Leod.



foirfaidis, pilleit and robbed furth of þe said Dutche schip, and Inglis schipis, þair victuallis, faillis and men, quhome 3e compellit to serue 3ow, as slaves, in all serueill and slauisch exerceiffes; and brocht the said Pink to the Blak-rok, in Ireland,<sup>1</sup> quhair þe faidis Capitane Barrett and Capitane Cowart, with nyntene of þair company, past on schoir, and was þair suppryset; þe said Pink tane and apprehended be certane boittis with men that come af þe schoir: And 3e, for feir of apprehensioun, eftir ane combat fell out betwix 3ow, þe said Capitane Love, and þe skipper of the schip callit þe Pream, louset out of þat raid,<sup>2</sup> and come with ane sutherlie wynd to the Lewis, quhair 3e tuik and apprehendit Thomas Flemyng (Richiesone) in Anstruper, and his schip, and ane Flemische busche,<sup>3</sup> out of þe quhilk busche 3e tuik fyve Flemnyngis, and pat in hir fyve of 3our awin companie; quhilk þaireftir, be storme of wedder, was seperat frome 3ow and drevyn to Schyteland, quhair þai landit, and detenit þe said Thomas Richiesone and his schip with 3ow, to be 3our gaird in the Lewis; ay and quhill 3e and thay, with the faidis tua schipis, war tane and apprehendit be the Hieland men. AND 3e and ilk ane of 3ow ar airt and pairt of the Robereis and Pirraeis aboue writtin: To þe taikin, 3e and ilk ane of 3ow, at þe leift sum of 3ow, hes Confessit þe haill premisses to be of veritie, be 3our Depositiones. ITEM, for cowmone and notorious Pirattis, Sie-Revaris and Robberis, Spuilziearis<sup>4</sup> and revearis of leill<sup>5</sup> menis guidis, alsweill on sie as land, quhaireuir 3e mycht apprehend þe famyn.

## ASSISA.

James Lokhart of Ley,

Mathow Baillie of Littilgill,<sup>6</sup> &c.

The Aduocat askis instrumentis of the swering of the Assyse: And for verifeing of the Dittay, repeittis thair Depositiones producet.

VERDICT. The Assyse, for the maist part,<sup>7</sup> be the mouth of the said James Lokhart of Ley, chancellor, ffand, pronuncet and declairit the faidis aucht persones on pannell, to be ffylet, culpable and convict of the haill perticular Pirraeis and Robberies perticulerlie fet down in the said Dittay.

DOME. To be tane to ane Gibbet vpone the Sandis of Leyth, within the fflodes-mark, and thair to be hangit quhill thay be deid: And all thair moveabill guidis and geir pertening to thame, and being in thair possessioun the tyme of thair taking, alsweill schip as guidis, geir, jewellis and vtheris being within the famyn, to be escheit and inbrocht to our souerane lordis vse; as culpable and convict of the faidis crymes.

<sup>1</sup> There are two places bearing this name; one in Sligo bay, the other four miles distant from Dublin.

<sup>2</sup> Road-stead.

<sup>3</sup> A Dutch fishing-vessel, called a *buss*.

<sup>4</sup> Spoilers.

<sup>5</sup> Leal,

loyal.

<sup>6</sup> The remainder of the Assise, merchants.

<sup>7</sup> By a marking in the Record, it appears that *seven* of the Assise, including the chancellor, voted for Cleansing or Acquitting the prisoners; probably from some remarkable deficiency in the evidence adduced by the public prosecutor, for popular feeling against the Pirates was very strong; and slender evidence in such instances was, in those days, enough to convict such pannells as those who were at the bar.

## APPENDIX OF PAPERS ILLUSTRATIVE OF TRIALS FOR PIRACY.

I. LETTER *Neill M'cloud of Harris to the Privy Council.*<sup>1</sup>

MY LORDIS of Counfell. My dewitie (and) seruice being rememberit, I ressaunt your l. Lettre frome this beirair, Patrik Greve, desiring me to delyuer him the Inglish Pirott, whiche wes tane be my men, with all hir equippage and apparrelling. Suirlye, my Lordis, I wes not at the takeing thair-of, for had I bene thair, I fould haif fend the said Pirott, as sho wes tane, to his Ma. and Counfell; for fuirlye I delyuerit hir to the said Patrik, with all her munition, as I ressaunt hir my self, to witt, with all hir failhis, towis, and tua aukeris, with xiiij peeple of grite cairte peepleis,<sup>2</sup> with hir Capitane and nyne of his. As for pe rest, thay war slayne at the taking of pe said Pirott, and foure Dutcheis<sup>3</sup> that wer tane be the Capitane, aucht dayis befor the hulk past to the Meane-land; for I wald nocht hald thame as prisounairis, in respect thay war takin perforce be the Capitane, with twa that deceiffit; and I did keepe ane Scottis man in my awin company, to<sup>4</sup> forder aduise. So I rest.

LEWIS, the 16 of October, 1610.

NEILL M'CLOUD.

II. TRIAL of *Thirty English Pirates, before the Vice-Admiral of Scotland, his Deputes, and certain Lords of the Privy Council.*

[THE following remarkable Trial is taken from an Official Extract preserved in the Charter-room of THE CITY OF EDINBURGH; and is presented in this Appendix, in illustration of the extent to which Piracy had been practised, and of the unrelenting severity with which it was universally punished in this country, as well as in England. The Editor begs to acknowledge the ready and liberal access which has been afforded to him, and the polite attention of the Town-Clerk, in facilitating this and former researches. A very interesting LETTER by the Privy Council to the King, which follows, (No. III.) fully explains many minute circumstances, and the course of proceedings adopted by them to check Piracy, and prevent, as far as possible, the recurrence of such atrocious and daring crimes.]

*CURIA JUSTICIARIE ADMIRALITATIS SCOTIÆ, tenta in Pretorio burgi de Edinburghe, coram Domino Jacobo Weymis de Bogie milite, Vice Admirallo Scotiæ, et Magistris Roberto Lermonth et Archibaldo Atchesone Advocatis, Admirallis deputatis ac Supreme Curie dictæ Admiralitatis Presidentibus (presentibus ibidem nonnullis ex nobilissimo Ordine Senatorum, Regiæ Majestati a Secretis Consiliis) vigesimo sexto die mensis Julij, anno Domini millesimo sexcentesimo et decimo. CURIA AFFIRMATA.*

THE quhilk day, in presens of the said Judges, sittand in judgment, Compeirit personallie Maister Robert Cokburne, Advocat, Procuratour Fiscall of the said Admirallie, speciallie constitute, and producet ane Dittay aganes certane Pirates, Sie-thives, and Rivers,<sup>5</sup> to the number efter mentionat; indytting thame and ilk ane of thame vpoune the committing of certane manifest barberous robereis and maisterfull stealthes vpoune the Sie, thir dyvers yeires bygane; togidder with ane Precept of the said Great Admirall of Scotland, summondng ane number of famous perfones to pas vpoune the saidis Pirates thair Affyse; and to determine thairin *affirmativé* or *negativé*, conforme to the said Dittay, as they knew or fould be speirit<sup>6</sup> at thame, vnder the panes thairin contenit; and defyrit justice to be ministrat

<sup>1</sup> From Orig. in *Denmyne Coll. of MSS.* Adv. Library. This Letter is superscribed 'Jxsus.'  
'pieces' mounted on carriages, similar to the heavy ship guns long in use on board of Pirate-vessels.  
Dutchmen.    <sup>4</sup> Until.    <sup>5</sup> *Reivers*; robbers.    <sup>6</sup> Asked; enquired.

<sup>2</sup> Perhaps  
<sup>3</sup> Flemings;

in the said mater, conforme to the lawis and practique of this realme, rait and custome of the said Admirallitie, aganes the persones Criminallis vnderwrittin; quaba, and ilk ane of thame, as they ar efter nominat, enterit and war present vpone pannell. Off the quhilk Dittay and Precept, the tenor followis.

*Followis the tennour of THE DITTAY.*

*INTRANTES.*

CAPT. WM. RANDELL,	Rodger Codgen,	Afchtoun Courtney,
Captane Johnne Parkins,	Richard Robifone,	Robert Croudis,
George Nicolfone,	Alexander Wische,	William Peirfie,
Jacob Janfone,	Johne Frieman,	Thomas Peirfie,
Thomas Thomlene,	Edward Bruz,	Johne Grase,
Robert Em,	William Tailzour,	Robert West,
Andro Rawling,	Johne Web,	Johne Schiphird,
Walter Cornifche,	Richard Robifone,	Francis Richtop,
Cornelius Jacobfone,	Benedict Ferres,	Nicolas Dartnoll,
Johne Williames,	Francis Wallace,	Johne Dawfone,

gea ar indyttit and accufit of your lyffes, That ge and ilk ane of 3ow, in maner, and at þe tymes *respectiue* efter specifeit, haveing schaiken aff all feir of God, and dew obedience to our soverane lord the Kinges Maieftie, within quhais dominions 3ea and everie ane of 3ow war borne, misregairding his Maiefties auctoritie royal, and loveabill lawis of his hienes realmes and kingdomes, and contempnand all humane societie and honest forme of traid and liveing, as becom Cristiane men borne within sua civill kingdomes, quhairin the trew feir of God is professit and þe Holie Evangill preichit; takand 3our selffes to ane maist wyld, barbarous, savage, inhumane, and crowell form of lyff, hes amassit<sup>1</sup> 3our selffes in crewis and vnhappie companeis, in maist hosteill and cruell maner, with all ingyneis of ffyre-wark and vapons invasive, of set purpos and intentionne to live as commoun roberis, thives, murthereris, and opin Pirates be Sie. LYKAS, 3ea and everie ane of 3ow, in maner and at þe tymes efter mentionat, hes committit the wyld, filthie, and abhominable Reiffes, Thiftes, Robereis, and Piraceis efter reherfit, als weill in forren Seis as within his Maiefties awin Seis and watteris, not onlie aganes his Maiefties freindis, confiderates, and allayas, bot also aganes his Maiefties frie leiges, being in thair lauchfull traidis of navigatioun, by lying in thair wayes, and thair, maist cruellie and barberouslie, by way of Thift, opin Reiff, Roberie, commoun and avowit Piracie, perfewing of thame in all hosteill maner, as said is, taking of pair persones captives, puting of thame in feir and dredour of pair lyves, robeing and reiveing of thame of pair schipes and gudis, drowning, slaying, and tortering of pair persones, maist vnmercifullie, ransomyng, and be setting of vthers vpoune schoir in barberous and vncouth<sup>2</sup> pairtes, leif 3our cruell practeiffis and Piraceis sould have bene be thame detectit; and be practeiffing of all vther Sie-Thifts, Robereis and Piraceis, as is particularlie efter deducit. Quhairof 3ea and ilk ane of 3ow ar speciall auctoris, doeris, airt, pairt, red, and counsell; quhilk 3ea can not deny. Quhairby, 3ea and ilk ane of 3ow bes demereit and worthilie incurrit the panes of death, to the terror and exempill of vtheris to attempt þe lyk crymes in tyme cuming; according to the prescript of his Maiefties lawis, and the maist loveabill custome of this kingdome. AND NAMELIE, 3ow *Capitane William Randell*, than Captane of þe Schip callit *THE GRYPHOUND*,<sup>3</sup> vpoun the first day of Julij, or pairby, 1609 3eiris, being at þe Long Iland, in Ireland, ane plaice of resort of all Pirates and opin Roberis, accompaneit with 3ow the saidis *Jacob Janfone, Thomas Thomlene, Roger Codgen, Richard Robifone* alias *Dik Couper, Alexander Wische, Johnne Friman, George Nicolfoun, Edward Bruz, Afchtoun Courtney*, and *Robert Croudis*,

<sup>1</sup> Joined; gathered; confederated.    <sup>2</sup> Strange; unfrequented.    <sup>3</sup> Griffin; or, as it is here emphatically styled, Grip-bound.

with dyveris vtheris your complices, haveing amassit your selfes togidder, with all hosteill maner, within the said schip, as said is; AND zow the said *Capitane Johne Parkins*, being than Captane of the Schip callit pe IRON PRYSE, being lyand in the same Rod<sup>1</sup> of Long Yland, with your fellow Pirates and complices, in the said Schip, bodin and furnischt lykwayes in hosteill maner, as said is, accompanit with *Captane Harvie*, *Captane Cowward* and dyvers vther Pirates, Sie-Roberis, and Reifferis, consultand, lurkand, and waittand vponne pe practeiffing of all kynd of Robereis and Piraceis, vpoun all maner of persones without exceptionne; zea first devydit your selfis, in maner efter following, viz. zea the said *Jacob Janfone*, *Thomas Thomlene*, *Richard Robifone*, *Roger Codgen*, *Alexander Wijche*, *Johne Friman*, *George Nicolfone*, *Edward Bruz*, *Afchtoune Courtney*, and *Robert Croudin*, the said *Captane Williame Randill* being than abuird in the said *Captane Williame Parkins* Schip foirfaid, in the said month of Julij or pairby, at the leift vpoune dyvers days of the samyn moneth, haveing consultit and plattit with the said *Captane Harvie* maist thifteouffie and piraticallie rest and away-tuik pe said *Captane Randellis* Schip, and tuk sail and coms toward the West-waird, vnder the conduct of pe said *Captane Harvie*, quhom zea all, of commoune consent, than choyfit for your Captane; and cumand fordward, in the latter end of pe said moneth of Julij or August, in the said zeir 1609, at pe leift vpoune sum dayes of ze samyn monethis, *respectiue*, zea onbefet,<sup>2</sup> perfewit, and burdit,<sup>3</sup> at pe leift ane great number of zow, at command and be advyse of the rest, ane pur fischar-man and his bot,<sup>4</sup> and robit him of his victuallis and all that he had. AND thairefter, in the said moneth of August, at pe leift vpoune sum dayes pairof, zea the saidis Pirates affoirsaidis onbefet and perfewitt, in all hosteill maner, ane French Bark, cumand from pe New-found-land, quhair ze forceable enterit abuird of pe same, robit and rest pe haill victuallis being pairintill. AND thairefter, in the said moneth of August, October, November, December, or vpoune sum dayis of pe saidis monethis, *respectiue*, zea, haueing returnit bak agane to Ballendrae, vpoune the West pairt of Ireland, and haueing trymit<sup>5</sup> your said Schip, and talking sail and cours to pe Seis for catching of your prayes,<sup>6</sup> vpoune dyvers dayes of pe saidis monethis immediatlie aboue writtin, or sum of thame, zea then forgadderit with *Captane Peirfie*, ane comoune and deiteistabill Pirat and Sie-river, and joyning your self in vnhappie societie with him, vpoune pe thrid day of pe said moneth of November or pairby, or sum dayes of pe samyn, being aff and on with the North Cap,<sup>7</sup> or neir thairby; and thair, all togidder of on mynd and wickit resolutionne, ayaitting and lurking for catching of your pray, zea the saidis Pirates immediatlie affoirsaidis, forgadderit with ane Schip of Midilburgh callit THE SANCT JOHNE, quhair of Daniell Abeg was maister, being than boun to Lighorne<sup>8</sup> in Italie, and thair zea altogidder being actoris and deid-doeria, airt, pairt, red, and counsell with vtheris, in all hosteill and forceabill maner, invadit and perfewit pe said Schip, buirdit, rest, and variet<sup>9</sup> hir away to the Coast of Barbarie to Sancticruce, quhair zea and everie ane of zow forceable extrudit and pat out pe said *Capitane Harvie*; and haveing electit *Capitane Barrett* to be your Captane, enterit into pe said Dutch pryse, and gave pe said schip callit the Gryphound to pe said *Captane Peirfie* and his company; and pair violentlie tuik *William Sanderis* and *Michaell Paterfone* his boy, with sex mo captiues and prifoneris; and sua deteinitt thame in the said Schip, quhair the said *Captane William Randell* and *Captane Johne Parkins* being arryvit at Sophie in Barbarie with your haill crew, and vicket companie foirfaid, enterit your selfes in societie with pe said *Captane Barrett*, and thair zea all, accompaniet and affittit with the said *Captane Peirfie*, being tua Schipes togidder, in the monethis of December, Januar, Februar, Marche, Apryll, Majj, Junij, at the leift vpoune dyvers and fundrie dayes of the saidis monethis, or sum of thame, past to the West Yles,<sup>10</sup> quhair zea haveing rancounterit at pe Yle Sanct Michaellis with tuo Englisch Schipes, and pair zea, with all kynd of hosteill maner, invadit and perfewit the saidis tua Schipes, buirdit thame, and rest and robit thame of pair haill victuallis, and vther furnitur being pairintill. LYKAS, also ze pe saidis Pirates immediatlie aboue namet, in the saidis monethis of December, Januar, Februar, March, Apryll, Majj,

<sup>1</sup> Road; road-stead.    <sup>2</sup> Attacked; beset.    <sup>3</sup> Boarded.    <sup>4</sup> Boat.    <sup>5</sup> Trimmed; refitted.    <sup>6</sup> Prey; booty.    <sup>7</sup> The North Cape.    <sup>8</sup> Bound for Leghorn.    <sup>9</sup> Wore away; varied her course, &c.    <sup>10</sup> The Azores.

Junij lastbypast, at pe leift vpoune sum or dyveris dayes pairof *respectiué*, zea, being boune altogidder to pe North Cap, and haveing forgadderit and met with ane French Schip, zea all and everie ane of zow, actoris, airt and pairt with vthers, maift cruellie invadit and perfewit an French Schip, callit . . . . .,<sup>1</sup> quhilk ze violentlie manit and buirdit, rest and cariet hir away, and maid pe haill cumpanie and trew men being pairintill zour prifoneris and captives. AND siclyk, vpoune pe nixt day pairefter, being vpoune sum dayes of pe saidis monethis *respectiué*, at that same plaice, or neir by to pe North Cap, zea haveing forgadderit with ane Dutch Prem, zea altogidder being actoris, airt and pairt with vtheris, in all hosteill maner, invadit and perfewit pe said Schip, manit and buirdit hir, tuik all her men and companie captives and prifoneris, and brocht pe said Schip, with hir haill laidnyng, gudis and geir, to pe Cost of Ireland, at pe said Long Yland; in the quhilk journey, zea the said *Robert Em* was present, and voluntarie enterit in thair companie, and remanit with thame senfyne, in all pair roberis. AT the quhilk Long Yland, in the saidis monethis of December, Januar, Februar, March, Apryll, Maij, Junij, or sum dayes of pe saidis monethis *respectiué*, haveing strukin sail and cassin anchor, and thair zow the saidis *William Peirse, Thomas Peirse, Johne Williames* and *Nicoll Dartnoll*, being thair present, vpoune pe schoir, as maisterles men and vagaboundis, cumiug of set purpos from Londoune to Ireland to pe said Long Yland, being ane comoune plaice of resort of all Pirates and Roberis to enter in the wickit fellowchip of Roberie, zea all, of zour awin voluntar accord, and of devyce and plat foirsaid, com to pe said schip, quhairin the said *Captane Parkins, Captane Randell*, and pair wickit companie wer, and enterit in the said schip callit pe Dutch Pryfe, as affisteris with pe foirsaidis vther Pirates; AND haveing, in pe saidis monethis *respectiué* aboue writtin, or sum dayes pairof, louffit and maid sail thairfra, vpoune pe same Cost of Ireland, zea altogidder forgadderit with tua French schipes, and pair, in all hosteill maner, as said is, maift cruellie invadit and perfewit pe saidis tua French Schipis and pair companie, and violentlie buirdit thame, rest, and robit, and pillied<sup>2</sup> thame, and away-tuik pe saidis Schipes, with pe haill gudis and geir being pairintill; and pat pe haill men and companie on schoir, in findrie vncouth and barberous pairtes, to pe mercie of pe Seis; AND thairefter, zea all, the foirsaidis Pirates and zour complices, in the saidis monethis of December, Januar, Februar, March, Appryll, Maij, Junij, and Julij instant, vpoune sum or mae days of pe saidis monethis *respectiué*, be storme of wedder being driven to pe said Long Yland, and thair haveing cassin anchor, and haveing met and forgadderit, consultit, plattit and devysit with *Captane Effon, Captane Bischop*, and vther Pirates and Sie-Roberis; In this mene tyme, zow the said *Robert Wast, Walter Cornishe, William Tailzour, Francis Wallace, Francis Richtop, Cornelius Jacobson, Johne Schipherd, Richard Robison*, callit Dik pe Hoyfer, *Johne Gryse, Andrew Rawling, Johne Web, Benedict Ferres*, and *Johne Dausjoune*, enterit in societie and assistance with pe saidis *Captane Parkins* and *Captane Randell*, and pe rest of pair wicket crew, of zour awin voluntar accord, zea being all maisterles men and vagaboundis, as said is. LYKEAS, vpoune sum of pe dayes of pe saidis monethis *respectiué* abovewrittin, zea louffit all togidder, and tuk sail fra the said Long Yland, and cam in zour cours to pe Cost of Norroway; and thair, haueing foirgadderit with ane Flemis schip, being laidnit than with cornes, and thair zea, in all hosteill forme and maner, as said is, enterit abuird of pe said schip, tuik hir and hir haill laydnyng, gudis and geir, and robit hir of hir curceabill<sup>3</sup> gudis being pairintill, and detenit pe said schip in zour companie captive and prifoner be pe space of four dayes or pairby. AND SICLYK, in the saidis monethis of December, Januar, Februar, March, Appryll, Maij, Junij, and Julij instant, and vpoune sum or vther dayes of pe saidis monethis *respectiué*, zea all, persisting in zour vngodlie and deteifabill traid of lyff, haveing foirgadderit vpoune pe same Cost of Norroway, with ane Dutch Schip, callit . . . . .,<sup>4</sup> zea, being actouris, doeris, airt, pairt, red and counsell with vtheris, in all hosteill maner, as said is, violentlie perfewit and enterit abuird, manit and tuik pe said schip and her haill cumpany, as prifoneris and captives, and made ane pryfe of pe famyn. AND ALS, zow, pe foirsaidis Pirates, in the monethis

<sup>1</sup> The name is left blank.<sup>2</sup> Pillaged; plundered.<sup>3</sup> Merchantable; staple.<sup>4</sup> Left blank.

immediatly affairfaidis, at þe leift vponne sum or findrie dayes of þe samyn, continewallie lurkand and awaiting for 3our pray, haveing foirgadderit vponne þe Coft of Norroway with tua Dutch schipes, quhairof þe ane was ane Schip of Danskene, quhilk Schip 3ea all as actoris, doeris, airt, pairt, red and counsell with vtheris, in all hostell forme invadit and perfewit, as faid is, buirdit þe same, robit and strypit þe hail companie being pairintill off thair gudis and geir, rest and tuk out of þe faid Schip of Danskene tua peice of ordinance. AND LYKWAYES, in the faidis monethis of December, Januar, Februar, Marche, Appryll, Maij, Junij and Julij instant, or vpoun sum or vther dayes of þe faidis monethis *respectiué*, 3ea, the foirfaidis Pirates and Sie-Thives and Rivers, being actores, doeris, airt, pairt, red and counsell with vtheris, haveing foirgadderit vponne þe Coft of Zetland, within this Kingdome, with ane Carvall of Zermouth, quhairof Mr Muriall was maister, and in all hosteill forme, as faid is, perfewit and invadit þe faid schip, as faid is, robit and away-tuik furth þairof, fra the faid Mr Muriall tuentie-fyve pund striviling; and from tua Falconeris, being passingeris boune to Norroway for bying of halkis,<sup>1</sup> four pund striviling; and thairwithall tuik Johne Colman and Peter Inkiping furth þairof, as captives and prissoneris with 3ow; and cariet thame quhair 3e pleaffit. AND ALSO, in the faidis monethis *respectiué* immediatlie above writtin, and vponne sum dayes thairof, lurking and awaiting continewallie for the compassing and catching of 3our pray, vponne trew subiectes, 3ea haveing sene and foirgadderit with ane Bark of Cathnes, vponne þe Coft of Zetland, quhairof . . . . was maister, 3ea the foirfaidis Pirates, at þe leift þe maist pairt of 3ow, and 3e all as actoris, doeris, airt, pairt, red and counsell with vtheris, vnder cloud and silence of nycht, invadit and perfewit þe faid Bark, buirdit þe samyn, strak and brak vp þe kiftes and vther lokfast lumes<sup>2</sup> being pairintill, robit and tuk furth þairof ane hundreth merk sterling; and tuk furth ane certane number of steikis<sup>3</sup> of braid-claith pertening to þe faid maister, and cariet þe samyn to 3our schipes. AND 3ea and ilk ane of 3ow gat 3our skair<sup>4</sup> of þe faidis robit gudis, and sua; at this selff same tyme. AND vponne þe dayes of þe monethis *respectiué* foirfaidis, haveing 3our cours direct towardis Orknay, thair to have lurkit, landit at þe Castell of Kirkwall, and com to þe toune þairof, quhair 3ea and ilk ane of 3ow, as opin and avowit Pirates and Sie-Roberis, behavit 3our selffis maist barberoullie and bastlie, being eveir and at all tymes drukin, and fechtand amanges 3our selffis, and subiecting and giuing of 3our selffis ovir to all kynd of wyce and villanie. LYKAS, 3e, þe faidis *Robert Croudis*, *Richard Robifone*, callit þe Hoyfier, and *Andro Rawling*, in 3our madd and drukin humoris, persisting than in 3our accustomit traid of Piracie, violentlie and perforce enterit and buirdit ane bark pertening to my Lord Erll of Orknay, lyand vponne þe schoir, off plane plat and intentionne to have robit, spolziet, and rest hir; quhair 3e was, in that attempt, tane and apprehendit. LYKAS, 3e, þe foirfaidis Pirates present on pannell, and ilk ane of 3ow, war thair lykwayes tane and aprehendit with the faid Dutch Schip, being laidin with hydys, leid, canon, arteilzerie and vther furnitur; and 3ea and ilk ane of 3ow ar actouris, doeris, airt, pairt, red and counsell of þe samyn cryme, and of all and findrie þe premisses; As 3e and ilk ane of 3ow can nocht deny, and ar all comoune Roberis, Thives, and Rivers, auld and new.

*Followis the tenor of the PRECEPT.*

LUDOUIK DUX OF LENNOX, Erll of Darnlie, Lord Torboltoune, Methvene, and Obigney, &c. Great Admirall of Scotland: To our Louittis, &c. [It is unnecessary, in this place, to insert the Precept of Executions at length, which are in common form.]

QUHILK Dittay and Precept affairnamet being productit, in prefens of the faidis Judges, and the foirfaidis hail Pirates and Criminallis indytit, compeirand and enterand vponne pannell, as faid is, the faid Procuratour Fiscall askit instrumentis and Act of Court thairvponne: And than desyrit the faidis Criminallis to be put to the knowlege of ane Affyse; and for that effect desyrit the faid Affyse to be callit, and the foirfaid Dittay red, as is aboue-ceaut,<sup>5</sup> in prefens of the pannell and perfones of Affyse;

<sup>1</sup> Norway was celebrated for the best breeds of falcons, &c., for the sport of hawking, then so much in vogue.  
<sup>2</sup> Literally, *looms*; implying lockers, chests, &c. in which valuable goods and money were stowed away.   <sup>3</sup> Webs; pieces.  
<sup>4</sup> Share, portion.   <sup>5</sup> Perhaps for 'conceavit.'

quilk defyre the saidis Judges thocht reffonabill, and thairfoir Ordanit the officeris of Court to call the names of the said Affyse, efter the Clerkis publict nominatioun, conforme to the Precept aboue writtin, direct thairanent ; quhairof the names compeirand followis.

## NOMINA ASSISÆ.

John Landis, merchand,	James Borthuik, merchand,	Williame Duff, skiper,
Robert Halyburtoun, merchand,	Johne Mairtene elder, skiper,	Williame Ridoch, skiper,
Johne Maffoune, merchand,	Johne Mairtene younger, skiper,	Johne Watfone, skiper,
Johne Mitchelhill, merchand,	William Weir, skiper,	Johne Moir, skiper,
Johne Hutchesone, merchand,	Johne Wilfonne, skiper,	William Mureheid, merchand.

Quhilkis perfonis of Affyse being reffaut, be consent of the hail Criminallis being vpoune the pannell, quha declairit they had na obijectioun nor imputatioun againes thame, nor na caus quhy to repell and fet thame or ony of thame: In the quhilk respect, the foirfaidis Judges tuik the saidis perfonis of Affyse and ilk ane of thame deiplic and solemplic suorne, vpon thair greit aithes,<sup>1</sup> that they and ilk ane of thame fuld leill fuith say and na fuith conceill, for na thing that be mycht, bot to determine verilie vpoune the said Indytment, be thair pairt of Hevin, and as they fould anfuer to God at the dreadfull day of Judgement: Quha instantlie passit vpoune the said Affyse. And thairefter caufit reid the foirfaid Dittay to the pannell, in presence of the said Affyse, in maner and conforme to the particular tenour and contentes aboue mentionat. Quhilk Dittay being judiciallic red, with findrie taikins<sup>2</sup> and informatiounis of everie ane of thair giltines; compeirit the hail perfonis of the pannell, and heirand the samyn, being accusit thairvpoune, could schaw na lauchfull nor reffounabill caus of thair innocencie of the saidis crymes layd to thair charge; ilk ane of thame for thair awin pairtes, conforme to the said Dittay, and according to thair awin Depositionis red to thame, and in presens of the said Affyse, quhilk they Confessit; and referrit thame to the Tryell of the said Affyse. Quhairvpoune the said Procuratour Fiscall askit instrumentis and Act of Court; and desyrit the said Affyse mycht be removet out of Judgement, and to be incloist, to the effect they mycht give thair Verdict and determinatioun thairintill, according to thair aithes alredie solemplic gevin in maner foirfaid.

VERDICT. Quhilkis perfonis of Affyse, being removit out of Judgement and incloist, electit and choyfit all with ane consent, the said James Borthuik, as chancellor of the said Affyse; and efter lang deliberatioun, reiding of the said Dittay, togidder with the said perfonis Criminallis thair Depositionis, and vther notices and informatiounis, and als with thair Confessioun vpoune pannell, being ryplie and at lenth advyfit, and all aggriand in ane voice, but discrepance or varriance, be the mouth of the said James Borthuik, chancellar, re-enterand agane in Judgment, Decernit and Declairit, and Decernes and Declaires, the foirnamet hail perfonis Criminallis on pannell, and everie ane of thame, to be GILTIE, airt and pairt of the foirfaidis Robereis and crymes contenit in the said Dittay, and Fyllit and Fyllis thame and everie ane of thame thairof, and (that) of everie heid, point, and circumstance of the said Dittay.—Quhairvpoune the said Procuratour Fiscall lykwayes askit instrumentis; and Remittit the Dome to the saidis Judges.

*Followis THE DOME,*

*At command of the saidis Judges, be the mouth of Patrick Leveraunce thair Demyster of Court.*

FORSAMEKILL as the saidis *Captane William Randell, &c.*,<sup>3</sup> present on pannell, and everie ane of thame, ar ffund, be ane conding Affyse, Giltie, art and pairt of the committing of certane vyld Robereis, Piraceis, and Reiffis, contenit in the said Dittay immediatlie befor writtin, quhairfoir I adiudge thame and ilk ane of thame to be tane to the Peir and fchoir of Leith, within the Sie-fluid and mark thairof, and thair to be Hangit vpoune ane gibbett till they be deid. And Ordanes the foirfaid greit Dutche

<sup>1</sup> This singular form of oath illustrates in the strbgeest maner the anomalous office of a Jury-man, in those times; they being called as *witnesses* of the facts charged against the pannel, as well as Assisors, as has formerly been explained. <sup>2</sup> Proofs; evidence. <sup>3</sup> The names of all the prisoners recited here.



Schip callit the Pryfe,<sup>1</sup> haill arteilzirie, ornamentis and apperrelling thairof, hydys, leid, and vther furnitur being thairintill, apprehendit with thame, and all vtheris moveabill gudis and geir, to be efcheat and inbrocht to our souerane lordis use (but preudeice to my Lord Admerall of the efcheates of Pirates and Sie-Roberis in tyme cuming). And this I give for Dome.

EXTRACTUM per me, Joannem Young, Scribam et Clericum Principalem dictæ Admiralitatis Scotiæ, sub meis signo et subscriptione manualibus. (L. S.<sup>2</sup>) JOANNES YOUNG.

### III. LETTER, the Privy Council of Scotland to THE KING, 'anent the Ingliſche Pyratis,'<sup>3</sup> (Captains Randall and Parkins, &c.)

MOST GRATIOUS AND SACRED SOUERANE,

VPOUNE advertifment gevin to ws that some Pirott ſchippis had bene ſeene in the mouthe of the Firth,<sup>4</sup> and the ſame ſecundeit by the complaintes of a grite many of your Ma<sup>tie</sup>s ſubiectis, bothe on the Weſt Coaſt and heir on the Eift, of the vnquietnes and haſaird of paſſage, by reaſſoun of the frequencie of Engliſche Pirottis on the ſea; and ſpeciallie, of one of Caithnes, who, in his paſſing home, wes robd of all that he had: And boith by him, and the repoirt of otheris who mett ſome of theſe Pirottis on the ſea, being certifyed, that they wer gone toward the Orknay Ylandis, We, being moved and grevit with the complaints of your Ma<sup>ties</sup> poore people, and being loathe to impesche<sup>5</sup> your Ma<sup>tie</sup>s vtheris weyghtie affairis, with the aduertifment thairof, whill<sup>6</sup> we had done ſome thing thairin oure ſelfis; and wilbeing that, in a mater of this qualite, (admitting hardlie ony delay, wherin the omitting of the preſent occaſioun nicht do much harme,) your Ma<sup>tie</sup> ſould rather find ws cairfull of our dewytie, then vtherwayes remiſſe or negligent, we did heirupoun preſentlie direct thrie of the beſt ſchippis at that tyme within the harbour of Leithe, weill mannit and furneiſſit with all weirlyke prouifion (your Ma<sup>ties</sup> awne ſchip at that tyme not being arryved heir.) And hauing gevin vnto thame expres directionn and charge to make ſearche, and to follow quhiddelſoeuir thay could apprehend thoſe Pirottis; and our Schippis hauing mett with thame vpoun the coaſt of the Mayne-land of Orknay, thay hauing tua failis, the one a Schip aboue 200, the vther a Choife-pinnace<sup>7</sup> of 100 (twñ of birth,<sup>8</sup>) efter a bloodie conflict, in whiche tua of oure men wer killed and findrie hurte; the Pinnace, being excellent in failling, maid choife rather by ſicht to ſaife hir ſelff, then, by ony langer ſtay, to abyde the haſard of taking: and albeit ſho wes followed for a ſpace, yitt did ſho ſtill gayne ground. Whereupoun, the perſuite being left of, the vther gritt Schip in the meane quhyle being boordit, wes broght away be oure ſchippis; and in hir wer takin to the number of threttie able men, befydes ſome few priſounaris, whom theſe Pirottis did keepe aboorde. Who, after thay had bene dewlie and ſeueral tymes examined, at laſt all theſe threttie wer putt to thair tryell and found guiltye: Of whiche number xxvij ar execute and putt to deathe; of whome thair were tua Capitaines, by name Capitaine Perkyne and Capitaine Randell. The other thrie are repryvit and continewit vntill ſuche tyme as your Ma<sup>tie</sup>s pleaſour be knowne, in regairde that thair is hoip, by thair forder examinatioun, to learne oute ſome thingis tuitcheing the eſtair. We haif already diſcouerit ſome mater of abuſe, hoiping to

<sup>1</sup> There is in the Charter-room of the city of Edinburgh, from which the above remarkable Trial has been taken, a GIFT OF THE ESCHEAT of the Dutch Ship noticed in the foregoing 'Dome,' paſſing under the Privy Seal, and dated at Edinburgh, Aug. 7, 1610, in favour of 'Thomas Young, induellar in oure burgh of Edinburgh, his airis and assignayes ane or ma;' which narrates that theſe Pirates 'wer juſtlie and worthelie execute to the dead, vpoun the morne thalreſtir.'

<sup>2</sup> The ancient Seal of the Court of Admiralty is remarkable, having a Veſſel of War in full ſail, with the arms of Scotland, England, and Ireland, on three ſhields introduced in the centre of the ſmaller ſails; and on the main-ſail is a large eſcutcheon of pretence, containing the quartered arms of the Duke of Lennox, as Hereditary Lord High Admiral, with the motto, 'KEIP.' The legend is, \* SIGILLVM. OFFICII. ADMIRALITATIS. REGNI. SCOTIÆ.'

<sup>3</sup> From the Original, preſerved in the *Denmyne MSS.* Adv. Library, A. 2. 40. It is alſo tranſcribed by the Earl of Haddington, in his *MS. Collection*, General Register Houſe, Edinburgh, but probably from an imperfect ſcroll or copy, as there are many minute variations. The moſt important of theſe are noted here.

<sup>4</sup> Of Forth. <sup>5</sup> Fr.; hindrance. <sup>6</sup> Until. <sup>7</sup> Called a 'Chace-pinnace' in *Had. MS.* <sup>8</sup> Added in *Had. MS.*

find more oute, wherby this grite increffe of Piracye hathe bene by some, far aganis thair deuyteis to your Ma<sup>tie</sup>, too muche fosterit and mantenit; bot of the particularis of the same, as vnwilling to commit thame to wryte, your Ma<sup>tie</sup> falbe certified at lenth by your Maiesteis Secretarype of this Kingdome, who is schortlie to mak his repair thither. In the mean quhyle, the perfonis of those men whose lyves ar spaired falbe faiflie kept and maid furthcomeand, ather for forder examinatioun heir, or; vpoun knowlege of your Maiesteis pleafour, falbe broght thither to be tryed. Thair wer also mony pregnant presumpcionis that howeur these men now spairit wer deprehendit in the societie of the rest, that the same wes more by enforcement then by consent, which wes<sup>1</sup> affirmed by the most parte of thame who war executed. This company of Pirottis did interteyne one whome they did call thair Perfoune, for saying of Prayeris to thame twyfe a day, who belyke ather wearyed of his cure, or fearing<sup>2</sup> the enfeuing (dainger and<sup>3</sup>) destructioun of his flock, had foirfaikin thame in Orknay, and priuelie convoying him self over land, wes at lenthe descryed and deprehendit in the burgh of Dundie; and being broght hither, did so cleirly confes and gif evidence aganis the rest; and, being confronted, broght mony of thame to confessioun. Thair being heirwith some likliehoode that his stay with thame had bene by constraint, we haif heirvpoun, in lyke soirt, continewit him frome being putt to tryall vntill your Ma<sup>ties</sup> pleafour be knowne.

We do vnderstand, by aduertisement from Orknay, that thair be some fyve or sex Pirottis mo deprehendit; bot quidder thay be of this company or not, it is vncertane; alwayes, we do expect thame by the first occasioun of any schipping that dothe come from thense. And since none of ws ar ignorant, that by reafonne of aduertisements, not onlie frome all the corneris of your Ma<sup>ties</sup> awin dominionis, bot alsua frome foreyne pairtis, your Ma<sup>tie</sup> hes newer almost any intermissioun or respitt, (your Maiestie, by Godis Providence and to your subiectis vnspeakable happynes, being the great Occeane vnto whiche all revaris and brookis do rinne,) as in dewytye we could not omitt to acquent your Maiestie hierwith, so the feir of troubling your Maiestie with too long a Letter hathe moved ws to refer the particular<sup>4</sup> relatioun of all the incidentis in this busynes to a more proper occasioun. And concerning all sache other directionis as it pleifit your Ma<sup>tie</sup>, ather by Commiffioun sent be the Lord Burley, or by Letteris wryttin vnto ony of ws, concerning the Marques of Huntley, the Erll of Errole, or ony vther mater worthie of the advertising, your Maiestie falbe certified<sup>5</sup> of all these oure procedingis by the Secretarie, at his repair be your Maiestie. And so, praying God to blisse your Maiestie with a long, happy, and prosperous reigune, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and feruitouris,

EDINBURGH, 27 July, 1610.

DUNFERMELINE. DUMBAR.

To THE KING his most sacred and excellent Maiestie, &c.

#### IV. EXTRACT from *Minutes of Privy Council Proceedings*,<sup>6</sup> Jul. 4, 1615.

THERE is one CAPTANE MAISONNE of *Lyne*, with fyve or sex others of his companye, in warde within the Tolbuith of Edinburgh, upon verie probable suspitiounes of Piracye. The estate of the cause is this. *Captane Mason*, some foure yeeres fence, or therby, having purchasid a yeere Tak<sup>7</sup> of the Assyise-hering<sup>8</sup> of the Northe Ylles; and vpoun occasion of his haunting of the Ylles that yeere, having enterred in some acquentance with the Bishope of the Ylles, and haveing transported him to and from Yreland,<sup>9</sup> he procures of the Bishop, in the moneth of Apryll, 1612, a Lease of a lytle Ylle called Rona; bot neuer com to tak possession of the Ylle, nor to try the worth thairof, whill<sup>10</sup> this yeere.

<sup>1</sup> The *Had. MS.* reads, 'And the same also.'    <sup>2</sup> 'Foirseing,' in the *Had. MS.*    <sup>3</sup> These words added in the *Had. MS.*    <sup>4</sup> 'Plaine,' in *Had. MS.*    <sup>5</sup> 'Aduertysed,' in *Had. MS.*    <sup>6</sup> *Denmylne MSS.* Advocates' Library, A. 4. 15.    <sup>7</sup> One year's lease.    <sup>8</sup> A tax paid to the Crown upon the quantity of herrings caught at the fishery; which, owing to the expense of collection, was usually farmed out annually.    <sup>9</sup> Andrew Knox, Bishop of the Isles, and Abbot of Icolmkill, had livings in Ireland. He was translated to the see of Raphoe, in Ireland, anno 1622.    <sup>10</sup> Until.

Has a pretty bark, wherewith this last yeere bygone he made fundrye voyages betweene Amsterdame and Lyne, haveing none in equyppage<sup>1</sup> but sex perfoncs. This yeere, when he resolues to come to our Ylles, he takes in at Yairmouth one CAPTAN WILMAN, who had beene a notable Pirott, and had obtained his Maiesteis Remission, with two of his brether: And pretending, as he affermes, to come to Rona to have taken possession of the Ylle, and to have tryed the fisheing there, (althoght he was nouthcr prouided with salt, trees, victualles, nor no kynd of outredd for the fisheing,) he comes first to Orknay, where he takes in other two perfoncs, the one to be a cook and the other to be a pyllot, and makes his adreafts for Rona; but the winds being contrarious, and not darring tak land there, he comes about the Ylles to Mull, where he stayed foure dayes. In which tyme, there comes to M<sup>c</sup>CLEANE a dcrection and Commiffion from the Counfall, for the perfute of Coll M<sup>c</sup>Gillefpik and the others Rebels of Ila.<sup>2</sup> Captane Mafone being acquented heerwith, he ingyres him self in that seruice, geveand M<sup>c</sup>claine to vnderftand that he would hafard his perfon and fhip in perfute of the Rebelles, vpon hope of his Ma<sup>ties</sup> confideratioune and rewarde for his seruice. M<sup>c</sup>claine geveand trust to his discourffis, encourages him to follow that enterpryse; and furnifhes him with some victuales, for he had lytle or non of his owne: And fo, leaving M<sup>c</sup>claine his country, he comes bak againe that fame way he went, towards Rona; and haveing stayed there some half a day, and getting information that the Rebelles wer in the Lews, he dcrectis his courfe from that towards Orknay, to tak in mo men, as he pretended, for the better ftrenthening of him against the Rebelles. In Orknay he takcs in sex men, which made his number to be feavintenth perfoncs. And whereas he should have gone to the Lews, he directes his courfe for Zetland, and from that to the coast of Norroway, where, going into a bay under a craig,<sup>3</sup> and lying there at ankar couertlie vnder the craig, there comes by a fhip of Copmanhouen.<sup>4</sup> Vpon the fight wherof, Mafones fhip immediatlie louses, followes the Copmanhouen fhip, takes her, and bringes her in to the bay, takes the wholl equippage<sup>5</sup> oute of her, which wer four or fyve perfoncs, and stowes thame in Mafones fhip.

Captane Mafone, to excuife him felue of this deide, makes this difcourfe, that when he came to Zetland, Captane Wilman perfaveing thcr voyage lyk to proof fruitles, there was no appearance of the Rebelles, he layed to his charge, and earnestlie delt with him to go feek some adventur by fea; and becaus he refufed to yeeld to fuch a vnhoneft and vnlawfull motion, Captane Wilman stirred vp the wholl companye of his fhip againeft him, vsurped vpon him the charge and commandement of the fhip, depnyved him of all charge, and took him aganeft his will to Norroway; and when the pryife was perfewed, stowed him beneth—and at laft patt him in the pryife, whiche wes a ould lek<sup>6</sup> fhip, with three of his company that would not yeeld to follow Wilman, spoiled him of his owne fhip, which wes a tight and good fhip, and fett him to the fea, to the hafard and perrell of his lyf.

For difcouerie and tryeing of the troth of this difcourfes, the Counfall hes been verie carefull in the examinatioun of fuch of Captane Mafones companye as ar broght heere, and by there examination it is funden that (there) wes neuer any mater of conteftation betweene Maifone and Wilman, that Willman stirred vp the companye againeft Maifone; and that there was neuer once fuch motion in the fhip, concerning that mater; that Mafone difwaded none of his companye to joyne with Wilman, nor neuer told ony of thame that Wilman had a purpofe for Pirracye; but that thay aggreid verie well in all thingis. And the Maifter of the Copmanhouene fhip fayd planelie, that Mafone wes aboue,<sup>7</sup> in his fhip, when he wes perfewed and taken; and when his fhip wes broght in to the bay and fastened to the other fhip, that Mafone enterred in his fhip, and that Wilman and he fuped togidder and made mirrye vpon the prouifion that wes in his fhip, and drank out his wyne and his beir; and that Mafone lay all night in the pryife, and vpon the morn called for the Maifter of the pryife, and tould him that he behoofed to tak his fhip, feeing Wilman had taken his fhip; and fayes, that vpon the morne,

<sup>1</sup> Crew.      <sup>2</sup> See Papers appended to the Trial of Sir James Makconell, III. 1, &c.      <sup>3</sup> Rock.      <sup>4</sup> The common name then in use for Copenhagen.      <sup>5</sup> Crew.      <sup>6</sup> Leaky.      <sup>7</sup> On deck.

both shippes loufe and come togidder the space of foure myles, to witt, Maifon in the pryife, and Wilman with the wholl companyee, except three men and a boy, in Mafones fhip; and when they finder, there wes gryte mirth amonges thame, with drinking mouy good nightis; and the Maifter of the pryife faves forder, that his fhip is iij<sup>c</sup> dollouris bettar nor<sup>1</sup> Mafones fhip.

The two companyees being finder, Captane Mafone come bak againe till Orknay in the Copmanhouen pryife, of purpofe, as appeires, to have taken in fome ma<sup>2</sup> men; but beeing guyltie, in his owne confcience, of Pirracye, he durft not tak land, but took him to the fea, and by storme of wedder wes dryven upoun the coaft of Caithnes; and being lyand there, in a harborry, he wes boarded by a fone of *the Larde of Markles*, and he and his foure men were taken and fend heere.

Captan Wilman in Mafones fhip pafte bak againe to that fame bay from which they loufed, and the nixt morning took a fhip of Ruftok, loadned with fifhes, and fet the wholl companyee of the fhip, being nyne in nomber, vpon a rock in the fea, and kept onlie one with thame; and Wilman come with the pryife and Mafones fhip till Orkney vpon a Sunday, and he pafte to land and wes enterteaned by the country people, and fome come aboorde and wer mirrie with him. Vpon the morn, being Mononday, two of *the Lairde of Grymmiffayes* fones, and one *Robert Elphinftoun*, comes aboorde of the pryife, wherin Wilman and his fkippar war both for the tyme; and haveing fome conference and fpeatch with thame, and efpying there ftrengh, they commanded Wilman to rander; and he refuifeing, the youngeft of *Grymmiffayes* fones immediatlie gave him a deadlie ftroak, wherwith he dyed prefentlie; and at that fame infant killed the fkippar by an other ftroak. And fo, the Captane and fkippar being both killed, the reft of the companyee and both fhippes randered. In this meantyme there is a Waughtar lyand in Zetland, attending the Fledes Fleitt<sup>3</sup> at the fifcheing, and being enformed by *Mr Williame Levingftoun* fchiref-depute, that a Pirote with a pryife wes gone by towards Orknay, this Waughtar, refaueing a pylote from the Schiref-depute, followes the Pirote to Orknay, and comes directlie to this fame harborry where the Pirote and the pryife lay, takes thame both and bringes thame to Leyth, faying, that he had a command and directioun from his Maifteris, the Eftates, that what euer Pirrottes he fand in the Scottifhe Seas, he fhould tak thame and prefent thame with there fhippes and goodes to the Kinges Maiefties Counfall here. The Orknay men who killed the Pirrott and his fkippar followed the Waughtar, and greeveouflic complained of the wrong alledged done to thame in taking of the fhippes af there handes, which thay had recouered with the hafard of there lyues; and they alledged that they wanted findrie of there goodes which they had put in the fhippes, they being of purpofe to have broght thame aboute to Leyth. The Captane of the Waughtar excufed him felue, that he knew nothing that they had recouered the fhippes; but believing the fhippes wer fill in the poffeffion of the Pirrottes, he tooke thame and broght thame heere to the Counfall—and tuitching the goodes which they alleged they wanted, the Captane constantlie affermed, and fo did the Orknay Pylote, that the Shiref-depute delynered him, that they wanted not a pennie worth of that which he gott in the fhippes. The Counfall accepted verie well of the Waughtars doings, hes returned him bak, with thankes, and hes propyned<sup>4</sup> him with a coup of lx vnce<sup>5</sup> weight.

Directioun is geven for delyuerie of the Copmanhouene fhip to the ownar, he geveand fome reafonable fatiffacioun to the gentlemen who recovered the fame from Captane Mafone.

Bycaus the owners of the fhip of Ruftok are not heer to refaue there fhip and goodes, and becaus the goodes will not keepe in the fhip, therefor derectioun is geven to roup and fell the wholl goodes beeing within the fhip, and to mak pennie of the fame; to be furth-cumand to the ownaris, whan they fhall come heere; they geveand reafonable fatiffacioun to the gentlemen who recovered the fhip and goodes from the Pirrottes.

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<sup>1</sup> More valuable than.

<sup>2</sup> More.

<sup>3</sup> Flemish Fleet.

<sup>4</sup> Gifted; presented.

<sup>5</sup> Sixty ounces.

**Mutilation and Demembration.**

Dec. 19.—JAMES FORRESTER, sone to vmq<sup>b</sup> James Forrester, ffather-brother to Sir Robert Forrester of Strahenrie, kny<sup>t</sup>.

Dilaitit, accuset, and perfewit be Mr Daid Anderfoun at Ballingarrie, off airt and pairt of the Mutilatioun of the said Mr Daid of his richt airme; committit vpoun the tuentie day of October I<sup>m</sup>.Vj<sup>c</sup>. and nyne yeiris, foiranent<sup>1</sup> the said Mr Daidis duelling-hous dur, at the Kirk of Ballinzerie; vpone sett purpos, prouifioun, and foirthocht fellonie.

The pannell, eftir reiding of the Dittay, acknowlegis the offence; and maift humblie craves God and his Maiestie pardoun, and the pairtie, for the fame; and offeris him self in his Maiesteis Will thairfoir.

VERDICT. The Assyse, in ane voce, be the mouth of Andro Cokburne in Treatoun, chancellor, ffand, pronuncet and declairit the said James, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the said Mutilatioune.

In respect quhairof, the Justice ordanit the said James to be committit to waird within the Tolbuth of Edinburgh, thairin to remane, as ane convict persone, quhill he be advyfet with the Lordis of Secreit Counfall, anent his Dome, to be pronuncet aganis him for the said cryme.

[*Mr Alexander Colvill Justice-Depute.*]

**Chett—Fire-raising—Slaughter—Intercommuning with the Clan Gregor—Fight of Bintoich, &c.**

[THE interest which now attaches to the proscription and subsequent history of the Clan MAC-GREGOR, induces the Editor to prefix a few explanatory remarks to the present Trial; and especially relative to 'THE FECHT' or 'skirmisch' of 'BINTOICHE,' which is taken notice of in the Dittay. The difficulty of obtaining accurate information regarding such proceedings, and the obscurity in which almost all Highland transactions at this period are involved, render this the more necessary; and it is hoped will plead the Editor's apology with those who deem such enquiries uninteresting.

This Fight or Skirmish of Bintoich, then, is likewise known as 'the *Chase of Ranefray*,' having been fought, partly, as would seem, at both places; or more probably the Fight took place at Bintoich, and the Chase or pursuit reached as far as Ranefray. '*The Book of Taymouth*'<sup>2</sup> thus narrates the transaction:—'Attoure, Robert Campbell, second sone to the Laird (of *Glenurquhay*) Sir Duncan, perfewing ane great number of them (*the Clan Gregor*) through the countrie, in end overtuik them in Ranefray, in the Brae of Glenurquhy; quhair he slew Duncan Abrok Makgregor, with his son Gregor in Ardchylie, Dougall Makgregor M<sup>c</sup>Coulchier in Glengyle, with his son Duncan, Charles Makgregor (M<sup>c</sup>) Cane in Bracklie, quha was principallis in that band; and twenty utheris of thair compleifes slain in the chais.' A contemporary historian, Sir Robert Gordon, in his *History of the Earldom of Sutherland*,<sup>3</sup> p. 247, says of this affair, that 'here (meaning at Bintoik, which he had previously mentioned) Robert Campbell, the Laird of Glen-Vrquhie his sone, accompanied with some of the Clanchamron,

<sup>1</sup> Directly before or opposite.      <sup>2</sup> An extremely interesting Family Chronicle, containing valuable notices of Highland History, and illustrating the genealogy of many families in those districts. The Original is in possession of the Noble family of Breadalbane, and, as the Editor has been informed, is likely to be privately printed for the use of THE BANNATTINE CLUB.      <sup>3</sup> This curious work might with much propriety have been styled a *History of Scotland*.

Clanab (M<sup>c</sup>Nabs), and Clanronald, to the number of tuo hundred chofen men, faught againft three score of the Clangregar; in which Conflict tuo of the Clan-Gregar were flain, to wit, Duncan Aberigh, one of the Chieftanes, and his fone Duncan (*Gregor*?) Seaven gentlemen of the Campbell's fyd wer killed ther, though they feemed to have the victorie'

It appears rather singular that the slaughter of one of the ClanGregor, at the very time when that Clan was the subject of Letters of fire and sword, should, by the Government, be held a *crime*; more especially when the MacGregors were again in the very same predicament.]

Mar. 2, 1611.—Johnne M<sup>c</sup>kewin, in Kilbryde; Archibald M<sup>c</sup>ilvoyll M<sup>c</sup>lowrin, Donald M<sup>c</sup>inowie, in Glencho; Duncane Caird M<sup>c</sup>gregour, Patrik M<sup>c</sup>ean Dow M<sup>c</sup>gregour, Allafter Bowie M<sup>c</sup>gregour Clerache, Dougall M<sup>c</sup>gregour Clerache M<sup>c</sup>gregour, Duncane M<sup>c</sup>neill M<sup>c</sup>gregour, [Donald M<sup>c</sup>eandich M<sup>c</sup>gregour,'] Johnne M<sup>c</sup>andro.

Dilaitit, accufet and perfewit be Mr Robert Foullis, fubftitute to Sir Thomas Hammiltoun of Bynnie, kny<sup>t</sup>, Aduocat to our fouerane lord, for his hienes inte-reis, of the crymes *refpectiue* following, viz.—THE faid *Johnne M<sup>c</sup>ewin*, ffor airt and pairt of the thiftious Steilling of tuelf fcheip fra the Barrone M<sup>c</sup>caffan, furth of his landis of Innerthonoling; committit in the moneth of Auguft laft-bypaft 1610 yeiris. ITEM, ffor airt and pairt of the thiftious Steilling of tua gait<sup>2</sup> and ane fcheip fra Adame Colquhoun in Poirt, furth of the landis of Ban-rie, in the moneth of December I<sup>m</sup>.Vj<sup>c</sup>. and fax yeiris. ITEM, ffor airt and pairt of the steilling of ane pair of pleuch-irnes fra Williame Myller in Schennekillis, furth of the landis of Schennekillis, in the moneth of Apryle I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris. ITEM, ffor cownoun Thift and cownone Refset of thift, inputing and outputing of thift, &c. AND for daylie Intercowmoning and keeping cumpanie with the M<sup>c</sup>GREGOURIS, affifting and taking pairt with thame, in all thair thifti-ous deidis, heirfchipis, robreis and oppreffiones, this thre or four yeir bygane.—THE faidis *Archibald M<sup>c</sup>ilvoyll M<sup>c</sup>Lowren*, and *Donald M<sup>c</sup>Innowie*, fervandis to Allafter and Allane M<sup>c</sup>Indowie in Glencho, ffor airt and pairt of the treffona-bill Raifeing of ffyre about Johnne Stewartis hous in the Camrone, in the Len-nox, in the moneth of December laftbypaft; affageing of Duncane, James, and vmq<sup>10</sup> Johnne Stewartis thairintill; AND ffor airt and pairt of the flauchter of the faid vmq<sup>10</sup> Johnne Stewart, at the tyme foirlaid.—THE faid *Duncane Caird M<sup>c</sup>Gregour*, ffor cownone Thift and Refsett of thift, outputing and inputing of thift, &c. AND ffor daylie Intercowmoning and keeping of tryftis and conful-tationes, with *the M<sup>c</sup>Gregouris*, affifting and taking pairt with thame in all and findrie thair thiftis, reiffis, and oppreffiones, committit be thame this thre yeir bygane.—THE faid *Patrik M<sup>c</sup>ean Dowie M<sup>c</sup>Gregour*, ffor being in company with *the M<sup>c</sup>Gregouris*, at the fecht or fkirmifch of Bintoiche, in the moneth of Apryle I<sup>m</sup>.Vj<sup>c</sup>. and four yeiris. AND ffor airt and pairt of the treffonable

<sup>1</sup> 'Tane bak agane to waird, and nocht put to ane Afflyfe.'

<sup>2</sup> Goats.

Raifeing of ffyre, burning of the Castell of Achallader, and of tuentie houffis in Glenlochie; and for the crewall Slauchter of ffourscoir ky<sup>1</sup> at the said fecht. AND ficklyk, ffor airt and pairt of the Slauchter of vmq<sup>le</sup> Patrik Dow M<sup>c</sup>nab, and ane feruand of the Laird of Glenvrcheis, namet M<sup>c</sup>Layne, baith flane in the said fecht of Bintoich. AND, ffor cowmone Thift, cowmone Refset of thift, outputing and inputing of thift, &c. AND, ffor Intercowmoning and keiping cumpanie with the *M<sup>c</sup>Gregouris*, in all thair wicket deidis, &c.—THE said *Allafter Bowie M<sup>c</sup>Gregour*, ffor Cowmone Thift and cowmone Refset of thift, outputing and inputing of thift, fra land to land, fra cuntrie to cuntrie: AND ffor Intercowmoning and keiping daylie tryftis and conventiones with *the M<sup>c</sup>Gregouris*, and taking plaine pairt with thame in all thair violent and thiftious deidis, thir dyuerse yeiris bygane.—THE said *Dougall M<sup>c</sup>Gregour Clerach M<sup>c</sup>Gregour*, ffor the crewall Slauchter of vmq<sup>le</sup> Gregour M<sup>c</sup>Gregour, sone to vmq<sup>le</sup> Duncane Abroche M<sup>c</sup>Gregour, be schuteing of him with ane arrow behind his bak; committit in August I<sup>m</sup>.Vj<sup>c</sup>. and four yeiris. ITEM, for Intercowmoning with *the M<sup>c</sup>Gregouris*, contrair the tennour of his Maiefteis Acts and Proclamations, at dyuerse tymes, fen the publicatione of the saidis Proclamations.—THE said *Duncane M<sup>c</sup>Neill M<sup>c</sup>Gregour*, ffor cowmone Thift, cowmone Refset of thift, &c. AND als, ffor Intercowmoning with *the M<sup>c</sup>Gregouris*, affifting and plane pairt-taking with thame, in all thair thiftious deidis, thir dyuerse yeiris bygane.—THE said *Johnne M<sup>c</sup>Andro*, ffor airt and pairt of the Burning of Johnne Stewartis hous, and Slauchter of the said vmq<sup>le</sup> Johnne Stewart; committit in the said moneth of December, I<sup>m</sup>.Vj<sup>c</sup>. and ten yeiris; at the leift, for keiping cumpanie with the saidis Archibald M<sup>c</sup>ilvoil M<sup>c</sup>Lauren and Duncane M<sup>c</sup>Innowie, and the remanent perfones thair complices, quha come furth of Glenco, to the doing of the saidis crymes.

## ASSISA.

Johnne Buntene of Ardoche,	Johnne Buchannane,	Williame Colquhoun,
Parlane M <sup>c</sup> Walter of Auchin-	Andro Cuninghame,	Mr Malcolme Colquhoun,
vannell,	Johnne Logane, fear of Drum-	Malcolme Crawford, feruitour
Mungo Buchannane in Tillie-	chapell,	to the Laird of Blair,
chewin,	James Colquhoun, feruitour to	Robert Blair,
Tho <sup>s</sup> Fallafdaill of Ardoch-beg,	the Laird of Kilbirnie,	Dauid Drummond,
Johnne Stewart in Camrone,	Robert Bradie, feruitour to the	Duncane Menzies.
Jo <sup>n</sup> Smyth in Auchindownanrie,	said James Colquhoun,	

VERDICT. The Assyse, be the mouth of the said Thomas Fallafdaill, chancellor, ffand, pronuncet and declairet the saidis Johnne M<sup>c</sup>ewin in Kilbryde, Archibald M<sup>c</sup>ilvoill, Donald M<sup>c</sup>Innowie, Duncane Caird M<sup>c</sup>Gregour, Patrik M<sup>c</sup>eandow M<sup>c</sup>Gregour, Allafter Bowie M<sup>c</sup>Gregour, and Duncane M<sup>c</sup>Neill M<sup>c</sup>Gregour, to be ffylet, culpable and convict of the feuerall crymes *respectiue* aboue writtin, con-

<sup>1</sup> Cattle; *kine*.

tenit in thair Dittayis : AND the said Dougall M<sup>c</sup>Gregour Clerach, to be ffylet, culpable and convict of airt and pairt of the Slauchter of the said vmq<sup>le</sup> Gregour M<sup>c</sup>Gregour, committit be the said Dougall, he being within the age of tuelf yeiris for the tyme ; and ficlyk, for Intercowmoning with the M<sup>c</sup>Gregouris, conforme to the Article of his Dittay. AND ficlyk, ffand, pronuncet and declairit the said Johnne M<sup>c</sup>Andro, to be Clene, innocent and acquit of the Burning of the said Johnne Stewartis hous in Camrone ; and Slauchter of the said vmq<sup>le</sup> Johnne Stewart ; and remanent poyntis contenit in his Dittay.

SENTENCE. The Justice, be the mouth of Alexander Kennydie, dempfter of Court, decernit and ordanit the saidis *Johnne M<sup>c</sup>Ewin, Duncane Caird M<sup>c</sup>Gregour, Patrik M<sup>c</sup>Indow M<sup>c</sup>Gregour, Allaister Bowie M<sup>c</sup>Gregour, and Duncan M<sup>c</sup>Neill M<sup>c</sup>Gregour*, to be tane to the Burrow-mure of Edinburgh, and thair, in the ordiner place of Executioun, to be hangit quhill thay be deid ; and all thair landis, heritages, guidis, geir, moveable and vnmovabill, &c., to be fforfaltit and efcheit to our fouerane lordis vfe, as convict of the saidis crymes. —AND superceidis the pronunceing of Dome vpon the vther thre, quhill he be advyset with the Lordis of Secreit Counfall thairanent : And ordanit thame to be tane bak agane to their priffone, &c.

[*Mr Robert Cockburne, Advocate, Justice-Depute.*]

**Slaughter — Shooting with Pistolets, &c.**

Mar. 8.—JOHNNE CARUTHERIS in Netholme, sumtyme seruitour to Robert Lord Sanquhair.

Dilaitit of airt and pairt of the crewall and vnmerciefull Slauchter of vmq<sup>le</sup> Andro Lyndfay of Raskarrell, brother to vmq<sup>le</sup> James Lindfay of Fairgirth, and seruitour for the tyme to my Lord Hereis, be schuiting of him throw the body, with ane pistolett ; committit be him and be George Graham, seruitour for the tyme to the said Robert Lord Sanquhair, at the West end of the Brig of Dumfries, vpon the xvij day of September or thairby, about the doun-letting of the sone, in the yeir of God I<sup>m</sup> fyve hundreth fourscoir saxtene yeiris ; off the quhilk schotte, and be dyuerse vtheris crewall and deidlie woundis, gevin to him with fuordis, quhingeris, and vtheris forbiddin wappones, he schortlie thaireftir depairtit this lyfe.

PERSEWARIS, James Lyndfay of Fairgirth, Hew Lyndfay, his brother, as brether fones ; Sir Thomas Hammiltoun of Bynnie.

PRELOCUTORIS for the pannell, Mr Thomas Hoip, Aduocat, Mr Johnne Dauling, The Tutour of Bombie (William M<sup>c</sup>Clellan), The Laird of Enterkyn.

The Aduocat producet the Dittay, and takis instrumentis thairupoun.—The pannell producet Letteris of Relaxatioun, quhairby he is the Kingis frie lege.—The said Johnne Carutheris producet ane Remiffioun, for all crymes preceeding



the dait thairof, and takis him thairto ; and in respect thairof, can nocht pas to ane Assyse. Off the quhilk Remiffioun, of the dait at Quhytehall, the xvij day of November, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and sax yeiris, grantit to him and to Alexander Erle of Home, Lord Jedburgh and Dunglas, Sir Johnne Home of Huttonehall, kny<sup>t</sup>, and dyuerse vtheris thair complices, the tennour followis.

REMISSION *in favor of the pannell, the Earl of Home, &c.*

JACOBUS, Dei gratia, Magne Britannie, francie et Hibernie Rex, defensorque fidei, Cancellario nostro salutem. QUIA, ex nostris specialibus gratia et favore, Remissimus *Alexandro Comiti de Home, domino Jedburt et Dunglas, et Jacobo Cranstoun* in Huntlie-woid, omnem rancorem animi nostri, sectam regiam et actionem quem seu quas contra dictas personas habuimus, habemus, seu quouifmodo in futurum habere vel clamare poterimus, pro arte et parte Oppugnationis et Interfectionis quondam *Leonardi Haili* in Pleuland, intra domum suam de Pleuland, et Incensionis et Combustionis ejusdem domus per ipsos, in mense Octobri, anno domini millesimo quingentesimo octagesimo octauo commissis. AC ETIAM Remissimus dicto *Alexandro Comiti de Home, Domino Joanne Home* de Huttone hall, militi, *Magistro Samueli Home*, ejus fratri, *Thome Tyrie* Tutori de Drumkilbo, *Alexandro et Joanni Frenches*, fratribus quondam *Roberti French* de Thornydykis, *Joanni Home* in Kello, *Roberto Home* in Huttone, *Roberto Auchincraw* seruitori dicti Comitis de Home, *Joanni Cranstoun* filio Joannis Cranstoun de Morestoun, *Niniano Chirnesyde* seruitori dicti Comitis, *Waltero Trumble* de Ramflat, *Roberto Home* filio *Willielmi Home* de Aytoun, *Willielmo, Niniano et Archibaldo Homes*, filiis quondam *Willielmi Home* de S<sup>t</sup> Leonardis, et JOANNI CARUTHERIS, et eorum cuilibet, omnem rancorem animi nostri, sectam regiam et actionem quam seu quas contra dictas personas aut eorum quamlibet habuimus, habemus, seu quouifmodo in futurum habere vel clamare poterimus, pro arte et parte Interfectionis quondam *Willielmi Lauder*, Balliui burgi nostri de Lauder, vocat. *Williame at the West-Poirt*, intra Pretorium nostrum de Lanark; ac pro arte et parte proditorie Incensionis et Combustionis dicti nostri pretorij per dictas personas, in mense Maio, anno domini millesimo quingentesimo nonagesimo octauo commissis. AC pro omni actione et crimine que desuper sequi aut contra dictum Comitem seu aliquam reliquarum personarum antedict. inde quouifmodo imputari poterint: Et pro omnibus alijs criminibus, transgressionibus et offensis quibuscunque, per dictum Comitem, vel aliquam reliquarum personarum supra specificatarum, vilo tempore preterito, datam presentium preceden. commissis. (Proditione in nostram personam, Raptu mulierum, et fabricatione falsae et adulterate monete, tantummodo exceptis.) QUIA dictus Comes, pro seipso, ac nomine reliquarum personarum antedict. eius complicitum, partibus pro dictis Interfectionibus, ac etiam Balliuis, consulibus et communitati dicti nostri burgi de Lauder, pro reparatione nostri Pretorij antedicti, satisfecit, prout nobis lucide constat. VOBIS Precipimus et mandamus, quatenus Literas nostras Remissionis nostro sub magno sigillo, in forma Capelle nostre debita, supra nominatis personis, super premissis, fieri faciatis. DATUM sub secreto sigillo nostro, Apud Quhytehall, decimo septimo die mensis Novembris, anno domini millesimo sexcentesimo septimo, et regnorum nostrorum annis quarto et quadragesimo.

The Aduocat allegit that the Remiffioun is null ; becaus, be Act of Parliament, it is speciallie provydit, that na Remiffioun fall be grantit for Slauchter without satisfacioun of pairtie, and is null be way of exceptioun ; and this pairtie is nocht satisfait, *ergo*, &c.—The pannell offerris to find cautioun to satisfie the pairtie, conforme to the lawis of this realme ; and allegit that his Maiesteis Remiffioun anes being grantit, can nevir thaireftir be callit in questioun, conforme to the daylie practik of this realme ; and repeittis the lyk practik of Aber-

crumbie of Pitmedden contrair Gordones, quhair the lyk Remiffioun was sustenit, vpon finding of caution.

It is forder allegit, that this Remiffioun nather designes quhair the pannell duellis, nather is the cryme it self speciallie expreffit in the Remiffioun; and thairfoir, except the said fact war speciallie expreffit in the Remiffioun, and the pannellis duelling and residence speciallie designet, the said Remiffioun is null, and can nocht be admittit.—It is anfuert, that the pannell is remittit be his Maiestie for Burning of the Tolbuth of Lauder, and Slauchter of the Baillie of Lauder, and all vtheris crymes preceeding the dait of the Remiffioun; and was than servand to my Lord Home, quha hes tene Remiffioun; and the said Johnne Carutheris name is insert in the Remiffioun with the remanent perfonnes committeris of the said Burning and Slauchter, as being in cumpany with him at that fact: Quhilk designatioun of his name to be Johnne Carutheris, with his style, and that he is the perfone remittit, he offeris to preve be famous witnesses present at the bar.—My Lord Aduocat desyret that my lord Justice and Justice-Clerk sould notifie this matter to the Counfall, and to desyre thair Lordschips to wryte to his Maiestie, to vnderstand of his Maiestie, quhither this Johnne Carutheris be the perfone quhome his Maiestie hes remittit or nocht.

THE Justice continewis this mater to this day aucht dayes, the xv *instantis*.

(Mar. 15.)—The Justice, befoir Interloquitour, inquiret of the persewaris, gif thai wald verifie ony vther perfone to be namet Johnne Carutheris nor (*than*) this perfone on pannell, quha was at the fact at Lauder, and wald instantlie preve the samyn? To quhome the persewar anfuert, that he wald verifie that thair is dyuerse vtheris sa namit, but had nocht witnesses present; and could nocht verifie that thair was ony vther Johnne Carutheris at the Burning of the Tolbuth of Lauder.—And the defender, being inquiryret, Gif he wald verifie him self to be the perfone specifeit in the Remiffioun? Anfuert, that he wald verifie the samyn be the witnesses present at the bar. And for verifeing thair of, producet Johnne Cranstoune, Niniane Chirneside, Patrik Chirneside, and Alexander Haitlie. It was allegit be the Aduocat, that thai can nocht be reffaut as witnesses in the said matter, becaus they ar insert in the Remiffioun as *socij ejusdem criminis* with the pannell, at the fact of Lauder.—Thaireftir it was anfuert be the pannell, that thai aucht to be reffaut, feing thay war nocht at the Slauchter of Lyndsay, for the quhilk he is this day persewit; and sa war nocht *socij illius criminis*.

THE Justice reffaut Johnne Cranstane, &c. : Quhilkis all being suorne, Declarit, that this Johnne Carutheris, present vpon pannell, was in seruire and companie with my Lord Home at the Burning of the Tolbuth of Lauder, and is the self-same Johnne Carutheris specifeit in the Remiffioun: Quhairvpoun the pannell askit instrumentis.

THE JUSTICE, be Interloquitour, ADMITTIS the Remiffioun producet; and Ordanis the pannell to find caution to fatisfie the pairtie perfewar, conforme to the lawis of this realme; according to the modificatioun of the Lordis of Sessioun: And als, that the Remiffioun fall be exped throw the Seillis within fourtie dayis, conforme to the Act of Parliament, vnder the pane of tua hundreth pundis: And that being done, the said Johnne Carutheris to be put to libertie.

For obedience quhairof, the said Johnne Carutheris ffand Williame M<sup>c</sup>Clellane, Tutour of Bombie, with him selff, caution to fatisfie the pairtie; conforme to the Lordis modificatioun. Lyk as, Johnne Cranftoun, brother to my Lord of Cranftoun, obleift him to exped the said Remiffioun throw the Seillis, within fourtie dayis, under the pane of iij<sup>c</sup> merkis.

Mr Johnne Hay, in name of the Bailleis of Edinburgh, tuik instrumentis of the said Johnne Carutheris entrie vpon pannell, and of the Justice Interloquitour aboue writtin, and the pannellis finding of cautione aboue specifeit; and in respect thairof, and that the Justice had ordanit him to be put to libertie, Protestit that the Bailleis of Edinburgh fould incur na harme nor inconvenient for setting of him to libertie. Quhilk protestatioun the Justice Admittit, provyding the said Johnne Carutheris be nocht arreiftit at the instance of ony vther pairtie, for ony vther cause.

#### **A bidding from the Raid of the Isles.**

Mar. 15.—GILBERT M<sup>c</sup>ADAME of Watterheid; Donald M<sup>c</sup>millane of Knokingarroche; Robert M<sup>c</sup>adame of Smeiftoun; George M<sup>c</sup>adame, thair; Johnne M<sup>c</sup>nacht of Doungucht; Gilbert Achannane of Murdochat; Robert Ferguffone of M<sup>c</sup>killieftoun; Johnne M<sup>c</sup>kill, elder; Johnne M<sup>c</sup>kill, younger; Williame Makadame of Craigullane; Thomas Gordoun of Crago; Johnne Neilson of Corfok.

Dilaitit for the allegit contravening of his Maieftis Proclamatiounes, in nocht accompaneing and passing fordwardis with Andro Lord Stewart of Vchiltrie, his Maieftis Lieutenant, in the profecutioun of his hienes feruice, towardis the repressing of the infolencies of certane the difobedient Inhabitants of the Isles of this kingdome; according to his hienes Proclamatiounes maid to that effect, in the monethis of Maij and Junij, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris.<sup>1</sup>

Compeirit judiciallie the saidis Gilbert, &c., and in respect that thai and everie ane of thame had furneiffit furth sufficient able men to the said Leutennent in the foirsaid Expedition, and thairupoun had purchest the said Lord Leutennentis Testificat, with his Licence to abyde at hame them selffis, and nocht to pas fordward with his Lordschip, in the said Airmie: Quhilk Licence thay producet

<sup>1</sup> See Notice prefixed to the Trial of *Sir James Makconell*, May 13, 1609, Vol. III. p. 1, &c.

in Judgment to the Justice, vnder the said Lord Leutenentis subcriptioun, daitit at Air, the xxvij of Julij, I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris. And protestit, that thair nor nane of thame sould be ony wayis trubillit, vnlawit, or persewit for the cauffis aboue mentionet; bot that thair and ilk ane of them sould be Affoilzeit *simpliciter* thairfra, in tyme cuming: Quhilk Protestatioun the Justice admittit.

And in respect that the said Andro Lord Stewart of Vchiltrie, his Maiesteis Lieutenant foirsaid, being personallie present, quha affirmet the Licences aboue written, and granting thair of to be of veritie, Ordanit that nane of the persones foirsaidis sould be callit or trubillit for abyding fra the said Raid of the Iles, in ony tyme coming. Quhairupoun the saidis persones askit instrumentis.

### Slaughter.

Mar. 16.—JOHNNE HAMMILTOUN of Hairfchaw; Gawin and Archibald Hammiltoun, sones to the said Johnne; Symone and Williame Hammiltoun, brether to Hairfchaw; Williame Hammiltoun, brother-sonne to Hairfchaw; James Lyddell, sone-in-law to Hairfchaw; and Mathow zoung, in Langlie.

Dilaitit of the Slauchter of v<sup>m</sup>q<sup>le</sup> Johnne Findlay in Eglischem; quha was slane at the Kirketoun of Eglischem, vpon the xvij of februarye, 1611.

PERSEWAR, Archibald fyndlaw, as brother to v<sup>m</sup>q<sup>le</sup> Johnne Fyndlaw.

The Justice, of consent of pairtie, continewis this matter to the thrid day of the nixt Justice-air of the scheref dome quhair the persone abouewrittin duellis<sup>1</sup> (Lanerk.)

[*Sir Williame Heart, Justice-Depute.*]

### Slaughter of Probost of Wigtoun—Shooting Hagbutts, &c.

Maij 22.—JOHNNE KENNYDIE of Blairquhan, and Johnne Bairdis, brother germane to the Laird of Kilquhinzie.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of v<sup>m</sup>q<sup>le</sup> Patrik Ahannay of Kirkdaill, Proveist of Wigtoune; committit be thame and thair complices, with schottis of hagbuttis and pistolettis, at the Cruves of the Watter of Crie, in the moneth of December, I<sup>m</sup>.Vj<sup>c</sup>. yeiris, vpon set purpois, prouifioun, and foirthocht felonie: And for beiring, weiring, and schoitting of hagbutis and pistolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Patrik Ahannay of Kirkdaill, as sone to v<sup>m</sup>q<sup>le</sup> Patrik A.; Sir Thomas Hammiltoun of Byris, kny<sup>t</sup>, Aduocat to our souerane lord, for his Maiesteis intereis.

PRELOCUTORIS for the pannell, My Lord of Cassillis, My Lord Vchiltrie, Gilbert Roifs; Mr Johnne Ruffell, Mr Thomas Hoip, and Mr Laurence M<sup>c</sup>gill, Aduocatis.

The pannell acceptis the summondis, and speciallie that pairt thair of quhair

<sup>1</sup> 'Plegijs, Hugone Montgomerie de Auchinhuid, et Joanne Hammiltoun de Hairfchaw, pro omnibus; et ipsi ad relevand.'

the defunct was schot with peiftis<sup>1</sup> or dropis, with ane charget hagbut. It is allegit, that this matter can nocht pas to ane Affyse; becaus his Maieftie, of his speciall grace, hes gevin to the perfonen on pannell ane Remiffioun, quhilk thai producet to the Justice, of the dait at Edinburgh, the xvij day of Maij instant: And offeris Cautiounne to fatisfie the pairtie.—It is anfuerit that this Remiffioun can nocht stay the matter to pas to ane Affyse; becaus, be Act of Parliament, in anno 1593, it is provydit, that all Remiffiones ar null that ar purchest eftir ane pairtie passis to the horne for the tyme; quhilk allegeance is reffaut be way of exceptioun, the pairtie nocht being fatisfieit.—It is anfuerit,<sup>2</sup> that this Act of Parliament is nocht *in viridi obseruantia*, nor hes nocht tane effect in this Judgement of befoir: Quhilk allegeance he offeris to verifie, be my Lord Cassillis, and vtheris heir present.

THE Justice continewis Interloquitour vponne this allegeance to ffryday nixt.

(Maij 24.)—My Lord Aduocat, befoir Interlocutour, passis fra his lordschipis former allegeance: Quhairupoun the pannell takis instrumentis.

THE Justice, be Interloquitour, Admittis the Remiffioun producet be the perfonen on pannell and thair prelocutouris; and Ordanit thame to find sufficient and resposfall Cautioun and souertie to fatisfie the pairtie grevit; conforme to the lawis and daylie practik of this realme.

Quhairupoun the said Johnne Kennydie of Blairquhan and Johnne Bairdis askit instrumentis: And ffor obedience of the said Justice Ordinance, nominat my Lord of Cassillis, my Lord Vchiltrie, Sir Robert M<sup>c</sup>clellane of Bombie, kny<sup>t</sup>, Williame Cunninghame of Capringtoun, and Sir James Kennydie of Culzeane, as cautioneris, coniunctlie and feuerallie for thame; lyk as, being all personallie present, in presence of the Justice, Band and obleift thame, coniunctlie and feuerallie, thair airis, executouris and assignais, to fatisfie the pairtie, viz. the kyn and freindis of the said v<sup>m</sup>q<sup>le</sup> Patrik Ahannay of Kirkdaill, ffor the slauchter aboue writtin; conforme to the Lawis of this realme.<sup>3</sup>

<sup>1</sup> Pellets, small shot; but, most probably, what is now termed *slugs*.      <sup>2</sup> Replied.      <sup>3</sup> The arguments are thus expressed in an after part of the Record. As the point started is interesting, and the Counsel engaged were the most eminent of their day, it has been deemed proper to preserve the arguments at length.—‘It being peremptourlie allegit for the pairt of the saidis perfonen on pannell, be Mr Johnne Ruffell, with concurrence of Mr Thomas Hoip and Mr Laurence M<sup>c</sup>gill, Aduocattis, thair preloquitouris, that the said fummondis and Dittay could nawayis be put to the knowlege of ane Affyse, becaus our fouerane lord, of his speciall grace and mercie, had gevin and grantit to thame ane Remiffioun for the saidis crymes, and producet the said Remiffioun, past the Grit Seill, of the dait at Edinburgh, the xvij day of Maij instant; quhairvnto thai tuik thame felftis, and offerit resposfall cautioneris and souerteis, at the bar, to fatisfie the pairtie for the crymes contenit in the said Remiffiounne, accoirding to the modificatioun of the Lordis of Sessioun, lawis and practik of this realme. To the quhilk it was anfuerit be our fouerane lordis Aduocat, that the foirfaid allegeance aucht to be repellit, and the pannell, nochtwithstanding thairof, sould be put to the knowlege of ane Affyse; becaus, be Act of Parliament maid in anno 1593, it is statute and ordanit, that na Respett nor Remiffioun be grantit at any tyme thaireftir to ony perfone or perfonen passand to the horne for Thift, Reif, Slauchter,

The pannels bound themselves to relieve their cautioners; and the cautioners also obliged themselves to free each other, *pro rata*, &c.

**Slaughter—Shooting with Hagbutts and Pistolets, &c.**

Jun. 7.—ROGER GORDOUN in Glasniche, and Johnne Glendoning of Drumrasche.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> George Stewart, brother to vmq<sup>h</sup> Mathow Stewart of Dunduff; committit the xxj<sup>1</sup> of September, 1601 yeiris, vpone fett purpois, prouifioun and foirthocht fellonie: And als, for beiring, weiring, and schuitting of hagbuttis and piftolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Williame Stewart of Dunduff, Johnne Stewart, brether fones.

The perfewaris producet the Letteris deulie execute and indorfate vpone the said Roger Gordoun and Johnne Glendoning; and als, vpone Alexander Gordoun of Hillis, Williame and Robert Gordones, his tua brether, Robert Gordoun of Bannernie, Alexander Creichtoune in Garrick, and Thomas Creichtoun in Balcaffie, quha ar past to the horne for the crymes contenit in the Letteris: And vpone the productione thairof, askit instrumentis; and protestit for the cautioneris relief for repoirting thairof.

Continewit to the morne. Plegio, Wilelmo M<sup>c</sup>culloche de Mertoun.

PRELOCUTORIS for the pannell, Mr Johnne Russell, Aduocat, The Laird of Lochinvar.

(Jun. 8.)—The perfewaris declairit, in respect that this Roger Gordoun is only airt and pairt of the Slauchter, and nocht principall actor of the fact, and thairfore, vnto the tyme the principall maliefactouris be apprehendit, quhairby the pannell his giltines or innocencie of that crewall slauchter may be tryit, desyres that he may be continewit to the thrid day of the air [Wigtoun], or foner, vpone xv dayis wairning; and that caution be fund be him to that effect, vn-

Burning, or Heirship, &c. quhill the pairtie skaithed [viz. until the party shall previously have received pecuniary satisfaction or damages for the loss sustained] be first satisfied: And gif ony sic Respet or Remiffioun fould happin to be grantit, befor the pairtie grevit be first satisfeit, the samyn fall be null, and of nane avall, be way of exception or reply, without ony forder declaratour. Bot trew it is, that the perfonen on pannel, lang befor the purchessing of the said Remiffioun, war denounced rebellis and at the horne, and war declairit fugitiues fra his hienes Lawis for the saidis crymes contenit in thair Dittay; the pairtie nawayis being satisfeit as zit: And thairfoir, the said Remiffioun vset and producet is null, be way of reply. And for verifeing thairof, producet the Extract of the Hoirning aganis the pannell.—To the quhilk it was duplyit be the pannell, that thay offerit thame to prove, be my Lord of Caffilis, and tua Ministeris, at the bar, that satisfacioun was offerit be thame to the pairtie grevit, lang befor thair passing to the horne, or purchessing of Remiffioun; quhilk was refusset: *Secundo*, it wes nevir in *viridi observantia* that the foirsaid Act of Parliament was autorisfet in this Judgement; nather yit could euir his Maiesteis fauour and pardoun, being anes grantit, be callit thair-estir in questioun. And thairfoir, takis thame, as ofbefoir, to his Maiesteis Remiffioun; and offerit caution to satisfe the pairtie.

<sup>1</sup> In the act of caution the slaughter is stated to have been committed on the 'ellevint.'

der the panes contenit in the Actis of Parliament. [*Plegio, Wilelmo M<sup>c</sup>culloche de Mertoun.*]

The Laird of Mertoune amerced 'in the pane of fyve hundreth merkis, for nocht entrie of the said Johnne Glendoning' on June 8, and Glendoning ordained to be denounced rebel, and all his 'moveabill guidis to be escheit,' &c.

### Slaughter.

Jun. 28.—PATRIK MAXWALL of Newark.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>r</sup> Robert Montgomerie of Skelmourlie, and vmq<sup>r</sup> Williame Montgomerie apperand of Skelmourlie; committit in the moneth of . . . . I<sup>m</sup>.V<sup>c</sup>.lxxxij yeiris.

PERSEWAR, George Montgomerie.

The Laird of Newark producet ane Warrant of the Lordis of Secret Counsell, direct to the Justice, anent the deserting of this dyet, for the reffonis contenit in the Supplicatioun gevin in to thair Lorfchipis thairanent; with ane Command on the bak of the said Supplicatioun and Warrant aboue writtin, commanding the Justice to tak cautoun of ather of the pairteis, befor thair cuming out of Judgement, that thai fall remane and keip waird within this burgh, quhill Tyfday nixt; and that thai fall compeir befor his Maiesteis Counfall the said day, vnder the panes following, viz. of Newwerk, vnder the pane of tua thousand merkis, and George Montgomarie, vnder the pane of ane thousand merkis. Quhilk Warrant is daitit at Edinburgh, the xxvij day of Junij 1611 instant.—For obedience of the quhilk Warrant, and ordinance thairin contenit, the Justice Desertit the said dyet; and Ordanit the saidis tua pairteis, *hinc inde*, to find cautoun for thair compeirance befor the Lordis of Secret Counsell the said day, viz. the secund day of Julij, vnder the panes aboue specifcit: Lyk as, for obedience of the said Justice ordinance, compeirit Williame Lord Kilmaweris, and became plege and fouertie for the said Patrik Maxwell; and ficlyk, compeirit James Dunlope of that ilk, and become fouertie for the said George, &c.

### Slaughter.

[THE Records of the Court of Justiciary do not afford sufficient information regarding the facts connected with the following Case; and, as it relates to individuals of considerable rank, the Editor thought it proper to select even such meagre notices as those which do occur. - The Young Laird of Closeburn seems to have been one of the active spirits of these times, and to have been engaged in a laudable share of affairs of honour, and in quarrels *quantum sufficit*, and 'befitting his degree!'

In *Lord Hadington's* MS. Collections, the following remarkable entry occurs, under date Feb. 27, 1610. 'The Lady Hemptseild, haveing defyred Andro Quhyt, keiper of the Tolbuith, to bring to hir Young Cloisburne, who wes in the Tolbuith wairdit, to speak with hir in his hous; he doing it at her defyre, Young Cloisburne schiftit him self away. ffor the quhilk caus, scho being put in the Tolbuith, and thairafter transported to the Castell, socht Licens of the Counfall to be transported to the

towne; quhilk the Lordis refused, vnles scho wald either enter Young Cloisburne, or find cautione to satisfie all pairteis be quhome he wes wairdit or arreifted.<sup>1</sup>

Closeburn's escape had been effected by his exchanging clothes with the Lady Hemptisfield, a method which has often proved successful in similar emergencies. It may be remarked, that the jailor's house was commonly attached to, or rather consisted of one or more apartments of, the prison.]

JUN. 28.—ALEXANDER KIRKPATRIK, sone to Sir Thomas Kirkpatrick of Cloisburne, kny<sup>t</sup>.

Dilaitit of airt and part of the Slauchter of vmq<sup>le</sup> James Carmichell, sone to Johne Carmichell of Spothe.

PERSEWARIS, Johnne and William Carmichell.

THE Justice, of consent of pairtie, continewis this dyet to the xxiiij of Julij nixt. [Plegio, D. Tho. Kirkpatrick de Cloisburne, milite.]

(Jul. 24.<sup>2</sup>)—THE Justice, of consent of pairtie, continewis this mater to the thrid day of the nixt Justice-air of the scherefdome of Dumfreis, or soner vppone fyftene dayis wairning: And ordanis cautione to be ffund for that effect. [Plegio, D. Thoma Kirkpatrick de Cloisburne.]

### Treason—Murder under Trust.

JUN. 29.—PETER WEIR, sumtyme in Goitnow in Rig.

Dilaitit of airt and part of the crewall Slauchter and Murthour of vmq<sup>le</sup> Johnne Hammiltoun, merchand burges of Edinburgh; committit, vnder trest, vppone the sevint day of November 1608 yeiris, befyde Monharig burne-fute.

PERSEWARIS, Jonet Small, the relict; Patrik Hammiltoun, as brother; Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intres.

PRELOCUTOUR for the pannell, Robert Bannatyne, wryter.<sup>3</sup>

DITTAY *against Peter Weir, the pannell.*

FORSAMEKILL as vmq<sup>le</sup> Johnne Hammiltoun, merchand burges of Edinburgh, haifing conqueift<sup>4</sup> and acqyret to him self the richt of certane landis, occupyit and posselt be Johnne Weir in Over Quhytecleuch, the said Peter Weir, and Margaret Weir in Bagra; and haifing thairupoun obtenit Decreit<sup>is</sup> of Removing, aganis thame and remanent tennentis and occupyeris of the saidis Landis; and for dislobedience of the charges of Hoirning, haifing denuncet the said Peter owr souerane lordis rebell, and put him to the horne, the said Johnne Weir, Mungo Weir, his brother, the said Peter Weir, and Margaret Weir, consultit and devyset amangis thame selfis, how to bereiff the said Johnne Hammiltoun of his lyfe: And for effectuating thair of, caufit certane freindis travell with him, and to cum in tryfing,<sup>5</sup> and to meit at Monharig, to cownone<sup>6</sup> thairupone; and affixt the

<sup>1</sup> Minutes of the Proceedings of the Privy Council, *Had. MSS. A. 4. 22.* Advocates' Library.

<sup>2</sup> The pursuers marked at this diet, are designed 'Johnne C. of Spothe, Williame C. his sone.'

<sup>3</sup> One of the brothers of the celebrated George Bannatyne, in honour of whose valuable compilation of early Scottish Poetry, the Club of that name was formed.

<sup>4</sup> Purchased, in contra-distinction

to having inherited.

<sup>5</sup> By special agreement or appointment.

<sup>6</sup> Commune.



sevint day of November I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris to that effect : Lyk as, the said v<sup>m</sup>q<sup>le</sup> Johnne Hammiltoun, for keiping of the said tryft, accompaneit with James Creichtoun in Bar, being cuming rydand furth the hie way, in sober and quyet maner for the tyme, vpon the said sevint day of November, to the appointit place aboue writtin, the saidis Johnne Weir, Peter Weir, Mungo Weir, and Margaret Weir, accompaneit with dyuerse perfones thair complices, being bodin with fuordis, quhingeris, kent-stalfis and otheris wappones *invafive*, darnit<sup>1</sup> thame felfis in the hie way, besyde Monharig, quhair thai lay at await for the said v<sup>m</sup>q<sup>le</sup> Johnne Hammiltounes by-cuming ; and thair, vnder trest and friendship, maist crewallie invaidet him for his slauchter, drew him af his hors, and with quhingeris, gaif him threscoir<sup>2</sup> bludie woundis, in dyuerse partis of his body, to the effufioun of his bluid in grit quantitie ; and crewallie flew and murtherit him out of hand : And the said Peter was and is airt and pairt of the said Murthour. To the taikin, he and the said Margaret Weir, being in cumpanie with the said Johnne Weir, com to the said James Creichtoun, and drew him down af his hors, and held him be force down, quhill the said v<sup>m</sup>q<sup>le</sup> Johnne was murtherit out of hand ; quhairthrow the said James mycht nocht releif him.

*James Creichtoun*, being fuorne, Declairit, that he, being in company with the defunct, the tyme lybellit, vpon the grund of the Land quhair the fact was committit ; and thair, this Peter Weir, with Margaret Weir, drew him af the hors and held him down ; quhairthrow he was nocht able to defend the defunct. —Quhairupoun my Lord Aduocat askit instrumens ; and Protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse,<sup>3</sup> being ryplie and weill advyset thairwith, togidder with the said Peteris Depositiones, producet be our fouerane lordis Aduocat ; togidder with the Letteris of Hoirning, quhairby the said Peter was fugitiue fra his hienes lawis, for the said cryme, lykwayis producet, for instructing of the Dittay ; thai, be the mouth of Robert Phillope, burges of Sanquhair, fand, pronuncet, and declairit the said Peter Weir to be ffylet, (be pluralitie of voitis,) of airt and pairt of the Murthour of the said v<sup>m</sup>q<sup>le</sup> Johnne Hammiltoun.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin from his body : And his haill guidis and geir to be escheit to our fouerane lordis vse, &c.

### Treason—Slaughter—Murder under Trust, &c.

[THE TRIAL of the MURES OF AUCHINDRAYNE may, without hesitation, be pronounced to be one of the most remarkable, in the whole range of the Criminal annals of this, or perhaps of any other country. In it are unfolded their most hidden transactions, and the secret springs of their most private and craft-

<sup>1</sup> Concealed.      <sup>2</sup> Three score ; sixty.  
and James M'Morrane younger of Glaspen.

<sup>3</sup> Among their number were George Maxwell of Drumcowtrane,

tily contrived plots, all of them leading to the perpetration of crimes so singular in atrocity, and of so deep a die, that one can hardly expect to meet with their parallel, even in the pages of Romantic fiction. By the clew, now afforded, may be traced almost the secret thoughts of two of the most accomplished and finished adepts in crime—individuals who murdered by rule, and who carried forward their deadly schemes of ambition, by means of a regularly connected chain of plots and stratagems, so artfully contrived, as to afford them every reasonable prospect of success—and even in the event of the entire failure of their plans, almost to ensure their escape from suspicion; at the least, in their estimation, to warrant their security against ultimate detection, and consequently exempt them from the penalty of capital punishment.

Ambition and the lust of power appear to have been the immediate procuring causes of all the crimes in which these infatuated men were involved. Theirs was not the sudden burst of ungoverned passions, which might have hurried them on to the commission of a solitary deed of frightful but unpremeditated violence—nor were their crimes the consequence of ancient Feuds, inherited from their restless and vindictive ancestors—nor yet had they the too common apology that they originated in impetuous assaults made upon them, and that their hasty quarrels sprung from a fiery and unbridled temper, which had unfortunately terminated in fatal results. On the contrary, the whole of their numerous attempts and crimes may be characterised as cool, calculating, and deliberate acts, anxiously studied, and by slow and patient, but sure degrees, matured and prosecuted, for a long series of years, until at length ‘the measure of their iniquities overflowed,’—and the unlooked-for concurrence of an extraordinary train of circumstances, the most unlikely to have happened, eventually led to a triumphant discovery of their enormous crimes.

It is quite unnecessary here to enter into any detailed account of the facts connected with the crimes of these individuals. Their leading features are already familiar to all, ever since the publication of ‘AUCHINDRANE, OR THE AYRSHIRE TRAGEDY,’ from the pen of Sir Walter Scott; in the preface to which dramatic sketch, the origin and progress of these dark transactions are so fully discussed, that the Editor begs simply to refer the reader to a perusal of that work.

In addition to the information contained in the ‘Dittay,’ and in the pleadings in this Trial, the Editor has been anxious to collect and lay before the reader the most remarkable circumstances connected with the history of the elder and younger Mures. For this purpose he has for some years past used all exertions to extend his researches in every direction, where authentic illustrative Documents and Records could be procured—and he has now the satisfaction of appending to this highly interesting Case a variety of Papers, which may almost be said to throw all the light that can now be reasonably expected, on proceedings which occurred now above two hundred and twenty years ago.

For the sake of saving too copious quotations in this work, the Editor has, through the liberal permission of the Curators of the Library of the Faculty of Advocates, Edinburgh, published in a separate volume ‘THE HISTORIE OF THE KENNEDYIS,’<sup>1</sup> from the Original MS. in their valuable collection. That History, besides the numerous interesting notices of the Mures of Auchindrayne, Sir Thomas Kennedy of Colzean, who ultimately fell their victim, the Earls of Cassilis, &c., enters most minutely into the Feuds and Conflicts of the Kennedys, Mures, Crawfords, &c., and satisfactorily develops the causes out of which the various crimes of Auchindrayne and his son sprung. The state of society, and the habits and manners of the people of Carrick, are very graphically delineated by the author, who was evidently an eye-witness of the many interesting transactions he has recorded.

For the purposes of the present Introductory Notice, it is enough to state, as in reference to the persons who principally figure in this dark tragedy, that so far as respected birth, the MURES OF AUCHINDRAYNE were of most respectable and ancient extraction, and were connected with many of the most opulent and influential families in Ayrshire. They also for a considerable period held a con-

<sup>1</sup> A limited impression of the ‘HISTORIE OF THE KENNEDYIS’ has been printed, uniformly with the works of THE BANNATTYNE and MAITLAND CLUBS, and may be had of the Publishers of this Collection.

spicuous station in all the transactions and feuds of the district of Carrick. There is no reason to doubt that the Mures of MONYHAGEN and Auchindrayne (which last title was only latterly assumed by them) were cadets of the very ancient and honourable Family of Mure of Rowallan, now represented by the present Marchioness of Hastings, as Countess of Loudoun, &c. In confirmation of this fact, Sir William Mure of Rowallan, knight, in his History of that House,<sup>1</sup> states, that *Andrew Mure of Monyhagen*, the first of the family, was either a son or a grandson of Sir Gilchrist Mure, who died *circa ann.* 1280. It does not appear how or when they became possessors of the Lands of Auchindrayne; but it is certain, that previous to the Wars of Bruce and Baliol, Auchindrayne (i. e. *the Field of Thorns*) belonged in property to Robert Brown; and was, upon his forfeiture, granted by King Robert the Bruce to Henry Annan. By a Charter, dated March 16, 1498, *James Mure of Monyhagen* granted certain lands, in Wigtonshire, in favour of James Mure, his son, and Margaret Wallace, his spouse. One of the witnesses to this deed, is *John Mure*, 'grandson and heir apparent of the said James;' which shews him to have been a very old man at that period, and that he was born *circa* 1430. This *John Mure* must have been the grandfather of the old Laird of Auchindrayne, who figures in the present Trial.

It is pretty evident, as appears from a Charter of *Novodamus* of the Lands of Leffenhill, dated Sept. 29, 1671, by Chalmers of Gadgirth, in favour of *John Mure of Auchindrayne*,<sup>2</sup> that the elder Mure must have been *nearly eighty years of age* at the period of his execution! The grantee is described as heir of *John Mure of Monyhagen*, 'proavi,' who had in like manner had a Charter of same Lands from Campbell of Loudoun, Sep. 2, 1550.<sup>3</sup>—This *John Mure*, who obtained the above mentioned Charter 1671, married Bethia Hamilton, daughter of Hamilton of Dalzell, by whom he had at least one son *James*, who probably predeceased him—for he conveyed Auchindrayne to his brother *Hugh Mure*, whose son or grandson sold it early in the last century; and the Family, it is believed, is now extinct in the male line.

To return to *John Mure Elder*, and *James Mure Younger of Auchindrayne*, the subjects of the following Trial, it is worthy of notice, as proving their rank and consequence in the most convincing manner, that *John Mure* the elder married Margaret Kennedy, second daughter of Sir Thomas Kennedy of Bargeny, (*obit*, Nov. 7, 1597,) by Lady Agnes Montgomery, sister to Hugh, *third* Earl of Eglinton,—and that *James Mure* the younger married Helen, second daughter of Sir Thomas Kennedy of Colzean, Tutor of Cassilis, by Dame Elizabeth MacGill, daughter of David MacGill of Cranston-Riddell, King's Advocate, and relict of the celebrated Robert Logan of Restalrig.

On occasion of John, fifth Earl of Cassilis, going on his travels to France, he conferred THE BAILLIARY OF CARRICK upon the elder Auchindrayne, for all the period of his life, an office of high trust and respectability, having the Civil and Criminal Jurisdiction of the whole of that extensive and populous district. It had previously been enjoyed by Kennedy of Blairquhan, one of the most powerful Chiefs of the name of Kennedy. The Earl had previously given Auchindrayne grants of a five-merk-land and a two-merk-land, in return for his fealty and service; and besides, 'the said John to be one his chargis euer quhan he ves out of Carrik.'<sup>4</sup> Through the influence, as was asserted, of Sir Thomas Kennedy of Colzean, the Tutor of Cassilis, this office was recalled on the Earl's return, which probably gave rise to the deadly grudge of Auchindrayne, and, after the lapse of many years, eventually terminated in his murder. After the period of this recall, Auchindrayne returned to the allegiance of the Laird of Bargany, and took a most active lead in all the feuds of that disturbed country.

As the most copious materials occur in the Illustrations appended to the present Trial, and in the 'Historie of the Kennedys,' relative to all the transactions of Auchindrayne, the Editor will not en-

<sup>1</sup> Written in or prior to 1657, and printed from the original MS. Crown 8vo, Glasgow, 1825. <sup>2</sup> He was eldest son of *Sir John Mure of Auchindrayne*, who was eldest son of *James Mure younger of Auchindrayne*, executed along with his father for the Murder of Dalrymple. <sup>3</sup> See Particular Register of Sasines for Ayrshire, II., 613, where numerous entries occur; but it would be foreign to the purposes of the present work to enter into lengthened genealogical detail and proofs. <sup>4</sup> See *Historie of the Kennedys*, 4to, Edin. 1830, pp. 18, 19.

croach on the prescribed limits of this work, by entering into farther detail. It is hoped that enough is there given to gratify the most anxious enquirer.

Among other curious matters which are mentioned in the present Trial, there occurs the ancient and almost universal superstition, that *the body of a murdered person bleeds at the approach, or at least on the touch, of the Murderer!* This test of guilt, or ordeal, is so remarkable, that the Editor has made every investigation which his opportunities admit; and lays the result before the reader, in the Appendix.]

Jul. 17.—JOHNE MURE OF AUCHINDRANE, elder; JAMES MURE, younger of Auchindrane; and JAMES BANNATYNE of Chapeldonall.

Dilaitit of airt and pairt of the treffonabill Murthour of vmq<sup>le</sup> SIR THOMAS KENNYDIE of Culzeane, knycht, Tutour of Caffilis, vnder trust, &c.; committit be the said Johnne Mure of Auchindrane elder, in forme and maner, and at the speciall tyme sett doun in his Dittay. AND als, for the treffonabill Murthour of vmq<sup>le</sup> WILLIAME DALRUMPILL, in Air; committit be the saidis Johnne Mure, elder of Auchindrane, (James Mure, younger of Auchindrane,) and James Bannatyne, in forme and maner also contenit in the Dittay, produceit be our souerane lordis Aduocat aganis thame.

PERSEWARIS, James Kennydie of Culzeane, as sone to vmq<sup>le</sup> Sir Thomas Kennydie of Culzeane, kny<sup>t</sup>, Tutour of Caffillis; Bessie Dalrumpill, as mother to vmq<sup>le</sup> Williame Dalrumpill; Sir Thomas Hammiltoun of Bytes, knycht, Aduocat to our souerane lord, for his hienes interes.

PRELOCUTORIS for the perfones on pannell.

Mr Johnne Ruffell, Aduocat; Mr Thomas Nicolson, Aduocat; Josefhe Myller, Aduocat.

My lord Aduocat producet the Dittay aboue (under) writtin.

DITTAY *against* JOHN MURE, *elder of Auchindrane*; JAMES MURE, *younger of Auchindrane*; and JAMES BANNATYNE, *sometime in Chapeldonane*.

JOHNE MURE, elder of Auchindrane, James Mure, younger of Auchindrane, and James Bannatyne, sumtyme in Chapeldonane, Ye and everie ane of yow, for your owne pairtes, *respectiue*, ar Indyted and accused of the haynous, crewall, and treasonabill crymes vnderwrittin: FORSAMEKILL AS, be Act of Parlement, maid be oure souerane lord and Estaittis of this kingdome, in the moneth of July, 1587 yeiris, cap. 51, it is statute and ordaned, that the Mourthour or Slauchter of whatsumever our souerane lordis liegis, whair the pairtie flayne is vnder the traift, credit, assurance, and power of the flayer, all fik Mourthour and Slauchter to be committit efter the dait of the said Act, the samin being lauffullie tryed, and the perfoun dilaited, ffund guiltie be ane Assyse thairof, fall be Treafoun; and the perfones ffund culpabill, fall forefault lyfe, landis and guddis. AND TREW IT IS, that ye, the said *Johne Mure, elder of Auchindrane*, haiving, without any iuste cause, conspyred the Mourthour of vmq<sup>le</sup> SIR THOMAS KENNEDIE of *Cullayne, knicht*, in the moneth of Januar, or thairby, 1597 yeiris, accompanyed with sevin or aucht of your complices in the said interpryfe, came

to the Towne of Maybole, and being furelie informed that the said Sir Thomas wes than soupping, vpon the . . . . day of the said moneth of Januar, in the howse of Sir Thomas Nisbett in Maybole, and wes to pafs, efter supper, from that pairt to his owne howse; ye and your said complices, bodin in feir of weir,<sup>1</sup> with hagbuttis and pistolettis, and vtheris forbiddin and vnlauffull wapinis, dairnit<sup>2</sup> your self, vnder silence of night, about nyne or ten houres at evin, in ane obscure place, by the whilk<sup>3</sup> the said Sir Thomas Kennedies passage laye; and, so sone as ye perfaued him, ye fercelie set vpon him, perfewed him with all violence and crueltie for his slauchter, schot and delaschit<sup>4</sup> at him ane great number of schottis of hagbuttis and pistolettis, and still chaiffit and perfewed him; whill,<sup>5</sup> be the Providence of God, and releif of honest nightbouris, he wes delyuered from your crueltie. For the whilk vylde and barbarous offence, ye being summond to vnderly the law, (wes) forced be your owne notour guiltines to go to the horne. THAT feid and inimitie wes schortlie thairefter removed, not onlie be publict and sworne reconciliation maid betuix the said vmq<sup>6</sup> Sir Thomas Kennedie and yow, the said Johne Mure of Auchindrane, bot also confirmed and strenthened, be allyance and mairiage of your eldest sone vpon the said Sir Thomas his dochter; whairby the said vmq<sup>6</sup> Sir Thomas wes drawin vnder sik traift, assurance and freindschip with yow, that he, lipning<sup>6</sup> altogidder to the same, vpon the tent day of May, the yeir of God 1602 yeiris, being of intentione to ryde to Ed<sup>r</sup> for his lauffull buffines, and having no lefs cair of your turnis<sup>7</sup> nor of his owne,<sup>8</sup> he send his feruand, Lancelot Kennedie, to wryte aduerteifment to yow, that he wes to tak his journay touardis Ed<sup>r</sup> vpon the nixt day, whilk wes the ellevint day of May, 1602 yeiris, or thairby; to the effect ye might meit him vpon the way, at the Duppil, a littill be-west the burgh of Aire, and informe him of sik buffines as ye wald desyre him to do for yow in Ed<sup>r</sup>. Whilk aduerteifment, being writtin at desyre of the said Lancelot Kennedie, be Mr Robert Mure, than schole-maister of Aire, your kinsman, he sent that his Letter to yow, with ane scollar boy, being in his schole for the tyme, called *Williame Dalrumpill*; whilk letter cumming to your handis that efternone that it wes writtin, vmq<sup>6</sup> Walter Mure in Cloncaird being than in cumpanie with yow, in your place of Auchindrane, ye dispatchit bak the said William Dalrumpill, in haist, directing him to returne to Maybole with diligence, and to deny that he had met with yow, or delyuered the Letter to yow: And incontinent thairefter, consulted and resolued with the said vmq<sup>6</sup> Walter Mure of Cloncaird, to aduerteis Thomas Kennedie of Drumvrquhie, your gude-brother,<sup>9</sup> of the certaintie of the

<sup>1</sup> Arrayed in warlike manner.      <sup>2</sup> Hid, concealed.      <sup>3</sup> Past which.      <sup>4</sup> Let off, fired.  
Fr. *delascher*.      <sup>5</sup> Until.      <sup>6</sup> Trusting, confiding.      <sup>7</sup> Affairs or matters.      <sup>8</sup> Than of his own.  
<sup>9</sup> Brother-in-law.

faid vmq<sup>le</sup> Sir Thomas Kennedie of Cullayne's journey, and of the way whilk he intended to ryde, advyng the faid Thomas Kennedie of Drumvrquhie to vse that occasion to Mourthour the faid Laird of Cullayne, in reuenge of the Slauchter of the vmq<sup>le</sup> Laird of Barganie; whair of the Laird of Cullayne wes altogidder innocent: And conforme to your faid develish resolution, ye, having aduerteifed, and perswaded, and instigat the faid Thomas Kennedie of Drumvrquhie to interpryse the faid treasonabill Murthour, alsweill be your message send to him be the faid vmq<sup>le</sup> Walter Mure of Cloncaird, as be ane vther Letter send be yow to him with . . . . . Makadam, your eldest sones seruand for the tyme; the saidis Thomas Kennedie of Drumvrchie and the faid vmq<sup>le</sup> Walter Mure of Cloncaird, accompanied with fyve or sax of thair complices, vmbeset the faid vmq<sup>le</sup> Sir Thomas his hie-way, neir the pairt whair he had trysted to meit yow, and vpon the faid ellevint day of May, 1602 yeiris, be your aduerteifment, counfall, and instigatioun foirfaid, cruellie and tressonablie Mourthoured and slew him, vnder traitt, credit, and assurance; of your causing, command, counfall, and ratihibition;<sup>1</sup> ffor the whilk treasonabill cryme, the faid Thomas Kennedie of Drumvrquhie standis forfaitit be Parlement. Notwithstanding whair of, ye, at all tymes sen the faid treasonabill Murthour, affistid and supported the faid Thomas Kennedie, bothe within this cuntrie and sen his going furth thair of; and hes keiped ordinar intelligence and correspondence with him. AND ye, the faid Johne Mure of Auchindrane, ar airt and pairt of the faid cruell and treasonabill Murthour, and aucht and sould be forfaitit, and vnderly the pvneifment of treason for the same. LYKE AS, ye, feiring the discouerie of your guiltines of the faid Treasonabill Mourthour, be the taking, tryall, and examinatioun of the faid Williame Dalrumpill, for eschewing thair of, ye caused quyettie convoy him to your place of Auchindrane, immediatlie efter the faid Murthour; and caused your wyfe keip him quyett within the sam, sumtymes within the barne and sumtymes in the turnepyke-heid;<sup>2</sup> appoynting James Cuninghame, your seruand, to cairie his meit to him for the maist pairt, and to ly in bed with him; keiping him verie quyett and secret from all vtheris. And nevertheles, finding that, pairtly be his weireing to be keiped as ane close prisoner, and pairtly be the discouerie of sum of your seruandis, who got knowlege of his being in your howse, that he might be more publictlye discouered, and ye thairby tryed<sup>3</sup> guiltie of the faid Mourthour, ye send him to Loch-Ransay, in Arrane, to the Laird of Skelmurlie,<sup>4</sup> your freind,<sup>5</sup> convoyed be your seruandis, Johne Mure called *the Barroun*, and James Gordoun, now stabler in Ed<sup>r</sup>, and at that tyme your houshold seruand; whare he, being deteaned for

<sup>1</sup> Confirmation. Law Lat. *ratihabere*.    <sup>2</sup> The top of the *turnpike* or circular staircase, common to the towers and residences of the principal families in Scotland, at this period. In the course of the Trial, it is specified that he was kept 'in *pe chalmers* in *pe turnepyke-heid*.'    <sup>3</sup> Found on trial to be guilty.    <sup>4</sup> Sir Robert Montgomery.    <sup>5</sup> Blood-relation; one related by the ties of consanguinity.

your cause, ane lang space, and he lykwayes weireing to remayne in ane barbarous cuntrie, amang rude peopill, who nothing reguardit him, being ane strenger to thame, leivand vnder ane counterfute name of *Williame Mure*, as ye had directed him; efter sum discord betuix him and ane of the Laird of Skelmurlies seruandis, he came bak to yow to Auchindrane, whair ye caused keip him darned<sup>1</sup> in the barne and turnepyke-heid *respectiue*, till ye learned that your freind James Mure of Fleit wes going to the Warres in the Low Cuntries; and than ye, be your self and your Lady, perswaded the said James to tak the said Williame to Flanders with him; whilk he consenting to do, your wyfe gaue to the said James ane naig, to help to mak the said Williames expensis; and ye recommended to him the cairefull and saif transport of the said Williame Dalrumpill, and fend the said James Gordoun, your seruand, to convoy thame and await vpon thame, to the Place of Cauldwell, in thair way to Leith. Lyke as, the said James Mure of Fleit fend the said Williame to Flanderis to the Warris; whair he ferved dyueris yeires, and ressaued dyueris woundis, and sustained many vther miseries in the same: Whairthrow, he, becumming desyrous to returne to his natiue cuntrie, ye no soner hard of his hame-cumming, bot incontinent thairefter ye fend for him to the duelling howse of Walter Mure in Glenheid of Auchindrane; and thairefter, vpon the . . . day of September, or thairby, the yeir of God 1607 yeiris, ye directed the said James Cuninghame, your seruand, to convoy him from the said Howse of Glenheid to *James Bannatynes* houfe of Chapel-Donald; and casting yow, to forgadder with him be the way,<sup>2</sup> ye, the said Johne Mure, elder of Auchindrane, and ye the said *James Mure, eldest sone and apperand aire* of the said Johne Mure, elder of Auchindrane, meitting with the said Williame Dalrumpill, in the hieway, betuix Auchindrane and Chapel-Donald, ye keiped cumpanie with him be the space of aucht myles, and held dyuers pourposés, speaches, and conferences with him; tryed of him the estait of the Low Cuntries, and findrie vther materis; till ye, cumming altogether to the houfe of Chapel-Donald, ye, the saidis Lairdis of Auchindrane, desyred the said *James Bannatyne* to keip the said *Williame Dalrumpill*, whom ye than named 'Williame Montgommerie,' whill he sould vnderstand farther of your purpose: And sending vpon the morne thairefter, being Setterday the . . . day of September, 1607 yeiris, for the said James Bannatyne, ye, the said Johne Mure, elder of Auchindrane, desyred him to bring to yow, to the Sandis of Girvan, the said Williame, about ten houris at evin; whairin he<sup>3</sup> obeying yow, at his cumming with the said Williame, he fand yow, the said Johnne Mure of

<sup>1</sup> Secreted, concealed.      <sup>2</sup> Contriving that you should, as if by accident, meet with him on the road.      <sup>3</sup> On the margin there is written, 'he simplie lipning (trusting) to traift and freindschip, cam simplie to yow,' but without a mark where it is meant to be taken in. The Dittay in Hadington's MS. Collections seems the original scroll, and bears numerous corrections, in his own hand.

Auchindrane, and James Mure, your eldest laifull fone, attending thame:<sup>1</sup> And at your meitting, ye, the faid James Mure, demanding whair the boy wes? And the faid James Bannatyne, schawing to yow whair he had lichted fra behind him,<sup>2</sup> he pait forward to yow, the faid Johne Mure elder of Auchindrane; wha, schawing to him that boy wes he wha brocht to yow the Letter of aduerteifment of Cullaynes dyet before his Mourthour, and that ye hauing vfed diuers meanes to put him by the way, for eschewing the discouerie of your pairt and guiltines of the faid Mourthour, he still returned within the cuntrie; whairby ye, feiring that he fould be the meanes of your wraik, ye wes forced to resolue to mak quyte of him: And the faid James Bannatyne, perfuading yow rather to giue him sumwhat and fend him away of new, when, as he had almost perfuaded yow, and that he and ye wer returning towardis your fone, to move him to allow of the faid refolutioun, so fone as ye approched neir vnto him, he crewallie invaided the faid Williame Dalrumpill for his slauchter, rusched him to the ground, and, setting his kneis vpone his airmes, he pat his handis in the faid Williames throt, and thairwith worried and slew him: In the whilk fact, ye, the faid Johne Mure, elder of Auchindrane, helped, with your owne handis, to hald him downe and smore<sup>3</sup> him. AND incontinent thairefter, ye, the saidis Johne Mure, elder of Auchindrane, and James Mure, your fone, and ye, the faid James Bannatyne, taking ane spaid and schule, reddie prepared be the faid James Mure for the pourpoise, caist<sup>4</sup> hollis in the sand to have buried him; whilk still schutting and filling with sand and water, swa that ye wes not abill to get his corps covered, ye, the saidis James Mure, younger of Auchindrane, and James Bannatyne, cairied his deid corps in the Sea, sa far as ye could waid, and left his corps thair, to be cairied to the mayne Sea,<sup>5</sup> be ane vtterlie wind;<sup>6</sup> notwithstanding whair of, within fyve or sax dayes thairefter, the wind and tyde brocht bak the dead corps of the faid vmq<sup>10</sup> Williame, neir to the pairt where ye had mourthoured him: WHILK being tryed,<sup>7</sup> and the authoris of his Mourthour referched, be all laifull meanes, the constant and vniuersall bruit<sup>8</sup> and opinion of the haill peopill of the cuntrie, blamed yow and evrie ane of you of the sam: Lykeas, in treuth and veritie, ye thrie are the verie and onlie Murthouraris and flayeris of the faid vmq<sup>10</sup> Williame Dalrumpill, vnder your traift, credit, assurance, and power; in respect that he wes knowne to you, the faid Johne Mure, elder of Auchindrane, at the tymes and in maner before specified; and wes not onlie knowne to yow, the faid James Mure, younger of Auchindrane, whan he wes ane scoller in Maybole, and whan he wes keiped in the place of Auchindrane,

<sup>1</sup> Waiting for them. Fr. *attendre*.

<sup>2</sup> Alighted from horseback, on which Bannatyne and Dalrumpill had 'rode *double*.'

<sup>3</sup> Smother, suffocate.

This horrid manner of death is in all respects the same as that lately pursued by the infamous *Burke* and his associates!

<sup>4</sup> Cast, dug.

<sup>5</sup> The Ocean.

<sup>6</sup> An off-shore wind.

<sup>7</sup> Examined or investigated by the proper legal authorities.

<sup>8</sup> Report. Fr. *bruit*.



in anno 1602 yeiris, befor his going to Arrane, and efter his bak-cumming thairfra to Auchindrane; bot alfo at his going fra Glenheid to Chapel-donald, whan ye, the saidis Johne Mure of Auchindrane, and James Mure, your eldest sone, convoyed him to the howse of Chapel-Donald, recommended him to the said James Bannatyne, and left him in the keiping of the said James Bannatyne; and, thairefter, fend for him to cum to yow to the Sandis of Girvan; whilk meffage he obeyed, and most willinglie and reddelie cam to yow; whan he, being vnder your traift, credit, affurance, and power, ye treasonable flew and murderied him, in maner aboue-writtin: AND yow, and evrie ane of yow, ar airt and pairt thairof, and aucht thairfoir be Decerned to forfeit lyfe, landis, and gudes, and to amit all landis, heretageis, takkis, fteidingis, rowmes, poffeffionis, teyndis, cornis, cattel, gudes and geir, titillis, proffitis, commodities, and rightis whatfumever, directlie or indirectlie perteaning to yow, or ather of yow, at the committing of the saidis Murthouris, or fenfyne, or to the whilk ye, or any of yow, had richt, clame, or actioun.

IT IS ALLEGET be the pannell, that na proces can be led aganis thame, becaus thai ar nocht fummond to this dyett.—My lord Aduocat anfueris, that thai war fummond for thir same crymes of befor, and being presentit and enterand, wer wairdit,<sup>1</sup> fum of thame in the Castell of Edinburgh, and vtheris in the Tolbuith of Edinburgh; and being accuset for Treafone, may be brocht furth of thair wairdis, and put to ane Assyse. And for verification of the premisses, producet the Letteris of Horning, quhair thay being fummond, past to the horne, for nocht finding of caution to compeir and vnderly the law.

The pannell defyres xxiiij houris to be advyset with the Dittay, becaus the matter, substance, perfones, and subiect of the first Dittay is alterit.—The Aduocat in the contrair, becaus the Dittay and the first Letteris agreis in substance, tuiching the Murthour of Sir Thomas Kennydie and Willyame Dalrumpill.—The pannell anfueris, thay differ in circumstances.

The Aduocat thairefter producet the first Summondis, and defyret the famin to be red; and the Justice to advyse, quhidder thay differ fra the Dittay, in substance, or nocht.—THE JUSTICE Ordanis proces, without delay.

The Lairdis of Auchindrane, elder and younger, askit instrumentis, that James Bannatyne is accuset and pannellit with thame, in this proces.—My Lord Aduocat declairis, that he infistis vpon the Summondis, as it is tressonabill.

It is allegit, that this Act of Parliament, quhairvpone the Summondis is foundit, was nevir *in viridi obseruantia*, in this Judgement, quhill this perfute.<sup>2</sup>

<sup>1</sup> Imprisoned, kept in ward.

<sup>2</sup> That the act in question was never observed in the practice of this Court; and that this is the first instance of its having been founded on.

—It is anfuerit, that this Act of Parliament hes tane effect aganis Thomas Kennedy of Drummorchie.

It is allegeit, that the assumption of the first pairt of the Dittay, aggreis nocht (with the) woirdis of the Act of Parliament, in thir woirdis, ‘ vnder power, trust, credeit, and affurance;’ becaus the Laird of Auchindrane had na power over the Tutour of Caffilis: And as to the woird of ‘ affurance,’ it is repointit in the Summondis, that the feid was taikin away, and thairfoir, na affurance.—To the quhilk it was anfuerit, be the Aduocat, that the allegeances aucht to he Repellit, in respect of the Dittay. For, it is sufficientlie knawin, that foure persones may haif ‘ power’ over ane; and the pannell, haifing gevin aduerteifment and direction to fax to stay the Tutour, thair was mair nor sufficient power: And as to the rest of the allegeance, ‘ credeit, trust, and affurance,’ the Dittay standis relevant, feing thair was na feid standing, and thairfoir, behovet to be flane under trust.

It is allegit, that the Dittay can nocht be relevant, vnles the samyn beir that the pannell was actuall committer of the cryme; becaus the Act of Parliament beiris, quhair the fact is committit and done be ane man, haifing power and authoritie of the persone flane; bot sa it is, that the pannell was nocht present at the committing of the fact; and sa the persone flane was nocht vnder his power.—It is anfuerit, that the Dittay standis relevant, in respect that the Pannell was airt and pairt of the fact; and thairfoir the allegeance aucht to be repellit, in respect of the Dittay.

THE JUSTICE findis the Dittay relevant, and Ordanis the samyn to be put to the knowledge of ane Affyse, except the pannell say forder.

It is forder allegeit, that the naikit assertioun of power, authoritie, and affurance, except the pannell had bene present at the committing of the fact, is nocht relevant. *Item*, thair can na proces be led vpone this Dittay, feing the samyn is foundit vpoun ane writ quhilk is nocht producet. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegit, that the Dittay is nocht relevant to infer Treasoun, becaus it is never subsumeit in the Dittay, that the Laird of Cullane was vnder the power of Auchindrane. Anfueris, *vt supra*, that the samyn aucht to be repellit, in respect of the Dittay.—It is allegit, that the wryting of ane Letter be Auchindrane to Thomas Kennedy is nocht relevant to infer, that the pannell was airt and pairt of Cullanes slauchter. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegeit, that thair is na thing qualifeit in the Dittay, that the cryme was committit be the pannellis causing, counfall, or command; becaus counsell can nocht infer airt or pairt. Anfueris, aucht to be repellit, in respect of the Dittay.

THE JUSTICE Repellis the hail former allegeances; and findis proces.

It is allegit, gif the principal flayeris fallis nocht vnder the danger of the Act of Parliament, the perfones nocht present, and yit accuset of airt and pairt, can nocht fall vnder the danger of the said Act: Bot fa it is, that the Tutour of Caffillis was nocht vnder the power or affurance of Thomas Kennydie of Drummurchie, principall flayer; and na affurance betuix thame, bot feid standing betuix thame. It is anfuerit, that thair was na feid standing betuix Drummurchie and the Tutour of Caffillis; and thairfoir the said allegeance aucht to be repellit, in respect of the Dittay, as it is sett down.

THE JUSTICE Repellis the allegeance, in respect of the Dittay.

Forder, allegis that the principall actouris is nocht discuffit. Anfuerit, aucht to be repellit, in respect of the Dittay beiring airt and pairt; and that the principall committeris ar fugitiue, and thairby hes tane the cryme vpon thame.

It is allegit, concerning *the Slauchter of Dalrumpill*, that the auld Laird repeatit the haill allegeances maid aganis the Act of Parliament, vnder trest, credeit, power, affurance, &c. And for Young Auchindrane, sayis, that Dalrumpill was nawayis vnder his power, credeit or affurance; becaus it is nocht qualifeit, that he was vnder the young Lairdis power; and thairfoir, can nocht infer Treafone aganis him. The Aduocat anfueris, aucht to be repellit, in respect of the Dittay.

THE JUSTICE, be Interloquoutour, Suftenis the Dittay, as it is confauet, alfweill aganis the young Laird as his father.—Quhairvpoun the Aduocat askit instrumentis.

ASSISA.

Sir James Scrymgeour of Dudope,	Duncane Bayne of Tulliche,	Williame Sinclair of Blaufe,
kny <sup>t</sup> , elder, Constable of Dundie,	Dauid Weir of Auchiefardill,	George Seatone of North-Rig,
Sir George Elphinstoun of	Patrik Stewart of Baithe,	Johnne Corbett of Arboill,
Blithifwod, kny <sup>t</sup> ,	Vthreid McDowell of Mondork,	Patrik Carkettill of Markill,
James Scrymgeour, younger of	Robert Merfer of Salene,	Johnne Kneilland of Fofkane,
Dudope,	Mathow Brisbane of Rallene,	Sir Dauid Woid of Craig, knycht.

My lord Aduocat tuik instrumentis of the fweiring of the Assyse. My lord Aduocat askit instrumentis of the fweiring of the Dittay, be Bessie Dalrumpill, moder to vmq<sup>h</sup> Williame Dalrumpill, in that article thairof, concerning the Murthouring her sone.

THAIREFTIR, my lord Aduocat, ffor verificatioun of THE DITTAY to the perfones of Assyse, repeatit to thame the notorietie of the fforfaltour in Parliament of Thomas Kennydie of Drummurchie, for the treffonabill Murthour of the Laird of Culzeane; repeatit the Hoirning vset aganis the said Thomas, Cloncaird, Thomas M<sup>c</sup>Alexander, and remanent thair complices; and the citatioun of the Laird of Auchindrane elder, for the said crymes, in anno 1602; producis the Hoirning vset be the Laird of Culzeane aganis Auchindrane, ffor the intendit

Murthour of the said Laird of Culzeane, in anno 1597; and repeittis the Laird of Auchindranes Confessioun thairof, in Judgment. And for verificatioun of the said Laird of Auchindrane elder his giltines of the Laird of Culzeanis Murthour, and of the giltines of his sone and James Bannatyne, of the Murthour of William Dalrumpill, producet the Hoirning execute aganis thame for the said cryme, in ffebruar 1608; quhairby, thay ganging to the horne, and fleing frome the Law, thay haif tane vpoune thame the giltines of the saidis crymes.

To prove that *Auchindrane elder ressuait the Letter* sent to him be Mr Robert Mure, contening aduerteisment of Culleanis dyet, and broght to him be Williame Dalrumple, Walter Mure of Cloncaird being present, producet the Deposition of James Mure of Fleit, markit with the Letter O. *pagina tertia*; the Deposition of James Gordoun, O. p. 5; the Young Laird of Auchindranes awin Declaratioun, O. p. 6. And that M<sup>r</sup> Adame carreit aduerteisment from Auchindrane to Thomas of Barganie thairof, produceit James Gordones Deposition, markit with the said Letter O. p. 10.

For Auchindranes *knowlege of Cullanes Murthour*, vses the Deposition of the Laird of Cauldwell, markit with the Letter G. p. 1, beirand, that Auchindrane schew to them, that he knew of Cullanes Murthour, befor it wes done, and wald nocht stay it. And vses lykwayis the Deposition of James Mure younger of Auchindrane, his sone, O. p. 6, beirand, that he knew that his father was hevelie suspectit of the Slauchter of the Tutour of Cassillis.

To verifie Auchindrane's *keiping of Williame Dalrumple in his hous of Auchindrane*, in the chalmer in the turnepyk-heid, and in the barne of Auchindrane, schortlie eftir the Slauchter of the Laird of Cullane; vses the Deposition of Young Auchindrane, E. p. 6, and D. p. 5; the Deposition of Johnne Mure of Woidland, L. p. 6; the Deposition of Johnne Mure, callit Blak-byres, O. p. 1; and of James Gordoun, O. p. 5 et 10.

To verifie Auchindranes *sending of Dalrumple to Arrane*, quhilk Auchindrane denyes; vses the Deposition of Patrik Dalrumple, H. p. 5; of Johnne Mure, in Blak-byres, O. p. 1; of James Mure of Fleit, O. p. 4.; off James Gordoun, O. p. 5 et p. 10.

To verifie *Dalrumpillis sending to Flanderis*, be Auchindrane, quhilk Auchindrane denyis; vses the Deposition of Walter Mure in Glenheid, A. p. 2; off Johnne Mure, in Blakbyres, O. p. 1; of James Mure of Fleit, O. p. 2 et 3; of James Gordoun, O. p. 5.—And that the Lady Auchindrane *causit Williame Dalrumple change his name*, and call him self *Williame Mure*; vses the Deposition of James Mure of Fleit, O. p. 9; and of James Gordoun, O. p. 10.

To preve Williame Dalrumpellis being in Walter Mure of Glenheidis hous, *after his returning frome Flanderis*, to wit, vpone the Thurisday befor his Mur-

thour, quhilk Auchindrane denyis ; vſes the Depofitioun of James Dalrumpill, G. p. 1 et 2 ; and of Walter Mure, in Glenheid, A. p. 2.

To preve *the bringing of Williame Dalrumpile from Glenheid*, be James Cunynghame, at directioun of the Laird of Auchindrane, quhilk he denyis ; vſes the Depofitioun of Walter Mure, in Glenheid, A. p. 2 ; and of James Gordoun, O. p. 5.

To preve the Lairdis of Auchindrane, elder and younger, thair *meitting with Williame Dalrumpile*, in the way betuix Auchindrane and Chapel-Donane, and keiping cumpanie and conference with him the ſpace of ſevin or aucht myles, quhill thay thre and James Cunynghame come to Chapel-Donane, quhilk Auchindrane preffis to deny ; vſes Auld Auchindrane's Depofitoun, E. p. 2 ; and Young Auchindrane's Depofitioun, E. p. 7 ; the Depofitioun of Andro M'Alexander, B. ; Johnne Mure of Woidland, C. ; Patrik Bannatynes Depofitioun, D. p. 1 ; Young Auchindrane's Confessioun, D. p. 5 ; James Dalrumples Depofitioun, G. p. 1 et 2 ; Williame Roife, L. p. 5 ; Johnne Mure in Carvell, L. p. 1 ; James Bannatyne, M. p. 1.

To verifie *the bringing of Williame Dalrumpile*, be James Bannatyne, *to the SANDIS OF GIRVEN*, to the Lairdis of Auchindrane, elder and younger, and **MUR-  
THERING HIM VNDER** nycht, in that place ; making ane hole for his burrall, and caſting of him in the ſea ; vſes the Depofitioun of Johnne Mure of Woidland, C. ; Patrik Bannatynes, D. p. 1. ; James Dalrumpillis, G. p. 1 et 2 ; David Merferis Depofitioun, L. p. 4 ; Williame Roife, L. p. 5 ; Johne Mure in Cairve, L. p. 7 ; James Bannatyne, M. p. 1 et 2 ; Johne Mure in Blak-byres, O. p. 2 et 11 ; James Gordoun, O. p. 5 ; James Pennycuiks Depofitioun, maid 27 of Maij ; the Young Laird of Auchindrane's Depofitioun, F. p. 2, beirand, that he hard be the bruit of the cuntrie, that his father knew of Dalrumples Murthour, becaus he was fugitiue.

To verifie that *Auchindrane's denyall that he knew Williame Dalrumpile*, or that he brocht him M<sup>r</sup> Robert Mures Lettir, is vntrew ; and that he knew him, and reſſauit the ſaid Letter from him ; vſes the Depofitioun of James Dalrumpile, G. p. 1 et 2 ; James Mure of Fleit, O. p. 3 ; James Gordoun, O. p. 5 ; the Depofitioun of James Mure, younger of Auchindrane, D. p. 5.

To verifie *James Mure*, younger of Auchindrane, *his knowlege of Williame Dalrumpill*, and of his keiping quyet in Auchindrane ; and of his being at hame, immediatlie befor his Murthour ; and his father and the deponneris meiting and conference with him in the way betuix Auchindrane and Chapel-Donane, the day befor his Murthour, and thair cuming altogidder to Chapel-Donane that nycht ; produceit the Depofitioun of the ſaid James Mure, younger of Auchindrane, D. p. 5. *Item*, the Depofitioun of the ſaid Laird of Auchindrane younger, D. p. 7.

To verifie the dilligence, craft, and subtilitie vsed be the Lairdis of Auchindrane, to suppress and eschew the tryell of Williame Dalrumpillis Murthour, and of thair awin giltines thair of; first, my Lord Aduocat vses the verificatioun of thair intentioun to Murthour Hew Kennydie of Garriehorne, onlie devyset and attemptit be thame, to cullour thair going to the horne, and to eschew the haynournes of thair fleing fra the law and tryell of thair giltines, of sic ane horrible and abhominable Murthour as Dalrumpillis; the Depositioun of James Dalruple, K. p. 1 et 2; and the Depositioun of James Bannatyne.

Defyres lykwayis the Assyse to haif confideratioun of thair continuall resoirt and friendschip with James Bannatyne, eftir the said Murthour; and thair being at the horne for the samyn; thair suffering the reproches and iniuries, be woird and deid, offerit be him to thame, quhilk thay wald nevir haif induret, gif thair had nocht bene affrayit, that, thair discoirding with him, he sould haif discoverit thair giltines of the said Murthour; vses the Depositioun of Patrik Bannatyne, D. p. 3; the Depositioun of Auld Auchindrane, M. p. 3; and of James Mure of Fleit, O. p. 8.

The geving be the young Laird of Auchindrane to James Bannatyne, ane Lyfrent Tak of his rowme of Chapel-Donane, all writtin with Young Auchindrane awin hand, contening fourtie penneis be yeir of deutie, denyit and menfuorne be Young Auchindrane; and thairefter confessit, quhan the Tak was recoverit and producet, E. p. 8.

The deilling of Young Auchindrane, be him selff and his freindis, with James Bannatyne to go to Ireland, and furnessing of him, to that effect, ane boit, meit and drink, quhilk Young Auchindrane denyit; vses for verificatioun thair of, the Depositioun of Allane Pyper, L. p. 3; Daid Marschellis Depositioun, N. p. 1, et O. p. 4 et 8; Daid Mure, in Girven, his Depositioun, O. p. 4; and James Bannatynes, O. p. 8.

That Young Auchindrane wrait ane Letter with the said James Bannatyne, and in his fauour, to Thomas Kennydie of Drummurchie, the Kingis forfalt Tratour; vses for verificatioun thair of, the Confessioun of the said Young Laird of Auchindrane, O. p. 7; and the Depositioun of Williame Kennydie of Garfar, O. p. 8.

To preve that the fermes (*rents*) of Chapel-Donane, was continuallie payit to James Bannatyne, sen his banishment; vses the Depositioun of James Roife, tenant thair, L. p. 5.

To preve the furnessing of pleniffing, money and necessaris be the Auld Lady Auchindrane to James Bannatyne, continuallie, since his going to Ireland; vses the Depositioun of Williame Pyper, L. p. 1; Daid Marschell, L. p. 4; Williame Roife, L. p. 5; James Roife, L. p. 5; James Gordoun, O. p. 10; and be Auchindrane awin Letter sent to James Bannatyne; Moyse Lokhartis Letter to James

Bannatyne; Young Auchindranes Letter sent to James Bannatyne; the Lady Auchindranes thre Letteris to James Bannatyne; and hir Letter to James Bannatynes wyfe.

The perfewar desyres the Assyse to haif confideratioun, as of ane verrie materiall circumstance, that James Cuninghame, being the man imployit be Auchindrane to keip Williame Dalrump quyet in the place of Auchindrane, and to convoy him fra Glenheid to Chapel-Donane, the nycht befor his Murthour, quhairby he, being for the tyme, his actuall fervand, and in his hous of Ballachtoule the nycht of Dalrumpillis Murthour, and thairby mair abill to haif discoverit the circumstances of the Murthour nor (*than*) ony vther; the Laird of Auchindrane hes absentit him, for eschewing of the said tryell: And how the said James Cuninghame, being in the Laird of Caldwellis hous, and the Erle of Abercorne geting knowledge thairof, haifing, as ane Counsalour, commandit Caldwell (*Mure*) to exhibeit Cuninghame befor the Counsell; he, contrair to his promeis, sufferit him to escaip: He being challengeit for it befor the Counsell, grantit the promeis, and declairit that Cuninghame was sent to his hous be the Lady Auchindrane; and that, contrair to his promeis, he sufferit him to escaip; ffearing, gif he had enterit him befor the Counsell, he fould haif done harme to his freind. For the quhilk, he become in the Counsellis will; as his Depositioun beiris, H. p. 1.

As lykwayis, how Auchindrane elder directit the said James Cuninghame, by the way to the Laird of Vaynes hous, in Angus, causing him change his name, and to call him self *Williame Broun*, and geving him that name, quhan he recommendit him to the Laird of Vayne, albeit the man was the said James Cuninghame; Quhilk Auchindrane denyis; bot the contrair is provin be James Gordoun, O. p. 5 et 10; be the Laird of Vayne, O. p. 11; Andro Lokhart, O. p. 12, and George Blakis Depositioun, maid at Lundoun, 28 Maj.

Forder, it is desyrit that the Assyis will consider the grit substance contenit in the Letter writtin be Auchindrane to his sone, with his awin hand, impudentlie denyit be him; and nevertheles cleirlye verifeit be the Depositionis of Daud Drummond, seruitour in the Castell, E. p. 15; and be Thomas Home, Constable, *ibid.*; and be the Declaratioun maid be my Lord of Mar, in Counsell; quhilk the Lordis of Secreit Counsell, present in this Judgment, hes verifeit.

Thay haif to confidder the Lady Auchindranes adverteiffing of James Bannatyne, be Letters, of all the Dyettis of proces led betuix the Laird of Auchindrane and her sone; and hir recommending of him to Thomas Kennydie of Drumurchie, hir brother; provin be Williame Pyper, L. p. 1; James Gordoun, O. p. 10; and be hir awin Miffaue Letter to James Bannatyne.

The Lady Auchindranes absenting hir self, and nocht compeirance befor the Counfall, quhan scho wes charget thairto, vnder the pane of Hoirning, to compeir and Depone hir knowlege of the crymes quhairof hir husband and sone ar

accused; Thomas Mure, sone to Auchindrane, and Andro Sinclair, half brother to Auchindrane, thair going to the horne, for nocht compeirance to depone in the saidis crymes, quhilk of necessitie man be presumeit to proceid of the stay maid to thame be Auchindrane, elder and younger, for feir that thair Depositiones sould discouer the giltines of the saidis Lairdis. The lyk man be presumet of Thomas Wallace, Johne M<sup>c</sup>caig, and dyuerse vtheris of the Lairdis servandis, going to the horne, for the lyk cause.

Thay haif also to confidder verrie cairfullie, the Laird of Auchindranes hyring James Pennycuik to go to Ireland to Murthour James Bannatyne; denyt be Auchindrane, and verifeit be the Deposition of the said James Pennycuik, and George Small his servand. And the lyk directioun sent be Auld Auchindrane with George Blak to Ireland, to Williame Carmichell younger of Rowntrie-croce; verifeit be the Depositiones of George Small, O. p. 11, and be the Examinations of the said James Pennycuik and George Blak, in Lundoun, in May last.<sup>1</sup>

Last, thay haif to confidder the Letter sent be Auld Auchindrane to the Laird of Stair,<sup>2</sup> and the forme of Band send thairwith; to haif bene obtenit, subscryuit be the Laird of Stair, and his freindis, of the name of Dalruple.

IN respect of the quhilkis premisses, verifeing the crymes lybellit, and hail materiall circumstances thair of, with so cleir evidences and manifest probatioun, as na man could haif expected, in so covered and craftie Murthouris; quhairby all dout of obscuritie and scruple is cleirly removet; in caice the said Assyse or ony pairt of thame fall happin so vnhappellie to forget thame selfis, as to clange<sup>3</sup> the saidis Lairdis of Auchindrane, elder and younger, or the said James Bannatyne, quha hes Confessit his awin giltines, in Judgement; my lord Aduocat protestis for Wilfull and manifest Errour; and for all payne that of the Law can follow thairupoune.

IT IS ANSUERIT be the pannell to the perticuleris aboue writtin, that the samyn, nather in hail nor in pairt, aucht to be respectit; and speciallie, in sa far as the samyn is foundit vpon Deposition of Witnesse; because, it is speciallie provydit be the Act of Parliament, maid in the yeir of God I<sup>m</sup>.V<sup>c</sup>. foursoir fevin,<sup>4</sup> cap. 90, that in all causses Criminall, the hail proces and probatioun, and vther instructiones quhatsoever, ather be Writ or Witnesse, fall be alleget, reffonet and deducet in prefens of pairtie accusit, in face of judgment, and na vther wayes; quhilk is according to the Cowmoun Law; seing na witnesse can be reffaut *contra non*

<sup>1</sup> It may be stated here, once for all, that unluckily the DEPOSITIONS, LETTERS, and other productions; which are here so regularly quoted by their proper numbers and pages, are lost; at least, if among the Records of the Justiciary Court, are in a room filled with loose and unarranged papers, tied up in bundles in such a manner, as to render any ordinary search entirely hopeless—as it would occupy many months' constant investigation. <sup>2</sup> John Dalrymple, chief of that name. <sup>3</sup> *Cleanse*; find innocent, acquit. <sup>4</sup> Anno 1587.



*citatum*; to the effect that the pairtie may be hard to oppone aganis thame: And trew it is, that all thir Depositiones and writtis, vset be my Lord Aduocat, and speciallie the saidis Depositiones of Witnesfes, hes bene resflaut out of presens of pairtie; the pairtie nevir being summonit to obiect aganis thame, done extraudiciall, and nocht in Judgement: And thairfoir, quhatfoeur the Lordis of Counfall, *per medium inquisitionis*, hes done of befoir, out of presens of pairtie, aucht nawyis now to be respectit be the Assyse; accoirding to the decisioun of the Act of Parliament: ffor, as in Ciuile causses, na fayth will be gevin to ony Witnesfes out of presens of pairtie, *multo minus in Criminalibus*.

And now, anfuering perticulerlie, firft, as to the Forfaltour of Thomas (Kennedy) of Barganie, (Drummurchie,) thair is na thing producet. Nixt, he wes nocht forfalt for the factis lybellit, bot only for the burning of the house of Auchinfoule. *Tertio*, it tuiches nocht our cause. As to the Hoirningis, the pannell vses fyve feuerall Relaxatiounes of Auchindrane, elder and younger, *respectiue*; quihilk thay producet. And albeit the Lairdis of Auchindrane, elder and younger, war put to the horne, for thair nocht compeirance, the first dyet, yet that importis na taking of the cryme upone thame; becaus, thay being giltie for vther crymes, and speciallie, schuiting of pistolettis, ffor the quihilk thing mycht haif bene pwneift be the lawis, thay durft nocht compeir, quhill first thay had obtenit ane Remiffioun of the saidis crymes, quihilk thay mycht lauchfullie do; becaus, thay knew certanlie, that thair going to the horne wald be purget be thair compeirance and offer to Tryell. As lykwayis, Young Auchindrane compeirit at the first Dyet; and also Auchindrane elder wald haif enterit willinglie, and to that effect offerit to comper<sup>1</sup> and tak his Remiffioun for the pistolettis, but culd nocht obtene the samyn; as is notour to my Lord Chancellor and Thesaurer.<sup>2</sup>—As to the repetitioun of the Deposition of *James Mure of Fleit*, and *James Gordoun*, it is anfuert, *ut supra*. And forder, in caice the pairtie had bene wairnit, as he was nocht, he wald haif repellit the said James Muir, he being ane vagabund, without ony residence, nocht worth the Kingis vnlaw;<sup>3</sup> and richt sua, that he was denunceit rebell and put to the horne, for steilling of tua horse and thre oxin fra the Tutour of Nuntoun; and also, for steilling of ane quhyte naig out of the landis of Skeltoun. Lyk as, the Tutour of Bombie, to move him to be ennemie to Auchindrane elder and younger, and to depone aganis thame, he aggreit<sup>4</sup> the Tutour of Nuntoun and the said James Mure, anent the steilling of the said guidis. And forder, the Laird of Blairquhand hes promiseit him geir and guid deid, to depone aganis thame;<sup>5</sup> and (Mure) hes now becum his fervand.

<sup>1</sup> Compromise; make a composition, or purchase his Remission from the Crown. <sup>2</sup> Both of whom, it will be remembered, were then sitting as Assessors. <sup>3</sup> Not being worth, i. e. unable to pay the fine or *amercement* to the king, for his own appearance, &c. <sup>4</sup> Reconciled them, and made up their quarrel. <sup>5</sup> For the reason of Blairquhand's feud with Auchindrayne, see Hist. of the Kennedys, p. 19, &c.

And as to Gordoun, can nawayis be respectit, becaus he was nocht aucht zeiris,<sup>1</sup> the tyme of the committing of the factis quhairvpon he was examinat. Lyk as, the pannell desyres that Gordoun may be presentit in prefens of the Assyse, and confrontit with the pannell.—Forder, it is allegit be the pannell, that the Depositiones for (of?) the said James Mure and James Gordoun, and all vtheris of the lyk nature, aucht nawayis be respectit; becaus, it is of veritie, that the lybell and Dittay confists of tua pairtis; the ane substantiall, to infer the pwneifchment lybellit, viz. the committing of the factis lybellit; and the advyse, consent, perswasion, instigatioun, causing, command, counsell, and ratihabitoun, quhilkis ar the only substantiall poyntis contenit in the lybell and Dittay: And the rest of the poyntis of the said Dittay are only presumptiones, coniecturis, and liklienes.<sup>2</sup> And feing, the speciall cause quhy the Justice Sustenit the lybell, was the advyse, presumptioun, instigatioun, counsell, command, affistance, and ratihabitoun gevin, be the Auld Laird of Auchindrane, to the saidis Thomas Kennydie, for Murthouring of the said Laird of Culzean; and that thair is na thing of the said substantiall poyntis provin be nane of the Depositiones; quhatfoeuer Depositiones is maid be the saidis tua perfonas, or ony vther remanent Witnesses, in materis of the lyk nature, anent ony probabilities or presumptiones, albeit thai war maist violent presumptiones, and indoutit, thay can produce na sentence condampnatour<sup>3</sup> in Criminall cauffis, bot only ar adminicles to the tortour and questioune. And forder, the Depositiones of the saidis tua perfonas, being only anent the reffait of ane Letter, nocht contening the contentis and qualitie thair of, can nawayis induce ony presumptioun, far les probatioun. *Item*, it is to be rememberit, that thir Depositiones tuiches nocht Young Auchindrane. *Item*, tuiching that pairt of Young Auchindrane, and Caldwellis Deposition, thay prove nathing, nather of the fact, nor yit of the knowlege. As also Young Auchindrane's Depositiones previs far les; becaus he mycht haif lauchfullie deponit that his father was suspect befor he was pannellit.

And forder, as to the Depositiones of *Young Auchindrane*, and *Johnne Mure of Woildland*, thay can work nathing, feing thai preve na pairt of the Dittay, or factis thairin contenit; ffor as to Young Auchindrane's Depositiones, anent his knowlege of Dalrumpile to haif bene in his fatheris hous, that previs na pairt of the Dittay. And, quhair it might appeir, be the said Deposition, and vtheris Depositiones conforme thairto, that the said Laird of Auchindrane is improvin, as quha deponit that he never knew the said Dalrumpill,—it is ansuerit, that the same can impoirt na probation of ony pairt of the Dittay; becaus, gifand<sup>4</sup> and

<sup>1</sup> Eight years old.      <sup>2</sup> Probabilities, *likelihoods*.      <sup>3</sup> Condemnatory.      <sup>4</sup> Giving or allowing for the sake of argument, but not granting; a common form of expression used in ancient legal proceedings, when Counsel was illustrating a point by arguments, &c.

nocht grantand that the pairtie pannellit had maid ane leifing,<sup>1</sup> or vareit and bene inconstant, and sa waverit in his Depofitioun, the fame can impoirt na probatioun; speciallie, quhair the said vntreuth, &c. is nocht in the substantiall pairtis of the Dittay, bot in vther accidentis and externall circumftances. And as to Johnne Mure of Woidlandis Depofitiones, it can nawayis be respectit, for thir particular cauffis:—ffirst, he is tennent removeable<sup>2</sup> to the Erle of Caffillis, and his houfhold fervand; nixt, he is Chalmerlane and factour to ane grit pairt of his lordfchipis landis; bot in speciall, is Bailzie of the Barronie of Dalrumple. *Secundlie*, he was vpon the ground, in companie with the Erle of Caffillis, at the flauchter of Barganie, at quhilk time Auchindrane was deidlie hurt. *Thridlie*, he was also in companie with the Erle of Caffillis, at the perfute of Auchindrane, in his awin hous. *Fourtlie*, he was in companie with Hew (Kennedy) of Garriehorne, and his convoy throw the landis of Auchindrane, quhair he come in bragging maner, and focht Auchindrane at his awin hous. *Fyftlie*, befor he was examinat befor the Counsell, the Erle of Caffillis caufit him fett down sic woirdis as his lordfchip thocht expedient, and to be fubfcriuit with his hand; quhilk he nawayis durft alter, befor the Counsell; *et sic prodiit testimonium*. The quhilk writ was producet to him in Counsell, befor he wald depone; quhairby he nicht keip my lordis injuncciones.

ITEM, as to the Depofitioun of *Johnne Mure of Blakbyres*, it previs na pairt of the Dittay, becaus he deponis nathing of knowledge that he hes of Auchindrane, bot a repoirt that he had of vther fervandis. And forder, the said Johnne could nevir haif bene witnes fra the beginning, ffor thir cauffis:—Becaus, he flew the Laird of Auchindrane's feruand callit Williame Geddies, for the quhilk he was baneifchet the countrie; nixt, he come in vpon fair promeiffis and conditiones maid to him be the Erle of Caffillis, to purches to him ane Remiffioun for that Slauchter, and for the quhilk caus, he promeifit to the said Erle to depone quhat he defyret: And laft, the said Johnne Mure hes intrufet<sup>3</sup> him felf in ane grit pairt of Auchindrane's lands, and thereby<sup>4</sup> thinkis to bruike<sup>5</sup> the famyn.

As to *Patrik Dalrumples* Depofitiones, na fayth can be gevin thairto, becaus he is uncle to the murtherit man.

It is anfuerit, to the Depofitioun of *Walter Mure*, and to the rest of the Depofitiones befor the allegit Presbiterie, that the saidis Depofitiones can mak na faith; becaus thai ar extra-judiciall, na proces depending aganis ony pairtie, na pairtie haifing intres being callit, bot only ane naikit conventioun of tua or thre Ministeris, nocht Presbiteriallie convenit, quha had na power to tak sic Depofitiones: And as the saidis Depofitiones, gif thai had bene tane to the saidis Mi-

<sup>1</sup> An untruth or falsehood; *leifing*.      <sup>2</sup> Tenant at will.      <sup>3</sup> Intruded; thrust himself into.  
<sup>4</sup> By perjury, or giving false evidence, &c.      <sup>5</sup> Enjoy; possess as his property.

nifteris in ane Ciuile caus, wald haif maid na faith, far les in ane Criminale. *Secundlie*, the said Walteris Depositione preuis na pairt of the Dittay: And albeit the Depositiones war trew and valid, yit thay ar ineffectuall; becaus, albeit it war grantit that Dalrump was fend to Flanderis, that impoirtis nocht the probatioun of ony Dittay.

ITEM, it is anfuert to *James Dalrumples* Depositione, that the same can nawayis work aganis thir perfonas pannellit: Becaus, in the first pairt of the said Depositione, he deponis nothing aganis thame: And as for the last pairt, beir- ing ane plott to mak ane onfett vpon Garriehorne, the samyn can nawayis work aganis the perfonas pannellit; nather can his Depositione be regairdit, in respect he deponis his awin turpitude, viz. the forgeing and contryveing of the slauch- ter of Garriehorne devyfit be him self, as is confessit; and quhilk devyfe of his, he counsellit the perfonas pannellit to put in executioun; and sua, he being de- vyfer and contryver of the fact, he can nevir be hard to depone in preiudice of the perfonas pannellit. And to purge the onfett maid vpon Garriehorne be Young Auchindrane, the verritie is, that the caus of that onfett was accidentlie, they meitting togidder at the end of the Toun of Air, and Young Auchindrane meiting him in the way, had just caus to mak the onfett vpon him: first, becaus he had tane his fatheris bluid, and nixt, he was at the Slauchter of his mother- brother.<sup>1</sup> And forder, the said James Dalrumpillis Depositione can nawayis be respectit, becaus he is ferdis of kyn<sup>2</sup> to Williame Dalrumpill, quha is flane, and is secund and thridis to the Laird of Culzeane. And forder, befoir he was pre- sent in Counsell to depone, he was movet to depone the samyn, vncitet,<sup>3</sup> be my Lord of Abercorne, quhair of he maid adverteifment thairefter to the Laird of Auchindrane and defyret him to fett him; becaus he had put all that he had, be submissioun, in Sir Claud Hammiltone's handis.

ITEM, as to the Depositione of *M<sup>c</sup> Alexander*, it preves na pairt of the Dit- tay nor factis lybellit, bot rather purges the samyn; and forder, can mak na faith, becaus it declairis, that the Lairdis of Auchindrane war content to cum and tuich the corps,<sup>4</sup> sua that<sup>5</sup> thay mycht do the samyn in Air, my lord of Cassillis nocht being thair. And to verifie the samyn, produces ane Instrument.<sup>6</sup> And forder, at that tyme Young Auchindrane was deidlie hurt; and sa could nocht cum. And forder, the said Depositione can nawayis be respectit, becaus it is extra-judiciall, and one in prefens of the partie adversar, viz. the Erle of Cassillis.

<sup>1</sup> Uncle; mother's brother.    <sup>2</sup> Within the fourth degree of relationship.    <sup>3</sup> Without having received lawful citation.    <sup>4</sup> Alluding to the well-known popular test, or ordeal, of *calling upon the accused or suspected person to come forward and touch the corpse of the murdered party!* The superstitious notion then held was, that THE CORPSE WOULD BLEED, *immediately on the approach or touch of the Murderer!* Powerful use of this circumstance has been made by Dramatists and writers of Romance. See a variety of interesting notices in the APPENDIX to this Trial, with an enquiry into the origin and practice of our ancestors in such cases.    <sup>5</sup> On condition; provided that, &c.    <sup>6</sup> A Notarial attestation.

ITEM, as to *Patrik Bannatyne's* Deposition, it aught nawayis to be respectit, for thir cauffis:—*First*, becaus he is secund and thridis of kyn with Culzeane, quha is ane partie accuser; as also to the Erle of Cassillis: *Nixt*, becaus he is brother to James Bannatyne, quha is *socius criminis*, and is callit and accuset for the samyn cryme: And *last*, his Deposition can mak na fayth, becaus the samyn proceidis onlie *ex auditu*, be relatioun of his brother James Bannatyne; in the quhilk Deposition, he confesses the said James Bannatyne to be thryse contrair<sup>1</sup> in his relatioun. And sua, his Deposition, depending vpon ane contrair relatioun, makis na fayth.—Aganis the hail Depositiones depending vpon *James Bannatynes* relatioun, it is allegit,—gif James Bannatynes fall, all his relations man fall.

And forder, as to *Williame Roifes* Depositione, it is allegit, that the samyn can nocht be respectit, becaus Williame Roifes wyfe and the Laird of Culzeane ar thrydis and ferdis of kyn. As also, his wyfe is father-fister to James Bannatyne, quha is accuset of the same crymes.—It is allegit aganis the Deposition of *Johne Mure in Curver*, that the samyn can nawayis be respectit: Becaus the samyn is only ane relatioun made be James Bannatyne: *Secundo*, becaus the samyn is contrair to the Dittay; in sa far as the Dittay beiris, that James Bannatyne, haifing brocht Dalrump to the Sandis of Girven, left him behind him, and raid forwardis to the tua Lairdis of Auchindrane, quhair the Auld Laird conferring with him, the Young Laird past to the said Dalrump; and eftir ane space, Auld Auchindrane and Bannatyne cuming neir thame, he slew him: And in this Deposition it is confessit, that James Bannatyne sould haif said to the Deponer, that Young Auchindrane drew this Dalrump after him, and slew him; quhairby it is euident, that James Bannatyne is contrair, insafar as the Deposition beiris, conforme to the Dittay.

As to the Deposition of *James Bannatyne*, it aucht nawayis to be respectit, for thir argumentis.—*First*, becaus he hes tane the cryme vpon him, and for the samyn hes maid offeris baith to the Kirk and partie: *Secundlie*, he standis yit at the horne vnrelaxit: As also, is vnder the censure of excommunicatioun; and so is nather Godis man nor the Kingis: *Thridlie*, he is secund and thridis of kyn to the Laird of Cullane and the Erle of Cassillis: *Ferdlie*, he is cum in vpon promeis and conditioun of his lyfe, quhilk was fet down to him be Josias Stewart, bruther to my Lord Vchiltrie, James Stewart, and the Laird of Girvenmaynes; and his Band gevin to that effect, that he fall cum baith saif to Scotland and returne saif to Ireland. Eftir meiting and conference in Ireland, and quhat he had sett doun the conditiones, he come over to Buit to his coufing the Laird of Cames,<sup>2</sup> to quhome he schew the conditiones, and brocht Cames brother,

<sup>1</sup> Contradictory.

<sup>2</sup> From Ireland to the Island of Bute, to his cousin, . . . Bannatyne of Kames.

callit Rannald Bannatyne, with him to the Largis, quhair he mett with James Stewart, quha brocht him to Kilwinning; and than Josias and James Stewartis mett with him beyde Irwing, to haif sett down the conditiones perfytlie, for his fure returning to Ireland, quhilk fould haif bene put in Rannald Bannatynes handis; bot, vpone fair promeffis, he was movet to leve Rannald behind him: And thairefter, he wes brocht to my Lord of Abercorne, with quhome he was tuentie dayis, or thairby: And thairefter, he was fend to Cliddisdail, to the Laird of Corhous;<sup>1</sup> and fua, be this progres, it is evident, quhat hes bene the indirect deilling of James Bannatyne, fra the beginning. Speciallie, quhan foueir ane pairtie is accuset for ane cryme, and is fugitiue for the same, as in this caise, he can nevir be hard, be his Confessioun and Depositioun, to work ony preiudice to ony vther pairtie; nather can his Depositioun work, sa mekill as the tortour, to the parties, vnles he first be subiect to the tortour him self; as is obseruit in the Justice Courtis of all Christiandome: Nather can his Depositioun be regairdit aganis Young Auchindrane, becaus the samyn proceidis vpone malice aganis him; infasar as he was informet that Young Auchindrane had offerit to the Thesaurer, for cleiring of his awin innocencie, to set cautioun, vnder the pane of Fourtie thowseand pundis, to exhibeit the said James Bannatyne befor the Justice:<sup>2</sup> And it is nocht to be presumet, that ane man giltie of ane haynous cryme, being at his awin libertie, wald willinglie cum in to his awin deid,<sup>3</sup> bot vpone promeiffes and conditionis. And forder, this argument is infallable; na gritter fayth can be gevin in this matter to James Bannatyne, nor gif<sup>4</sup> Dalrumple, vpone his deid-bed, had maid his Declaratioun that he was slane be Auchindrane, elder and younger: Bot trew it is, that na fayth wald haif bene gevin thairto, without vther probatioun. This was cleirly decydit, quhan as Robert Ramsay, notter in Stirling, was execute to the death, confessing that the Instrument of Denunceatioun maid be him self, quhairto he was notter aganis the Tennentis of Halbarnes and Auldlistoune, was fals, and past constantlie to the deid with it; yit, quhan as the caus of Improbatioun was advyset be the Lordis of Counsell,<sup>5</sup> thay respectit nather his first, secund, nor thrid Depositioun, in preiudice of the producer, accoirding to the Cowmoun Law; becaus the Confessioun of ane malefactor may weill preiudge him self, bot na vther.

It is Ansuerit to the remanent Depositiones, depending vpone James Bannatyne's relatioun—aucht nocht to be respectit, *vt supra*.

As to the Depositiones of *James Pennycuik*, thay aucht to mak na fayth, be-

<sup>1</sup> Bannatyne of Corhous, in the county of Lanark.      <sup>2</sup> They omit a material part of the offer, viz. to present him 'dead or alive!' It being their purpose to have him murdered in Ireland, *by authority*, and thus for ever to have suppressed evidence of their nefarious wickedness!      <sup>3</sup> Death.

<sup>4</sup> Than if Dalrymple upon his death-bed.      <sup>5</sup> When the process of Reduction, for the purpose of annulling and setting aside the Instrument, was advised before the Civil Court.

caus he is ane personage infamous and notoriouſſie knawin to be infame ; he is denuncet rebell and put to the horne at the instance of Capitane Williame Rig, for ſteilling of his cloick and his ſuord, accompaneit with ſevin vtheris, betuix Leyth and Ed<sup>r</sup>, vnder clud of nycht : And this Hoirning, ſtanding for ane ma-niſeſt Ryote and Oppreſſioun, is ſufficient to mak him infame : And produceit the Hoirning for veryfeing thairof : *Secundlie*, the Depoſitioun of James Pen-nycuik can nocht be regairdit, in reſpect the ſamyn is improvin, in the ſpeciall poynt thairof, befor the Lordis of Secret Counſell ; in ſa far as he, haifing de-ponit the Obligatioun reſſauit be him from Auchindrane for the ſowme of Four-ſcoir pund, to haif bene gevin for Murthering of the ſaid James Bannatyne—the contrair thairof was verifeit befor the ſaidis Lordis, and the ſaid Obligatioun (proven) to haif bene gevin for borrowit money : Lyk as, the Witneſſes quha war examinat thairupoun, deponit, that thai ſaw the numeratioun<sup>1</sup> of the ſaid money. And ſua the ſaid deponer being improvin, in the maift ſubſtantiall poynt of his Depoſitioun, thair aucht no credeit to be gevin to the reſt. Forder, the ſaid Depoſitioun concernis na pairt of the Dittay, nather ſubſtantiall nor circum-ſtances thairin contenit. Laſt, he is *teſtis ſingularis*, deponeing vpon his awin turpitude, viz. that he was hyret to the Slauchter of ane man ; and thairfoir, his Depoſitioun can nocht be regairdit ; ſpeciallie, haifing confideratioun to the circumſtances thairof, viz. that vncoactit or compellit, he paſt furth of Scotland to London, to mak his Depoſitioun to his awin guid-brother,<sup>2</sup> Sir James Ham-miltoun, in the quhilk he confeſſis him ſelf to be reſtranit fra his allegit pre-tences, and to mak the ſaid Depoſitioun for the love and reverence he bure to my Lord of Abercorne, quhome the perſones pannellit acknowleges<sup>3</sup> as pairtie. Quhilkis haill circumſtances, concurrand with the notorietie of his bypaſt lyfe, vereifeit be the Decreit of Secret Counſall, his Depoſitioun can mak na fayth.

As for the Depoſitiones of *George Blak*, the ſamyn can mak na fayth : becaus he depones that the Laird of Auchindrane ſould haif hyret ane Williame Car-michell, being ane diſcreit Gentilman, *integre fame*, is nevir examinat thair-upoun ; and ſua the ſaid Georges aſſertioun, being *teſtis ſingularis* in that Depo-ſitioun, can nocht worke.

To the preſumptioun obiectit aganis *Young Auchindrane*, beiring, that gif he had nocht bene giltie of the Murthour of Dalrumple, he wald nocht haif ſufferit the iniurious woirdis and langage of James Bannatyne ; it is anſuerit, that gifand the preſumptioun war trew, yit it is nawayis pregnant to infer Treafone aganis Young Auchindrane, ſeing na ſubſtanciall fact is provin. And forder, the caus of his forbeiring of him, at that tyme, was, in reſpect the ſaid James Bannatyne vtterit his iniurious woirdis and boiſting, in his drukinnes,

<sup>1</sup> Telling, or counting out of the money.

<sup>2</sup> Brother-in-law.

<sup>3</sup> Recogniſe.

quhairvnto he is alwayis subiect. As lykwayis, it was na honour<sup>1</sup> to Young Auchindrane to put handis in his awin man, being in that estait : Lykas, he was reconfeillit with him, at the requeist of Williame Kennydie of Garfar, quha was examinat befoir the Counsell.—It is anfuert, to the presumptioun concerning the Tak<sup>2</sup> maid be Young Auchindrane to James Bannatyne, quhilk Young Auchindrane denyit that he nevir gaif any to the said James, quhill<sup>3</sup> the samyn was provin and producet, &c.; that the samyn presumptioun is nawayis sufficient to infer the cryme of Treasoun ; becaus the same is nocht ane presumptioun concerning the committing of the cryme lybellit, bot only ane illatioun<sup>4</sup> vpon ane vnnecessar consequence ; ffor it nawayis followis that, albeit ony Gentilman gaif ane Tak, for nocht, to ony of his servandis or dependeris, that thairfoir he was airt and pairt with him in committing of ane treffonabill act ; vnles it war sufficientlie verifeit to haif bene done for that caus ; nor yit dois the production of the Tak mak Young Auchindranes Depositioun to be vntrew ; becaus it is neuir provin that the Tak was gevin to James Bannatyne ; bot, be the contrair, the samyn was tane out of Thomas M<sup>c</sup>Alexanderis kift, in quhais handis it was confignit, quhill the conditiones betuix thame war endit ; viz. that the said James sould haif maid richt to Young Auchindrane of the sowme of 1<sup>m</sup> (1000) merkis, quhilk he had vpon Langschawis land, quhilk he could nocht than presentlie do, in respect the said James had maid his awin wyffe assignay thairto ; quhilk Assignatioun is producet in judgement : Nather is it probable that gif the Tak had bene maid to the said James, conforme to the presumptioun, bot the samyn wald haif bene put in his awin hand, and nocht confignit in ane thrid perfonis hand.

[My Lord Aduocat takis instrumentis of James Bannatynes Declaratioun maid judiciallie be him ; quha being demandit, ‘ Gif the Tak grantit to him be Young Auchindrane was delyuerit to him self ?’ Declarit, it was first delyuerit to him, and thairefter, be consent of him self and Young Auchindrane, it was put in the handis of Thomas M<sup>c</sup>Alexander, vpon Auchindranes feir that the deponent had allegit the production of that Tak sould haif done him grit harme.]

As to the Depositioun of *Allane Pyper*, it aucht nocht to be respectit, becaus he is tennant to my Lord of Cassillis of the foure merk land of Sallachan ; and forder, the said Depositioun proves nathing, nather of the substance nor circumstances of the Dittay. As to the Depositioun of *Williame Roise*, can mak na fayth ; becaus his wyfe and the Laird of Cullane are thridis and ferdis of kyn : And forder, the payment of the maill and deutie inferris na presumptioun. As to the Depositioun of *Williame Pyper*, anent the Lady Auchindranes furneiffing of James Bannatyne, aucht nocht to be respectit, becaus he is man, tennent, and

<sup>1</sup> It would have been dishonourable.    <sup>2</sup> Lease, or *tack*.    <sup>3</sup> Until.    <sup>4</sup> Inference. Lat. *illatio*.



servand to the Erle of Cassillis ; as also, is tennent removeable to the Erle of the foure merk land of Sallachan ; nixt, he fauld his maister Ardmillane and Thomas of Bargany to my Lord of Cassillis ; for the quhilk he promiseit him V<sup>c</sup> merkis. It is ansuerit to the presumptioun anent *the Laird of Cauldwallis* Depositioun, of the suffering James Cunninghame to pas away, contrair to his promes, that the samyn is nawayis pregnant aganis the perfonnes pannellit, seing thair is na fact or deid contenit in the same, allegit to be done be thame. It is ansuerit, to the presumptioun resulting vpon the Letter producet—First, the same wirkis nathing aganis Young Auchindrane, becaus it is ane Lettir allegit writtin fra his father to him, never ressaute be him ; and sa can infer na preiudice aganis him : *Item*, it can work nathing aganis the father, becaus the samyn is nocht subscryuit be him ; lyk as, he denyis the samyn being re-sent ; and thairfoir, he nocht confessing the samyn, nor being subscryuit be him, can work nathing aganis him : And quhair as, it wald appeir the same to haif bene delyuerit to the Counsell be my Lord of Mar, quha is allegit to haif ressaute the samyn fra the Constable,<sup>1</sup> quhilk Constable is allegit to haif ressaute the same fra Dormond, ane of the ordineris of the Castell ; and the said Dormond is allegit to haif ressaute the samyn fra Auchindrane elder, to haif bene delyuerit to his sone : The samyn can mak na fayth, ffor albeit my Lord of Mar and the Constable thair Depositiouns may be trew, as the perfonnes on pannell will nocht impunge the samyn, yit it followis nocht bot that Dormond hes bene subornet be the vnfreindis of the saidis perfonnes to mak the said narratioun to the Constable : to the effect that thairby he mycht caus ane falsfeit Letter cum in the Counfallis handis :—And to mak the said mater mair cleir, the said Laird of Auchindrane elder offeris to preve and verifie instantlie, be dyuersse famous witnessis subscryveand, and, in speciall, be James Pennycuik, ane of the perfonnes producet aganis him, and vtheris, &c., that Eduard Mekiljohnne, sumtyme seruitour to James Prymrois,<sup>2</sup> come to the Laird of Auchindrane, thay being baith wairdit in the Tolbuthe, and said to him, ‘ Sir, I haif sene 3our writ ofbefoir ;’ and being demandit, ‘ Quhair?’ ansuerit, ‘ I was imployit to counterfute ane Letter of 3ouris, allegit directit be 3ow to be Castell of Ed<sup>r</sup> to 3our sone,<sup>3</sup> the quhilk contenit ane half-throche of paper<sup>4</sup> on bayth be fydis, and was nocht subscryued ; the quhilk I counterfute as neir 3our hand writt as I think was possible.’ Being demandit, ‘ How was it be pis writt quhilk I am now wryting?’ Ansuerit, ‘ It was sumthing smaller.’ Being demandit, ‘ Quhat was be caus be Letter was nocht subscryuit?’ Ansuerit, ‘ It was to mak the matter mair suspitious!’ ffor, sayis he, ‘ it wes gevin me vpon

<sup>1</sup> The Constable of Edinburgh Castle, viz. Thomas Hume.

<sup>2</sup> Clerk to the Privy Council.

<sup>3</sup> Directed from Old Auchindrane, then in the Tolbooth of Edinburgh, to his son, then in ward in the Castle.

<sup>4</sup> A half *through*, or half a sheet of writing-paper, then usually of the size which is now termed ‘ foolscap.’

ane grit secreit in the Tolbuthe, and I nevir reveillit nor opnit þe matter quhill now.' James Pennycuik speiris at him, 'Quha gaif 3ow this?' Anfuerit, 'I will keip þat to my selff!'

As for the doingis of *the Lady Auchindrane*, the famin can nawayis preiudge hir husband or hir sone, scho being ane woman; and hir absenting of hir selff was for ane lauchfull cause, viz. feiknes, authorizet be ane lauchfull Testimoniall.

As for *Thomas Mure* and the rest going to the horne, for non compeirance, it can be no pregnant presumptioun to infer Treafone vpon the persones pannellit.

*Eduard Mekill-Johnne*, being send for, and presenting him selff, fuorne and examinat, deponis, that he ressaute the Letter direct be Auld Auchindrane to his sone, being wairdit in the Castell of Ed', fra my Lord of Mar, in presens of Archibald Prymrois, writter, to be coppeit be the Deponer. Eftir the coppieing quhairof, the deponer, ane grit space thaireftir, cuming to the Tolbuith of Ed', and finding the Laird of Auchindrane wryting at ane buird, he come to him and said as followis: 'Laird of Auchindrane, I think I haif sene 3our writ ofbefoir.' Quhairvnto Auchindrane anfuerit, 'Quhair saw 3e it?' The Deponer replyit, 'I remember I coppeit ane Letter verrie lyk 3our writ, quhilk I ressaute to coppie fra ane Noble man!' Bot wald nocht declair to him the Noble man his name that gaif the directioun: And as to the alleget declaratioun than maid be the deponer, that he counterfute the said hand writt, denyis the samyn; bot that the samyn was coppeit be him, be directioun, as said is. Quhairvpon my lord Aduocat askit instrumentis.

*Archibald Prymrois*, also present, being sworne, Declairis, that he was present quhan my Lord of Mar delyuerit the Letter to Eduard Mekil-Johnne to be coppeit; quhilk my Lord than declairit, was interceptit betuix Auld Auchindrane and his sone; and the samyn Letter being than presentit be my lord to the Deponer, he verrie hardlie could get the samyn red, being sa evill writtin and evill spellit; Bot to put Auchindrane in remembrance anent that matter, the samyn Letter being producet to the Lordis of Secreit Counsell, eftir intercepting thair-of, and schawn to the Laird of Auchindrane, and he than inquiryit, 'Gif he knew that Letter or the hand writ thairof?' Auchindrane anfuerit, 'It was nocht his hand-writ, bot was verrie lyk it.' And being desyret to reid the Letter, he red the samyn in thair Lordschipis presens, verrie distinctlie, without ony stope: At quhilk tyme, the Lordis of Secreit Counsell, my Lord of Dumbar being present, causit Auchindrane wryte with his awin hand ane particuler anfuer of all that was demandit him in that matter, to the end thai mycht the better recognosce and try quhidder the famin was writtin be him or nocht: And forder, the deponer knawis nocht.—Quhairvpon my Lord Aduocat als askit Instrumentis.

IN fortificatioun of THE VERIFICATIONIS producet be the Aduocat, and vsset

to the Assyse, my lord Advocat affirmes, that it is lauchfull and vsuale to the Lordis of his Maiesteis Secretit Counsell to examine Witnesse, out of prefens of pairtie, in all crymes treffonable; quhais Depositiones being producet to the Assyse, makis full faith, vnles thai be impugnet be sum lauchfull particular exceptioun proponit aganis the samyn; and can nocht be impugnet, for want of power in the examinaturis; or the Depositiones was ressauid, the pannell nocht being callit thairto.—The Depositiones of *James Pennycuik* and *George Blak*, tane at Court, ar lauchfull, as tane by expres command of the Kingis Maiestie, and in prefens of ane of the Lordis of his Counsell of this Kingdome.—It is absurd to excufe the pannellis going to the horne, for the tresonabill cryme lybellit, for feir, gif he had compeirit, to haif bene challanged for pistolettis; feing, his being fugitiue for this cryme, inferris aganis him presumptioun of Treasoun: And in caice he had compeirit, his schuitting of pistolettis without ony harme done with thame, wald haif inferrit na forder danger, nor (*than*) the panes of ane fyne.—The persewar neidis nocht to produce *Thomas Kennydeis fforfaltour* for this cryme, becaus the samyn being deducet in Parliament, is judget nottour to all the subiectis, and na man can pretend ignorance thairof.—The Relaxationes producet, purges nocht the presumptioun of thair giltines of the crymes contenit in the Hoirningis; becaus, Auchindrane elder was nocht relaxit fra the hoirning, for lying (in wait) for Collayne in Mayboill, quhill efter his reconciliatioun with the pairtie; at the quhilk tyme, na man was to persew him: Nather was he relaxt fra the horne for the tresonable crymes lybellit, quhill he was tane and imprifonet in the Tolbuith of Edinburgh, and sa could nocht eschew his tryall.—To the obijectioun aganis *James Mure of Fleit*, it is vntrew and malicious: And he being confrontit with the Deponer, Auchindrane proponit na objectioun aganis him, that tuichet ather his fame or welth.—Attour, the persewar takis instrumentis, that *the Erle of Cassillis*, being suorne, in prefens of the Assyse, vpoun the obijectioun offerit to be verifeit be his aith, hes declairit the samyn to be vntrew. And lykways, that *Sir Williame M'clellane of Auchleane, kny'*, being suorne vpon the poynt of Thift, and reconciliatioun thairof, offerit to be provin be his aithe, he declairit the samyn to be vntrew: And forder, he declairit, befoir the Assyse, that gif ony imputatioun could be laid to James Mure for the suspitioun of that Thift, the samyn was cheffie to be imput to Auld Auchindrane, quha houndit him out to the doing thairof.—To the obijectioun aganis *James Gordoun*, for his youthe, the tyme of the factis quhairvpone he hes deponit, answeris that he was past ten yeir auld, befoir the committing of the first of the saidis factis; And being now ane man of perfyte age, may lauchfullie depone of thingis done quhan he was young, the samyn being recent in his memorie.—Attour, the said James, being confrontit with the Laird of Auchindrane, he than deponit

nathing aganis his perfone, age, nor lauchfulnes of his Depofitioune.—To the generall objectioun, that the Depofitiones in Criminall cauffis makis na probatioun, bôt ar prefumptionis and cauffis of tortour, it is manifefstlie vntrew, and contrair to the Law and practiques of this cuntrie.—To the objectioun, that the Depofitiones concerning *Mr Robert Mures* Letter ar generall, and preves nathing, it is vntrew ; becaus the Depofitiones contenis, that the Letter buir aduerteifment to Auchindrane of the Laird of Culaynes dyet to Edinburgh.—For the Depofitiones maid be *Caldwell* and *Young Auchindrane*, referris the confideratioun of thame to the Affyfe, it being out of dout, that nather Young Auchindrane wald hurt his father, nor Caldwell his freind, be thair Depofitioun.—The objectiones aganis *Woidland* ar proponit in jeaft ; becaus at all tymes quhan he cumis to the toun, he viffeitis the Defenderis, his freindis,<sup>1</sup> in ane freindlie inaner.—For *Johne Mure*, callit of *Blakbyres*, he was Auld Auchindrane's houfhold fervand, fa lang as he had ane hous, and fenfyne hes duelt in Blakbyres, vpon Auchindrane's land, familiar with his Lady and him felf, frie of all perfute, convictioun, hoirning, or fufpitioun of cryme. And the perfewar takis instrumentis of the *Erle of Caffillis* Declairatioun to the Affyfe, that his lordfchip nevir maid promeis to Blakbyres, to purches<sup>2</sup> to him Refpett, Remiffioun, or vther fauour, for his compeirance.—The *Depofitionis* maid to the *Presbiterie*, ar verrie lauchfull and formell; haifing the force of ane Inquifitioun, for tryell of ane murthourit man and the authoris thairof.<sup>3</sup>—*Walter Mure* was tenent and fervand to the pannell, and convoyit by the way<sup>4</sup> by his meanis, becaus he mycht haif controllit his denyall of his fending James Cuninghame to the faid Walter Mures hous for Williame Dalrumpile.—*James Dalrumpile* his Depofitioun is lauchfull, albeit thai allege it to be maid to his awin turpitude, and that, be his awin confeffioun, he is *focius criminis*; becaus in abhominable and extraordinar crymes, fic as Murthour vpon fet purpois, complices ar lauchfull Witneffis, and thair Depofitionis makis full faith ; becaus it is confiderit be the Law-makeris, that fic fecret and denyable crymes, can nocht poffiblie be provin, bot be complices. James Dalrumpillis kynreid with Cullayne and the Erle of Caffillis, can nocht mak him fufpect, becaus he is fifter-fove<sup>5</sup> to the Lady Auchindrane, and fifter-bairnis<sup>6</sup> with Young Auchindrane, and fa prefumet of the Law to beir gritter affectioun to thame.

The perfewar defyres the Affyfe to remember Auld Auchindrane's Declairatioun, in thair prefens, that James Dalrumpill maid him adverteifment to fet

<sup>1</sup> In this instance, and indeed generally throughout this Trial, the term '*freind*' fignifies relative or blood-relation, as in the preceding reference to Caldwell, &c. <sup>2</sup> Procure. <sup>3</sup> An inquest or precognition held for the purpose of discovering the perpetrators of a murder; and for bringing them to juftice for their crimes, if guilty. <sup>4</sup> Put out of the way. <sup>5</sup> Nephew. <sup>6</sup> Cousin-german.

him,<sup>1</sup> quhilk detectis his fauour to the defenderis, and his vnwillingnes to depone to thair prejudice.

*Patrik Bannatynes* Depofitioun man mak fayth, becaus it was maid quhan he was the Kingis lauchfull fubiect, frie of all cryme; and his kindreid with the Erle of Caffillis, can nocht mak him fufpect; becaus, fen the feid,<sup>2</sup> he hes bene in fpeciall freindschip and familiaritie with the Defenderis; quhilk thai can nocht deny: Nather can the faid Patrikes Depofitioun, nor the Depofitioun of ony of the remanent Witneffis, be impungeit, as foundit only *super auditu*, and be relatioun of James Bannatyne; becaus that relatioun was maid be James, quhan he was in verrie grit freindschip with the Lairdis of Auchindrane, elder and younger, and reffaut many fauoris and fuppoirtis fra thame.—The Defenderis impungis *Johne Mure in Curveris* Depofitioun anent the pulleing of Williame Dalrumpill af James Bannatynes hors; bot never anfueris to the materiall poyntis thair of, anent thair fending of Cuninghame for Dalrumpill to Glenheid; convoying of him to Chapeldonan; fending for him to Girven Sandis; and Murthouring of him thair.—*James Bannatynes* Depofitioun man mak full fayth, albeit he be at the horne, and excommunicat for this cryme; but hoirning and excommunicatioun can nocht work famekill aganis him as his awin Confessioun; quhilk Confessioun can nocht stay him to be Witnes, feing he is fo neccellar a Witnes, as without him na probatioun can be had in this caus, bot be his Depofitioun; except, be the Confessioun of the remanent defenderis, quhair of thair is no hoip, in respect of thair effronterie, obftinacie, and induratioun. His kinreid with the Erle of Caffillis and Cullzeane is proponit in fcorne; becaus the Lairdis of Auchindrane can nocht deny, bot that the faid James was profellit pairt-taker with thame, in all feidis and querrellis aganis the Erle of Caffillis, and affistit thame in the Invasioun of Garriehorne for his Slauchter. Thair allegeance, that he comes in vpoun promeis and conditioun of his lyfe, is absurdlie qualifeit, as grantit be thame quhois protectioun and faif conduct can (nocht) faif ane hair of his heid. Thair allegeance of his malice aganis Young Auchindrane is impertinent, in respect of Young Auchindrane furneiffing and fending of him out of the countrie, and recommending of him, be his Lettres, to his uncle; and of the fauour and help maid to the faid James Bannatyne fenfyne, be the Lady and the pannellis remanent freindis. Quhair thay propone, that he wald nocht haif willinglie cum in to his awin deid; it is faiffer for him to cum in and depend vpone Godis fauour and the Kingis mercie, or failzeing thair of to die, weill preparit in ane Chriftiane refolutioun, vpone the fcaffold, nor<sup>3</sup> to haif bene in hourlie danger to haif bene murthourit, be procurement of the Defenderis, as he mycht haif bene in danger—nocht haifing lafour to haif callit for Godis mercie.

<sup>1</sup> To cite him as a witness.

<sup>2</sup> Feud.

<sup>3</sup> Rather than.

*Robert Ramsfayis* practique is impertinentlie citet in this caice; becaus he deit for his manifest periurie, and false and contrair Depositiones, justlie working aganis him self; quhilk maid nocht the evident<sup>1</sup> to fall, and sa verifeit na punifcheable falsit aganis ony vther. Bot heir, thair is ane actuall Murthour, quhair of the Lairdis of Auchindrane ar provin als giltie as James Bannatyne.—The persewar takis instrumentis that *James Pennycuik*, being solempnelie fuorne befor the Assyse, hes ratifeit, in thair presens, his hail Depositiones maid in Ingland. His Hoirning makis him nocht infamous, becaus it proceidis vpon ane Decreit of Secreit Counsell, quhilk can nocht be gevin in ane mater impoirting infamie; besyde, that sen<sup>2</sup> the said Hoirning, he remanit priffoner dyuerse oulkis in the Tolbuith of Edinburgh, quhair ony man that lyket to haif accuset him mycht haif drawin him to pannell, in despyte of his heart.—The Deposition of *Mr Johnne Edmestoun* aganis him can nocht be respectit; becaus Mr Johnne is infamous, being deprehendit and tryit authour of ane infamous lybill aganis the Lordis of Secreit Counsell, Seffioun, Prelattis of this Kingdome, and Magistrates of this Burgh.—Quhair thay allege that James Pennycuikis Deposition concernis nocht this Dittay, the persewar declairis, that he vses his Deposition as ane probatioun of ane consequent fact, quhilk cleiris exceidinglie the preceiding Murthour of Dalrumple: ffor Auld Auchindrane wald nevir haif hyret ane man to haif murthoret James Bannatyne, gif James Bannatyne had nocht bene able to haif verifeit aganis Auchindrane ane mair dangerous cryme. He is nocht meirlie *testis singularis*, becaus his Deposition is strentened by the Deposition of his servand *George Small*; and his Deposition vpon his allegit turpitude can nocht repell him in this caice; becaus he is, in effect, ane complice with thame aganis quhome he deponis, and hes purget his giltines thair of, be his tymous repentance, and desisting frome the prosecutioun of the said purpos. His Deposition can nocht be elydit<sup>3</sup> be ony thing writtin to him be Sir James Hamiltoun; becaus that Deposition is maid judiciall, alsweill be his Declaratioun, befor the Lordis of his hienes Secreit Counsell, in Ingland, and be his approbatioun of his hail Depositiones, this nycht, in presens of the Assyse. *George Blakis* Deposition is verrie famous,<sup>4</sup> and can nocht be drawin in suspicioun, vpoun the allegeance of ony malice confauct for want of fourtie merkis of fie.—*Young Auchindrane*s suffering of the iniureis offerit to him be James Bannatyne, standis cleirlie verifeit be the reiterat Depositiones of *William Kennydie of Garfar*, he being confrontit with Young Auchindrane.—*Auld Auchindrane*s denyall of his Letter to his sone, can nocht be respectit, seing it is so cleirlie verifeit to the Counsell, be David Dormond, and Thomas Home, Constable of the

<sup>1</sup> The writing or Title-deed referred to in his case.

<sup>2</sup> Since.

<sup>3</sup> Evaded; got quit of. Lat.

*elidere.* <sup>4</sup> Worthy of credit.

Castle, and the Erle of Mar, quho ar Witnesses aboue all exceptioun, that the samyn was send be Auld Auchindrane to his sone.—The perswar repeatit the Depositiones maid be *Archibald Prymrois* and *Eduard Mekill-Johnne*, in judgement; and namelie, that pairt, quhairby Archibald Prymrois callit my Lordis of Counsell treulie to memorie, that Auld Auchindrane, at the verrie first sicht of his Letter, red the samyn so ryplie and perfytlie, as gif he had it perquier,<sup>1</sup> quhilk no vther man, nor<sup>2</sup> the wryter of the Letter, was able to haif done. Repeatit lykwayis the said Eduard Mekill-Johnnes Deposition, quhairby the treuth of his copping of Auchindranes Letter to his sone, at the desyre of ane most honourabill and famous Noble-man, detectit the knaverie and complete of ane socieatie of malefactoris and dyverse.<sup>3</sup>

Finallie, the perswar repeatit the just suspitioun confauct vpon the pannellis absenting of his wyfe, sone, and brother.

THE DEFENDERIS allegis, that the Young Laird of Auchindrane is frie of the presumptioun of the Hoirning, becaus he compeirit at the day.—Auld Auchindrane is nocht pannellit for lying at wait aganis the Tutour of Cassillis, at Maybole; and sua, na presumptioun can arryse vpon that Hoirning. As for the rest, thay ar purget be compeirance.—As for that pairt anent *James Gordoun*, he being confrontit with Auchindrane, he opponit nothing at that tyme, ather concerning his youthe or vtherwayis; ansueris, that was nocht the place convenient; bot now, *debito tempore*, in this Judgment, he proponis the samyn, conforme to the Act of Parliament; and all vtheris of the lyk nature.—It is ansuerit to that article, ‘that Depositiones ar manifest probationes,’ that the Depositiones vpon conjectouris and presumptiounis of na Law nor practique, ar manifest probatione, bot only sufficient to induce tortour: And trew it is, that all the Depositiones lybellit ar vpon conjectouris.—*Walter Mure*, eftir that Auchindrane younger was twyse enterit, and Auld Auchindrane lang in the Tolbuthe, was duelling actuallie in his awin hous, tane and apprehendit be the Erle of Cassillis, and demittit be his lordschip; and sa, his absenting him self can nocht be presumet for this cause.—The malice of *James Bannatyne* towardis Young Auchindrane is cleir, becaus he will preve, be James Gordoun, ane of the witnesses producet aganis him, that James avowit to haif Young Auchindranes lyfe, becaus he offerit to the Counsell to inbring him vnder the pane of Fourtie thousand pundis.—The Depositione of *Mr Johnne Edmestoun* is nocht vsset as ane sufficient probatioun; but his Deposition, with the vther Deponer with him, aganis quhome thair is na suspitioun, is mair pregnant to tak away James Pennycuikis Deposition, than James Pennycuikis Depositione is to infer Treafone:

<sup>1</sup> By heart; by rote. Fr. *par cœur*.      <sup>2</sup> Excepting; but.      <sup>3</sup> Detects the knavery and plot (conspiracy) of a society, or association, of malefactors and bankrupts (*dyvouris*)

As *James Pennycuik* is at the horne, sa *George Small*, his seruand, is at the horne, for the same fact ; and *George Small* deponis nathing in speciall.—Last, the perones on pannell desyres your honouris of the Assyse to haif confideratioun of the lybell and Dittay ; as the samyn was admittit be my Lord Justice, viz. that the speciall poynt making the samyn relevant, was, that *Thomas Kennydie* of *Culzeane* was flane be the advyse, instigatioun, causeing, command, counsell, and rathabitoun of *Auchindrane elder*, quhilk is the first pairt of the Dittay ; quhairin, thair is nathing provin aganes *Auchindrane elder*, of those substanciall poyntis ; nather can the samyn be ony wayes imputtit to *Auchindrane younger*. And as for the secund pairt, quhilk is lybellit conjunctlie aganis *Auchindrane elder* and *younger*, and *James Bannatyne* ; the substanciall pairt quhairof is the allegit committing of the Slauchter of *vmq<sup>le</sup>* (*Williame Dalrumpill*) : And the rest of the hail lybell, ar only accidentis, conjectouris, and presumptiones ; and seing na pairt of the substanciall poyntis is provin, albeit the hail actiones, presumptiones, and conjectouris war provin, quhilk is nocht grantit ; off all law and equitie, obseruit in all cuntreyis, the maist that can be inferrit thairupone, is the tortour of the perones aganis quhome the presumptiones ar militant ; quhilk specialle man haif place in the persone of *Young Auchindrane*, aganis quhome few or nane of the presumptiones ather contenit in the Dittay, or proponit by<sup>1</sup> the samyn, dois militat.

VERDICT OF THE ASSISE. Quhilkis perones of Assyse, eftir accusatioun of the saidis perones on pannell, be Dittay, of the Treffonabill and crewall Slauchteris and Murthouris *respectiue*, aboue specifeit, and fuering that article thairof, anent the Murthour of the said *Williame Dalrumpill*, be the said *Bessie Dalrumpill*, his mother ; and eftir productioun of the hail Depositiones aboue writtin, and vther writtis and probatioun for cleiring of the Pannellis giltines of the saidis crymes, be our said souerane lordis Aduocat ; the saidis perones of Assyse remouet altogidder furth of Courte, to the Counsal-hous of the said *Tolbuthe* ; quhair thai, be pluralitie of voitis, electit and choiset the said *Sir James Scrymgeour* of *Dudope*, kny<sup>t</sup>, chancellor ; *Ressonet* and voitit vpone the crymes contenit in the said Dittay, and hail circumstances thairof ; and being ryplie and at lenth advyset thairwith, togidder with the hail writtis and probatioun vset and producet be our souerane lordis Aduocat, for instructing thairof ; togidder with the Pannellis objectiones proponit be thame, and thair preloquitours aganis the samyn, with my Lord Aduocattis anfuers maid thairto ; thay reenterit agane in Court, quhair the saidis perones of Assyse, be the mouth of the said *Sir James Scrymgeour* of *Dudope*, kyn<sup>t</sup>, thair chancellor, Pronuncet and gaif furth thair determinatioun vnder writtin, subscryuit be the said chancelloris hand, quhairof the tennour followis.

<sup>1</sup> Independent of ; besides ; *forby*.



“ The Assyse, for the maist pairt, efter reffoning and voiting vpon the first article of the said Dittay, find **JOHNNE MURE ELDER OF AUCHINDRANE** to be Giltie, culpable, and convict of airt and pairt of the tressonable and crewal Murthour of vmq<sup>le</sup> Sir Thomas Kennydie of Culzeane, kny<sup>t</sup>, committit in forme and maner contenit in the first pairt of the Dittay. AND siclyk, the saidis perfones of Assyse, for the maist pairt, findis and declairis the said Johnne Mure elder of Auchindrane, and **JAMES MURE OF AUCHINDRANE YOUNGER**, and ather of thame, to be Giltie, culpable and convict of airt and pairt of the tressonable and crewal Murthour of vmq<sup>le</sup> Williame Dalruple, in maner specifeit in the Dittay.—AND last, thai all, in ane voce, findis and declairis the said **JAMES BANNATYNE**, callit of Chapel-Donane, to be Giltie, culpable, and convict of airt and pairt of the said tressonabill Murthour of the said vmq<sup>le</sup> Williame Dalruple, committit be the saidis perfones, in maner contenit in the Dittay.”

**SENTENCE.** Efter the pronunceing and declairing of the quhilk determination and delyuerance of the saidis perfones of Assyse, “ **THE JUSTICE**, in respect thair of, be the mouth of Alexander Kennydie, dempster of Court, decernit and adiudget the saidis Johnne Mure of Auchindrane elder, James Mure of Auchindrane younger, his eldest sone and appeirand air, and James Bannatyne, callit of Chapel-Donane, and ilk ane of thame, to be tane to the mercat croce of the burcht of Edinburgh, and thair, upone ane scaffold, thair heidis to be strukin frome thair bodeyis: And all thair landis, heritages, takis, steidingis, rowmes, possessiones, teyndis, coirnes, cattell, inficht pleniffing, guidis, geir, tyillis, profitis, commoditeis, and richtis quhatfumeuir, directlie or indirectlie pertening to thame or ony of thame, at the committing of the saidis tressonabill Murthouris; or fensyne; or to the quhilkis thay, or ony of thame, had richt, claim, or action, to be forfalt, efcheit, and inbrocht to our souerane lordis vsé; as culpable and convict of the saidis tressonabill crymes.”

Quhilk was pronuncet for **DOME**.

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APPENDIX OF PAPERS AND DOCUMENTS ILLUSTRATIVE OF THE TRIAL  
OF THE MURES OF AUCHINDRAYNE.

I. LETTER *by Sir Thomas Hamilton of Byres, knight, to a Nobleman at Court, relative to the Trial of the Laird of Auchindrayne and his Son, &c.*<sup>1</sup>

[THE following LETTER is a rough draught of a Letter transmitted by Sir Thomas Hamilton to some Nobleman high in power and favour at Court, (probably the corrupt Earl of Somerset); and is evidently intended for the King's perusal. This successful Lawyer and Statesman knew well how to

<sup>1</sup> Dec. 11, 1601.—Now, on the tent of December, ane wariance being betuix the Erll of Cassillis and the Laird of Bargany, thay mett in Carrik, quhair the Laird of Bargany and sindrie wtheris war alayne, and diuerse Gentilmene hurt. This was on 11 day of December, 1601. And on the 12 day of Maij, 1602, Thomas Kennedy, brother to the Laird of Bargany, slew Schir Thomas Kennedy of Colzeane, kny<sup>t</sup>, quha had beine Tutour of Cassillis, in the rewendge of the slauchter off his brother. The quhilk Fead continewis as yitt onreconseellit.—*Aston. MS. Hist. of Scotland*, Adv. Library, A. 4. 35.

please his Majesty's taste for flattery—but, if this is to be taken as a specimen, King James must have been much more of a glutton than an epicure! In the same Collection from which this is taken (*Haddington's MSS.*, Adv. Library, Edinburgh), there is preserved another draught, which is evidently the original, and is extremely corrected and altered—but it is so characteristic, that it shall also be preserved here in the original state, though merely a fragment.

‘HONORABIL AND VERTUOUS LORD,

‘BEING informeit be ane wourthie freind, that your lordschip wes very defyrous to have ane trew and ample relatioun of the proces deduced aganis the Lairdis of Auchindrane elder and younger, for the Mourthouris of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrimple, I wes exceeding glaid to have rencountred that occasion to offer to your lordschip this discours, as an earnest of my faithful dispositioun to expres my thankfulnes in matters of greater moment, when ever God fould grant me the abilitie to performe any seruice worthie of your honour, and correspondent to that great obligatioun whairin your singular fauour and courteffis haue exceidinglie engaged to your lo. Bot when I had written at lenth, all that did concerne that pourpofe, and had it reddie to be sent to your lo., report cumming to this cuntrie of his Maieftis gracious pardoun granted to James Bannatyne, whairas I did confaue that all men wald acknowledge it as ane commendabil effort of his Maieftis most iuste, gracious, and judicious clemencie; yet, finding that some deuelifh peopill als venomoullie inclyned to find mater of calumnie in his Maieftis most vertuous actionis, as the wesp to suck poyfon out of the sweifest and most holefome floures, I have delayed my first proiect, to send to your lo. the simpill discours of the proceding aganis thofe malefactoris, quhill (*until*) efter Tryell of all that has bene murmured aganis his Maieftie in any circumstance of this action, I might mak the more full and perfyte report, allweill of the materiall circumstances of the proces, as of these incidentis, whairin his Maieftie, having expreffed his rare and wouderfull iugement, his vnalterabil constancie and . . . . .’]

[HONORABIL AND VERTUOUS LORD.]

KNAWING, by informatioun of ane wourthie freind, that efter your lordschip hard the vulgar report of the conuictioun and pvnishment of THE LAIRDIS OF AUCHINDRANE, ELDER and YOUNGER, for *the Mourthour of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrumpill*, yow did defyre to have a full and verie particular relation of the whole proceedingis of that mater, becaus my being ey witnes from the beginning to the laft act of that proces, makis me abill to giue ane true accompt of euerie circumstance thairof; and the great fauoris and courteffis ressaued of your lo. have engaged me in stronger bandis of dewtie nor<sup>1</sup> want of abilitie will permit my seruice to dischaarge; I haue prefumed to send to your lo. this discours, rude, informall, and voyde of all ornamentis except treuth, as ane earnest of my defyre to proue thankfull to your lo. and obedient to your commandementis; whilk fould haue soner cum to your lo. handis, had not this tyme of vaicance<sup>2</sup> impeded me to find, so speidelie as I did wish, the helpis of sum scrollis of the lawers and clerkis, to whom the deduction of that proces was speciallie committed; I did coniecture that your lo. cheif respect in this defyre wes to have *the iustice of his Maieftis directionis*, in that action, maid als manifest to the worlde as thay ar in the fight of God, and persuaision of his owne conscience (albeit his prouidence, wifdome, justice, and mercie have fund peopill als abill to suck venome owt of these Royall verteues as the wesp to extract poyfoun furth of the most beautifull and healthfull floures, whilk in thay owne place,<sup>3</sup> I have remarked, naikedlie, as does best beseme treuth,) acknowledgeing how vnhabill I am to giue the dew luster to these eminent and abundant vertues; and thairfore, if your lo. fall ever think that proces wourthie of the fight of the worlde, I know your wourth and bontie has gevin your lo. power and ane great many rare and excellent spirits, who will be glad to bestow the best floures of thair ingyne and learning, to giue the right foyle to that whilk may concerne his Maieftie, in fame, or your lo.

<sup>1</sup> Than.  
the country.

<sup>2</sup> Time of Vacation, when the Courts of Justice do not sit, and when the Lawyers are frequently in the country.  
<sup>3</sup> The own or proper place.

in contentment. And, to the effect the proces may the more easelie to vnderstand, before I cum to the Report thair of, I will premit (*premise*) ane trew Narration of the first motiues which involued the Laird of Auchindrane evill nature in the labirynth of these mischevous interpryffes; which, be the justice of God, and his Maiesteis admirabill prouidence and inflexibill constancie, being brocht to light, have overthrowne his life and fortunes.

ANE TREW NARRATION *of the first Motiues which involued the Laird of Auchindrane's evill Nature, &c.*

YOUR lo. hes heir the particular Discours of ane Proces, whilk, vpon dyueris respectis, many wyfe men have judged to be verie memorabill. Sum, remarking the bad nature of malicious men, who, measuring be thair owne merciles disposition, the affection of vther menis hairtis, can never hope to ressaue frie pardon of those whom they have mightelie offendeit; and thairfore, forgetting the courtiffie ressaue of those who have remitted to thame great iniuries, faillies nocht to requit thair gude with evill; and at their first aduantage, to bereave those of thair lyfe from whom they ressaue thair owne, as *Auld Auchindrane* did to *Sir Thomas Kennedie of Cullayne*.

Vtheris, did consider, with horrou, the craft and diligence of the Devill vfeis keip in his bondage those who he anis fetteris in his snaires; offering to thame allurements to facilitat to thame the Interpryffes, whilk, in thair worldlie considerationis they judge most liklie to procur the wished endis of thair proiectis; as *Auld Auchindrane's* resolution to cut af all meanis of discouerie of his guiltines of *Cullayne's Mourthour* be *the Mourthouring of Dalrumpill*; whairin his sin apperis to have bene so odious in the sight of God, as, for his pvneifment, God permittit his sone to be inuolued in the guiltines of that sam haynous cryme, as ane preparatiue of the vtter rayne of that houfe: Whilk succedding altogidder contrare to thair expectationne, and the verie elementis concurring to the discouerie of thair secret sin, that did not oppin thair eyes and hairtis to sie that manis wit is fillie before God, and that thair strenth is bot duft; bot they fall be blinded with the presumptioun of thair owne jugement; and thairby thinking, that if *Bannatyne*, who wes ey witness and actour with thame of *Dalrumpilis Murthour*, wer killed, that thair rested no vther meanes to prone thame guiltie thair of; whilk being constantlie denyed be thame, wald lykwyes cleir *Auld Auchindrane of Cullaynes Murthour*. They intended to vse *Penicuke* in *the Murthour of Bannatyne*; and feiring lest *Penicuke* might efteruardis discover that he had bene moved be *Auld Auchindrane* to kill *Bannatyne*, being fugitiue, as pairtaker with *Auchindrane* and his sone in *Dalrumpilis Murthour*, it aucht (to) put all men in iuste suspicioun that it wes done, for cutting away the meane of the discouerie of *Dalrumpilis Murthour*; thairfore it wes thought expedient that *Quintene Mure of Auchneill* sould kill *Penicuke*, in reuenge of his Mourthouring *Bannatyne*; and swa, *Auchneill*, knoweing no thing of *Dalrumpilis Murthour*, and being not onlie innocent of *Bannatyne's* Murthour, bot the avenger thair of, he sould be frie of all suspicioun of the fyrst Murthouris, and thay secured of all probatioun that could have bene led aganis thame thair-anent; whilk being disapoynted, be *Penicukis* remorse, and *James Bannatyne's* resolutionn to end his dangeris and miseries, ather be his Maiesteis mercie, or, be ane setled resolutionn, to accept his death, as the just pvneifment of his great finnis, in patience. It is evidentlie remarqued that the courfes, grounded vpoun the presumptioun of ane manis owne wit, ar the verie instrumentis whilk God vfes to confound thame in the folie of their owne imaginationis.

Nather could wyfe men neglect to admire, how loath the Devill is to quyte his possessioun of ane finneris soule; having so contended to menteane *Auld Auchindrane* in his denyall and impenitence, that efter his convictioun, when his constancie could nothing avail him, thair wes no appearance that he sould either confes or publictlie repent the crymes for which he was condemned; whill (*until*) efter ane notabill conflict betuix his sone (*Young Auchindrane*) and the Devill, who still perswaded him, that thair wes no hope of mercie to ane finner, who had wilfullie and oft periured him self, with horribill execrationis; sum godlie Bischoppis and Ministeris, be lang conference, and many comfortabill af-

faranceis gevin to him of the reddines of Godis frie grace and mercie to all finneris, who, with vnsayned repentance, ar displeasid for thair sinnes; and can dispose thair soules to hope for pardoun, and beg it at his handis;—he wes moved to mak plane and particular declaratioun of the vnhappie *Murthour of Dalrumpill*, committit be his father and him self, according to *Bannatynes* Confessioun and thair convictioun. Quhairby, finding his conscience wonderfullie disburdened, and his soule fullie repleineiffed with assured hope of Goddis abundant mercie; did cheirfullie dispose him self to death, as the only way to ane better and ever permanent lyfe; and vsing his best persuasions to his father, that as they wer joynd by bloude, and lykwayes conioyned in the equall guiltines of so hynous ane sin, so he wald consent that thay might joyne in repentance and trew conuerfioun; he did so muche pervale with him, that being affittid be the godlie travels of the Bischopis and Ministeris, the father wes broght to so frie and sensibill contritioun, as, in the last houres of thair lyfe, and at the tyme of thair death, thair godlie resolutioun to mak haist to ressaue the eternal joyes, whilk thay expected assuredlie at Goddis merci- full handis, gave als great confort to the behalderis of thair Execution, as thair wicked lyves had bene offensue, to those who knew the actionis thair of.

THE dependance of this Proces kept menis myndis in great suspens, dyuerflie distracted, in the ex- spectatioun of the incertane event thair of; the vulgar multitude, alwayes piteing siche as ar miserabil, without respect of the dangerous consequence of the impritie of siche crymes, wishing faistie and re- lief of the prifoneris: wyfe and godlie men, longing for the plaine discouerie and exemplar pveinment of the haynous transgressouris, whair of, in thair conscience, thay judged the defendaris culpabil; and vthers, disallowing the preparative of the long imprisonement and rigorous Tryall, ever glaid to sie the appeirances of thair escaip; till God, in his owne appoynted tyme, be siche meanes as ar before reherfed, did justlie determine this long dowsfum cause.

And albeit I have many tymes earnistlie considered, both the groundis of this cause, and meruellous incidentis and accidentis in the progres thair of, yet no thing hes ever appeird so strange and extraor- dinary to me, as the blindnes or rather malice of ane great number of oure peopill of all fortis; who, forgetfull of oure happines in the wyfe, equitabil, clement, and moderat regime of oure most excellent King, became dowsfull of the justice of his directionis, in this cause, [For whan I call to memorie, the whole course of his lyfe, from his first concepioun to this hour, and do compare the same with the regnes and lyves of vther Kingis, I think we have more reason, with thankfulness to God, to ac- knowledg his regne, to be the renouatioun of ane golden aige, nor be<sup>1</sup> malicious pryeing in his holie intentionis and juste doingis, to resemble those, who, vewing most pure and precious jewellis, dois not so mutche delyte thair eyes with the presence thair of, as exercise thair curiositie to espy taches<sup>2</sup> in thame.] For God, having, as it dois weill appeir, decreed in his eternal wifdome, to appoynt oure King to be the instrument of more happines to this Ile, nor<sup>3</sup> in oure wishes we durst haue requyred: knowing, that the wonders of his preferuatioun, and of the happines of his most rare, most excellent, and most difficill actionis, sould mak his Maiestie more august and venerabil, it fall be easie to any man, who fall with ane honest mynd and vnpartial ey, consider the course of his yeiris, manifestlie to remark, that it hes bene ane contineuall exercise of perfyte virtue, beautified with the ouercumming of all siche difficulties as the wifdome and courage of man could foircast; and whan the dangeris did ex- ceed that measour, than did God visiblie interpone the strenth of his owne hand, as the pledge of his loue, and prouf of his caire, not to suffer a King, so necessar for the Christian worlde, to be ouer sud- denlie translated thairfra, to those blissingis, whilk in end he hes prepared for him, amang his most deir Elect. Bot to deduce the abrege of his lyfe to the owne right ordour, we must acknowledge, that it pleesed God, in his eternal wifdome, to assigne the meanis of his convoy vnto this worlde, to be the happie conjunctioun of two of the most nobill, beautifull, and hopefull Princes, who at that tyme wer to be fund vpoun earth;<sup>4</sup> the suces<sup>5</sup> whair of, being forefene be the Devill, in his viperous wifdome, to

<sup>1</sup> Than by.  
Queen of Scots.

<sup>2</sup> Flaws, blemishes. Old Fr. *tasche*.  
<sup>5</sup> Success.

<sup>3</sup> Than.

<sup>4</sup> Henry Darnley and Mary Stewart,

be the ouerthrow of his kingdome, in this Ile,<sup>1</sup> he did stir vp vnfaithfull subiectis to be instrumentis of so terribill tempestis and deidlie stormes, that his Maiesteis lyfe wes, in his motheris wombe, reduced so neir to the durris of the death, as the tender and most delicat stay of that faire excellent lady, be the accursed poyntis of the crewall daguers of hir faithles treasonabill subjectis, Murthouring in hir owne presence ane of hir seruandis;<sup>2</sup> bot as hir courage, surpassing the imbecillitie of hir sexe, and ouercumming her dangeris, did offer this ritche present to the worlde, in the yeir of God 1586; whairbye, his Royall parentis, hauing confaued so extraordinarie joy, as thay did accompt it to be the perfectioun of thair earthlie felicitie. God, who will not suffer those who he hes destinat<sup>3</sup> to ane more. happie habitatioun, to abuse thame selfis with the delytis of the vayne schaddowes of this lyfe, suffered the hellish complottis of damned subiectis, so far to preuaile aganis thame, as the vertuous actionis of the King his father, being interrupted be that most execrabil Tragedie, practifed and performed be that infamous and never-aneuch abhorred traitour, *Bothuell*, aganis his lyffe. The contagious example of that vnnaturall Treafoun, did so infect the mynd of ane great number of hir Maiesteis powerful subiectis, that thay wer not afrayd to ryse in oppin rebellioun aganis hir, lay violent handis vpoun hir sacred persoun, confyned hir libertie within the miserabil boundis of the wylde and vnwholfome *Craig of Lochlevin*, force hir to the abdicatioun of hir Royaltie; and whan, as the dexteritie of hir courageous devyfe, faithfullie affisted be sum of hir vncorrupted subiectis, had fred hir furth of that miserabil bondage, hir rebellis did suddanlie assembill thair forceis, and in oppin Battell, ouerthrowing that number of dewtifull subiectis who did assit hir, did so malicioullie pursue that victorie, as scho could nocht find in the whole boundis of that lairge Kingdome, which was hir natie inheritance; ane place of saif retrait; wharby hir hard destinie, dryving hir to seik refuge in England, scho found be effectis, that '*incidit in Scyllam cupiens vitare Caribdim*,' not enioyeing in it hir libertie one houre, during the whole space of eighteen yeiris of hir lyfe spent in that Kingdom. Bot these afflictionis of hir lyfe, did sa strengthen hir mynd aganis the terrouris of death, and prepare hir so happelie for the entrance to ane better lyfe, that whan the catastrophe of hir miseries brocht hir to ressaue death, efter ane manner so rare and vnaccustomabil to ane Princeffe of hir birth and estait, as the hardest harted beholders, touched with the strangenes of that rigourous exampill, were driven to extreme grief and compaffioun; hir godlie resolution and invincibil courage wes so constant, that scho appeired nocht onlie content bot joyfull, that God, haveing vsed hir troubles in this lyfe for ane expiatioun of hir sinnes, had gevin hir so full assurance of his mercie and fauour, whair of scho promised to hir self, be the beginning of that dayes passage, ane most bliffed and endles fruitioun.—Be thir meanes, his Maiesteie being destitute of these helpes of Royall educatioun, whilk the caire and knoulege of so excellentis parentis wald have procured to him, and standing subject to the danger of the cruell plottis of those who, having treasonable overthrowne his parentis, could never think thame self frie of impunitie for so vnpardonabil Treafoun, so long as he, who, beyde the commoun interest of Princes in the pynishment of vsurpeing Traitoures, wes bund, be dewtie of bloude and nature, to pynes those who had vsed so butcherlie violence aganis the lyves, libertie, and estate of his parentis. Yit God, in his Providence, did so cairefullie wathe over him, as haveing disperfed that tracheourous combination, and with progres of tyme turned thair wittis and vapines<sup>4</sup> of these rebellis to wourk aganis vtheris; his Maiesteis lyfe wes not onlie thairby preserved, bot his quarrell wes be thame reuenged. During this tyme and thir dangerous passages, his Maiesteie, growing in graceis and yeiris, and finding his realme so miserable disordered, as be the ciuill factionis and warris, not onlie the accustomed barbaritie of the Bordouraris and Hielandmen wes increased, bot, be infectioun, had so polluted the whole cuntrie with crueltie and diffensions, that publict factionis, and privat deidlie feidis, did so disquyet everie manis estait, as thair jakkis, knapfcaes, plait-sleves, and pistoles, wer als ordinar apparrell, to the most pairt, as thair doublettis and breachis; becaus, whatever wes the cause of thair conventionis or

<sup>1</sup> In allusion to the overthrow of the Papal power in Scotland, and the blessings to follow from the Reformation of Religion.    <sup>2</sup> Alluding to the murder of David Rizzio.    <sup>3</sup> Predestinated.    <sup>4</sup> *Wappinnis*; weapons.

meitingis, fightis or frayes wes the occasioun of thair departing, not onlie at Parleментis, conventionis, tryflis, and mercatis, bot lykwayis at Churche-yerdis and Churches, and places appoynted for exercises of Religioun. The purgatioun of so extraordinar and vniverfall corruptioun, being the task of his Maiesteis<sup>1</sup> . . . . .

Bot that which I have ever thought most strange and vnnaturall, in all this actioun, is, that efter so many, so lairge and sensibill praiffes of his Maiesteis pietie, justice, clemencie, extended to all the cornaris, and almost to all the particular<sup>2</sup> persones of his Kingdome, so many subiectis sould haue bene fund, who, in fauour of two men of so wicked lyfe, sould so lightlie have regairded, and so maliciousslie detracted his Maiesteis directionis, gevin for tortouring of *Young Auchindrane*, and refusing libertie to him self and his father, efter so many yeiris imprisonement: Never considering how his Maiestie, being evrie way iuste and equitabill, had, in thir menis particular, so small cause to vse thame with rigour, that if the aspired opinion of his cleir conscience had not certanlie perswaded him of thair guiltines, he wald never have either vexed thair persones, or restrained thair liberties, aganis the courses of ordinar justice of his kingdome.

It is fowlis prefumptioun in subiectis to think, that the Kingis whom God hes chosen as his lieutenantis, to regne ouer so great Nationis, sould haue hairtis of no greater excellence than the vulgar sort! If God had not prepared the hairt of Solomon, in his youth, to command the houris child<sup>3</sup> to be devyded betuix hir and hir neighbour who claimed the leving bairne, what Judge in the world could certanlie have determined to which of the two the living childe did belong? Whilk nevertheless, Salomon, be ane sentence, seming at first most cruell and vniust, did in end most admirablie determine,<sup>4</sup> to the manifestatioun of the singular wisdome, whilk God had put in the Kingis hairt.

When oure King, the trew Salomon of oure aige, and the most Godlie, wyfe, and learned King that ever bure ane Regall crowne in any Christian kingdome, trowelie representeng, having fra his owne infancie gevin so extraordinar promissis of his jugement<sup>5</sup> . . . . .

THE just determinatioun of the Proces which did long depend aganis THE LAIRD OF AUCHINDRANE and his eldest sone, having greatlie contented the myndes of manie faithfull subiectis; not that thay did reioice in the calamitie of Gentilmen of that sort,<sup>6</sup> bot becaus thairby, the justice of God, in the discoverie and pynishment of most subtil and dark crimes, was maid manifest to hard haired and vnbelieving peopill; hee also buffied many menis pens to send the report thairof to thair freindis abroad; whairin, albeit at first I did intend to keip silence, and remit the publicatioun of that memorabill actioun to those who wer more curious and skilful nor myself; yet, calling to my remembrance sum notabill circumstances, which, during the incertane event of that procedure, did giue bauldenes to peruersed peopill, to calumniat the true justice of his Maiesteis directiones; which now, to his differued commendatioun, is approued to the whole worlde; I have since thought it my duetie, truelie to informe your lordship (whom I know to be so curious and cairefull of no thing as of his Maiesteis honour) of the whole substance of that perfute, craving your Lo. pardoun, if omitting sum parcellis, scairce necessarie to be recorded, I fall tak bauldenes, in place thairof, to remark, that in the course and progres of the most notabill actionis of his Maiesties lyfe and regne, whairof no Prince's aige and fortune hathe ever bene more fertile, his holiest, happiest, and most iuste intentionis have never bene frie of the bitter sting of calumnious detractaris.

In this Discours, I will not follow his methode, *qui in medias res non secus ac notas auditorem rapit*, bot studie to mak the mater so plane to your Lo. as possibill I can, be deduction of the occasionis whilk inuolued Auchindrane's evill nature, in the laberinth of these mischevous interpryses, which,

<sup>1</sup> This is left unfinished; a page is left blank to fill up the rest. <sup>2</sup> Individual. <sup>3</sup> The well-known story of 'the Judgment of Solomon.' Sir Thomas had, in the course of the long digression which he made regarding the King's 'rise and progress,' touched on very dangerous ground, and travelled very far out of his way, for the purpose of lavishing the most fulsome praise; being certain that the Letter would be subjected to his Majesty's perusal. <sup>4</sup> Terminate; result.

<sup>5</sup> Here the scroll again breaks off, and three blank pages are left, for farther digression and flattery. <sup>6</sup> Rank; condition in society.

be the justice of God and his Maiesteis inflexibill constancie, being broght to light, have ouerthrowne his lyfe and fortunes.

BE birth, he (JOHN MURE OF AUCHINDRANE) was a Gentilman of wourfchipfull discent, succeding to that inheritance, which his prediceffouris in bloude and name had possessed almost foure hundredth yeires. By marriage of the dochter of Sir Thomas Kennedie of Barganie, one of the mightiest subiectis in the cuntrie whair he dwelt,<sup>1</sup> having increffed the strenght of his freindschip and presumption of his hairt; and thinking, that no thing could impeid the absolute power of *Barganies* freindschip, in Carrik, bot *the Erle of Cassillis howse*, whilk, be ane long discent of vertuous Nobilmen, for wourthie seruices done to thair Princes and cuntrie, had differued and ressaue so lairge recompens in landis, honouris, and iurisdictionis, as extending thair branches in all the cornaris of that cuntrie, and keeping faithfull dewtie and obedience to thair Prince, they had, be lawful meanes, obtaned aduantage of honour and commandement ouer all thair nightbouris; till of lait, the father of this Erle deceassed, and leiving his sones infantes, thair did not rest of that cheif howse, any man, abill to menteane the dignitie and rightes thair of, bot for *Sir Thomas Kennedie of Cullayne*, brother to the deceassed Erle, and vnclie and *Tutour* to this Erle of Cassillis; whom, vpoune emulation and inuie, before mentioned, Auchindrane intended to Murthour: ffor which pourpose, having affociat to him self nyne or ten well chosen compliceis, thay, vpon the . . . . day of (January), or thairby, in the yeir of God 1597, come to the towne of Maybole, whair *the Laird of Cullayne* maid than his ordinar residence, and tryeing<sup>2</sup> that he wes at supper in the house of (*Sir*) *Thomas Nisbet*, and wes thairfra to go to bed to his owne ludgeing; Auchindrane and his complices darned<sup>3</sup> thame selfis in (*Sir*) *Thomas Nisbetis* gairdine, throw which the Laird of Cullaynes way lay to his owne howse, and, in his passage, having delaisched<sup>4</sup> at him aucht or ten schot of hagbuttis and pistolettis, in the boundis of ane strait allay, yit he being saif of any hurt thairwith, and persauing thame with thair suourdis, most cruellie to persue his lyfe, he being alone, (becaus his seruandis, not thinking that any man had reason to offer him harme, did not attend him,) he was forced for his saiftie to flie; in which chaice thay did approche him so neir, as he had vndoutedlie bene ouertane and killed, if he had not aduentured to rin asyde and couer him self with the ruines of ane decayed house, whilk, in respect of the darknes of the night, they did not persaue; bot still followed to his ludgeing, and searched all the corneris thair of, till the confluence of the peopill of the towne<sup>5</sup> resorting, whair thay hard fuche a fray, forced thame to retire. For which schamefull and barbarous attempt, the said *Sir Thomas Kennedie of Cullayne*, having socht redress be law, did thairby dryue Auchindrane in fuche danger of ruyne, as necessarlie did constayne him to couer his malice with schew of repentance: And for satisfacioun of his bypast offence, and gadge<sup>6</sup> of his future dewtie, to offer his eldest sone in marriage to *Sir Thomas Kennedie's* dochter: Whilk, be intercesson of freindis, being accepted, and thairefter the marriage accomplieffed, the Laird of Cullayne did so affect the gude of the Laird of Auchindrane and his howse, as it was no less dere to him nor<sup>7</sup> his owne; considering, that in thair hopes and wishes, it wes to be possessed be the posteritie of thair conioyned discentis.

In which termes, materis continowed, vpoune Cullayne's pairt, faithfullie and in hairt, and vpoune Auchindranes, in tresonabill professionis; whilk,<sup>8</sup> be the deceas of *Sir Thomas Kennedie of Barganie*, his sone, *Gilbert Kennedie of Barganie*, ane young Gentilman of great courage, succeding to him, his inexperienced youth wes seduced be Auchindrane to beleve, that the tyme wes proper to raise his house, from the secund place in the cuntrie to the first, be the ouerthrow of the *Erle of Cassillis* house; whilk he proponed not to be difficill, for many probabill reasonis: Which, finding approbation, in the ambitious mynd of the young Gentilman, all occasionis of haitrent wer so fostered be seditious instrumentis on ather fyde, that in schort tyme the parties wer broght to fuche profession of inimitie, as *the Laird of Barganie*, intending, in contempt of the Erle, to go by his zet,<sup>9</sup> in his passage from Aire to

<sup>1</sup> In the Bailliary of Carrick and shire of Ayr.    <sup>2</sup> Ascertaining after enquiry; discovering.    <sup>3</sup> Concealed; hid; secreted.    <sup>4</sup> Let off; fired. Old Fr. *delascher*.    <sup>5</sup> Maybole.    <sup>6</sup> Pledge. Fr. *gage*.    <sup>7</sup> Than.    <sup>8</sup> Until;    <sup>9</sup> Contemptuously to go past the Earl's gate, without so much as enquiring after his health, he being his Chief, &c.

. . . . ., and the Erle, resolving rather to die nor<sup>1</sup> digest that publick indignitie; having bothe strenthened thame selfis with suche forceis, as vpon so suddane occasioun thay could assembl;<sup>2</sup> thay rencountred vpon the ffieldis, neir the Erles howse of . . . . ., whan ffoure or ffyve hundreth men entring in flight, it wes verie liklie that the eagernefs of the Cheiffis sould have broght thair peopill to great butcherie, if *Barganies* courage had not carried him so headlong to the rasche invasioun of *the Erles* peopill, lying at cover, vnder the advantage of ditches, as him self rassaving ane deidlie musket schot, and *Auchindrane*, being also maid vnhabill to brak his horse, be ane verie dangerous schot in the theigh, thair trowp, wanting leaderis, fled, and left the feld to the Erles better fortune.

Which, no thing abating *Auchindrane's* malice, he did not cease to stir vp *Thomas Kennedie*, brother to the lait slayne *Barganie*, to be assistand to him, in daylie ambushes, for *the Erles death*; whairin, not prevailling, in respect of the Erles power and circumspectioun; at last, *Auchindrane*, determining rather to ouerthrow honour, promes, conscience, and all bandis of dewtie, nor<sup>3</sup> to misf sum sort of reuenge; he concludit to Murthour the before named *Sir Thomas of Cullayne*, ane mater most easie to be attheved; becaus the Gentilman wes, in his owne confait, fullie secured of all parrell fra thair factioun, for that he had absteaned from assistig his newew *the Erle* in his querrell aganis *Barganie*, alsweill becaus he wes godfather to *Gilbert Kennedie of Barganie*, as that his mother and the Erles grandmother be his father, wes ane dochter of the honse of *Barganie*: Which respectis, making him exceidinglie to regrait thair vnnatural inimitie, he thocht it more agreabill to his dewtie to reforme him self newtrall, in thir vnhappy dissentiounis of his kinfmen; thairby, to wathe occasiounis and referue equall credit and trust of bothe parties, to be ane instrument of thair reconciliatioun, nor be his kyndnefs to one of his kinfmen, be vnnatural and vndewtifull to the vther.

In this estait, being onlie intente to his owne adoie,<sup>4</sup> whilk in the moneth of . . . . ., in the yeir of God . . . . .,<sup>5</sup> did requyre his resort to Edinburghe, thair to consult with his lawers in his wechtie buffines; he send his seruand to Maybole, to seik *Auchindrane*, and aduerteis him of his purpose; with direction, if he missed him thair, that he sould certifie him, be Letter, of his intended journey; to the effect *Auchindrane* might, vpon the nixt day, meit him vpon the way, at . . . . ., and informe him of any thing he wald wish him to do for him in Edinburghe, seing it wes bot one travell for him to do his freindis buffines and his owne. This seruand of *Cullaynes*, missing *Auchindrane* in Maybole, desyred *Mr Robert Mure scholemaster at Maybole*, to wryte ane Letter of that substance to *Auchindrane*; who did so, and sent it be ane boy of his schole, called *Williame Dalrumpill*, who finding *Auchindrane* at his house of *Auchindrane*, with his cusing, *Walter Mure of Cloncaird*, ane deidlie ennemie to *the Erle of Cassillis*; so sone as he fand him self certified of *Cullaynes* pourpose and dyet, he dismissed the boy, commanding him to returne bak in haist, caireing the Letter with him; directing him farder to schaw to his maister and *Cullayne's* man, that he had not fund him at his howse: And immediatlie thairefter, resolved with his cusing *Cloncaird*, that this occasioun of reuenge of *Barganies* Slauchter, be *Cullaynes* Murthour, wes nocht to be onesslipped: And, efter sum deliberatioun, concluded vpon the choise of the actouris, and maner of the execution; making aduerteisment thairof, alsweill by Letter sent to *Thomas Kennedie of Drumvrguhie*, be *Makadam*, futeman to *Young Auchindrane*, as by message to *Cloncaird*; who, finding *Thomas* most reddie to embrace that opportunitie, the said *Thomas Kennedie*, *Walter Mure of Cloncaird*, and foure or fyve seruandis with thame, weill armed and horsed, conuoyeing thame selfis neir the way appoynted be *Cullaynes* Letter, for his meiting with *Auchindrane*, did ly at await, till *Cullaynes* by-cumming; who, being in full securitie of his dangerles estait, ryding vpoun ane paiffing naig,<sup>6</sup> and having with him ane seruand onlie, thay suddentlie surpried him, and with thair pistoles and suourdis gaued him ane number of deedlie woundis;

<sup>1</sup> Than. <sup>2</sup> See a full account of these proceedings in 'THE HISTORIE OF THE KENNEDYIS' before referred to—and also ORIGINAL PAPERS in this Appendix. <sup>3</sup> Rather than be deprived of some sort of revenge against the name of Kennedy. <sup>4</sup> Affairs; concerns. <sup>5</sup> 11th May, 1602. <sup>6</sup> A pacing, ambling nag; a hackney, for his journey; not a swift and powerful horse, by which he might possibly have escaped. See 'The Historie of the Kennedyis,'



And, nocht content to haue so barbaroullie and traitroullie bereft him of his lyfe, spoyled him of ane thousand merk of gold, being in his purse, ane number of golden buttonis vpon his coat, and sum ringis and vther jouallis: For the which villanous fact, the actuall *Mourthouraris* being first outlawed and thairefter fforfalted, and *Auchindrane*, vpoun vehement presumptionis of his devyfe and causing execute fo execrabil ane cryme, being summond to vnderly the law, did bouldlie compeir: And feing that the persewaris, for want of sufficient evidences, wer not than to aduenture his Tryell, fearing that he might be clenged,<sup>1</sup> and so, perpetuallie fred of that cryme; whan he saw them adiourne thair persute, he seemed greived thairat, as bragging exceidinglie of his innocencie, whair of he had gevin prouif, he offering him self to tryell of law, if thair wer within the kingdome any man of *Cullaynes* kinred or freindschip, who wald advow<sup>2</sup> him any wayes participant of the devyfe or executioun of that Murthour, he wald reddelie offer him self in that querrell to the tryell of *COMBAT* to the death: And so, wanting ane partie,<sup>3</sup> wes dismissed; more frie, in the persuaifioun of the most pairt of suche as wer present, nor in his owne conscience, whilk geiving him many alarmes, that so long as *Dalrumpill*, who wes carrier of the Letter, wes within the cuntrie, the mater might be discovered be him. Heiring that *Young Cullayne*, sone to Sir Thomas Kennedie, had begun to try him verie rudelie, Auchindrane drew Dalrumpill to his house, and keiped him cloife, be the space of nyne or ten oulkis;<sup>4</sup> whairwith the boy weireing exceidinglie, he sent him thairefter to the *Ile of Arrane*, to the *Laird of Skelmurlie*,<sup>5</sup> his great freind, willing him to keip him as ane boy of *Thomas Kennedie of Drumvorkies*: Whair he being ressaued and reteaned ane long space, the boy, finding him self neglected and vnprovyded of many necessaris, returned to *Muncoun*, to the house of ane vncl of his owne;<sup>6</sup> which came no sone to Auchindrane's knowlege, bot incontinent he sent for him to his house of Auchindrane, whair he of new kept him cloife, whill, be paction with ane of his coungis, called *James Mure of Fleet*, he send him to Leith, to be transported to the *Low-cuntries*, to serve as ane sodgeour in the *Lord Balcleuchis Regiment*;<sup>7</sup> hoping that he might either thair end his life, be suche accidentis as daylie befallis to souldiouris, or at least be secure from discoverie or persute of suche as he did stand in feare off. But whan the senseles blindnes of his conscience had gevin sentence of perpetuall securitie to him from all discoverie of his abominabil transgressioun, in respect of *Dalrumpillis* absence, be the space of fyve or sax yeiris; the ey of Goddis justice, whilk never sleipis, convoyed him back to Aire, the place of his natiuetie, whar, having onlie staid with his mother and suster ane night or two, he did address himself to *Auchindrane*, who, aduertised of his returning, and thairby stinged with fearfull tormentis of conscience, he take ordour for Dalrumpillis stay in the howse of his seruand, *Walter Mure of Glenheid*: And the nixt day, in the afternone, being the . . . day of September, in the yeir of God . . . ,<sup>8</sup> he send his houshold seruand, *James Cuninghame*, to bring him to him; and rencountering with thame, in his way from his howse of Auchindrane to ane vther howse of his, called *Ballachtoule*,<sup>9</sup> him self and his sone, *Young Auchindrane*, had conference with *Dalrumpill* ane great pairt of the way, till they came neir the House of *Chapeldonan*,<sup>10</sup> perteaning, by inheritance, to Auchindrane, and possessed be his tennent and allye,<sup>11</sup> *James Bannatyne*, with whom thay left that night *Williame Dalrumpill*, calling him be ane changed name, '*Williame Montgomerie*': Whair he staid all the next day, whill, be directioun of *Auld Auchindrane*, James Bannatyne did bring Dalrumpill, about ten a clok in the night, to the *Sands of Girvan*, whair Johne Mure, elder of Auchindrane, and James Mure, younger of Auchindrane, wer attending<sup>12</sup> thair cuming: At meitting, *Auld Auchindrane* begane to declaire to his man *Bannatyne* that he

<sup>1</sup> Literally *cleansed*; acquitted.    <sup>2</sup> Avow; openly challenge.    <sup>3</sup> Pursuer or prosecutor.    <sup>4</sup> Weeks.    <sup>5</sup> Sir Robert Montgomery. He married Margaret, eldest daughter of the Laird of Drumlanrig, Sir William Douglas.    <sup>6</sup> It cannot be traced who this individual was.    <sup>7</sup> SIR WALTER SCOTT, who raised a regiment of his name, and served in the Wars of Maurice, Prince of Orange, against the Spaniards. For his singular merit and services, he was, Mar. 16, 1606, created Lord Scott of Buccleuch, being the first person of that celebrated Family who had been ennobled. His son, Walter, second Lord Scott of Buccleuch, also commanded a Regiment in the service of the States of Holland, and was created Earl of Buccleuch, Lord Whitechester, and Eskdale, Mar. 16, 1619.    <sup>8</sup> 1607.    <sup>9</sup> Situated near Girvan.    <sup>10</sup> Situated about a mile and a half from Girvan, on the sea-shore.    <sup>11</sup> 'Kinnisman to his wyfe' is deleted, and 'allye' interlined.    <sup>12</sup> Waiting. Fr. *attendre*.

had bene in perpetuall feare, since *Cullaynes Slaughter*, to be discovered as guiltie thair of;—that for eschewing that danger, he had sent furth of the cuntrie this *Dalrumpill*, who broght to him the Letter of aduerteifment of Cullaynes dyet; and whan as he had materis at that poynt, as be his traelis,<sup>1</sup> *Young Cullayne* and *Thomas Kennedie* wer maid to allow of the conditionis whilk he had set downe for reconciliatioun of thair querrell, for the Murthour of Cullaynes father, this man wes vnhappellie returned, be whom his whole devyfe wald be disapoynted, and his danger renewed. That he saw no remeid bot to red *Dalrumpill* furth of this lyfe, since he could not vtherwayes be kept out of his way. Whairvnto *Bannatyne* making ansuer, that it wes ane cruel pourpofe to Murthour the poure innocent youth, speciallie feing thay might send him to *Ireland*, to be saiffie keiped thair, till the agrieance wes perfytted betuix *Cullayne* and *Drumvorkie*: Auld Auchindrane semed to inclyne sumwhat to that expedient; and in the uncertaintie of his resolution, turning towardis the pairt whar his sone stuid, of pourpofe, as appeired, to have consulted with him, *Young Auchindrane* perfavd thame no sone (draw) neir, bot, thairby assuring himself of thair assistance, in executioun of that whilk his father and he had formerlie concluded, he did violentlie invade *Dalrumpill*, rushed him to the ground, and never left him till, helped by his father, with his handis and kneis he had strangled him. And then, thinking to have buried him in *the Sandis*, whirby no mark fould remayne<sup>2</sup> whilk might raise any suspicioun of his Murthour, in that place, thay pressed to mak vse of ane spead and schoule whilk *Young Auchindrane* had broght with him for the pourpofe; bot finding that no hole wes sone cassin be thame in the Sand, bot wes alfone filled agane with the water and sand that schot in it, thay wer forced, efter lang travell, to draw him in the sea, alsfar as they durst wade, hoping that ane vtterlie wind<sup>3</sup> fould carie his deid corps to *the Coast of Ireland*: Whilk not succeding according to thair expectatioun, the corps staving all the nixt day in the verie place whar they left it, they passed that day in meruelous anxietie, for feir of discoverie; till the nixt night, searcheing the corps to have buried it, they could not, be any searche, find it, becaus the winde had carried it to the Sea, whair it wes tossed continuallie be the space of fyve nychtis, till the Fryday following, that God, deineing (*deigning*) to vse that meane, for manifestatioun of thair hid iniquities, broght *Dalrumpills* corps bak to the verie place whair, sex or seven dayis before, he had been Murthoured: Whilk being perfavd be sum cuntrie peopill, the corps wes cairied be thame to the nixt Church yaird, and thair buried.

Bot the report of so strange ane accident, having raised suspicioun in *the Erle of Cassilis* and sum of his friendis, who had heard of *Dalrumpills* returning in the cuntrie, that it might be he had part in that turne, it wes thocht fit be the Erle and dyeris of the Ministrie<sup>4</sup> of that boundis, that intimation fould publictly be maid in Aire, being the heid burgh of the schyre, and at the Paroche-Kirkis to landward, that suche ane corps, being fund deid vpoun the coast, wes to be sene at *the Church of Girvan*. Whilk being accordinglie publeiffed, the corps wes raised, and amongs vtheris, fighted be *Dalrumpills* mother and his *syster*, who efter diligent consideratioun of the proportioun and markis of his bodie, assured thamefelfis and vtheris, that he wes the mourthoured man! The opinioun of *Auchindrane*s guiltines of that Murthour becam so vniuersall, as it began to be talked of amongis his owne seruandis and in his owne house, and thairby himself, his sone, and thair man *Bannatyne*, so confused, as thay knew not how to cleir thaim self of that vylde imputation; till going to Aire, and meitting with *James Dalrumpill*,<sup>5</sup> cusing germane to *Young Auchindrane*, by his mother, he did informe thame of the schamefull opinioun wes had of thair guiltines of that foule Murthour; advying thame, that feing it wes not saif for thame, to offer thame felfis to the Tryell of Law, for ane Murthour, whair of all men thocht thame so guiltie; and if thay, being challanged be *the Erle of Cassilis*, fould be fugitive for so haynous a cryme, thair freindis could not with credit do for thame.<sup>6</sup> It was fitter, that they fould kill *Hew Kennedie of Garriehorn*, servant to the Erle of Cassilis, for dyeris proba-

<sup>1</sup> Pains; trouble.

<sup>2</sup> By burying him within the flood-mark; so that, on the reflux of the tide, all marks of the struggle and foot-marks, &c. might be effaced.

<sup>3</sup> An off-shore or outward wind.

<sup>4</sup> Clergy; Ministers.

<sup>5</sup> 'Sisteris sone to the Lady Auchindrane, and so cusing,' deleted.

<sup>6</sup> Support or maintain them, while fugitive.

bill querrellis whilk they had against him : Whair of the occasion did presentlie offer, in respect of his being singill <sup>1</sup> *in Aire* ; whilk being done, they might ever pretend, that the danger of that cryme, and feir of the rigour of the Erle, wes the onlie caus for the whilk they wer fugitiue ! In whilk caice, nevertheles, thair freindis might, without reproche, do for thame ; becaus, albeit the fact wes vplawfull, it wes not dishonest, since it proceeded vpon professed querrelis, and might be done publiclie ; and so, thay be fugitiue, without infamie ! They presentlie imbrased the expedient, and provyding thame selvis of pistoles and vther armour, thay invaided Gariehorne, <sup>2</sup> schott thair pistoles, and vied all vther meanes to have killed him. Bot finding, that it wes ane mater more difficill, to ouirthrow ane gentilman, armed with gude courage, in ane laifull defense, nor <sup>3</sup> to Murthour innocent men, voyde of apprehension of danger and meanes of defence, all that thay reported of that inuasion, wes ane hurt of Young Auchindrane in his right hand, whairby he became almost lame of it.

Be this new iniurie, THE ERLE OF CASSILLIS perceiving that thair lyves wald end, before thair malice aganis him sould diminish, he resolued to strengthen him self be all suche aduantage as Law sould giue him ; and having chalenged thame bothe for the *Murthour of Dalrympill*, and for the Inuasion of his seruand with prohibit vapinis, <sup>4</sup> thay go to the horne ; <sup>5</sup> professing alwayes, that if thair vsing pistoles aganis *Gariehorne* might be remitted to thame, thay wald ever be reddie to enter and abyde Tryell of *Dalrumpillis Murthour*. Bot his Maiestie, being trewlie informed of thir proceedingis, efter serious consideratioun of the circumstances, than consaued so constant ane opinion of Auchindrane and his fones guiltines of Dalrumpillis Murthour, that he assured him self, that if thay wer tane and dewlie examined, thay wald vndoutedlie be brocht to confels it. And thairbye, inspyred with his accustomed zeale to justice, gave secret Commissioun to the Erle of Abercorne, that he wald not omit ony occasion to apprehend those suspected personis ; whairin the Erles diligence had so gud succes, that within schort space, he did rencounter and tak *Auld Auchindrane*, and enter him prisoner in the Towbuith of Edinburgh ; whair of, hes sone had no sone knowledge, bot imagining with him self, that it wer easie for his father and him self to conceall thair crymes, be obstinat secrecie, if *Bannatyme* sould not be brocht, by examination and confrontation, to reueale the treuth and discredit thair denyall ; he instantly raid to *Ballintrae*, whair *Bannatyme* wes for the tyme, perswaded him, for all thair saifties, to retire to *Ireland* ; provyded and furneissed him with victuallis and necessaris, ane bot <sup>6</sup> for his transport, recommended him, by his Letteris, to his vnclie *Thomas Kennedie of Drumvrguhie*, <sup>7</sup> gave him assurance that be his absence, he sould not tak any proffeit of the land quhilk he had of thame, nor no vther help, whil thay wer abill to mak to him. And be *Bannatymes* remove, becoming confident, did suspend his Horningis, be caution for his compeirance to vnderly law ; desyring no thing so mucche as that he might be precipitatlie put to ane Assyse ; vpon hope, that the lak of verification, in ane mater so clandestine and obscure, and the assistance of his great and gude freindis, sould procure to him vndouted absolutour, <sup>8</sup> and thairby, being frie of all dangeris of law, wald be more abill to procure his ffatheris libertie and declaratioun of his innocencie. Bot, being anis entered, examined, and vpon great caution <sup>9</sup> lett to libertie, and thairefter his cautioner chairged to re-enter him, he, remitting no jote of his former confidence, compeired the day appoynted, and being than re-examinat, and be the commendabill industrie of my *Lord Chancelar*, and vtheris of the Counfall, appoynted for his Tryall, drawne in sum materiall contrarietie ; vpon signification thair of to his Maiestie, directioun wes returned, that not onlie he sould be reteaned, bot if he wer obstinat, sould be coerced, be *Tortour*, to discouer the trewth ! Whilk being accordingly performed, be those of his Maiesties Counfall, to whois secrecie and faith that charge wes committed ; the *Young Auchindrane*, pairtly confirmed be the strench of his great courage, vnhappellie bestowed in

<sup>1</sup> Single ; unaccompanied.    <sup>2</sup> Hew Kennedie of Gariehorne, called in the Act of Secret Council, Feb. 5, 1602, 'The Guidman of the Ballot,' probably from being Lessee or tacksman of that farm.    <sup>3</sup> Than.    <sup>4</sup> Wappinnis, weapons, which were by Act of Parliament prohibited from being used by private gentlemen, excepting in his Majesty's service.    <sup>5</sup> Permit themselves to be denounced rebels and put to the horn, by virtue of Letters of Horning passing under the Signet, rather than present themselves for trial, as was previously arranged.    <sup>6</sup> Boat.    <sup>7</sup> One of the forfeited murderers of Sir Thomas Kennedy.    <sup>8</sup> Acquittal. Lat. *absolvens*.    <sup>9</sup> Bail ; security.

pruiffis of that kynd, and partlie be the craftie advyfes and aduerteifments of his ffather, convoyed to him be the counfile of fum thair welwillaris, who take the advantage of the cairelefines of thair keiparis; he did endure the extremitie of that insufferabil torment, with fuche constancie, that whairas, it wes hoped that the veritie of the accusation and extremitie of payne fould have forced him to ane trew Confessioun, the event proved fo far contrarie, as he resoluing, with silence, and souffrance of ane schort payne, to redeme his libertie, and to adde the hope of many yeiris to his lyfe.

The most part of thofe who hard of the event of that Tryall, the forme whair of wes muche miflyked, did confaue fo constant opinion of his innocencie, as not onlie the vulgar fort did publeis the fame, and regrait the extraordinar rigour vfed aganis him, bot fum Nobilmen and Counfallouris did affist his Supplicationis for his libertie, alledgeing many reasonis, why, with reason, it could not be refused him: That ane man of his birth and qualitie had refsaue hard aneuch meafour, being *put to Tortour* for ane cryme whilk nather did concerne his Maiesties perfone nor estait, albeit, efter so gude prouif of his innocencie, be his singular constancie in suffering that tryell; whilk no thing could have resisted, bot the integritie of ane vnspotted conscience; he fould not be ouercharged with ane secund oppression, in denying to him his natie and lafull libertie; since he did offer either to vndergo present tryell, or, if his ennemies did rather chuse, to prorogat it to ane tyme more fit for thame, he wes content to find caution, not vnder the pane of ane thousand merkis prescryved be Act of Parlement to ane man of his estait, bot, for removing of all scruple of his not compeirance, he fould bind his freindis vnder the payne of *Twentie Thousand poundis* for his re-entrie, whanfoever he fould be charged to that effect: Which wes fo oft requyred and vehementlie preassed, that my Lord Chancellor, ouercum with the continuall importunitie of *Young Auchindranes* favouraris, did yeild, that aduerteifment fould go from the Counfall to *HIS MAIESTIE*, of *Auchindranes* fate, and of the inclination of ane great part of the Counfall to yeild to the sam. Whairwith, his Maiestie, no whit diverted from his former resolution, signified his pleasour to be, that in no caice, nor vpoun no condicioun, he fould have ony libertie; being resolved in his conscience, that he wes most guiltie of that Mourthour; and that God, in his iustice and appoynted tyme, wald manifest the sam: Whairby, my Lord Chancellor, strenched be the exprefs Warrant of his Maiesties directioun, proceeding of his Royall motiue and certain knowledge, did fo dewlie obey his Maiesties command, that many tymes thairefter, whan the most part of the Counfall, abused with vntrew probabilities, and inclining to muche preposterous pitie, did preass that *Young Auchindranes* Supplicatioun might be red and refaue ansueir from the Counfall, be the voices of the most part of thofe who wer present, according to the institution thair of and custume inuolablie obserued.

My Lord Chancelar, persaving, be thair vttering of thais preconfaued opinions, that be pluralitie of voces it wald be ordaned that libertie fould be granted to *Auchindrane*, vpoun caution, vnder great fowmes for his re-entrie whan he fould be charged; did oppone to thair opinioun, grounded vpoun the vsuall forme of that judicatour, his Maiesties expres commandement, proceeding from his absolute Royall power, whilk he wald never bring in questioun, since no man could deny that his Maiestie, vpoun causes knowne to him self, might commit and reteane in wairde any of his subiectis, who in his conscience he knew to differue the sam; and that it wes presumption to his subjectis, speciallie Counfallouris, any wayes to contest in that poynt, efter his Maiesties lafull pleasour so oft and so expresse declaired.

My nobill Lord, it wer heir verie easie for me to iustifie the course of *HIS MAIESTIES* proceeding in this particular, and not onlie refute the popular error of the presumptuous multitude, bot also, with infallibil reasonis, to condemn the vntymous pitie of fum of better fort, nather remembering the obligatioun of thair place, nor the pruiffis of so many bypast accidentis, whairin his Maiestie, voyde of all passiou and particular,<sup>1</sup> and onlie moved by conscience, and loue of justice, had fumwhat diuerted from

<sup>1</sup> Partiality; bias, or leaning to the quarrel or cause of either of the parties.

the common pathes of ordinar Justice, without respect to popular murmour; so let the world to see, in end, be his most notabill conclusionis, how his purposes, tending to vnpartiall Justice, wer assisted be the fauour of God, and be heavenlie inspirationis, conducted to endis, confortabill, and almost miraculous! Bot, becaus I falbe more abill perfittie to performe that pairt, whan in the end of this actionn I falbe strengthened be the credit of ane faithfull and conscionabill Affyse, and muche more be the Confessioun of the parties, extorted be the power and Prouidence of God, I will referue it that place; and following furth the course of this Narratiue, subioyne thairto the Judicial Procedure and Sentence, whilk was never thought to be in the way of any probabill expectationn, till *the Erle of Abercorne*, by secret and instant dealing with sum of his freindis in *Ireland*, fand meanis to tak *James Bannatyne*, and bring him to Scotland, to his howse of Paislay; whair *Bannatyne*, efter the reherfall of all that Tragedie of *Dalrumpills Murthour*, having subioyned the maner of his owne taking, whairin he feimmed to acclame sum promeis, maid for the saiftie of his lyfe: The Erle did forthwith judge that dealing, so contrare to his honour and his Maiesties intention, as he instantlie assured *Bannatyne*, that he never did intend to have him vpon any futch conditionis. Bot being vnwilling that whan he sould be presented to justice, he sould reproche to him the brek of condicion maid be any whom he had employed for his apprehensioun, whairby the heararis might tak libertie, either to beleve or not beleve *Bannatyne's* affirmatioun, and thairby bring his honour in question; he gaue to him libertie to go frie out of his house, with assurance, that for the space of ten dayes he sould be vnpersewed be him or any of his, geving him space to provyde for his saiftie, either within this realme, or be removing furth thair of; aduerteising him thairwithall, that that terme being expyred, he wald bestow his owne travels and the assistance of all the friendis he had in the world to apprehend him, whairever he might be had, either quick or dead! So *Bannatyne*, being left to ane bodelie libertie, whilk neuer fred him of terrour of conscience, and fear of death, alswell in respect of the suorde of his Maiesteis Justice hanging about his head, as that endles perfute, whilk he knew *the Erle of Abercorne* did intend against him; bot most of all, in respect of his knouledge, that *Auchindrane* had, of lait, devysed and practeisid many meanes to cause *Murthour* him in *Ireland*, thairby to prevent the danger quhilk *Bannatynes* Confessioun might bring vpon him, if, be falling in *the Erle of Abercornes* handis, he sould have bene broght to Edr, examined and confronted with him and his sone: Being also informed, that whan *Young Auchindrane* caused deale with *the Erle of Dumbar* for his libertie, he had offered that his cautioneris sould bring *Bannatyne* in, *either quick or deid!* The Erle had verie judiciouslie answered, that he did well believe that *Young Auchindrane*, being frie, wald vnsaynedlie do his best to bring in *Bannatynes* head, whair of for his pairt he wald be sorie, as losing ane of the best meanis of the discouerie of thair guiltines, whair of he in his conscience wes resolued! Thir consideratiounis did force *Bannatyne* to prostrat him self at the Counsals seit, offering him self, without any condition, to reveill the whole treuth of that *Murthour*, and to verifie all that he sould say in *Auchindrane* and his sonis face; hoping, be the assistance of Gods gude Spirit, to bring thame to ane Confessioun of that vdenyabill treuth; onlie craiving, that if the Counsall fand him trew in all his speachis, and to be ane meanes to discouer the wickednes of these men, who, having drawn him vnhappellie in the participation of thair mischief, had so ingratelie and wickedlie devysed to *Murthour* him self, thar Lordschips wald be pleased to recommend him to the Kingis mercie, whois pleafour he sould joyfullie fulfill, wer it in his lyfe or in his death!

He wes commanded to mak ane trew Narration of *the maner of Dalrumpills death*; whilk being writt be the Clerk of Counsall, and *Auld Auchindrane* broght in and examined and confronted with him, and being contrare to him in all the poyntis of his Deposition; afferming impudentlie, that *Bannatyne* wes seduced and conduced be his vnfreindis (*enemies*), for desyre of his lyfe and landis, to avow these vntreuthis vpon him. Thay wer so directlie opposite to vtheris, as *Auchindrane* appeired more craftie and *Bannatyne* more simple and trew in his Deposition; bot bothe of thame so confident, that not

oalie evrie ane of thame menteaned thair owne Declaratione; bot whare as Bannatyne had prostrat him self vpon his kneis, and directing his eyes and handis to Heaven, had, with tearis, exhorted Auchindrane ' to have remorse of his great wickednes, and to confes that Murthour, whilk God wald not suffer him any longer to conceale! Affuring him, that if he had bene innocent of that cryme, all the land of the Kindome, ze<sup>1</sup> the faistie of his owne lyfe, fould never haue persuaded them (him) to pre-judge his maister, who he had so deirly loved and followed in many dangeris, whairin he had ad-ventured his lyfe and estait, without feir or respect of the best subiectis in the cuntrie.'—AUCHINDRANE answered, that ' he hoped God wald nocht so reiect him, as to permit him to confes so infamous vntrewth of him self, and douted not bot God wald move Bannatyne to beir witnes to his innocencie, and how, be what perfonis and meanes, he had been seduced fallie to accuse him!'

Whairby, the Counsall, being broght in admiration<sup>2</sup> of so great obstinacie, and hoping that the sone, being confronted with *Bannatyne*, might be fund perhappis lefs confident: When thay wer broght in thair presence, and examined, confronted, re-examined, and tryed, be all the best meanes that the experience or judgement of wyse and well affected Counsalouris could affurd; nothing wes hard bot direct contrarieties, confidentlie confirmed be execrabil oathes! So dyueris whole dayes being spent in Examination of these pairties, and many Witnesse who wer thought ony wayes abill to furneis light to this obscure caise.

At last, whan no hope of any farther discouerie wes expected, THE LORDIS OF SECREIT COUNSALL concluded, that vpon the . . . day of July instant, these perfonis fould be put to thair TRYALL: And for that pourpose caused Summond ane sufficient number of Gentilmen of gud report, to pas vpon thair ASSYSSE; and did lykwayes appoynt my Lords President,<sup>3</sup> Secretar,<sup>4</sup> Justice Clark,<sup>5</sup> Meidhop,<sup>6</sup> Killyth,<sup>7</sup> and Wrightisland,<sup>8</sup> to be ASSESSOURIS to the Justice in this singular cause, whairin the inclination of the peopell wes so favorabill to *Auchindrane* and *his sone*, that verie many did allege, that it wes requisit that *Bannatyne* fould be first put to an Affyse; and being convict, as of necessitie he behoued to be, in respect of his owne Confessioun, and Execute to the death, as he had well deserved; his constant ratification vpon the scaffald of his former Depositionis, and seilling the same with his bloude, at his death, might than put thame in sum opinion of *Auchindrane's* guiltines, whair of vtherwayes thay had never sene any appeirance. Bot the Lordis of Counsall, thinking it more agreabill to reason, that<sup>9</sup> . . . . . [those?] who wer thought all guiltie of ane fact, fould go to ane com . . . . . [mon Affise?] and that the gentilmen of Affyse, whois consciences . . . . . [might?] susteane the chairge of the Judgement to be gevin in so we . . . . . [ightie?] a cause, fould have all the thrie Defendaris at ones in thair presence, that so thairby thay might be resolued of whatsoever thay fould think fit to demand of thame. Thair Lordschipis followed thair first ordonnance, and vpon the said [17<sup>th</sup>] day of Julie, efter ellevin a klok, cumming to the ordinar place of Jugement, did cause bring the Defendaris from thair general prisionis to the bar, whair Sir Thomas Hamilton of Byres, Knight, his Maiesties Aduocat, compeiring as persewar, did exhibit ane DITTAY aganis the saidis Defendaris, desyring my LORD JUSTICE to put thame to the Tryall of ane Affyse; who, intending no wayes to preiudge the Defendaris of the benefite of Law, gave to thame libertie to name those whom thay desyred to be forespeakaris<sup>10</sup> for thame in thair defence; who naming<sup>11</sup> [' Mr Johne Russell, Aduocat, Mr Thomas Nicolfone, Aduocat, and Josephe Myller, Aduocat,'] thay wer presentlie called be thair names; and having accepted vpon thame the Defense of the *Lairdis of Auchindrane*, elder and younger, the Dittay wes oppinlie red in judgement: Aganis which *James Bannatyne* did not oppone any thing; bot declaired, that as he wald not vse any defence why this mater fould nocht pas to the knowledge of an Affyse; so when the

<sup>1</sup> Yea.    <sup>2</sup> Astonishment.    <sup>3</sup> Sir John Preston of Fenton-barns, President of the Court of Session.    <sup>4</sup> Sir Alexander Hay.  
<sup>5</sup> Sir John Cockburn of Ormiston.    <sup>6</sup> Sir Alexander Drummond, an Extraordinary Lord of Session.  
<sup>7</sup> Sir William Levingston, an Extraordinary Lord of Session.    <sup>8</sup> Sir Lewis Craig.  
<sup>9</sup> The MS. torn at this and the following places, which the Editor has supplied from conjecture, within brackets.  
<sup>10</sup> Counsel, or *Prelocutors*.    <sup>11</sup> Left blank. The names within brackets are taken from the Record.

Affyse fould be chofen, he fuld mak thair burding light, granting in thair prefence fo muche of the Dittay as concerned him, albeit he take God to witnes, that he wes the maift innocent of the thrie.

Thairefter M<sup>rs</sup> Johne Ruffell and Thomas Nicolfoun, having exponed to my Lord Justice the groundis of the caufe, the qualitie of the Defenderis meriting fauour and respect, the rigour vfed aganis thame in thair lang captiuitie, and extraordinar Tortour of the young man, did craive, that thay might have the benefite of law, whilk allowed to the Defendaris citatioun vpoun fiftene dayes wairning; whairby, reffaving the Copie of the Summondis, containing the Inditement to the whilk thay wer to anfuer, thay might, be that fpace, be advyfit of thair wyfe freindis and learned Counfall, to prepar thair juft Defenfis. Whairvnto it wes anfuered, be his Maiefties Aduocat, that thair defyre could not be granted in this caufe, be reafoun, the crymes whairof thay wer to be accused wer treasonabill; in which caice, ane prifoner, being broght from his Maiefteis prifon to the bar, wes, be the ordour of this Judgement,<sup>1</sup> put to prefent Tryall, without any delay or continewation; whilk, with no reafons, could be granted to thame at this tyme; becaus, thrie yeiris ago, thay had bene fummoned for the fame crymes, vpon xv dayes wairning; at whilk tyme, they going to the horne, for thair contumacie, the Auld Laird wes takin be his Maiefties Commiffion, the Young Laird relaxing his [Summondis and entering] had bene deteaned be his Maiefties direction; fo that they had not onlie fyvetene dayes, bot full thrie yeires to prepaire thair defenfis.

The Defenderis than alledged, that the fummonds, produced be the Lord Aduocat, could not juftlie feclude thame of thair defyre of delay, becaus the Dittay this day produced be him, wes fo different from the tenour of the ould Letteris, in many fubftantiall heidis, and did fo aggravat the cryme, be many circumftances, nowayes mentioned in the former Letteris, that it wes eafie to my Lord Justice and the Lord Affeffouris to difcerne, that no thing conteaned in the former Letteris, could have gotin thame information to prepaire thair Defenfes aganis the tenour of the Dittay now layd to thair charge. Which, being confidered be the Lord Justice and Affeffouris, and the auld Letteris and prefent Dittay exactlie conferred;<sup>2</sup> be Interlocutour, thay ordained prefent proces, refufing to give the Defendaris any vther copie of the Dittay, or delay of proces, till the nixt day.<sup>3</sup> . . . . .

## II. PROCEEDINGS BEFORE THE PRIVY COUNCIL OF SCOTLAND, *in reference to the Feuds and Conflicts recorded in the preceding Trial, &c.*

(i.) WARRANT of Privy Council, (*Apud Edinburgh, Decimo tercio Decembris, 1601.*) *commanding the Earl of Caffillis to fet Mure of Auchindrane and others at liberty.*

FORSAMEKILL as it is vnderftand to the Lordis of Secrete Counfall, that at the lait CONFLICT and Combat, quhilk hapnit and fell out betuix JOHNNE ERLE OF CASSILLIS, and certane his freindis, on the ane pairt; and GILBERT KENNEDY OF BARGANY, and certane his freindis, on the vther pairt, vpoun the ellevint day of December infant; the faid Erle tuik and apprehendit . . . . . MURE OF AUCHINDRANE, DAVID KENNEDY of *Maxuelstoun*, and certane vthers of the faid Laird of Auchindrane and Barganyis feruandis; and prefentlie hes thame in his cuftodie and keiping: And in respect of the Slauchter and bluid quhilk hapnit and fell out at the faid Conflict, it is verie fufpitious that the faid perfonis fould be sufferit to remane in the powar and handis of the faid Erle. THAIRFOIR, the faidis Lordis Ordanis Letteris to be direct, chargeing the faid *Erle of Caffillis* to defist and ceis fra all proceeding aganis the perfonis foirfaidis, tane and apprehendit be him at the faid Conflict, be vertew of his office of Bailgerie, or of ony powar or commiffioun grantit to him for that effect; difchargeing him

<sup>1</sup> The practice of this Tribunal.      <sup>2</sup> Collated; compared with each other.      <sup>3</sup> Here the Narrative ends abruptly. As the Report of the Trial is so full, it is likely that the writer had abandoned his original intention of giving a report of the proceedings which took place at the Trial—but merely to resume his Narrative, and continue it down to the period of their execution. This, however, if ever completed, has unfortunately been kept out of the scrolls. An account of the subsequent conduct of these atrocious criminals between the period of their condemnation and execution, must have possessed great interest.

thair of and of his office in that pairt: As alsua, chairgeing the said Erle to caus fett the said *Laird of Auchindrane* and *David Kennedy of Maxwellstoun*, and all vtheris personis tane be him at the said Conflict, at frie libertie, within the toun of Air, without ony violence or harme to be maid to thame be the way, within tuentie four houris nixt efter the chairge; vnder the pane of rebellious, &c. And, gif he failzie, &c., to denunce him rebell, &c.

(ii.) WARRANT of Privy Council, (*Apud Halyrudhous, quarto Februarij, 1607,*) to denounce JOHN MURE of Auchindrane and others.

## SEDERUNT.

Lennox,	Fyvie,	Lowdown,	Kinlofs,	Previe feill,	Kilsyth,
Chancellor,	Vchiltrie,	Maister of El-	Haliruidhous,	Aduocat,	Tracquair,
Angus,	Newbottle,	phingstoun,	Thefaurar,	Collectour,	Brunt-Iland,
Mar,	Spynie,	Rofs,	Comptrollar,	Clericus Registri,	Sir Patrik Mur-
Wyntoun,	Roxburgh,	Dunkeld,	Justice-Clerk,	Elimofinar,	ray.

ANENT oure souerane lordis Letteris, raised at the instance of Sir George Home of Spott, knycht, his Maiesteis Thefaurer, and Mr Thomas Hammiltoun of Drumcaine, his Maiesteis Aduocat, for his hienes enterefe; makand mentioun: That quhair, vpoun the ellevint day of December instant, JOHN MURE of Auchindrane, Thomas Kennedy of Drummurchy, Hew Kennedy of Bennan, Walter Mure of Cloncard, Hector Kennedy in Bargany, John M<sup>c</sup>alexander in Auchingregane, Thomas M<sup>c</sup>alexander his broder, James Bannatye in Chapeltonane, John Cathcart of Carloun, John Cathcart zounger of Carloun, Johnne Eccles of Kildonane, Williame Irwing, Thomas Wallace seruitour to the Laird of Bargany, John M<sup>c</sup>alexander of Dalreoch, Thomas Dalrumpill brother to the Laird of Stair, Gilbert Kennedy in Pynmachir, Gilbert Ramsay seruitour to the Laird of Bargany, Moses Lokhart brother to the Laird of Bar, David Kennedy in Maxwellstone, Alexander Kennedy sone to Hew Kennedy in Craignell, Robert Kennedy seruitour to Walter Mure of Cloncard, Mairtene Wilfoun in Newark, Robert Campbell in Carnychell, Williame Cauldwell of Lochirmos, Williame Kennedy in Garfer, John Mure of Craigskeane, John Mure in Quhytleis, Robert Wallace of Holmiftoun, George Angus notar in Air, Symone Gilmour thair, Peter Hammiltoun thair, Andro Kennedy thair, Henry Dalruple thair, Hew Kennedy thair, James Blair thair, John Blair thair, George Dumbar thair, George M<sup>c</sup>almont thair, James Dumbar thair, and . . . Kennedy cowpar thair, with convocatioun of his hienes leigeis, to the nowmer of . . . personis; all bodin in feir of weir, with jakis, corflettis, secrettis, lancis, and vtheris waponis, *inuafue*, and with muscattis, hacquebuttis, and pistolettis, prohibit to be worne be the lawis of this realme, Actis of Parliament and Secrete Counfall, come furth of the burgh of Air, towardis the toun of Mayboill, resoluit and disposit to haue attemptit some heich interpryse aganis JOHN ERLE OF CASSILLIS, in cais thay had found him vpoun the feildis: LYKES AS, thay perfaving the said Erle and some of his frendis and servandis to be vpoun the feildis, befyd the toun of Mayboill, thay immediatlie set vpoun thame, schot and difchairgit a nowmer of muscattis, hacquebuttis and pistolettis amang thame, quhairwith thay flew v<sup>m</sup>q<sup>ie</sup> . . . Spence, maister of houshald to the said Erle, and hurt and woundit sindrie vtheris of his servandis: Quhairthrow, as thay haue convocat his hienes leigis in armes, without powar or commissioun, sua haue thay violat his hienes lawis and Actis of Parliament, maid aganis the beiring and weiring of hacquebuttis and pistolettis; and with that, thay haue brokin his hienes peace, to the disturbance and schaikin lowse of the hail estait of that cuntrey, without remeid be prouydit. AND anent the chairge gevin to the saidis JOHN MURE OF AUCHINDRANE, &c. to haue compeirit personallie, befor the Kingis Maieftie and Lordis of Secrete Counfall, at ane certane day bigane, to haue anfuert to the premiffes, and to haue vnderlyne sic ordour as sould haue bene tane thairanent; as alsua, tuicheing the obseruatioun of his hienes peace and keiping of guid reull and quyetnes in the cuntrey, vnder the paine of rebellious and putting of thame to the borne: With certificatioun to thame, and (*if*) thay failzeit, Letteris sould be direct *simpliciter* to put



thame thairto: Lyke as at mair lenth is contenit in the said Letteris, executionis and indorfationis thair-  
of. Quhilkis being callit, and the saidis Perfewaris compeirand personallie, and the saidis Johne Mure  
of Auchindrane, &c. being oftymes callit and not compeirand, The Lordis of Secrete Counfall thair-  
foir Ordains Letteris to be direct, to denunce thame rebellis, and put thame to the horne, and to  
escheit.

(iii.) DECRET OF ABSOLVITOR, (*Apud Haliruidhous, quinto Februarij, 1602,*) by the Privy  
Council, in favor of JOHN EARL OF CASSILLIS and others, 'for convocatioun of his hienes  
lieges, and beiring and weiring of hacquebuttis and pistolettis, breking of his hienes peace.'

## SEDERUNT.

Chancellor,	Fyvie,	Blantyre,	Secretar,	Prevey feill,	Kilfyth,
Ergyll,	Lowdown,	Haliruidhous,	Comptrollar,	Aduocat,	Sir Patrik Murray,
Angus,	Roxburgh,	Thefaurar,	Collectour,	Tracquir,	Elimofinar.

ANENT oure souerane lordis Letteris, raifed at the instances of Sir George Home of Spot, knycht,  
hie hienes thefaurer, and Mr Thomas Hammiltoun of Drumcairne, his Maiesteis Aduocat, for his hie-  
nes interesse; makand mentioun: That quhair, vpoun the elleuint day of December instant, JOHNN  
ERLE OF CASSILLIS, Johne Corrie of Kelwod, Hew Kennedy of Penquhirry, Johne Dauidfoun of  
Pennyglen, Oliver Baird of Culleinzie, Patrik Mcilveane elder of Gremmat, Johne Mcilveane 3ounger  
of Gremmat, Hew Kennedy of Garryhorne, vtherwayis callit *the Guidman of the Ballot*, George  
Fergusfoun of Thraif, Alexander Schaw tutour of Gremmat, Johne Mure of Wodland, Johne Mure of  
Kingmarloch, Johne Dik of Barbesburie,<sup>1</sup> Hew Kennedy of Dangar, Anthone Kennedy 3ounger of  
Barfalloch, Johne Mure merchant in Mynyboill (Maybole), Quintene Crawford 3ounger of Silliboll,  
Johne Kennedy of Smetoun, Williame Kennedy of Turneberry, Johne Campbell in Barnefurd, Johne  
Smyth 3ounger in Caffillis, Johne Calderwode in Girmerftoun, Johne Fultoune in Giltryhill, Johne  
Fultoune in Mofend, Alexander Baxter porter, Williame Harlaw hagbutter, Robert Fultoun in Gil-  
tryhill, Johne Fultoune in Bargennoch, David Fultoun his brother, Thomas Faltoune in Giltrie, Tho-  
mas Wode in Caffillis, Quintene Tod in Caffillis, James Dauidfoun in Burnemoith, Johne Dauidfoun  
his sone, Johne Mcolme in Mcolmestoun, Johne Malcome in Blairbouy, Johne Bell in Mcolmestoun,  
Thomas Mortoune in Caffillis, Johne Mortoun his broder thair, Johne Mcary thair, Johne Smyth in  
Dalrumple-holme, Williame Huntar thair, James Corry in Bray of Dalrumple, David Mcquhorta in  
Batlewand, William Campbell in Bra thair, Robert Cunynghame in Bateiftoun, Johne Smyth in Drum-  
goblis, &c.<sup>2</sup> all men, tennentis, sermandis, and proper dependaris vpoun the said Erle, with convoca-  
tioun of his Maiesteis leigeis, to the nowmer of . . . . hundreth personis, all bodin in feir of weir,  
with jakis, steil-bonnettis, corflettis, lancis, and vtheris waponis invasiue, and with hacquebuttis and  
pistolettis, prohibite to be worne be the lawis of this realme and Actis of Parliament; come in hostile  
and weirlyk maner furth of the toun of Mayboill, and lay at await for v<sup>m</sup>q<sup>le</sup> GILBERT KENNEDY of  
*Bargany*, his freindis and sermandis, as thay wer comeing the hie way fra the burgh of Air towardis  
the said Lairdis awne duelling hous, and invadit and perfewit thame of thair lyffis, schot and dischair-  
git a nowmer of hacquebuttis and pistolettis at thame, quhairwith findrie of the said Laird of Barga-  
nyis company wer hurt and woundit; and at that same tyme, thay schamefullie, cruellie, and vnmer-  
cifullie *flew the said v<sup>m</sup>q<sup>le</sup> Gilbert Kennedy of Bargany*: QUHAIRTHROW, as thay haue convocat his  
hienes liegeis in airmes, without ony lauchfull Warrant or authoritie, sua haue thay violat his hienes  
lawis and Actis of Parliament maid aganis the beiring and weiring of hacquebuttis and pistolettis, and  
with that, thay haue brokin and dissoluit his hienes peace in that cuntrey; quhairby mony inconveni-  
entis are lyke to fall out, to the trouble and disquyeting of the hail cuntrey, without remeid be pro-  
vydit. AND anent the charge gevin to the saidis Johne Erle of Caffillis, *Capitane Johne Forrester*,

<sup>1</sup> Barbestoune.    <sup>2</sup> A List of one hundred and thirty more names follows. They are unnecessary to be inserted  
here, though they might no doubt be of some local interest. None of them are persons of rank.

Mr Cristopher Cokburne, Quintene Craufurd, Patrik Reidpeth, Williame Maitland, Williame Flemmyng, Alexander Forbea, household-men to the said Erle, Anthon Kennedy younger of Balscheroh, Arthour Kennedy his brother, Mr Williame Boyd, Andro Cuninghame, David Girvan, Thomas Kennedy, David Cathcart, Alexander Baxter, Williame Harlaw, David Craufurd, David Gray, Johne Blair, alsua his householdmen and servandis, Johne Corrie of Kelwode, Hew Kennedy of Penquiberry,<sup>1</sup> &c. to haue compeirit personallie: As alsua anent the charge gevin to the said Erle of Cassillis, to haue enterit and presentit the personis particularlie aboue writtin befoir the Kingis Maiestie and Lordis of Secreit Counfall at ane certane day bigane, to haue answert to the premisses, and to haue vnderlyne sic ordour as sould haue bene tane thairanent; as alsua, tuicheing the obseruatioun of his hienes peace and keeping of guid ruell and quyetnes in the cuntrey, heirefter, vnder the paine of rebellious and putting of thame to the horne, with certificatioun to thame and<sup>2</sup> thay failzeit, Letteris sould be direct *simpliciter* to put thame thairto; lyk as at mair lenth is contenit in the saidis Letteris, executionis, and indorfationis thairof. QUHILKIS being callit, and the saidis perswaris compeirand personallie, and the said *Johne Erle of Cassillis* being lykwayis personallie present, for him self, and in name of the remanent defendaris foirfaidis; quha producit tua Commissionis, subscriuit be his Maiestie, and past his hienes Register and Signet: The ane aganis *Blaquhane younger*,<sup>3</sup> Girvenmanis, Hew Kennedy of Bennan, Thomas his brother, and Walter Mure of Cloncard, quhais names ar insert in the said Commission with his Maiesteis awne hand, knowing thair misdeidis, geving powar to the said Erle of Cassillis to convocat his hienes liegeis, and to searche, seik, tak, apprehend and persew, *with fyre and sword*, the personis aboue writtin, and to weir hacquebuttis and pistolettis to that effect; as the said Commission, of the dait the nynt day of Julij, the zeir of God I<sup>m</sup>.Vj<sup>c</sup>. and ane zeiris, at lenth beiris: And the vther Commission, direct to the said Erle, for the persute, taking, and apprehending of *Robert Gordoun of Barnerino*, Alexander Gordoun of the Hillis, Williame Mcneilie, Alexander Mckie of Balseir, and Thomas Kennedy of Drummurchy, as suspect guilty of Murthour, Oppressioun, and Reflett of Thift; as in the said Commission, geving powar to the said Erle to convocat his hienes liegeis, assiege houffis, raise fyre, and persew the saidis personis with all extremitie, and beiring dait the tuentie-ane day of July I<sup>m</sup>.Vj<sup>c</sup>. and ane, at lenth is contenit: Be vertew of the quhilkis Commissionis, the said Erle allegit, that he had lauchfullie proceedit in the haill actioun aboue writtin, quhairvpoun he wes accuset, feing the said *Thomas Kennedy of Drummurchy* and the said *Walter Mure of Cloncard*, and dynerse vtheris his Maiesteis rebellis, vpone quhome the said Erle presentlie producit Horning deulie execnte and regiftrat, and quha standis zit at the horne vnrelaxt, wer present and vpoun the grund with the said vmq<sup>le</sup> *Gilbert Kennedy of Bargany*, the tyme foirfaid; and the said Erle, being in executioun of his Maiesteis Commissionis, in searching and seiking of the said Thomas, and of the remanent personis thairin contenit, all that fell out in that mater wer lauchfull. QUHAIRUNTO it wes answert be the said Mr Thomas Hammiltoun, that the said first Commission can be na Warrant nor authoritie to the said Erle; becaus that lang befoir the committing of the crymes aboue writtin, quhairvpoun he is now accuset, the same Commission wes dischairgit be his Maiestie, for the haill personis thairin contenit, except Young Blairquhane; and lauchfull intimatioun and publication wes maid to the said Erle of the said discharge, lang befoir the said tyme, viz. in the moneth of August lastbypast; quhilk the said Aduocat referrit to the said Erles aith: And sua, in respect of that discharge, and that the said Laird of Blairquhane Younger wes not in cumpany with the said Laird of Bargany the tyme foirfaid, the same Commission can be na Warrant to the said Erle: And as to the last Commission, it was answert be the said Aduocat, that the same can be na sufficient Warrant to the said Erle; because the same Commission wes not deulie regiftrat aganis the said Thomas Kennedy of Drummurchy, bot his name insert thairin, lang efter the same wes past the Register

<sup>1</sup> Here the remainder of the names are repeated.<sup>2</sup> If.<sup>3</sup> Blairquhan.

and Signet: And thair was na powar nor licence contenit in the said laft Commiffioun for beiring and weiring of hacquebuttis and pistolettis; and feing his Maiefties Register is the reull be the quhilk the said Commiffioun fould have been directit, the fame can be na Warrant to the said Erle: Vnto the quhilk it wes replyit be the said Erle, that, albeit the first Commiffioun wes difchairgit aganis the hail perfonis contenit thairin, except *Young Blaquhane*, zit it stude in full force and effect aganis him; and he being his Maiefties rebell, and continewing difobedient to his Maieftie, and being a ordinary hantar and keipar of cumpany with the said Laird of Bargany, oftymes ofbefoir and fenfyne, and fufpectit to haue bene with him that day, he had gude Warrant and powar to fearch him quhairneuer he mycht get knowlege of his being: And as to the said laft Commiffioun, it wes replyit be the said Erle that he had a special Warrant and direction fra his Maieftie, to the Keipar of the Register, to register the said Commiffioun, as it wes producit to the Register; quhilk Warrant he producit befor the saidis Lordis; fua that it was lauchfull to him to infert ony names thairin, quha wer rebellis, or gilty of sic crymes, in his plefour: And albeit thair wes na mention maid in the laft Commiffioun of hacquebuttis and pistolettis, zit, in respect of the first Commiffioun standing vndifcharget, as said is, and that the laft Commiffioun gaif him powar to vse all weirlyk ingyne quhilk he could denyse for apprehenfion of the perfonis thairin contenit, the executioun of the fame, in forme and maner as it fell out, was lauchfull: And forder, it wes replyit be the said Erle, that he being the ordinar Judge and Magiftrat of the cuntrey, and not a privat perfone, thair fould na sic difcharge haue bene purchest quhill<sup>1</sup> first he had bene wairnit to the geving thairof, and that the perfonis, in quhais fauour the fame was grantit, had gevin thair obedience to his Maieftie, and purgit thame selfis of the Horningis quhilkis thay vnderlay. WITH the quhilkis Answers and Replyis, and dyuerse vtheris the reffonis and allegations of baith the saidis pairteis, the Lordis of Secrete Counfell being weill and ryplie advyset,—THE LORDIS of Secrete Counfall FINDIS and DECLAIRIS the tua Commiffionis aboue written, producit be the said Erle, to be guid, valid, and sufficient; and that thairby he had gude powar and authoritie to fearch and feik the saidis perfonis, and vse the fame Commiffionis. AND thairfoir the saidis Lordis Affoilzeis<sup>2</sup> *fimpliciter* the saidis Defenderis fra that pairt of the saidis Letteris, tuicheing the convocatioun of his hienes liegeis, and beireing and weiring of hacquebuttis and pistolettis, and breking of his hienes peace: And Decernis thame quyte thairfra in all tyme comeing, and of all offence (that) may be impute to him in the vRING of the saidis Commiffionis.

(iv.) ACT of Privy Council, *The Laird of Cullane against Williame M<sup>c</sup>Phadrik*.<sup>3</sup>

ANENT our fouerane lordis Letteris, reasit at the instance of JAMES KENNEDY of *Culzeane*, makand mention: That quhair, albeit his Maieftie, be the space of aucht yeiris syne, maid and fet furth diuerse edictis and Proclamatiounis, prohibiting and difchargeing all his heynes leigeis, that nane of thame fould refset, supplie, nor intercommoun with *Thomas Kennedy*, *Thomas M<sup>c</sup>Alexander*, *Thomas Wallace*, and *William Irving*, during the tyme of thair rebellious and remaneing at the horne, for the odious, cruell, and detestable Murthour of vmq<sup>e</sup> Sir Thomas Kennedy of *Culzeane*, father to the said complenair, committit be thame, in maner specifit in the said Proclamatioun, vnder certane panes mentionat thairintill. Nochtwithstanding, it is of treuth, that *William M<sup>c</sup>Phedrice*, fervitour to the Laird of *Girvanmanis*, hes continewallie, and almaist ilk day sen the dait of the said Proclamatioun, aganis the tennour of the fame, refset, suppleit, and intercommounit with the said *Thomas M<sup>c</sup>Alexander*, and remanent rebellis abouenameit, within his awin duelling house in Air; hes keipit mony tryftis and meitingis with him, as namelie, vpoun the xxvj Junij, I<sup>m</sup>. Vj. and aucht yeiris, the said *Thomas M<sup>c</sup>Alexander* being in his dwelling hous in Air; and informatioun thairof being maid to *JOHNE ERLI OF CASSILLIS* and the said Complénair, and thay haueing warrand, power, and commiffioun for the perfute of the said *Thomas M<sup>c</sup>Alexander*, and being than vpoun the feildis agaitward<sup>4</sup> towards him, it is

<sup>1</sup> Untill.    <sup>2</sup> Absolves; acquits.

<sup>3</sup> *Regist. Secr. Conc. (Acta)*, Aug. 3, 1609.

<sup>4</sup> On the road or gait to apprehend him.

of treuth that the said William McPhedrice, being vpon the knowlege and counfall of the said Erll and the said Complenaris said purpois aganis the said Thomas, he lap on horse and convoyit him self secretlie away to the said hous, quhair the said Thomas wes for the tyme, and thair intercommvnt with him, reveillit, and disclofit vnto him the said purpois and plat layd down for his perfute: And that he mycht the more faulie eschew, the said William McPhedrice horfit him on his awin horse, and pat him away; in heich and proud contempt of his Maiesteis auctoritie and lawis. For the quibilk the said Williame aucht to be persewit and pvnist in his persone and guidis, to the terrour of vtheris to commit the lyke heirafter. And anent the chairge gevin to the said William McPhedrice to haue compeirit personalie before the Lordis of Secrite Counfall this present thrid day of August instant, to haue anfuert to this complaint, and to haue hard and sene sic ordour tane thairanent, as appertenit; vndir the pane of rebellion and puting of him to the horne: with certificatioun to him and<sup>1</sup> he failzet, Letteris fould be direct *simpliciter* to put him thairto; lyke as at mair lenth is contenit in the saidis Letteris, executionis, and indorfationis thairof; quhilkis being callit, and the said persewar compeirand personalie, and the said Defender being oftymes callit, and not compeirand, The Lordis of Secrite Counfall thairfoir Ordanis Letteris to be direct to Officearis of airmes, schireffis in that pairt, chargeing thame to pas and denunce the said Williame McPhedrice his Maiesteis rebell, and to put him to the borne; and to eschete, &c.

(v.) ACT of Privy Council, *The Kingis Aduocat aguinft Johnne Mure.*<sup>2</sup>

ANENT our fouerane lordis letteris, reasit at the instance of Sir Thomas Hammiltoun of Bynnie, knycht, aduocat to our fouerane lord, for his hienes interesse, makand mentibun: That quhair the cruell, unworthie, and detestabill Murthour of vniq<sup>le</sup> SIR THOMAS KENNEDY of *Culzeane*, knycht, and of vniq<sup>le</sup> WILLIAME DALRUMPLE, sone to Williame Dalrumple in Aire, haueing thir mony zeiris bigane lyne obscure and hid, and no perfyte discouerie nor knowledge being had of these who wer the cheiff and principall divisaris, practizaris, and conspiratouris in the same Murthour, the said Aduocat is now informed that the personis following, thay ar to say, JOHNNE MURE, cook in Auchindrane, *Thomas Wallace*, seruitour to Auchindrane, *Andro M<sup>c</sup>Alexander*, sometyme seruitour to *James Bellindane*<sup>3</sup> in Chapildonane, *James M<sup>c</sup>caig*, sone to Adam M<sup>c</sup>caig, in Girvane, and *George Small*, in Plefance, doeth knaw something in that mater, and can gif some licht, evidence, and probable presumptioun and circumstanceis, for cleiring of the same: Quhairfore, necessar it is, that thay be examinat heirvpon, in presence of the Lordis of his heynes Preuey Counfall. AND anent the charge gevin to the saidis Johne Mure, cook, Thomas Wallace, Andro M<sup>c</sup>Alexander, James M<sup>c</sup>caig, and George Small, in Plefance, to haue compeirit personalie, befoir the Lordis of Secrite Counfall, this present xx day of Junij instant, to haue anfuert to fuche thingis as fould have bene speirit at thame tuitching the Murthour of the personis foirsaidis, vnder the pane of rebelloun and puting of thame to the horne; with certificatioun, &c. The Lordis ordanis Letteris to be direct, &c., chargeing to pas and denunce the said personis, who compeirit not, his Maiesteis rebellis, and put thame to the horne; and to eschete, &c.<sup>4</sup>

(vi.) SUSPENSIOUN, *James Bannatyne, in Chapeldonall.*<sup>5</sup>

ANENT oure fouerane lordis Letteris, reasit at the instance of *James Bannatyne in Chapeldonall*, makand mentioun, That quhair as, he is informed he is denuncit rebell and put to the horne, be virtew of Letteris, reasit at the instance of *Johne Erll of Cassillis* and Sir Thomas Hammiltoun of Bynnie, kny<sup>t</sup>, his Maiesteis Aduocat for his heynes interesse, ffor the complenair his allegeit not compeiring personalie before the Lordis of Secrite Counfall, at ane certain day bygane, to haue anfuert to ane complaint maid be the said Erll and Lord Aduocat vpon him, tuicheing his allegit beiring and weiring of

<sup>1</sup> An, if.    <sup>2</sup> *Reg. Secr. Conc. (Acta)*, Jun. 20, 1611.    <sup>3</sup> Bannatyne. At this period the name Bannatyne was indifferently spelt, Ballendyne, Bellenden, Bannatyne, and Ballantyne.    <sup>4</sup> A similar entry occurs, of the same date, to denounce 'THOMAS MURE, sone to (Johne) Mure of Auchindrayne, and ANDRO SINCLAIR, half-brother to the Laird of Auchindrane, for not appearing to answer at ane certane day bygane.'    <sup>5</sup> *Regist. Secr. Conc. (Acta)*, Sep. 27, 1611.

hagbuttis and pistolettis, and invading and perfewing of *Hew Kennedy of Garrihorne* and *Thomas Mcquhary*, boith seruitouris to the said Erll, and schooting and dischairging of pistolettis at thame, &c. The Lords suspended the said Letters, *simpliciter*, on the ground of Bannatyne's not having been cited to appear, &c.

III. PROCEEDINGS IN PARLIAMENT, *as to the Forfeiture of Thomas Kennedy of Drummurchie, for the Burning of Auchinsoull,—Murder of Sir Thomas Kennedy, &c.*

(i.) *The Forfaltie of Thomas Kennedie.*

Apr. 26, 1604.—SIR Thomas Hamilton, King's Advocate, took instruments of the Production of the Summons of Treason and executions, &c. in Parliament.<sup>1</sup>

Jul. 11, 1604.—The Summons and other documents were again produced in Parliament,<sup>2</sup> which were of new verified in presence of the Lord Commiffioner, (John Earl of Montrose,) and haill Estaittis: And siclyk, the said Aduocat produceit Lettres of Relaxatioun, relaxand the said *Thomas Kennedie* from all proces of Horning led and deducet aganis him, for quhatfumeuir cause. And thaireftir, the said *Thomas Kennedie* being thryse callit at the tolbuith windo, to haue answerit to the said Summondis of Treassoun, he comperit nocht to ansuer thairto, and thairfoir the said Aduocat (eftir that the foirfaid caus of the said Summondis of Treassoun wes fundin relevant be the saidis haill Estaittis aganis the said Thomas Kennedie of Drummurchie) ffor preving of the pointis of the said Summondis of Treassoun aganis the said Thomas Kennedie, and of the reffoun and caus contenit thairin, repetit the Depositionnes of the Witnessses reffaut, admittit, sworne, and examinat in presens of the saidis haill Estaittis vpoun the foirfaid resone and cause; and als repetit the notorieit of the fact of the Burning, and the said Thomas Kennedie acknowlegeing his awin giltines, and taking of the saidis crymes vpoun him, throw being fugitiue and denuncit Rebell for nocht comperance befor our said souerane lordis Justice and Lordis of his hienes Privie Counfall *respectiue*, in maner contenit in the Lettres of Horning rasit thairvpoun: And lykwayis, the said Aduocat producit diuerse vtheris wryttis and probatiounes, for preving of the said Summondis of Treassoun, and desyrit the saidis Estaittis of Parliament to advyse the foirfaidis probatiounes, and to gif furth thair Dome and Sentence thairintill, according to justice. And thaireftir, the foirfaidis haill probatiounis and Summondis of Treassoun being red, hard, sene and confiderit be the saidis Estaittis, and they thairwith being ryplie advysit, the saidis haill Estaittis of Parliament FINDIS, Decernis, and Declaris that the said Thomas Kennedie of Drummurchie hes committit TREASSOUN, in Raifing of the said Fyre, and Burning of the said Place of AUCHINSOULL, in maner specefeit in the foirfaid Summondis: AND thairfoir, Decernis and Ordanis THE DOME vnderwrittin to be pronuncit and gevin furth aganis him, be the mouth of Dauid Lyndesay, dempster: Off the quhilk Dome, the tennour followis.

DOME. This Courte of Parliament schawes for Law, that the said THOMAS KENNEDIE of Drummurchie hes committit Treassoun in Raifing of Fyre and Burning of the said Place of Auchinsoull, pertenyng to the said Duncane Craufurde, the tyme and in maner specefeit in the said Summondis of Treassoun, perfewit be his hienes said Aduocat, for his grace entres, aganis him: And thairfoir Findis and Declaris, That the said THOMAS KENNEDIE hes amittit, and tynt, and Foirfaltit for euir, all his landis, heretages, rowmes, possessionis, gudis, and geir quhatfumeuir, belonging to him ony maner of way, and quhilkis he hes, had, nicht haue, or clame, within this Realme of Scotland: And Decernis the samin to haue appertent and to appertene to our said souerane lord, to be confiscat, and to remane with his hienes, as his propirtie, in all tyme cumming. And als Findis and Declaris, that the said THOMAS KENNEDIE hes amittit and tynt his fame, honouris, and dignitie: And he to be pvnist as ane Tratur, conforme to the Lawes of this realme. And this I gif for Dome.

<sup>1</sup> *Acta Parl.* iv. 260.

<sup>2</sup> *Acta Parl.* iv. 267.

(ii.) THE SUMMONDIS OF TRESSOUN of *vmq<sup>te</sup>* WALTER MURE OF CLONCARDE, *paft fra fimpliciter* *be our fouerane Lordis Aduocat.*<sup>1</sup>

Jul. 11, 1604.—THE quhilk day Maifter Thomas Rollok, depute for Sir Thomas Hammyltoun of Monkland, knycht, Aduocat to our fouerane Lord, and in his hienes name reproducit, in prefens of are nobill and potent lord, Johne Erle of Montrofe, Lord Grahame and Mukdok, Great Commiffionar of this prefent Parliament, and in prefens of the hail Eftaittis thair of, the Summondis of Treaffoun vaderwrittin; quhilkis wer producit be the faid Aduocat, ofbefoir, at Edinburgh, in prefens of the Lordis of Articlis, vpoun the tuentie aucht day of Aprile laft bipaft: Off the quhilk Summondis of Treaffoun the tennour followes.<sup>2</sup>

[SUMMONS OF TREASON *againft Thomas Kennedy of Drummurchie and Walter Mure of Cloncarde.*<sup>3</sup>]

JACOBUS, Dei Gracia Rex Anglorum, Scotorum, Gallorum et Hibernorum, &c. Fideique defensor: Dilectis noftris Leoni Regi Armorum, Albanie, Snawdoun, Merchemont, Rothesay, Ilay, Rofs, Bute, Carrik, Ormond, Vnicorne, signiferis; Dauid Bryffoun, Robert Stewart, Alexandro Dowglas et Jacobo Chalmeris clauigeris noftris; necnon Joanni Ferguffoun et Joanni Wilkeffoun nuncijs, et eorum ouilibet, coniunctim et diuifim. Vobis precipimus et mandamus quatenus legitime fummonéatis THOMAM KENNEDIE *de Drummurchie*, fratrem germanum quondam Gilberti Kennedie de Barganie, perfonaliter, fi ejus perfonalem prefentiam habere poteritis, feu aliter apud locum fui domicilij et habitationis; ac etiam apud cruces forales burgorum noftrorum de Air, Irving, Mayboll ac apud portas noftras de Air et Leith, et alia loca neceffaria, fuper premonitione fexaginta dierum, eo quod dictus Thomas de prefenti extra regnum noftrum Scotie morari dicitur. Necnon fummonéatis legitime ROBERTUM MURE, fratrem germanum et heredem apparentem quondam *Walteri Mure de Cloncarde*, JOANETAM MURE eius forem germanam, perfonaliter, fi eorum perfonalem prefentiam habere poteritis, vel fecus apud locum fuorum domiciliorum et habitationis; ac etiam dictos Robertum et Jonetam aliofque agnatos et cognatos dictj quondam Walterj Mure de Cloncard, omnefque alios intereffe habentes vel habere pretendentes, necnon Tutores et Curatores dictorum Robertj et Jonete Mures, fi quos habent, apud dictos cruces forales dictorum burgorum noftrorum de Air, Irving, Mayboll, et alia loca neceffaria, quod compareant coram nobis et noftris Commiffionarijs et Locum tenentibus, necnon coram Regni noftri Scotie Ordinibus, Edinburgi, vicefimo die menfis Aprilis proxime futuri, in Parlamento noftra incipiendo decimo die dicti menfis, hora caufarum, cum continuatione dierum; ad respondendum nobis, necnon ad instantiam dilecti et fidelis noftri confiliarij Domini Thome Hammyltoun de Monkland, militis, noftri Aduocatj, pro noftra intereffe, dictum viz. THOMAM KENNEDIE *de Drummurchie*, pro fua nefaria, fcelefta, facinorofa, et proditoria Occifione et Interemptione quondam Thome Kennedie de Coiff militis<sup>4</sup> per fe fuos complices et confortes fecum confpiratores in dicto Homicidio, per fumum nefas vt fequitur, perpetrato, vndecimo die menfis Maij, anno domini 1602: NECNON pro fuo fcelefto, nefario, et manifesto Furto, cum violenta rapina coniuncto, vulgariter vocat. *Stuth-reiff*, mafupij feu crumene dicti quondam Thome Kennedie de Coiff militis, cum magna pecunie fumma auro et argento signato, fummam duorum millium mercarum extenden. quam dictus quondam Thomas cum eo portabat; cum varijs annulis aureis, gemmatis et alijs, ac multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. in ipfo actu Homicidij perpetrat.: NECNON pro fua proditoria et nefaria Obfidione, per fe et fuos complices, ad numerum quinquaginta virorum armatorum, Manfionis et Maneriei terrarum de AUCHINSOULL, jacen. infra vicecomitatum noftrum de Air; ad quod, per occafionem fubfcriptam, dilecta confanguinea noftra JEANNA COMITISSA DE CASSELLIS, comitata feptem vel octo feruis ac comitibus confugerat, falutis fue caufa, cum dicta Domina Jeanna et eius ferui iter

<sup>1</sup> *Acta Parl.* IV. 271.

<sup>2</sup> Here the Summons which has already been given is inserted.

<sup>3</sup> To prevent

repetition, this Summons (which is a transcript of the other agalnst Drummurchie, with the additions relating to Cloncard) has been preferred.

<sup>4</sup> A mistake for Cassilia. However, Sir Thomas was often so designed.

facerent a domicilio suo de INCHE in Gallouidia, versus aliud suum domicilium in Villa de MAYBOLL, in balliati de Carrik et infra vicecomitatum nostrum de Air, decimo octavo die mensis Maij ultimo elapsi, 1603. Et pro maleuolo, crudeli, nefario, abominabili, et scelesto Incendio Maneriej, in quod, causa evitandi periculi mortis, dicta Domina Jeanna Comitissa de Cassellis et serui sui confugerunt; e qua mansione et manerie de Auchinsoull, cum idem maneriem combustam essent vndique et conflagraret, metu mortis vehementia flammarum et fumi egredi coacti sunt, vbi post egressum dicte Domine Joanne Comitisse de Cassellis quondam HUGO KENNEDIE, frater germanus et heres apparens dilecti nostri consanguinej Joannis Comitiss de Cassellis, Domini Kennedie, Joannes Mcilveiane junior de Grwmatt, Joannes Dik de Barbastoun, Andreas Cunynghame in Knokdone, Quintinus Craufurde, Robertus Hay, Willielmus Kennedie, serui et comites dicte Comitisse pro tempore, per dictum Thomam Kennedie de Drummurchie et suos complices captiui facti sunt, et vt infra dicitur abducti, et in privatis carceribus detenti. ET PROPTEREA, dictum Thomam ad videndum et audiendum se crimen Lese-Maiestatis per decretum et censuram nostri Parlamenti et regni Scotie Statuum incurrisse; et ideo, tanquam reum, Lese-Maiestatis puniri debere, capitali et vltimo supplicio; necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum et tenementorum, que dictus Thomas in regno nostro Scotie habet, habere, vel clamare poterit, in futurum. NECNON, dictos ROBERTUM MURE, fratrem germanum et heredem apparentem dicti quondam Walterij Mure de Cloncarde, et JONETAM MURE eius sororem germanam, omnesque alios cognatos et consanguineos dicti quondam Walteri, ac tutores et curatores dicti Roberti et Jonete, si quos habent, omnesque alios interesse habentes vel habere pretendentes, ad videndum et audiendum, per regni nostri Ordines in Parlamento nostro supradicto decerni et declarari, quod dictus quondam Walterus Mure de Cloncarde fuit et est reus Lese-Maiestatis, vt qui fuit actor, factor, et. perpetrator dict. criminum cum dicto Thoma Kennedie de Drummurchie modo et forma quibus infra dicitur. PRO QUIBUS eiusdem quondam Walteri memoria et fama damnari et aboleri debet, ac eius omnia bona mobilia et immobilia, terre, tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere potuit, ad nos pertinere decerni debeat; et quod ab eisdem dictus Robertus frater et Joneta, eius soror, omnesque alij ab eo descendentes, debent excludi imperpetuum, propter rationes et causas subsequentes. PROPTEREA quod in Parlamento nostro tento apud burgum nostrum de Edinburgh, in Scotia, vicesimo nono die mensis Julij, anno domini 1587, per nos et tres dicti nostri regni Ordines statutum est, quod si contigerit aliquem subditorum nostrorum dicti regni Scotie, qui habet terras sibi hereditarie pertinentes, viz. vt vulgariter in dicto statuto dicitur *ony landit man*, fore legitime et secundum juris ordinem, aliquo tempore post dictum statutum futuro, de manifesto furto et vi rapine admisso, id est *Stouth-reiff* esse convictos, incurrant propterea crimen et penam Lese-Maiestatis, hoc est omissionem et forisfacturam vite, terrarum, et bonorum; prout in dicto statuto apertissime continetur. SED sic est in rei veritate, quod dictus THOMAS KENNEDIE de Drummurchie, et prefatus quondam WALTERUS MURE de Cloncarde, cum suis complicitibus et consortibus, numero septem, armis, machinis bellicis, et sclopis, prohibitis et lege vetitis, instructi, et equis insidentes, dicto duodecimo die mensis Maij 1602, existentes Rebelles et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis clare constare poterit; et ex precogitata feloniam dictum Thomam Kennedie de Coiff militem, imparatum et non-opinantem, ac iter facientem, vno seruo comitatum, a domicilio suo de Coiff versus dictum burgum nostrum de Air, ac inde profecturum Edinburgum negotiorum suorum gerendorum causa, apud Capellam Sanctj Leonardi nuncupat. dimidio miliaris a dicta Vrbe de Air distan. aggressi sunt, ac eundem invaserunt machinis bellicis ac lanceis transfixerunt et crudeliter occiderunt, et furto, rapina, et vi furtum comitante, id est le *Stouth-reif*, ex marsupio et crumena dicti quondam Thome Kennedie de Coiff predictam summam bis mille marcarum in auro signato, lie *Rois-nobillis*, et *Fyve-pund-peices*, *Angell-nobillis*, et *Portingall-doucattis*, violenter furati sunt et abstulerunt, cum varijs annulis, gemmatis, ac alijs, et multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. Pro quoquidem crimine, coram Iusticiario nostro vocati,

vt lege subirent, contumaces facti Rebelles declarati sunt, et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis satis clare constare poterit. AC ETIAM statutum est, per aliud actum Parlamenti illustrissime memorie quondam Jacobi V. Scotorum Regis, avi nostri, tenti et inchoati, apud Edinburgh, vicefimo secundo Januarij, anno 1538, quod si quis combuserit aliquos in domibus suis, reus Lese-Maieftatis erit: Ac etiam, quod omnes Combustiones domorum vel granorum, et omnia Incendia voluntaria seu malitiosa, fiant crimina Lese-Maieftatis; idque in odium Incendiariorum, quos leges propter criminis atrocitatem feuerius plecti jubent; sicut in eodem statuto plenius continetur: Quodquidem statutum in Parlamento nostro tento apud Edinburgh, quinto die mensis Decembris, anno domini 1567, repetitum et renovatum est, idque merito crescente in regno nostro Incendiariorum numero et audacia; prout in dicto statuto posteriori latius continetur: SED sic est, quod dictus THOMAS KENNEDIE de *Drummurchie* et dictus quondam WALTERUS MURE de *Cloncarde*, comitati circiter quinquaginta armatis equitibus, per insidias obsiderunt iter dicte dilecte consanguinee nostre JEANNE COMITISSE DE CASSELLIS, proficiscentis e domicilio de Inche in Gallovidia, in vicecomitatu nostro de Wigton, versus aliud domicilium suum in Villa de Mayboll et balliatu nostro de Carrik et vicecomitata de Air, die xvij<sup>o</sup> mensis Maij, anno domini 1603, et equis citatis in dictam dilectam nostram consanguineam, et eius seruos ac comites, impetum facientes, iter et viam publicam deferere, metu vite sue, compulerunt: Illa autem cum refvgii causa versus Mansionem quandam de AUCHINSOWLL, quam tum inhabitabat *Duncanus Craufurde de Auchinsfoll*, cum comitibus et seruis suis citatis equis accurreret; qui locus, cum ad effugium commodus videtur, et viderunt ex eo loco dilectam consanguineam nostram seruos et comites eius nisi domo incensa extrahi non posse, illico illato igni domum et eius ambitum vndique incenderunt, e qua crescente fumo et irrumpentibus flammis, ad extremum periculum omnes redacti, in manus dictorum Latronum Incendiariorumque dilecta nostra consanguinea cum suis seruis et comitibus, deditione facta, captiui devenerunt; ex quibus vnus, nomine Joannes Mcgrane, flammis superatus predictam domum combustam egressus priusquam respirare potuerit, crudeliter et nefarie gladijs et machinis bellicis, a dictis Thoma et quondam Waltero et complicibus predictis crudeliter interfectus est: Ac reliqui comites dicte nostre consanguinee, viz. HUGO KENNEDY, frater germanus et heres apparens dicti dilecti nostri consanguinei et consiliarij Joannis domini de Cassellis, Joannes Mcilveyane junior de Grwmatt, Joannes Dik de Barbestoun, Andreas Cunynghame de Knokdone, Quintinus Craufurde, Robertus Hay, Willelmus Kennedy, per dictos Latrones, Predones, et Incendiarios captiui facti sunt, et eorum arbitrio abductj, et per eos in domibus, fortalicijs, et Castris de Ardstinchell, et lie Coiff de Craignett, infra dictum vicecomitatum nostrum de Air, proditorie custoditi et detenti sunt, per dies quindecim, aut eo circiter; Nec ab illa captiuitate liberati et redempti fuerunt, donec per se et fidejussores suos obligarentur, quod dictum dilectum consanguineum nostrum Joannem Comitem de Cassellis, cui vt domino et hero suo seruire tenebantur, omnino desererent, et si secus facerent, maguam pecunie summam soluturos se promitterent, compulsi etiam diris seipfos denouere, si contra fecissent: IN QUO, non solum Latrocinijs, *Stuthreis*, Infidationis viarum, ac proditorij Incendij crimine irritati sunt; sed etiam, proditorie Vfurpationis autoritatis nostre reos sese facerent. Ac vt hec omnia notoria fiant, idem Thomas Kennedie de Drummurchie at dictus quondam Walterus Mure de Cloncarde vocati coram Dominis Secreti Consilij nostri responsuri predicto proditorio crimini Incendij et Captionis dictarum liberarum personarum et liegiorum nostrorum et alijs supramentionatis, contumaces effecti sunt; Ac propterea etiam Rebelles nobis declarati et denunciati sunt; prout in Literis nostris, ea de re executioni mandatis, latius continetur. QUARE, dictus THOMAS KENNEDIE de *Drummurchie*, per Decretum et censuram Parlamenti nostri et regni nostri Ordinum crimen Lese-Maieftatis incurrisse decerni; et ideo, tanquam reus Lese-Maieftatis puniri debet capitali et vltimo supplicio, necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum, et teneamentorum, que dictus Thomas in regno nostro Scotie habet, vel clamare et habere poterit in futurum; ac etiam per dictum nostrum Parlamentum et regni nostri Ordines decerni et



declarari debet, quod dictus quondam WALTERUS MURE *de Cloncarde* fuit et est reus dicti criminis, Lese-Majestatis, vt qui fuerit actor, factor, et perpetrator dicti criminum respectiue supramentionat. cum dicto THOMA KENNEDY *de Drummurchie*, modo et forma antedict. ; pro quibus, etiam eiusdem quondam Walteri memoria et fama aboleri et damnari debent ; ac etiam eius omnia bona, mobilia et immobilia, terre et tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere vel clamare potuit, vel prefatus Robertvs et Joneta agnati, cognati, consanguinei, et omnes ab eo descendentes, habere vel clamare potuerunt, in futurum, ad nos pertinere decerni debent, et ab eisdem dictus Robertus nunc frater germanus et dicta Joneta soror germana dicti quondam Walteri, et omnes alii ab eo descendentes, ascendentes, collaterales, et alii quicunque, excludi debent imperpetuum, propter rationes et causas suprascriptas ; intimando supradictis personis, et eorum cuilibet, respectiue, quod sine dictis die et loco cum continuatione dierum comparuerint, siue non, nos, dictusque noster Iusticiarius in premissis, iusticia mediante, procedemus et procedet. INSUPER, citetis peremptorie, coram testibus, Alanum Cathcart *de Drumjowan*, Petrum Algeo *seruum Magistri Jacobi Donaldsoun Aduocati*, Dauidem Craufurde, Alexandrum Craufurde *seruos Domini de Kerfe*, Duncanum Craufurde, Joannem Mure *de Tarquyne*,<sup>1</sup> Jacobum M<sup>c</sup>artour *in Knokdone*, Gilbertum Mure *de Auchinsoull*, Gilbertum Kennedy *de Monunsoon*, Arthurum Kennedie *filium*, Dauidis Kennedie *de Balscheroyche*, Joannem Wilsoun *in Dalrumpill*, Archibaldum Gellis *coquum*, Hugonem Kennedie *de Garryhorne*, Allanum M<sup>c</sup>tir *in Layne*, Jacobum Gowdie *in Lauderdall*, Jacobum M<sup>c</sup>troutour *in Traboyak*, ad comparendum coram nobis dictiue nostro Iusticiario, dictis die et loco, cum continuatione dierum, ad perhibendum fidele testimonium in causa predicta, sub pena legis. Et presentes Literas debite executas et indorsatas earundem latori reddatis. Et vos qui presentes executi fueritis, sitis ibidem dictis die et loco, coram nobis seu dicto nostro Iusticiario, portantes vobiscum summonitionis vestre testimonia inscript. pro premissis vel ipsos testes. Ad quod faciend. vobis et vestrum cuilibet, coniunctim et diuisim vicecomitibus nostris in hac parte, nostram committimus potestatem. DATUM sub testimonio nostri magni sigilli, apud Edinburgh, xiiij die Februarij 1604, et regni nostri Scotie tricesimo septimo, anno Anglie, Gallie et Hibernie primo.

THE quhilk Summondis, with the executiounes and Indorsationes thair of, wer producit be the said Sir Thomas Hammyltoun of Monkland knycht, Aduocat to oure souerane lord, in presens of the said Erle of Montrose, Great Commiffionar of this present Parliament, and haill Estaittis of the said Parliament, first vpoun the tuentie sext day of Aprile last bipast ; and thairefter the saidin wes producit in thair presens, and presens of the Lordis of Articlis, vpoun the tuentie aucht day of the said moneth of Aprile last bipast : Vpoun the quhilk tuentie aucht day of Aprile, the said Sir Thomas Hammyltoun, Aduocat to oure souerane lord, in his hienes name, past *simpliciter* fra the perfute of the said ROBERT MURE, brother germane and apperant air to the said vnr<sup>le</sup> *Walter Mure of Cloncarde*, and Jonet Mure his sister, and thair Tutouris and Curatouris, for thair interessis ; as also, past *simpliciter* frome the haill ressones, haill pointis and articlis contenit in the said Summondis of Treassoun, beirand and contenand as is abonewrittin, sua far as the saidin extendis or may be extendit to the saidis Robert and Jonet Mures. Lyk as, also this instant day, in presens of my Lord Great Commiffionar and haill Estaittis of Parliament, the said Sir Thomas Rollok, Aduocat depute, in absens of the said Sir Thomas Hammyltoun, principall Aduocate, lykwayes past *simpliciter* frome the perfute of the saidis Robert and Jonet Mures, and thair saidis Tutouris and Curatouris for thair interessis ; and also past *simpliciter* frome the haill ressones, haill pointis and articlis contenit in the said Summondis of Treassoun, sua far as the saidin extendis or may be extendit to the saidis Robert and Jonet Mures, and thair saidis Tutouris and Curatouris : Lykas, the said Sir Thomas Hammyltoun, principall Aduocat foirsaid, vpoun the said xxviiij day of Aprile last bipast, had past *simpliciter* frome the saidin, of befoir, in presens of the saidis Lordis of Articles. Vpoun the quhilkis haill premissis, the said Robert Mure, for himself and his said sister, askit Instrumentis.

<sup>1</sup> In *Act. Parl. IV.*, 269, he is described Johne Mure de Carquhene.

IV. LORD FOUNTAINHALL'S *Abstract of the Case of Mure of Auchindrayne*.<sup>1</sup>

THE story of the fact is remarkable. AUCHINDRANE, having conceived a deadly feud against THE TUTOR OF CASSILLIS, comes one day to Maybole, with intention to kill him, assaulted him under night, thought to have killed him, had he not been rescued by some of his neighbours. For which fact, Auchindrane and his complices past to the horne. (The Horning was produced by the Advocat.) At lenth, this enmity was taken away, not only by publick and sworn reconciliation, but also by marriage of the said *Auchindrane's eldest sone on the Tutor's daughter*. After which, *the Tutor* lived with *Auchindrane* in all friendship, trust, and assurance imaginable. And going in to Edinburgh, and willing to do *Auchindrane's* busines there, as well as his oune, he caused his man leive at *the Schoolmaster of Air* his house, a Letter for *Auchindrane*, signifying that he was going for Edinburgh to-morrow, and would gladly meet with him at the West end of Air, at the Duppils, or<sup>2</sup> he went. This advertisement was sent with a schoolboy called WILLIAM DALRIMPLE, who delivered it to old Auchindrane, sitting with *Walter Muir of Cloncaird*; who, immediately upon his reading of it, sent back the boy, and entreated him to say, that he had neither got him, nor delivered him the Letter. Then, resolved with the said Walter, to advertise THOMAS KENNEDY of *Drummurphy* of the certainty of Culzain's journey, and the way he intended to ride; advising him to use that occasione to revenge himselfe on him. The advertisement, with this advice, (he) sends with on<sup>3</sup> *Macadam*, as is clearly proven by the Deposition of Witneses. *Drummurphy*, by the advertisement, counsell, and instigation foirsaid, waites the gentleman, in the place he had trysted<sup>4</sup> *Auchindrane*; and most treasonably murders him. Wheirfor,<sup>5</sup> *Drummurphy* stands forfaulted by Act of Parliament.

He, having turned fugitive, was much assisted and supported by *Auchindrane*; who, fearing that discovery of his accession to the said treasonable Murder might be made by the said *William Dalruple*; to eschew it, caused him first to be secretly conveyed to his house, wher he keiped him long quiet; at last, sent him to Arran, to *the Laird of Skelmorly*. After some tyme, returning from thence, he sent him away with one that was going to the wars in Flanders, hoping he sould never see him againe. Wheir, having stayed some tyme, the boy longed to returne. Being returned, and *Auchindrane* getting notice theirof, he was troubled—immediately fetched him to his hous, and pnt him with one JAMES BANNATYNE, in *Chapeldonald*, his tennent; whom he caused fetch him with him to THE SANDS OF GIRVAN, at 10 a'clock of even; wher they murdered him, and throw him in the Sea, so far as they could waid.

This treasonable Murder, with all its circumstances, is most clearly made out, by the Depositions of Witneses, who also deponed of a speciall friendship after that, pretended to the said *James Bannatyne*; so that they gave him a life-rent Take<sup>6</sup> of *Chapeldonald*. Then they persuaded him to go out of the way to Ireland, giving him a Letter of recommendation to *Drummurphy*: And after he was there, he lacked for nothing. Frequent correspondence betwixt him and *Auchindrane* and his wyfe: Then, caused *James Cunninghame*, his seruand ther, who knew of their concealing of *William Dalruple*, absent himself, for eschewing of tryall. Also, *the Lady Auchindrane*, for the same reason, absented herself.—Proven by Witneses, that *Auld Auchindrane* would have hyred *James Penny-cuick* to go to Ireland, and their to murder *Bannatyne*.—Then he wrote to *Stairs*, that because he was bruited for the slaughter of *William Dalruple*, he was willing to transact with him theirof.<sup>7</sup>

<sup>1</sup> From *Fount. Abstract of Books of Adjournal*, MS. Adv. Library. It was thought proper to preserve the account given by this eminent Lawyer;—but at same time, it appears unnecessary to point out to the reader in how many particulars his *traditional* Account differs from the Record; which renders it probable that his lordship wrote from memory, or noted down the facts from reports then prevalent. <sup>2</sup> Before; ere. <sup>3</sup> One. <sup>4</sup> Appointed to meet. <sup>5</sup> For which fact. <sup>6</sup> Tack; lease. <sup>7</sup> That is, he was willing to enter into terms of compromise with the relations of the deceased. As they were not wealthy, he considered he could, through the mediation of their Chief, the Laird of Stairs or Dalrymple, easily bribe them to silence; so as either to procure from them 'Letters of Slains,' or at all events, get them to abstain from prosecuting him and his son for the Murder.

All which are so clear evidences and manifest probations, as could hardly be expected, in so covered and crafty Murthers.

V. ILLUSTRATIONS *relative to the* POPULAR SUPERSTITION *of touching the Corpse of a Murdered person, as an ORDEAL or TEST for the discovery of the Innocence or Guilt of suspected Murderers.*

(1.) OPINIONS *entertained by the Ancients on the subject of the Blood.*

FROM the earliest periods of History, sacred and profane, it appears to have been the general opinion of mankind, in all Nations, that the soul, as well as the vital principle, *had their existence in the blood.* This idea was greatly strengthened by the strong and repeated testimonies afforded in the Sacred Scriptures, under the Mosaic dispensation; where it is expressly laid down, as an undeniable principle, that THE BLOOD, with the spirits therein contained, is *the seat and support of life.*<sup>1</sup> Without multiplying quotations from the Pentateuch, which are extremely numerous, it is enough for the purpose of this enquiry, to instance the frequent injunctions of Moses to the Children of Israel, *to abstain from blood.* One of the most remarkable of these passages is, '*Blood with THE LIFE thereof, which is THE BLOOD thereof, shall ye not eat;*'<sup>2</sup>—and the same injunction was repeated throughout the Law of Moses, in almost every various form, which the wisdom and sagacity of the Legislator could devise. It is not unworthy of remark, that the early Christians strictly observed this command, which had been repeated by the Apostles, to abstain from '*things strangled, and from blood.*' This Divine command having been given to the Jews, in the subordinate instance of abstaining from the blood of the lower animals, in making use of their flesh for the ordinary purpose of food, it was by no means unnatural that they should have thence concluded, that THE LIFE or vital principle resided in the blood *after Death*, even after its particles were apparently dissolved, and after the whole mass had returned into its native dust.

A similar opinion is to be found in *Lucretius*<sup>3</sup> and other profane writers, as *Empedocles*, *Critias*, &c. who held that THE SOUL *was a suffusion of blood about the heart*—and consequently, that *it is the blood itself.*<sup>4</sup> According to this opinion, *Homer* gives death the epithet, *purple*: *πορφύρεος θάνατος.*—*Iliad*, v. 5, 83;—*Virgil* likewise alludes to it: '*Purpuream vomit ille animam.*'—*Æneid* ix., v. 349. '*Undantoque animam diffundit in arma cruore.*'—*Æneid* x., v. ult. Nor are we without frequent instances of this in our English poets. *Milton* says of Abel,

'He fell, and deadly pale,

Groan'd out his soul with gushing blood diffused.'

*Sir Robert Blackmore* also has the following passage:

'Gasping he lay, and from the griesly wound  
The crimson life ebb'd out upon the ground.'

*Lee*, in the tragedy of *Nero*:

'With many a wound she made her bosom gay;  
Her wounds, like floodgates, did themselves display,  
Through which life ran in purple streams away.'

And *Cowley*, *David* 4:

'His life for ever spilt, stain'd all the grass around.'

It was likewise a very early popular opinion, among profane Greek and Latin authors, that the blood

<sup>1</sup> *Gen.* ix. 4. See also *Levit.* &c. passim.      <sup>2</sup> In modern times, that highly distinguished physician, HARVEY, the discoverer of the circulation of the blood, maintained the hypothesis, that *the blood was actually possessed of a living principle*, and that the life of the whole body is derived from it; in which opinion he was supported by the celebrated Mr *John Hunter*, and other anatomists and physicians of eminence. It would be foreign to the subject of this Notice to enter minutely into the opinions of modern writers, who are extremely divided upon the point.      <sup>3</sup> 'That they know well, the soul consists in blood.' Creech's *Lucret.* B. iii. p. 43.      <sup>4</sup> *Aristotle* de Anima, lib. I. c. 2; *Cicero*, *Tuscul.* 1; *Macrobius* on the dream of *Scipio*, lib. I. c. 14; *Tertullian* of the Soul, cap. 4.

springs naturally towards that part whence a blow is received<sup>1</sup>—and they also affirmed that the soul pursued with enmity a Murderer of the body.<sup>2</sup> In conformity with this latter idea, we find that *the blood*, according to the ancients, and especially the Jews, was figuratively, but most emphatically, represented as *crying to Heaven for vengeance!*—and that that cry could only be appeased by the shedding of the blood of the Murderer. In the powerful language of Holy Writ, the Almighty, when denouncing Cain, the first murderer, is represented as exclaiming to him, ‘*The VOICE of thy brother’s BLOOD crieth unto me from the ground!*’

Accordingly, in pursuance of this sentiment, the Jews had an *Avenger of blood*, who was the next of kin to the murdered person—and whose awful, but imperious, duty it was, relentlessly to pursue the Murderer to the death.

There is no doubt that this ancient opinion of *the life being in the blood*, continued to be entertained by THE EARLY CHRISTIANS of the Western Churches of Europe, so late as the tenth century. An able writer<sup>3</sup> asserts, that ‘the Holy Church throughout the world did, in its first and purest, and even in the darker ages of the tenth century, or later, observe and keep the precept to abstain from eating blood—and that the Churches of the East and of the South, to this day, reproach the Western Church with the violation of this Apostolical constitution.’ On this point it may likewise be remarked, that *Tertullian* is said to have written in defence of the doctrine, that the soul was *indissolubly* connected with the blood.

From these few scattered hints, the application of the doctrine to the instance in question appears to be natural and easy. The *soul* of a murdered man was considered to linger about *the body* until the Murderer could be convicted, and his blood shed to appease the *manes* of the deceased. According to the remains of this superstitious principle, which are still to be traced in modern times, in various countries, but especially in Great Britain and Ireland, and in Germany, &c., the prevailing idea was, that (even after the blood was dried up and the corpse decayed and mouldered into a mere skeleton, nay, though disjointed into separate bones and fragments) the TOUCH or PRESENCE of the MURDERER would act upon these decayed relics, and that *the life* or blood would, upon Appeal being made, return to manifest the Murder.

A very curious instance of this branch of the superstition has been preserved by Sir WALTER SCOTT,<sup>4</sup> who, in an early work, relates the circumstances in his usual felicitous manner:—‘Two young men, going a-fishing in the river Yarrow, fell out; and so high ran the quarrel, that the one, in a fit of passion, stabbed the other to the heart with a fish-spear. Astonished at the rash act, he hesitated whether to fly, give himself up to justice, or conceal the crime; and, in the end, fixed on the latter expedient, burying the body of his friend very deep in the Sands. As the meeting had been accidental, he was never suspected, although a visible change was observed in his behaviour, from gaiety to a settled melancholy. Time passed on, for the space of *fifty years*; when a smith, fishing near the same place, discovered an uncommon and curious *bone*, which he put in his pocket, and afterwards showed to some people in his smithy. The Murderer being present, now an old white-headed man, leaning on his staff, desired a sight of the little bone. But how horrible was the issue! *No sooner had he touched it, than it streamed with purple blood!* Being told where it was found, he confessed the crime, was condemned, but was prevented, by death, from suffering the punishment due to his offence.’

(2.) INSTITUTION of the BAHR-RECHT or LAW OF THE BIER, and FORM of the CEREMONIAL.

THERE cannot be a doubt that, from very early times, TESTS or ORDEALS were instituted by the common consent of almost all Nations, for the detection of hidden and atrocious cases of Murder, which had baffled all the ordinary methods of judicial scrutiny. The mysterious doctrines taught by the Metaphysicians of the dark ages, on the subject of an *universal sympathy* and *antipathy* existing in nature, would lead those who believed in their theories to approve of such an obvious Test as that

<sup>1</sup> See quotation from *Lucretius*, ‘*Idque petit corpus*,’ &c. in *Del Rio’s* and *De L’Ancre’s* notices.   <sup>2</sup> *Plato*, &c.  
<sup>3</sup> Dr Deacon.   <sup>4</sup> *Minstrelsy of the Scottish Border*, II. 425.

of compelling suspected persons to come forward and *touch the murdered corpse*—and accordingly, the *BAHR-RECHT*, or *LAW OF THE BIER*, was early recognized, even by Judicial authority, throughout all civilized Europe. It is extremely probable, that such a striking ceremonial as that just referred to, would first be seized upon by the Clergy; for it would tend, in a great measure, to strengthen their own hands, while it would also promote the interests of 'Holy Mother Church;' and, at the same time, the almost miraculous discovery of secret crimes would directly lead a superstitious and ignorant people to give God the glory, and to ascribe to His immediate presence and intervention, the detection and subsequent punishment of the Murderer.

Perhaps it may be premised, that, properly speaking, the recognized *ORDEALS* or Appeals to the immediate interposition of God, being what was termed the *Vulgaris Purgatio*, or *Judicium Dei*, were the *Judicium Ferri callidi*, *Aque*, et *Ignis*, i. e. Trials by *RED-HOT IRON*, *FIRE*, and *WATER*. In process of time, the *JUDICIAL COMBAT*, the *ORDEAL OF THE CROSS*,<sup>1</sup> and the *CROSSED*,<sup>2</sup> or consecrated bread and cheese, were added to the other Appeals. In the East, no less than *nine* Ordeals are still in use, viz. the *Balance*, the *Fire-ordeal*, the *Water-ordeal*, the *Poison-ordeal*, *Trial by the Cosha* or three draughts of consecrated water, the *Rice-ordeal*, the *Ordeal by hot oil*, the *Ordeal by a red-hot Iron ball or lance-head*, the *Ordeal by Dharmarch*, or drawing forth from a jar of certain Images, cloth, &c. Amongst all these various forms, the touching of a Murdered corpse is not reckoned as a proper Ordeal; but, as will be immediately shown, it was adopted and recognized as a Test, or popular Ordeal, both on the authority of the Church and of the Criminal Tribunals of civilized Europe.

In regard to *THE FORM OF THE CEREMONIAL*, it must have been extremely imposing; and especially, when regulated by the Church, who increased the otherwise solemn spectacle by Processions, the exhibition of their holy relics, lighted tapers, and all the usual machinery of the Romish Church, was admirably calculated to have inspired the guilty mind of the already conscience-struck Criminal with awe and terror, and eventually compel him to confess his enormous crimes, in the face of the assembly.

The mangled body of the murdered person was stretched upon a bier, covered with a fair linen cloth, and placed before the High-Altar; when, after a procession of Priests hymning an anthem, the suspected person was conducted forward to the High-Altar, where, after performing his devotions, the face of the deceased was uncovered before him. He was then called upon to place one hand upon the mortal wound, and often the other upon the mouth of the deceased—and, in that posture, to invoke Heaven to attest his innocence—at the same time calling down its curses and instant vengeance on his head, should he, after such asseverations, be guilty. If, on his approaching the body, or during the above ceremo-

<sup>1</sup> Two pieces of wood were prepared exactly like each other; but on one of them was the form of the Cross. Both being wrapped up in fine wool, were laid on the altar, and after prayers, &c., a Priest approached the Altar, and took up one piece, which if it proved to be that on which the Cross was cut, the accused was found innocent. Other solemnities, unnecessary to be noted, also took place. <sup>2</sup> This primitive Ordeal was thus performed. A piece of barley bread and a piece of cheese were laid upon the Altar; and, after various Prayers, at length the Priest fervently petitioned, that 'if the party accused was guilty, God would send his angel *Gabriel* to stop his throat, that he might not be able to swallow that food.' This ended, the accused advanced to the Altar, took up the bread and cheese, and commenced eating. If he swallowed deliberately and freely, he was declared innocent—but if he could not swallow them, he was pronounced guilty! This coincides with the Eastern Ordeal of the Rice, &c., and originates in this well-known circumstance, that persons labouring under violent mental excitement, such as accusation of a crime of which they are *conscious of guilt*, are, in a great measure, deprived of the natural supply of *saliva* necessary for the process of mastication and deglutition; and, consequently, it would generally happen, that the strong mental struggle under which the accused was suffering, would be the means of preventing his fulfilling, what, at first sight, appears so foolish and simple a Test. It is hardly necessary to remind the reader, that barley bread which has been baked for several hours, requires a considerable quantity of liquid to enable one to swallow it. The pungency of the cheese would act as a sufficient stimulant to assist an innocent person who was required to undergo this Ordeal; but would merely increase the confusion and hasten the discomfiture of one whose mouth was already parched with conscious fear and remorse. It was almost universally noticed, that *the guilty* greedily snatched large mouthfuls, under the mistaken idea of getting sooner over with it!—and that usually a second or a third attempt to swallow produced cough and constant choking, so as to force them to desist, and either to confess their crime, or permit sentence to be passed against them in silence. On the other hand, *innocent* persons leisurely ate the portion given them, with little or no inconvenience. It will be found, upon examination, that many similar Ordeals and rites proceeded on the like minute knowledge of natural causes.

nial, the blood should gush from the mouth, nostrils, or wound—this was held sufficient evidence of his guilt.

The reader may here be reminded, that the Ceremony, thus shortly and imperfectly described, was only reserved for *extreme cases*, where all legal proof had failed; and where there was strong circumstantial evidence to implicate the party accused, either as 'guilty actor, art, or part' of the Murder. It is impossible to state precisely what Nation first practised this Ordeal,—but it was obviously founded on a deep knowledge of human nature. Few even of the most hardened and practised villains could have undergone such a Test unmoved; and when it is considered that the act was performed in the presence of the Judges, Clergy, and the accusers, it would generally be easy to distinguish between the confusion of an innocent person accused of the crime, and the terror and conscience-struck countenance and demeanour of the Murderer; and even should he have nerve enough to brave the worst part of this severe Ordeal, his very confidence and studied boldness would prove the means of his detection. The accidental bleeding of the corpse, also, might overthrow the assumed courage of the Murderer,—and, in fact, was often the means of producing the most abject Confession of the crime; and compelled the recreant felon to utter cries for mercy, which even *the torture* had failed to extort.

Nothing can so well illustrate this remarkable Ceremonial, as the following powerful passage from the pen of the greatest living writer of this age, who has bestowed much attention on such subjects; and has done more towards the elucidation of the manners, customs, and superstitions of this country than any preceding author. 'The eastern window, richly and variously painted, streamed down a torrent of chequered light upon the high altar. On the bier placed before it were stretched the mortal remains of the murdered man; his arms folded on his breast, and his palms joined together, with the fingers pointed upwards, as if the senseless clay was itself appealing to Heaven for vengeance against those who had violently divorced the immortal spirit from its mangled tenement. . . . . The face was bare, as were the breast and arms. The rest of the corpse was shrouded in a winding-sheet of the finest linen, so that, if the blood should flow from any place which was covered, it could not fail to be instantly manifest. . . . . He paused before the Bier, and his voice faltered, as he swore by all that was created in six days and six nights, by Heaven, by Hell, by his part of Paradise, and by the God and author of all, that he was free and sackless of the bloody deed done upon the Corpse before which he stood, and on whose breast he made the sign of the Cross, in evidence of the Appeal. No consequences ensued. The body remained stiff, as before. The curdled wounds gave no sign of blood.'<sup>1</sup>

Another writer, to whom the Antiquities and History of England has been vastly indebted for the large stores of information rescued by him from sources which may be termed as generally inaccessible, even to the great bulk of antiquaries, has, in a posthumous work, professedly undertaken for the purpose of illustrating the Superstitious observance now under consideration, embodied the result of his enquiries in the following striking passage.<sup>2</sup>

'BARON. At thy request th' Ordeal is prepared:  
I grant thee this appeal! What, though it claims  
With me no faith? By custom authorized,  
Let it be made. At least, this good results,  
We better satisfy the common mind.  
BENEDICT. Experience, good my Lord, has often proved

<sup>1</sup> Sir Walter Scott's *Fair Maid of Perth*, vol. ii. p. 306.      <sup>2</sup> Strutt's *Test of Guilt, or Traits of Ancient Superstition*; Quarto, Lond. 1808, p. 79;—a posthumous work of the celebrated English Antiquary, Joseph Strutt, published by his son. Unfortunately Mr Strutt did not live to compose the notes which he had intended to prepare illustrative of this remarkable subject, which would have put the Public in possession of all that was worthy of knowing about it. As it is, the Editor has done his best to pave the way, by providing materials for some abler and more successful Antiquary doing justice to such an enquiry, in a regular treatise.

That Providence, in such Appeals as these,  
Has manifested suddenly its power,  
And struck the guilty mind with sharp remorse—  
Enforced confession—or abash'd the heart,  
That, coward-like, th' offender has shrunk back  
Confused, and manifested signs of guilt  
Too plain to be mistaken.

BAR. I, indeed,  
Have heard such tales.—Well, Father, then proceed.

BEN. Before the holy Altar lies the corpse—  
Here let th' accused come—and come with him  
All his accusers—no exception made:  
They all must touch the body. 'Tis with us  
To scrutinize with care each countenance—  
For then 'twill be an index of the heart,  
Unless the heart be callous to all good,  
Devoid of feeling, nay, be changed to stone.

BAR. Proceed—and may success clear up my doubt!  
But miracles, I ween, are out of date.

BEN. Let young Fitzhugh approach—and bring with him  
All his accusers.—Now begin the rites.

*[A procession of priests, singing a dirge—and when ranged on both  
sides of the altar, conclude with a chorus.]*

BEN. HENRY FITZHUGH, come forward!—Touch the corpse—  
May Holy Saints protect the innocent!

HENRY. Thy mangled body, Dorothy, I touch—  
And make, with all my soul, Appeal to Heaven!  
Ah! could those ghastly wounds bot speak, they would  
Proclaim mine innocence!—But I submit.

BEN. Pass on, my son.—You see, no change appears—

*[Aside to the BARON.]*

Come forward, his accusers—and first, thou,

*[To GRIM.]*

Most loud against him—touch, and make Appeal!

GRIM. Why should I touch her? No! I will not yield  
To such fond Superstition!—I stand not  
Within the pale of accusation!—No!

BEN. What then can hinder thee to make Appeal?  
If thou be guiltless, Heaven is thy friend!

GRIM. Or friend or foe, I will not make Appeal!

BEN. Thou art afraid.—Thy conscience is not clear!

GRIM. 'Tis false!—I'm innocent!—Well, if I must  
Join in the folly—What is to be done?

BEN. Look up to Heav'n, and touch the breathless corpse.

*[GRIM strikes his hand down suddenly—and then starts from the body.]*

RALPH. See! Where Grim touch'd, the blood has gush'd afresh!—

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## (3.) OPINIONS relative to the abstract question, whether the CORPSE of a Murdered person BLEEDS on the touch of THE MURDERER? And the causes and consequences of such an exhibition.

IT is the Editor's conviction, that the most satisfactory, as well as the most faithful, manner of treating matters of an abstruse and forgotten description, such as the Superstition under examination, is, to afford to the reader miscellaneous extracts from writers of various ages and countries, who have commented on the subject. Besides being the plan laid down at the outset of this work, this mode enables the reader to examine their theories and conclusions in the very language of the respective authors themselves, many of whose works are now of rare occurrence, and are very seldom consulted, excepting for the explanation of similar facts.

In the preceding remarks it has been shown that the ancient opinion was, that the Soul of a Murdered person lingered about the body, until appeased by the discovery of the foul deed, and by the subsequent shedding of the Murderer's blood. It is obvious, therefore, that on the original institution of this Test or Ordeal, during the earlier and in the dark ages, the purpose of requiring the accused to prove his innocence before the Corpse, originated in the idea and belief, that by the Murderer's approach, and especially by his polluted touch, the Soul was excited to an instant manifestation of its indignation, by appearing in the form in which it was supposed to subsist, viz. in that of blood.

(i.) To commence, then, with the examples alluded to, *Delrio*,<sup>1</sup> who is the great authority on such subjects, remarks, 'Cadaver coram occifore, propter præcedentem contactum, fanguinem folet fundere. Resp. Varias reddi causas, quidam miraculo tribuunt; quidam casui, quo factum fit aliquando, ut cadaver tum cruorem mitteret, cum præfens erat reus Homicidii. Recensui alio loco multas hac de re sententias et auctores laudavi:<sup>2</sup> Neque adhuc dum video, quid solidius adferatur illa antipathia, ex vehementi odio occifi in occiforem; quod qualitatem latentem et arcanam imprefferit corpori, cum cadavere permanentem: Et huc referendum illud *Lucretii*:

Idque petit corpus mens unde est faucia amore.

Namque homines plerumque cadunt in vulnus, et illam

Emitat in partem fanguis, unde icimur ictu.

Et si cominus est, hostem ruber occupat horror!

Ut sit vivi amantis et mortui hostis comparatio.<sup>3</sup>—In treating of ORDEAL BY WATER he thus expresses himself:—'Octavum argumentum, teste *Binsfeldio*, Indicium homicidii ex cadavere fanguinante coram occifore petitum, videtur soli Divino miraculo adscribendum: Ergo sentiendum similiter de sagis supernatantibus? Respondeo, quid de antecedente sentiam, hoc opere non semel me indicasse; sed esto, sit adscribendum miraculo: An eadem ratio huius probæ? Dicis non probas. Ego qui nego discrimen dabo. Nulla in fanguis illa missio causa subest suspitionis de pacto cum Dæmone: nihil illic miscetur superstitiosi: non queritur illic a Deo signum; et proinde nec Deus tentatur,' &c.<sup>4</sup>

(ii.) HE also mentions in another place:<sup>5</sup>—'Ex communi opinione Doctorum et Judicum, si cadaver positum coram reo fanguinem emittere inciperet vel ex vulnere, vel ex ore, vel ex naribus, hoc indicium quidam magni faciunt, et de ejus cum alias a me disputatum hoc eodem opere. Ego istud indicium nunquam existimarem sufficere ad torturam, quicquid graves doctores quidam in contrarium dixerint.<sup>6</sup> Moveor, quia verè est indicium remotum, et quasi prodigiosum, de cujus cum non constat, et incertissimum, quod nullo jure vel causâ juridicè probatâ nobis constat, et tortura maximi est prejudicii. Quare nisi accedant fama, minæ, inimicitia, vel simile adminiculum, nunquam ad torturam ex

<sup>1</sup> *Disquisitionum Magicarum libri sex, &c. Martini Delrio, Edit., Venetiis, 1606. Lib. i. cap. 3, q. 40.* <sup>2</sup> Comment. in Octaviam Senece, ver. 127. <sup>3</sup> Sic Lemnius, lib. 2; De occultis naturæ miraculis, cap. 7; Langius, epist. 40. Pictorius, Dialog. 9; Gemma, lib. 1; De caracterium, cap. 6. <sup>4</sup> *Delrio, Lib. iv. cap. iv. quæst. v. de proba aquæ frigidæ, &c.* <sup>5</sup> *Delrio, lib. v. p. 25.* <sup>6</sup> Post Ang. et Parid. Boerius decis. 166; Blanchus de ind. ad l. fin. de quæst. n. 408; Carrer. tract. de indic. Indl. 27, n. 2; Novel. regu. 184; Menoc. de arb. cas. 270, n. 16; et de præsu. l. 1, q. 89, n. 128; et alii.



hoc indicio Deum timenti judici procedendum, affirmavit *Farina*. nu. 156 post Ant. Gomez, lii. fusé et prudenter hoc discutientem d tom. 3 cap. 13 a num. 15, et *Marfl.* in pract. et diligenter num. 181. *Mascard* et alios.

(iii.) ANOTHER author, who was Counsellor of State to King Louis XIII of France, makes the following interesting observations, under the Title,—‘DES ATTOUACHEMENS DES HOMMES : *Sçavoir si vn Meurtrier s'approchant, ou touchant le corps d'un homme qu'il a meurtry, en peut faire reiaillir du sang.*—‘ JE commenceray par ce trait commun, que le Corps d'un homme meurtry, estant touché ou approché de Meurtrier, fait reiaillir du sang, tesmoignant qu'il entre aussi-tost en accusation, et crie vengeance contre luy, voulant comme tirer à compassion tous ceux qui le voyent, et comme les esmouoir à luy en faire auoir raison. *Theodoric* vit dans vne escaille ou tect de poiffon, qui luy fut seruy à table, la teste de *Symmachus*, qu'il avoit tué, laquelle le menaçoit, versant du sang en quantité, dequoy il eut si grande frayeur, qu'il en mourut bien-tost apres. Et ne sçay si ce qu'on dit y est nécessaire qu'il faut que ce soit vn corps fraichement affafliné. Veu qu'un homme d'honneur, faisant le procez à vn Meurtrier, m'a assure, que, l'ayant approché du corps qu'il nioit auoir tué, iettá du sang par le nez assez abondamment, apres le seiziésme iour de l'homicide commis. Sur quoy *Del-Rio* dit, qu'il ne voit aucune raison plus folide que celle de l'antipathie qui est entre le Meurtry et le Meurtrier, et leur haine, la quelle aggrave certaine qualité latente et cachée, et la tient imprimée dans le corps demeurant encore avec le cadaver; employant là-dessus ces vers de *Lucrece*: “*Idque petit,*” &c.<sup>1</sup> Comme s'il auoit quelque conuenance et raport, entre vn amy viuant, et vn ennemy mort!

‘ Mais la verité est, qu'on ne sçauroit colliger de là nulle sorte de charme, causé par la veuë ou par l'attouchement, vn corps mort estant bien d'autre nature, que celui d'un homme viuant. Et de dire que c'est quelque dissension cachée, qui tesmoigne l'inimitié qui est entre eux, laquelle ce corps ainsi outré, fait encore paroistre apres la mort; le declarant par ceste emission de sang. On ne sçauroit rendre nulle raison valable de ceste dissension. Et se peut dire, qu'aucuns ont auancé et tenu ceste experience pour veritable, pour l'auoir parauanture essayée ou veuë vne seule fois et par cas fortuit. Car il se peut faire que le corps d'un homme mort, qui a demeuré feize iours gifant en repos en quelque lieu, estant remué pour souffrir quelque visite de Chirurgiens, esmouuera par ce mouuement le sang qui s'est retiré és veines, et le fera sortir en abondance. Mais cela n'arriuera pas plustost en la presence du Meurtrier, que du Juge qui luy fait le procez, ou denant quelqu'autre que ce soit.’<sup>2</sup>

(iv.) THROUGH the kindness of DR SAMUEL HIBBERT, late Secretary to the Society of Antiquaries of Scotland, F.R.S.E., &c. whose philosophical, geological, and antiquarian researches have justly entitled him to a very conspicuous rank in the literature of his country, the Editor has an opportunity of giving the following interesting extract from a rare volume in his Collection, entitled,—‘*Physiologia Epicuro-Gassendo-Charltoniana*: or a Fabrick of Science Natural, upon the Hypothesis of Atoms, &c. &c. By Dr Walter Charleton, Physician to the late Charles, Monarch of Great Britain.’ London, 1654. In this singular treatise, the author, in discussing ‘*the cause of the fresh cruentation of the Carcass of a Murdered man, at the presence and touch of the Homicide,*’ thus expresses his opinion:—‘THE cruentation (and, according to some reports, *the opening of the eyes*) of the Carcass of a Murdered man at the presence and touch of the Homicide, is, in truth, the noblest of antipathies: And scarce any writer of the secrets or miracles of nature, hath omitted the consideration thereof. This Life in Death, Revenge of the Grave, or loud language of silent Corruption, many venerable and Christian Philosophers have accounted wholly miraculous or supernatural, as ordained and effected by the just judgement of God for the detection and punishment of the inhumane Affassine!

<sup>1</sup> The same verses as in Delrio's quotation are here repeated. <sup>2</sup> DR L'ANCRE, Conseiller du Roy, Lud. XIII. en son Conseil d'Etat, sur l'Incredulité et Mescreance du Sortilege. Quarto, Paris, 1622, fol. 153. The curious reader is likewise referred to the following old authorities,—*Vair*, l. 2, c. 10, De Fascino. *Del Rio*, de Contactu. *Lemnius*, de Occultis naturæ miraculis, cap. 7, &c. <sup>3</sup> See the Case of *Jane Norkott*, afterwards quoted, p. 192.

And, lest we should seem too forward to expunge from the mind of any man the belief of that opinion, which to some may be a more powerful argument than the express command of God, to deterr. them from committing so horrible and execrable a crime as Murder, we shall so far concur with them as to conceive this effect to be Divine only in the *institution*, but merely natural in the *production or immediate causes*. Because the appearance seems not to transcend the capacity of natural means, and the whole syndrome and series of its causes may be thus explained. It is an opinion highly consuetaneous, that in every vehement passion there is formed a certain idea, as well of the object whereupon the imagination is most intent, as of the good or evil connected unto, and expected from, that object; and that this idea is, as it were, impressed, by a kind of inexplicable sigillation upon the spirits, at the same instant the mind determineth to will the present prosecution or avoidance of the object; so that, by the mediation of the spirits (those angels of the mind), the same idea is transmitted to *the blood*, and, through the arteries, diffused into all parts of the body, as well into the nerves and muscles, which are inservient to such voluntary motions as are requisite to the execution of the decrees and mandates of the will concerning the prosecution or avoidance of the object. This being so, we may conceive that the phanfy of the person assaulted by an assassine, having formed an idea of hatred, opposition, and revenge; and the same being characterized upon the spirits, and by them diffused through the blood; though the blood become much less fluid in the veins after death, by reason the vital influence and pulsifick faculty of the heart, which animated and circulated it, is extinct, yet, because at the presence of the Murderer, there issue from the pores of his body such subtile emanations as are consimilar to those which were emitted from him at the time he strove with, overcame, and killed the patient; and those emanations entering the dead body, doe cause a fresh commotion in the blood, remaining yet somewhat fluid in its veins, and, as it were, renew the former colluctation or duell betwixt the yet wholly uncondensed spirits of the slain and those of the Homicide; therefore is it that the blood, suffering an æstuation, flows up and down in the veins to seek some vent or sallyport, and finding none so open as in *that part wherein the wound was made*, it issues forth from thence! And where the Murdered person is destroyed by strangulation, suffocation, or the like unbloody death, so that there is no manifest solution of continuity in the skin or other exterior parts of the body, in that case it hath been observed that the carcass bleeds at *the mouth or nose*, or both; and this only because in all vehement strivings, and especially in colluctation for life, the spirits and blood flow most plentifully into the arteries and veins of the head, as is visible by the great redness of the eyes and face of every man that fights; and where the blood fixeth in most plenty, there will be the greatest tumult, æstuation, and commotion when it is ferment, agitated, and again set afloat, by the Discordant Effluvias emitted from the body of the neer approaching or touching Murderer—and, consequently, there must the vessels suffer the greatest stress, distension, and disruption, or apertion of their orifices.

This passage fully explains the extraordinary opinions which were formerly entertained by the most eminent physicians, in England, during the reign of King Charles II.

(v.) DR HIBBERT likewise transmitted the following extract from the well-known work, entitled, 'Ludovici Lavateri Theologii eximii de Spectris, Lemuribus, variisque præfagitionibus Tractatus vere aureus.'—'Aliquis à latronibus interceptus fuit; accedentibus latronibus ad cadaver, *statim cepit recentem sanguinem stillare*, aut aliis signis præsentiam latronis significari. *Plato*, 1, Legum 1,<sup>2</sup> tradit eorum qui occisi sunt animas, sæpe interfectorum animas hostiliter insequitendi. *Marsilius Ficinus* fortè contingere putat, ut occisi hominis vulnus etiam jacente cadavere in eum qui vulneraverat, si modò ille cominus inflat, vulnus ipsum inspiciens, sanguinem rursus ejiciat, quod quidem evenire *Lucretius* affirmavit, et Judices observarint. *Dido* apud *Virg.* minetur *Æneæ*: Et cum frigida mors anima se duxerit artus, omnibus umbra locis adero; dabis, improbe, pænas.—Similis locus est apud *Horat.* et alios

<sup>1</sup> Lugduni Batav. Apud Henricum Verbiest. Anno 1659.

<sup>2</sup> Lib. xvi. cap. 5, De Animorum Immort.

Poetas. Latro affedit mensæ, everfo poculo, vinum per solidum lignum mensæ manavit omnium magna admiratione.'

To conclude these Notices, the Editor, without offering farther observations on this branch of the subject, presents a variety of other extracts, all bearing on the same point, and tending to show the universal concurrence of Lawyers, Divines, Historians, Physicians, and Philosophers, in the ancient opinions already related as obtaining so general a belief over the civilized world, and especially in Europe.

(vi.) 'IN a secret Murther, if the dead carkaffe be at any time thereafter handled by the Murtherer, it will gufh out of blood; as if the blood were crying to Heaven for revenge of the Murtherer.'—*King James VI, Dæmonologie*, p. 136.

(vii.) 'I HAVE heard, by credible report, that the wound of a man murdered, renewing bleeding at the prefence of a dear friend or of a mortal enemy. Divers also write, that if one pafs by a murdered body (though unknown), he shall be stricken with fear, and feel in himself some alteration, by nature.'—*Scot's Discovery of Witchcraft*, p. 170.

(viii.) 'WHO can alleage any certaine and firme reason, why the blood runnes out of the wounde of a man mured, long after the Murder committed, if the Murderer be brought before the dead bodie? Galeotus Martius, Jeronymus Maggius, Marfilius Ficinus, Valleriola, Joubert, and others, have offered to say something thereof.—Who (I pray you) can shew why, if a desperat bodie hang himfelfe, suddenie there arise tempests and whirlwinds in the aire?'—*Living Librarie*, fol. Lond. 1621, p. 283.

(ix.) 'WHY dead bodies bleed in the prefence of their Murtherers? Because nothing is so hidden from Justice as Murder, they use not only torments of the body, but also the torture of the soule, to which its passions doe deliver it over, of which *Feare* discovering itfelfe more than the rest, the Judges have forgotten nothing that may make the suspected person fearefull. For, besides their interrogatories, confronting him with witnesses, sterne lookes, and bringing before him the Instruments of Torture, as if they were ready to make him feele them, they persuade him that a carkaffe BLEEDS in the prefence of his Murtherers, because dead bodies being removed doe often bleed; and then, he whose conscience is tainted with the *synterefs* of the fact, is troubled in such fort, that by his mouth or gesture he often bewrayes his own guiltinesse, as not having his first motions in his owne power.'—*Five Philos. quest. answered*, 4to, Lond. 1653.

(x.) IN the *Athenian Oracle*, I. 106, there is inserted a particular relation of a corpse falling a-bleeding at the approach of persons supposed to have in any way occasioned its death. The phenomenon is thus endeavoured to be accounted for. 'The blood is congealed in the body for two or three days, and then becomes liquid again, in its tendency to corruption. The air being heated by many persons coming about the body, is the same thing to it as motion is. 'Tis observed that dead bodies will bleed in a concourse of people, when Murderers are absent as well as present; yet legislators have thought fit to authorize it, and use this trial, as an argument at least, to frighten, though 'tis no conclusive one to condemn them.' *Vid.* also p. 193.

(xi.) 'IT is a thing known, yea, by many undeniable instances witnessed, that marvellous discovery of concealed Murder, by the bleeding of the body, upon the touch of the Murderer!<sup>1</sup> I confesse, it

<sup>1</sup> 'What is it that should make men's guilt so legible oft in their countenance, even when they study most to conceal it; and thus cause them give their tongue the lie, yea, bewray to bystanders whether they will or not some

should be hard to assert the lawful and warrantable practice of such an Appeal to so extraordinary and stupendous a sign from the Lord, where Scripture goeth not clearly before us. But, on the other hand, such a thing so surely tried for such an end, and in the case where all ordinary means of discovery have been wanting, I think, calleth us to a serious remark thereof, while it so visibly seemeth to witness his hand who doth make inquisition for blood!

(xii.) SIR KENELM DIGBY takes it for granted that a Corpse often bleeds on such occasions—and thus accounts for the phenomenon. ‘And to this cause, peradventure, may be reduced the strange effect which is frequently seen in England, when, *at the approach of the Murderer, the slain body suddenly bleedeth afresh*. For certainly the Souls of them that are treacherously Murdered by surprize, use to leave their bodies with extreme unwillingness, and with vehement indignation against them that force them to so unprovided and abhorred a passage! That Soul, then, to wreak its evil talent against the hated Murderer, and to draw a just and desired revenge upon his head, would do all it can to manifest the author of the fact! To *speake* it cannot—for in itself it wanteth the organs of voice; and those it is parted from are now grown too heavy, and are too benumbed, for to give motion unto: Yet some change it desireth to make in the body, which it hath so vehement inclination to; and therefore is the aptest for it to work upon. It must then endeavour to cause a motion in the subtlest and most fluid parts (and consequently the most moveable ones) of it. This can be nothing but THE BLOOD, which then being violently moved, *must needs gush out at those places where it findeth issue!*’

(xiii.) EXTRACT from a Letter, the Rev. H. Cross, Caithness, Jun. 11, 1712, to the Rev. Robert Wodrow.<sup>2</sup> ‘Some Murthers in this cuntry have been discovered, *by causing suspected persons touch the deid corps*; which *upon their touching have immediatly bled*; wherupon some have confessed guilt, and have been executed. I cannot tak up time in telling the particular circumstances thereof.’

(xiv.) MR BURNETT,<sup>3</sup> in treating of presumptive evidence, remarks, that ‘in various Trials for Murder, we find the notion of *the corpse bleeding, if touched by the Murderer*, a circumstance founded on. In *Stewart Abercombie’s Case*,<sup>4</sup> we see it stated, in the Information for the prisoner, as a circumstance in his favour, that he had, without fear or dread, gone and touched the body of the person murdered. And in the Case of *Howatson*,<sup>5</sup> before Lord Justice-Clerk Cockburn, we find it stated and insisted on as a strong circumstance of suspicion against him, *that he had refused to go to the lifting of the corpse*. This even is stated as one of the circumstances in the Interlocutor of relevancy; and perhaps rightly so, on the supposition of *the popular belief of THE MURDERER’S TOUCHING THE CORPSE.*’

(4.) PARTICULAR INSTANCES *where the CORPSES of Murdered Persons have been TOUCHED, as a TEST OF GUILT*—REMARKABLE CRIMINAL TRIALS, *in which this circumstance was founded on*—THE OPINIONS OF LAWYERS, &c.

(i.) THE earliest recorded notice which the Editor has been able to find, in British History, of this superstitious custom, is in Buchanan’s History of Scotland;<sup>6</sup> who relates, that, in A.D. 972, after the atrocious Murder of KING DUFFUS<sup>7</sup> by the assassins hired by Donald, Governor of the Castle of Forres, they ‘carried him out so cunningly a back way, that not so much as a drop of blood appeared,’

secret trouble and sore they have within? Doth it not clearly show the power of Conscience, which hath such authority on men, that without violence or constraint from others, doth even force them to confess the truth, and supply the room of witnesses.’—*Fleming’s Fulfilling of the Scripture*, 3d edit. Glasg. 1681.

<sup>1</sup> *Ibid.*      <sup>2</sup> Wodrow MSS. Orig. Letters. Quarto, XIX. ‘Remarkable Providences.’ Adv. Library, Edinburgh. No traces can be had of the particular instances to which the Rev. Gentleman alludes. They would doubtless prove of much interest, could they be still discovered.      <sup>3</sup> *Burnett on Crimes*, p. 529. (Note.)      <sup>4</sup> Jan. and Feb. 1718.      <sup>5</sup> James Howatson, tried for Murder, at Dumfries, May 1727.      <sup>6</sup> *Buchanan’s History of Scotland*, Ed. 1762, l. 247.      <sup>7</sup> Son of King Malcolm I. He was murdered A. D. 972.

&c.—‘ The executioners of that bloody fact were sent out of the way by Donald ; because there is an opinion, *received from our ancestors*, which as yet obtains amongst the vulgar, *That BLOOD will issue from a dead body, many days after the party's being murdered, IF THE MURDERER BE PRESENT ; just as if the fact had been newly committed.*’ This takes it for granted, that the understanding was, that the TOUCHING of the corpse must have been infinitely more available, towards the discovery of the Murderer.

(ii.) RAPIN<sup>1</sup> records a circumstance, as having occurred at the interment of KING HENRY II. of England, A.D. 1189. That monarch having fallen sick at *Chinon*, caused himself to be carried into the Church, before the Altar ; where, after confessing himself, and expressing repentance, he expired. ‘ His corpse was removed to Font-Evrand, in Anjou, where he was buried, according to his own order. An extraordinary accident rendered the funeral of his body very remarkable. His son RICHARD (*Cœur de Lion*) coming to meet the funeral pomp, in order to attend his father to his grave, upon his approach THE BLOOD in great abundance gushed out of the mouth and nostrils of the corpse ! RICHARD, though naturally very hard hearted, was so moved at this sight, that he burst out into tears, and openly accused himself of being the occasion of his father's death.’ *Hume*<sup>2</sup> adds, that ‘ he exclaimed, *agreeably to a vulgar SUPERSTITION, that he was his father's MURDERER !*’

(iii.) BUT, without attempting too laborious an investigation of our early Historians and Chroniclers on so insulated a point, it is enough for our purposes to preserve the memory of such Cases as have been peculiarly striking, and which have occurred nearer to our own times. Accordingly, one of the most remarkable instances of *Touching* as a Test of Murder,<sup>3</sup> is the Case of the Murder of JOHAN NORKOTT, wife of Arthur Norkott, the incidents of which were fortunately preserved amongst the papers of *Sir John Maynard*, Sergeant at Law,<sup>4</sup> and afterwards one of the Lord Commissioners of the Great Seal of England, &c. who noted the particulars at the Trial, at the bar of the King's Bench, 4th Car. I. (1628.) This eminent Lawyer's Notes are followed here, as closely as possible, in his own words.

‘ *Johan Norkott* having been murdered, the question was, How she had come by her death ? The Coroner's Inquest, on view of the body, and Depositions of *Mary Norkott*, *John Okeman*, and *Agnes* his wife, inclined to find JOHAN NORKOTT *Felo de se* ;—for the evidence persuaded the Coroner and Jury that she was found dead in her bed, the knife sticking in the floor, and her throat cut—that the night before, she went to bed with her child, her husband being absent—and that no other person, after she had gone to bed, came into the house—the Examinants lying in the outer room, and they must needs have seen or known if any stranger had come in. Whereupon the Jury gave up to the Coroner their Verdict, that she was *Felo de se*.

‘ But afterwards, upon rumour among the neighbourhood, and their own observation of a variety of circumstances, which manifested, that she did not ; nor, according to those circumstances, could possibly murder herself—the Jury, whose Verdict was not yet drawn into form by the Coroner, desired that the Body, which had been buried, might be taken up out of the grave. The Coroner assented to their desire ; and THIRTY DAYS after her death, she was taken up, in presence of the Jury and a great concourse of people ; and, in consequence of what transpired, the Jury altered their former Verdict.

‘ The persons accused were tried at *Hertford Assizes*, and Acquitted ; but so much against the Evidence, that *Judge Harvey* expressed his opinion, that it were better an Appeal were brought, than so foul a murder should escape unpunished.

<sup>1</sup> *Rapin*, Fol. Lond. 1784, i. 221.

<sup>2</sup> *Hume's Hist. of England*, 8vo. Edin. 1805, i. 484. See also *Bened.*

*Abb.*, p. 547. *Brompton*, p. 1151. *Mat. Paris*, p. 107.

<sup>3</sup> See also *Gent. Mag.* (Sep 1731,) i. 395. *Ellis's*

*Brand's Popular Antiquities*, ii. 543.

<sup>4</sup> See *Howell's State Trials*, xiv. 1324. But especially *History of the Works of the Learned*, for the year 1739, Art. 12, to which curious publication *Sir John Maynard's Papers* were originally communicated by *Dr Rawlinson*.

‘ Accordingly, at the ensuing Easter term (*Pascha, 4 Car.*), they were tried on the Appeal, which was brought by the Young Child against his father, grandmother, and aunt, and her husband *Okeman*.<sup>1</sup> *The Minister of the Parish*<sup>2</sup> where the Murder was committed, deposed, “ That the Body being taken up out of the grave, *thirty days after the party’s death*; and lying on the grass, and the four defendants being present, *were required each of them to TOUCH THE DEAD BODY*. *Okeman’s* wife fell upon her knees, and prayed to God to shew a Token of her Innocency, or to some such purpose—her very words I have forgot. The Appellees *did touch the dead body*;—whereupon *the brow of the dead*, which before was of a livid and carrion colour,<sup>3</sup> begun to have a *dew or gentle sweat* arise on it, which increased by degrees, *till the sweat ran down in drops on the face*. The brow turned to a *lively and fresh colour*, and *the deceased opened one of her eyes and shut it again*: And this opening the eye was done *three several times*. She likewise *thrust out the ring or marriage finger three times*, and pulled it in again; and *the finger dropped blood from it on the grass*.”

‘ SIR NICHOLAS HYDE, *Lord Chief Justice*, seeming to doubt the Evidence, asked the Witnesses, “ Who saw this besides you?” *Witness*. “ I cannot swear what others saw—but my Lord, (said he,) I do believe the whole company saw it; and if it had been thought a doubt, Proof would have been made of it, and many would have attested with me.” The Witness observing some admiration<sup>4</sup> in the auditors, he spake further. “ My Lord, I am Minister of the Parish, and have long known all the parties; but never had any occasion of displeasure against any of them, nor had to do with them or they with me, but as I was Minister.—The thing was wonderful to me, but I have no interest in the matter; but as called upon to testify the truth, that I have done.”—Whereupon, applying himself to *the Chief Justice*, he said, “ My Lord, my brother, here present, is *Minister of the next Parish adjacent*—and I am assured saw all done that I have affirmed.”

‘ Therefore that person was also sworn to give Evidence, and did depose, in every point, *viz. the sweating of the brow—the change of the colour—opening of the eye—and the thrice motion of the finger*, and drawing it in again. Only, the first Witness added, *that he himself dipped his finger in the blood which came from the dead body*, to examine it—and he swore *he believed it was blood!*’

*Sir John Maynard* adds, ‘ I conferred (my Notes) afterwards with *Sir Edward Powell*, Barrister at Law, and others, who all concurred in the observation—and for myself, if I were upon oath, can depose, that these Depositions (especially of the first Witness) are truly reported, in substance.’

‘ The other Evidence was given against the Prisoners, *viz. the Grandmother of the Plaintiff*, and against *Okeman* and his Wife—that they confessed they lay in the next room to the dead person that night, and that none came into the house till they found her dead the next morning; therefore, if she did not Murder herself, they must be the Murderers. To that end further proof was made.

‘ *First*, That she lay in a composed manner in her bed, the clothes nothing at all disturbed, and her child by her in bed.—*Secondly*, Her throat cut from ear to ear, and her neck broken; and if she first cut her throat, she could not break her neck in bed, nor *contra*.—*Thirdly*, There was no blood in the bed, saving there was a tincture of blood on the bolster whereon her head lay—but no substance of blood at all.—*Fourthly*, From the bed’s head there was a stream of blood on the floor, which run along till it ponded in the hollows of the floor, to a very great quantity; and there was another stream of blood on the floor at the bed’s foot, which ponded also on the floor, to another great quantity,—but no continuance or communication of blood of either of these two places from one to the other, neither upon the bed—so that she bled in two places severally: And it was deposed, (that on) turning up the mat of the bed, there were clotts of congealed blood in the straw of the mat underneath.—*Fifthly*, The

<sup>1</sup> The individuals on whose Depositions the original Verdict had been pronounced.    <sup>2</sup> ‘ A very reverend person, as I guessed, of about seventy years of age. His testimony was delivered gravely and temperately—but to the great admiration (*wonder, astonishment*) of the auditory.’    <sup>3</sup> ‘ That was the verbal expression, in *terminis*, of the Witness.’

<sup>4</sup> Wonder, astonishment, amazement.

bloody knife was found in the morning sticking in the floor, a good distance from the bed; but the point of the knife, as it stuck, was *towards the bed*, and the *haft* or handle *from the bed*.—*Sixthly*, There was a print of the thumb and four fingers of a left hand. *Sir Nich. Hyde*, Chief Justice, said to the Witnesses, "How can you know the print of a left-hand from the print of a right-hand, in such a case?" *Witness*, "My Lord, it is hard to describe—but if it please that honourable *Judge* to put his left-hand upon your left-hand, you cannot possibly place your right-hand in the same posture." Which being done, appeared so.

'The Defendants had time to make their Defence—but gave no evidence, to any purpose.

'THE JURY departed from the bar—and returning, ACQUITTED *Okeman*, and found the other three GUILTY; who, being severally demanded, "What they could say, why Judgement should not be pronounced?" said nothing—but (saying that) each of them said, "I did not do it! I did not do it!"

'JUDGEMENT was given accordingly, and the Grandmother and the Husband executed; but the Aunt had the privilege to be spared execution, being with child.

'I inquired if they confessed any thing at their Execution; but did not, as I was told.'

(iv.) THE next case which shall be mentioned, is that of MARIOUN PEEBLES,<sup>1</sup> *alias* Pardone, spouse to SWENE, in Hildiswick, who was, on March 22, 1644, sentenced to be strangled at a stake, and burnt to ashes, at *the Hill of Berrie*, for WITCHCRAFT and MURDER. Marion and her husband having 'ane deadlie and venefical malice in her heart' against Edward Halcro in Overure, and being determined 'to destroy and put him down,' being 'transformed in the lyknes of ane pellack-quhail, (the Devill changing her spirit, quhilk fled in the same quhail,)' and the said Edward and other four individuals being in a fishing-boat, coming from the Sea, at the North-banks of Hildiswick, 'on ane fair morning, did cum under the said boat, and overturnit her with ease, and drowned and devoired thame in the fey, right at the shore, when there wis na danger wtherwayis.' The bodies of Halcro and another of these hapless fishermen having been found, Marion and Swene 'wir sent for, and brought to see thame, and to lay thair hands on thame, . . . . dayis after said death and away-casting, quhaire thair bluid was evanished and defolved, from every natural cours or caus, shine, and run; the said umquhill Edward *bled at the collir-bain or craig-bane*, and the said . . . . ,<sup>2</sup> *in the hand and fingers, gushing out bluid thairat*, to the great admiration of the beholders—and revelation of the judgement of the Almytie! And by which lyk occasionis and miraculous works of God, made manifest in Murders and the Murderers; whereby, be many frequent occasiones brought to light, and the Murderers, be the said proof brought to judgment, convict and condemned, not only in this Kingdom, also this countrie, but lykwayis in maist forrin Christiane Kingdomis; and be so manie frequent precedentis and practifing of and tuitching Murderis and Murdereris, notourlie known: So, the foirsaid Murder and Witchcraft of the saidis persons, with the rest of their companions, through your said Husband's deed, art, part, rad,<sup>3</sup> and counsall, is manifest and cleir to all, not onlie through and by the foirsaid precedentis of your malice, wicked and malishes<sup>4</sup> practifes, by Witchcraft, Confessionis, and Declarationis of the said umquill Janet Frafer, Witch, revealed to her, as said is, and quha wis desyrit by him to concur and assist with you to the doing thereof; but lykways *be the declaration and revelation of the justice and judgementis of God, through the said issuing of bluid from the bodies!* &c.

(v.) A SIMILAR and very remarkable instance is related in the following Trial: In the Dittay of CHRISTIAN WILSON, *alias the Lanthorne*,<sup>5</sup> accused of Murder, Witchcraft, &c., (which is founded

<sup>1</sup> See *Dr Hibbert's Hist. of Orkney, &c.* to which this remarkable Trial is appended.    <sup>2</sup> The name left blank.  
<sup>3</sup> *Rede*; advice.    <sup>4</sup> Malicious.    <sup>5</sup> The name given her at her baptism by the Devil. From *Collection of Original Documents*, belonging to the Society of Antiquaries of Scotland, MS. As a specimen of the other charges, take the following: "*Williame Richardsons*, in Dalkeith, haiving felled ane hen of the said Cristianes with ane stone, and wpon her sight therof did immediatly threatne him, and with ane frowneing countenance told him, that he 'should newer cast ane vther stone!' And immediatly the said Williame fell into ane franicle and madnes, and

upon the examinations of James Wilson, Abraham Macmillan, William Crichton, and Fyfe and George Erskine, &c. led before Sir William Murray of Newtown, and other Commissioners, at Dalkeith, Jun. 14, 1661,) it is stated, that ' Ther being enimitie betwixt the said Christiane and Alexander Wilfone her brother, and shoo having often tymes threatned him, at lenth, about 7 or 8 monthes since, altho' the said Alexander was sene that day of his death, at three houres afternone, in good health, walking about his buffnesse and office; yitt, at fyve howres in that same night, he was fownd dead, lying in his owne howse, naked as he was borne, with his face torne and rent, without any appearance of a spot of blood either wpon his bodie or neigh to it. And altho' many of the neiboures in the toune (Dalkeith) come into his howse to see the dead corpe, yitt sho newar offered to come, howbeit her dwelling was nixt adjacent thairto; nor had shoo so much as any seiming greiff for his death. Bot the Minister and Bailliffes of the towne, taking great suspitione of her, in respect of her cairiage, comandit that shoo showld be browght in; bot when shoo come, shoo come trembling all the way to the howse—bot *shoo refused to come nigh THE CORPS or to TUITCH it*, faying, that shoo " nevir tuitched a dead corpe in her lyfe!" Bot being earnestly desyred by the Minister, Bailliffes, and hir brother's friends who was killed, that shoo wold " bot *tuitch the corpses softlie*," shoo granted to doe it—but before shoo did it, the Sone being shyning in at the howse, shoo exprest her selfe thus, humbly desyring, that " as the Lord made the Sone to shyne and give light into that howse, that also *he wold give light to discovering of that Murder!*" And with these words, shoo TUITCHEING *the wound of the dead man, verie softlie*, it being whyte and cleane, without any spot of blod or the lyke!—yitt IMEDIATLY, *whill her fingers was wpon it*, THE BLOOD RUSHED OWT OF IT, to the great admiratioune<sup>1</sup> of all the behoulders, who tooke it for *discoverie of the Murder*, according to her owne prayers.—For ther was ane great lumpe of flesh taken out of his cheik, so smowthlie, as no rasor in the world cowld have made so ticht ane incisioone, wpon flesh, or cheis—and ther wes no blood at all in the wownd—nor did it at all bleed, altho' that many perfones befor had tuitched it, whill<sup>2</sup> shoo did tuitche it! And the howse being searched all over, for the shirt of the dead man, yitt it cowld not be found; and altho' the howse was full of people all that night, ever vatching the corpses,<sup>3</sup> neither did any of them tuitch him that night—which is probable<sup>4</sup>—yitt, in the morneing, his shirt was fownd tyed fast abowt his neck, as a brechame,<sup>5</sup> non knowing how this come to pass! And this Cristian did immediatlie transport all her owne goods owt of her own howse into her dowghter's, purposing to flie away—bot was therwpon apprehendit and imprisoned.'

(vi.) THE next instance which shall be cited, refers immediately to the Case of THE MURES OF AUCHINDRANE; being an extract from a 'RELATIONE of quhat past betwixt the Commitie<sup>6</sup> and MR JAMES MITCHELL,' &c.<sup>7</sup> January 18, 22, and 24, 1676. In the course of the pleadings as to the lawfulness of inflicting Torture, the following interesting passage occurs. " Bot in this preparative, the practife is wnparalleled, to put a perfon to it be such a *Tortour*, to turne (contrarie the cowrse of nature and expresse law of God) to be his own accuser; no, not in *Peiter Aroy*, the Highland Rober

tooke his bed, and newer rose agane, but died within a few dayes: And in the tyme of his sicknes, he alwayes cryed owt, that the said Cristiane wes present befor him, in the liknes of ane gray catt! And some tyme eftir his death, James Richardsons, nephew to the said Williame, being a boy playing in the said Cristiane her yaird, and be calling her *Lantherne*, shoo threatned, that ' if he held not his peace, shoo sowld cawse him to die the death his nephew (uncle) died of!' Whairby it would appeare that shoo tooke wpon hir his nepheas (uncle's) death."

<sup>1</sup> Wonder; amazement.    <sup>2</sup> Until. That is, many previous trials had been made of other persons suspected, or of those who were near neighbours, perhaps living at enmity with the deceased, who had voluntarily offered themselves to this solemn ordeal, or had been called upon thus publicly to attest their innocence of his blood.    <sup>3</sup> Holding the *lyke-wake*.    <sup>4</sup> Can be proved, by testimony or probation.    <sup>5</sup> The large collar which goes about a draught-horse's neck.    <sup>6</sup> Of the Estates of Parliament.    <sup>7</sup> *Wodrow's MSS.* as to ' *the Sufferings*,' Adv. Lib. xxxvi. Quarto, No. 2. This Document relates to the Tortures used to *Mitchell*, who had been accused of an attempt to Murder, by shooting a pistol at *Archbishop Sharpe*, and the *Bishop of Orkney*, Jul. 9, 1668, &c. 29 Car. II, Jan. 7, 1677. See for the particulars of her Trial, *Salm. State Trials*, p. 334, &c.



and Murthrer ! Bot he, being legalie convicted himself, was put to *the Tortowr*, to cause him declaire who was his confederats and affociats in committing of such horrid crymes. Bot if any man shall object that about THE LAIRD OF AUCHINDRANE, I answer : 1st, Thair is no paritie in the cawfe ; be-cawfe he was accused of an horrid and privat Murther, quhair thair was altogether penurie of Witneffes, and not of a deutie contraverted be Apostats : 2dly, GOD, in a soveraine and singlar way, *witnesed it from Heaven, by his own immediate hand, and proved the Deed against him !* viz. the Corpes of the man Murthered, being buried in *Giroane Kirk-yard*, as a man cast away at sea, and cast owt thaire, *the Laird of Coleaine*, whose servant he had beine befor, driming<sup>1</sup> of him in his sleipe, and that he had a muse-marke wnder his left pape ;<sup>2</sup> and when he awook owt of his sleipe, wpon searsh, found it to be trwe—came to the place, and taking wpe the Corpes owt of the place quhair they were buried, found him to be Murthered. Wpon which, he *sumoned in all the men in that pairt, to touch the Corpes, as the custom was in such cafes* ; and all compeiring, except the saids Laird and his son, who were the Murtherers ; and his dwelling house and familie being neire to the place, *ane young chyld of his, MARIE MURE be name*, feing the people, went to the place ; and *when she drew neire to the Corpes* (to the admiration of all the people,) *did spring out wpon her in abundance of blood !* Wpon which they were apprehended and put to tryell.”

(vii.) A VERY singular incident is related by *Law*, in his ‘*Memorials*.’<sup>3</sup> Two men having been executed at Glasgow, Jun. 14, 1683, for the Murder of a gentleman (David Monroe) at Inchbelly-bridge ; in consequence of the enormity of the offence, their bodies were appointed to be hung up in irons. For this purpose, the bodies of the Criminals were conveyed to the spot, where, accordingt o the terms of the Sentence, they were to be gibbeted. *Law* relates, that “*Though their entrails were taken out, and their bodies cleansed from all blood, yet when it (the body of one of the culprits) came to the place where the Murther was committed, did gush out in blood, in the arm which was cut ; test fied to be a truth by the beholders ; which was a testimony of their guilt !*”

(viii.) Of a like nature with the last instance, a strange story is told in the *Biographia Scoticana*, which has likewise been elsewhere repeated. That a few days after Mr James Guthrie was executed, and his head placed upon the Netherbow Port of Edinburgh, *Middleton’s* coach coming down that way and passing through the Port, *several drops of blood fell from the head* upon the top of the coach ; —which, as the legend goes, ‘*all their art and diligence could not wipe off !*’ Physicians were called, and desired to enquire if any natural cause could be given for this event—but they could give none ! “*This odd incident being noised abroad, and all means tried, at length the leather was removed, and a new cover put on ! ! !* But this was much sooner done, than the wiping off the guilt of this great and good man’s blood upon the shedders of it, and the disgrace from this poor Nation !”

(ix.) FEW instances of this description are entitled to the consideration which the following Case possesses, as well in a legal as in a philosophical point of view. In the very remarkable Scottish Trial of PHILIP STANFIELD,<sup>4</sup> for *Parricide*, (executed Feb. 15, 1688,) the circumstance of the body of Sir James Stanfield of Newmills, who was Murdered near Haddington, in Dec. 1687, *having bled on the touch of his son Philip, the Parricide*, was urged and argued with the utmost earnestness, in Court. *James Muirhead*, Surgeon, one of the Witnesses, swore, that “*upon the prisoner’s affisting to lift the body of his deceased father, Sir James Stanfield, after it had been fewed up,<sup>5</sup> and clean linen*

<sup>1</sup> Dreaming.      <sup>2</sup> A mouse mark under his left breast.      <sup>3</sup> *Law’s Memorials*, p. 252.      <sup>4</sup> See *Howell’s State Trials*, XI. 1371.—*Salmon’s State Trials*, p. 610.—*Fountainhall’s Decisions*, I. 484.—See also *Fountainhall’s Diary*.—*Arnot’s Criminal Trials*, p. 33, Note.      <sup>5</sup> The body had been opened and examined, by *Judicial authority*, for the purpose of determining the precise cause of the deceased’s death. The surgeons to whom this remit had been granted, reported, that Sir James had died from *strangulation*, not from drowning—and that the idea of *felo de se*, which had been attempted to be proved by the son, was utterly impossible.

put on, it DARTED OUT BLOOD *through the linen, from the left side of the neck, which the pannel TOUCHED*—but, that when he (the Witness) and the other Surgeon, *James Crawford*, put on the linen, and stirred and moved the head and neck, before, *he saw no blood at all!*"

This fact was corroborated by other Witnesses—and it is, perhaps, worthy of notice, as the most striking peculiarity of that Case, that Sir James had not been stabbed, shot, or assassinated by the cutting of his throat—but was *strangled*, and then thrown into a water; so that there was no *external wound* on the neck.

A singular feature in this Case of Stanfield, is the rank and eminence of the Public prosecutors, *Sir John Dalrymple*, younger of Stair, *Sir George Mackenzie*, and the gravity with which these superstitious circumstances are argued. The Dittay states, "When his father's dead body was sighted and inspected by Chirurgions, and the clear and evident signs of the Murder had appeared, the body was sewed up, and most carefully cleaned; and his nearest relations and friends were desired to *lift* up his body to the coffin: <sup>1</sup> And accordingly, *James Row*, merchand (who was in Edinburgh at the time of the Murder), having lifted the left side of Sir James, his head and shoulder, and the said *Philip* the right side; his father's body, though carefully cleaned, as said is, so as the least blood was not on it, did (ACCORDING TO GOD'S USUAL METHOD OF DISCOVERING MURDERERS) *blood afresh upon him, and defiled all his hands*; which struck him with such a terror, that he immediately let his father's head and body fall with violence—and fled from the body!—And, in consternation and confusion, cried, *Lord, have mercy upon me!*—and bowed himself down over a seat in the Church, (where the Corps was inspected,) wiping his father's innocent blood off his own murdering hands, upon his cloaths!" But as the arguments are fortunately preserved, and as they shew many of the peculiarities of these superstitions, and give the reasonings of the most eminent Lawyers of that time, it may be proper, and can hardly fail to be interesting, even to the general reader, to enter a little into details.

*Sir Patrick Hume*,<sup>2</sup> Counsel for Philip Stanfield, urged, that this is but a superstitious observation, without any ground, either in Law or reason. And *Carpzovius* relates, *Part 3, quest. 122, no. 31*, that several persons had been unjustly challenged, and that he, in his own experience, had *seen a dead body bleed*, in presence of the person who was *not guilty!* And *Matheus de Criminibus* is of the same opinion, Tit. 16, *de questionibus*, num. 12, "de sanguine porro de *Cadavere* profuente, quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falsa sint—ratio vero idonea nulla reddi possit, non putaverim indicium ad Torturam sufficiens esse, non enim sapientis Judicis est incerto experimento credere, quod certa ratione dirimendum est." And the truth is, *the occasion* of the dead body's bleeding was, that the Chirurgion that came out to visit the body did make an incision about the neck, which might be the occasion of the bleeding;—and also the very moving of the dead body, when it was taken out of the grave and out of the coffin, might occasion the bleeding; especially, seeing the body did not bleed for some time after, which certainly was made by the motion and by the incision: As also, a further evidence that it could not be the defender's *touching* the body, the Chirurgions did lykewais touch the body, as well as he, and several others present; so that the bleeding could no more be ascribed to *his touching*, than the touching of the other persons present.

*Sir James Dalrymple*, Lord Advocate, answered, that "although the deceased's servants had made a *mutiny ament the Burial, till the Corps were fought*, yet the pannel caused bury the Corps that same

<sup>1</sup> This may, no doubt, have been resorted to, for the purpose of proving Philip's participation in the Murder—but, of itself, this ceremony is still universally observed in the middle and lower ranks of life; and is a most affecting spectacle to those who are so deeply interested. It is called "the chesting" or "coffining" of the corpse—a duty almost never (in Scotland) intrusted to hirelings—but is most solemnly performed by the nearest relations, as the last endearing act of respectful and affectionate regard, which they can offer, to the breathless remains of those who had been nearest and dearest to them. <sup>2</sup> Along with this gentleman were Sir David Thoires, Mr William Monniepenny, and Mr William Dundas, as counsel for the prisoner.

night' without flensing them !" After Warrant for raising the body had been obtained, the inspection by Surgeons, and the touching, as before detailed, took place; when the pannel let his father's head fall to the ground, and cried out, O God!—and ran away and went to a desk in the Church, where he lay groaning and in confusion, and durst never return to touch the Corpse. And that as there could no *natural* reason be given, but an ordinar and *wonderful Providence of God in this kind of discovery of Murder*, so the fact was never more evident and sure. Though half a dozen of persons were bearing the Corpse, *no man's hands were bloody but the pannels !* That the Corpse being two entire days in the grave, in that weather and season, the blood, by the course of nature, was become stagnant and congealed—so that the former toffing and lifting of the Corpse, and even the incision itself, had occasioned no such effusion, but only some water or gore—but upon *the first touch* of the pannel, *the Murderer*, there appeared *abundance of liquid florid blood !*

*Sir David Thoirs*, in reply, argued, that the falling of blood from the wound could neither be a ground nor presumption for guilt—and though the pannel was *surprised* to see his father's blood, yet the same did only proceed from *natural duty and affection*, and not from any apprehension of guilt ! *Sir Patrick Hume* added, that he offered to prove, that *the pannel had touched his father's body before the incision*, AND IT DID NOT BLEED.

*Sir George Mackenzie*, in his address to the Jury, asserts that ' GOD ALMIGHTY *himself was pleased to bear a share in the testimonies which we produce ; that* Divine power which makes the blood circulate during life, *has oft-times, in all Nations, opened a passage to it, after death upon such occasions,—but most in this case !*

The sentence of the Court was, that he should be ' hanged on a gibbet till he be dead—and his tongue to be cut out and burnt upon a scaffold—and his right hand to be cut off and affix on the East Port of Haddingtoun—and his body to be carried to the Gallowlee, betwixt Leith and Edinburgh, and there to be hanged up in chains,' &c.

(x.) BESIDES the class of notices which has already been afforded, it is natural to expect that vestiges of so prevalent a superstition should appear in the ancient Popular Poetry of all Nations. The Editor's present leisure and opportunities do not admit of his entering upon so wide a field as that just alluded to, for the illustration of such an enquiry. It is sufficient to mention, generally, that such traces do appear in the Ballads of Scotland, England, Germany, and other European Nations. The ancient Romance also, and the Drama of all these countries, abound with allusions to this superstition ; and some of them make use of the ceremonial of touching the Corpse, as a powerful aid in exciting the feelings, and in heightening the interest of the reader, or auditory.

As a specimen of one of the Scottish Ballads illustrative of this superstition, the Editor may cite the conclusion of the Romantic Ballad of *Young Huntin*, or *Earl Richard*,<sup>2</sup> as it is too long for insertion at length :—

“ PUT na the wite<sup>3</sup> on me,” she said,  
 “ It was my may<sup>4</sup> Catherine !”  
 Than they hae cut baith fern and thorn,  
 To burn that maiden in.—

‘ It wadna tak upon her cheik,  
 Nor yet upon her chin,  
 Nor yet upon her yellow hair,  
 To cleanse the deidly sin !

<sup>1</sup> The same night the body had been found in the water, having been incrustated with frozen ice, owing to the inclemency of the season ; the Murder having been perpetrated in the month of December, during a storm. <sup>2</sup> See *Minstrelsy of the Scottish Border*, II., 420—*Herd's Ballads*—*Chambers's Ballads*, &c. <sup>3</sup> Blame. <sup>4</sup> Maiden.

' *The Maiden touch'd the clay-cauld Corpse,*  
A DRAP IT NEVER BLED;  
The Lady laid *her* hand on him,  
And soon the ground was red!

' Out they hae ta'en her, may Catherine,  
And put her mistress in.  
The flame tuik fast upon her cheik,  
Tuik fast upon her chin,  
Tuik fast upon her fair bodye—  
She burn'd like hollin green!'<sup>1</sup>

(xi.) BEFORE concluding these notices, it may be remarked, for the benefit of the curious inquirer into the superstitions of his native country, that absurdities greater by far than this Test or Ordeal have been gravely stated and maintained, even before the Supreme Criminal Tribunal of Scotland. Perhaps the most extraordinary instance of this description occurred in *the Trial of THE MARQUIS OF ARGYLL,*<sup>2</sup> before Parliament, 1661, where the Indictment, after setting forth a variety of alleged Murders and cruelties, proceeds, ' That THE LORD from Heaven did declare his wrath and displeasure against the aforesaid inhumane cruelty, by striking the tree whereon they<sup>3</sup> were hanged in the said month of June, being a lively fresh growing ash-tree, at the Kirk-yard of *Dunoone,*<sup>4</sup> among many other fresh trees with leaves. THE LORD struck the said tree immediately thereafter, so that the whole leaves fell from it, and the tree withered, never bearing leaf thereafter, remaining so for the space of two years; after which, being cut down, there sprang out of the very heart of the root thereof a *spring like unto BLOOD, popling up, running into several streams all over the root; and that for several years thereafter,*<sup>5</sup> till the said Murderers or their favourers, perceiving that it was remarked by persons of all ranks resorting there to see this *Miracle,* they caused hock out the root,<sup>6</sup> covering the whole with earth, which was full of the said matter like blood!'

There cannot be a doubt that the foregoing Case, monstrous and shocking in the extreme as it is, is merely an *improvement* upon the popular Superstition we have been considering; and the inference they wished to deduce from the whole matter is,—that '*blood will have blood,*'—that God will not suffer Murder to pass over unavenged, even in this world;—and farther, that if man fails to discover guilt, the Almighty will, by *extraordinary* and even *miraculous* means, disclose the Murderer's horrid secret.

<sup>1</sup> Green holly.    <sup>2</sup> *State Trials*, (old Edit.) III. 422, and VII. 379.—*Howell*, XI. 1380.    <sup>3</sup> The persons thus mercilessly murdered by the commands of Argyll, and massacred by his followers, were thirty-six in number; who were hanged on this single tree, being 'special gentlemen of the name of *Lamond*, and vassals to *Sir James Lamond of Innerin*,' (that *Ilk.*) And on the same day, they 'Murdered with durks, and cut down with swords and pistols,' a number of other unhappy creatures, among whom *John Lamond* in *Auchinshallach*, 'who being about the age of fourscore years, &c. they most cruelly and barbarously stabbed with *durks* and *skanes* at the ladder-foot.' *The Provost of Rothesay* was shot through the body thrice, yet finding some life in him, they thrust at him with durks and skanes, and at last cut his throat with a long durk; others they cast into holes, their victims 'spurning and wrestling, whilst they were suffocated with earth; having denied to them any time to recommend themselves to God!' These are part of the atrocities of the Marquis's followers, detailed in the remarkable Dittay above alluded to; and besides this, they murdered and massacred a number of innocent women, and inhumanly left their bodies as a prey to ravenous beasts and fowls, and 'young and old, yea suckling children, some of them not one month old!' The reader is referred to the *State Trials* for other particulars, which are too circumstantial to be enumerated here.    <sup>4</sup> An ancient Castle on the Clyde, of which the Family of Argyll are still the nominal heritable Keepers. It has long since been razed with the ground. The *Dun*, on which it was situated, has a very peculiar and commanding form, and is a beautiful and picturesque object from the opposite coast, and from the river. The 'Kirk-yard' is still surrounded by lofty trees.    <sup>5</sup> *Ovid's Metamorphoses* are a trifle to this; but still such execrable and almost blasphemous ravings were not only tolerated, but gravely discussed before Parliament! It ought, however, to be kept in mind that the fanaticism which then prevailed had a large share in producing this gross and shocking exhibition, which can only be viewed as solemn mockery of all judicial proceedings, and indeed of every thing sacred.    <sup>6</sup> Dig up; extirpate.

**Slaughter — Shooting of Pistolets, &c.**

Jul. 24.—ALEXANDER DUMBAR, Younger of Kilbowak;<sup>1</sup> Robert Dumbar, his brother; Niniane Dunbar, sone to Williame Dunbar of Hemprigis; James Dumbar, sone to Gawin Dumbar, Archedeane of Murray; Thomas Falconer, seruitour to the said Alexander.

Dilaitit of airt and part of the Slauchter of vmq<sup>le</sup> Alexander Dumbar of Waftfield (Scheref of Murray); committit the first day of Junij last: And contravening of the Actis of Parliament, in beiring and schuiting of pistolettis, &c.

## PERSEWARIS.

Johne Dumbar of Waftfield, as brother to the defunct; Sir Thomas Hammiltoun.

## PRELOCUTORIS for the Pannell.

Mr Johnne Ruffell, Mr Thomas Hoip, Mr Thomas Nicolfoun, Aduocatis; the Constable of Dundie, elder, the Laird of Monymusk, the Laird of Halkertoun.

The Justice, of consent of ather parteis, continewis this dyet to fryday nixt. The Assyse wairnit *apud acta*, ilk persone, vnder the pane of twa hundreth merkis.

(Jul. 26.)—The Justice continewis this dyet, as ofbefoir, with consent of ather partie, to Wednesday nixt, &c.

(Jul. 31.)—The persewar passis *simpliciter* fra the perfute of the persones on pannell; and is content that thai be put to libertie. Quhairupone the pannell askit instrumentis.—Compeirit Patrik Dumbar of Blarie, and producet the Counfallis Warrant to the Justice, quhair of the tennour followis.

WARRANT for the *Dumbaris libertie*.

JUSTICE, Justice Clerk, and your deputis: Qubear as, Alexander Dumbar of Kilboyak,<sup>2</sup> (&c.) are to be presentit befor zow this present day, to vnderly the lawis for pe slauchter of vmq<sup>le</sup> the Scheref of Murray: And We, vnderstanding that pe partie persewar will nocht ipfist in the perfute of pir persones, bot ar content and will consent that pai be put to libertie and fredome: Thairfoir zow fall tak guid caution of thame, that pai fall compeir befor his Maiesteis Justice, the thrid day of pe nixt Justice-air of the scherefdome quhair pai duell,<sup>3</sup> or soner vpon a fyftene dayis wairning, and vnderly pe law for the Slauchter foirfaid; vnder pe panes contenit in the Actis of Parliament: And this caution being fund, zow fall put them to libertie and fredome, and suffer pame pas quhair pai pleis: Quhairanent pir presentis fall be your Warrant. AT EDINBURGH, the last day of Julij, 1611.

AL. CANCELL<sup>r</sup>. JO. PRESTOUN.

Patrik Dumbar of Blarie and Robert Falconer of Ballandro became cautione for thame, coniunctlie and feuerallie, to the effect aboue writtin.

THE Justice, accoirding to the directioun of the former Warrant, ordanit the saidis persones on pannell to pas frie, and nocht to returne to the said Tolbuthe furth of the quhilk thai war brocht. Quhairupone Alexander Clerk, ane of the Bailleis of Edinburgh, askit instrumentis.

<sup>1</sup> See Jul. 31, 1616.

<sup>2</sup> The rest of the names are recited.

<sup>3</sup> Elgin.

**Egyptians remaining within the Kingdom after Proclamation.**

Jul. 31.—MOYSES FA, DAVID FA, ROBERT FA, and Johnne *alias* Willie Fa, Egiptianis.

Dilaittit for Abyding and remaining within this Kingdome, they being Egiptianis; contrair the tennour of the Actis of Parliament.

## THE ÆGIPTIANIS DITTAY.

MOYSES FA, DAVID FA, and JOHNNE FA, 3e ar indytit and accuset; That quhair, be Act of Parliament haldin at Edinburgh the xxiiij day of Junij, the 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and nyne 3eiris, it was statute and ordanit that all the vagabundis, soirneris<sup>2</sup> and cowmone thevis, cowmonlie callit EGIPTIANES, fould haif past furth pairof, and nevir returnet within pe samyn, estir pe first day of August, the foirfaid 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and nyne 3eiris, vnder the pane of deathe: And that it fould be leifum to all his Maieftieis guid subiectis, or ony of thame, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alswell men as wemen, as cowmone, notorious, and condempnet Thevis, only to be tryit be ane Assyse, that pai ar callit, knawin, repute, and haldin in<sup>3</sup> Egiptianis: NOCHTPELES, 3e and ilk ane of 3ow being vagabundis, soirneris, cowmone thevis, repute, callit, and haldin Egiptianis, in contempt of his Maieftie and his Lawis, hes presumet to remane in this Kingdome, and hes nocht depairtit and abiddin furth pairof, sen pe said first day of August, pe 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and nyne 3eiris foirfaid; bot be the contrair, 3e and ilk ane of 3ow hes remanet within this Kingdome, in contempt of pe said Act of Parliament, and ar notoriouflic knawin to be Egiptianis, and sua repute and haldin: And pairfoir 3e and ilk ane of 3ow aucht to be demanit to pe death, and suffer pe panes pairof; conforme to the said Act of Parliament.

PERSEWAR, Mr Robert Foullis, substitute to our souerane lordis Aduocat.

The Pannell, viz. Moyfes Fa, producet ane Licence, grantit to him be the Counsell; quhilk the Aduocat acceptis, *in quantum*.—It is allegit be the Aduocat, that the conditiones specifeit in the Licence grantit to Moyfes Fa is nawayis keipit be the pannell, viz. that he fould find cautioun for fulfilling the perticular injuncciones specifeit in his Licence: Quhilk cautioun,<sup>4</sup> for his nocht entrie afoir<sup>5</sup> the Counsel, is vnlawit in the pane and penaltie of ane Thowfeand pundis; and the cautioner being charget for payment to the Thesaurer of the said penaltie, hes past to the horne: And thairfoir, in respect of the wordis of the Act of Parliament, and of the nocht payment of the penaltie, as also in respect that the conditiones specifeit in the Licence is nocht keipit, the said Moyfes Faw hes fallin vnder the danger of the said Act of Parliament, and the pane of daith inflictit vpon him; and the remanent perfones, his complices, aucht and fould be pvneift to the daith, conforme to the said Act: And protestis for Wilfull Errour aganis the Assyse, gif thai acquit, according to the said Act: And produces the Counsellis Act contrair the cautioner, quhair he wes vnlawit in the fowme;<sup>6</sup> togidder with the Letteris of Hoirning vset aganis him: And repeittis the Depofitioun of James Ballache, testifeing the said Moyfes being in companie and soctie with the Egiptianis, and of his geving Band to the said James, for redressing of dyuerse Thiftis: And repeittis the Act of Parliament to the Assyse.

<sup>1</sup> See Jul. 19, 1616.  
surety. <sup>5</sup> Before.

<sup>2</sup> Who forcibly take free quarters, &c.  
<sup>6</sup> The sum or amount.

<sup>3</sup> As.

<sup>4</sup> Cautioner;

THE Justice, nochtwithstanding of the allegiance proponit be the said Moyfes Fa, vpon the pretendit Licence producet be him; and in respect of the anfueries maid thairto be the Aduocat, referrit the samyn Dittay to the knowlege and tryell of ane Assyse.

VERDICT. The Assyse all in ane voce, be the mouth of Williame Murehead, mercheand burges of Edinburgh, chancellor, fand, pronuncet, and declairit the saidis Moyfes Fa, David Fa, Robert Fa, and Johnne *alias Willie* Fa, notoriousslie knawin to be Egiptianis, at the leift sua repute and haldin, to be ffylit, culpable, and convict of contravening the tennour of the said Act of Parliament, in thair contemptuous remaining and abyding within this kingdome, continuallie, sen the said first day of August, in the foirsaid yeir of God I<sup>m</sup>. sax hundreth and nyne yeiris, expres contrair the tennour of the said Act.

SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be hangit quhill thai be deid: And all thair moveabill guidis and geir pertening to thame, to be escheit and inbrocht to our souerane lordis use, as culpable and convict, &c.

#### **Abiding from the Raid of the Isles.**

Sept. 17.—JOHNNE M<sup>c</sup>MILLANE in Merskelloch, Johnne M<sup>c</sup>Millane in Bank, and Cuthbert M<sup>c</sup>millane in Drumreische.

Dilaitit for contravening of his Maiesteis Proclama<sup>t</sup>ioun, maid in the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris, in nocht passing forward with his Maiesteis Lieutenant to the Raid of the Ilis.

For releif of thair Cautioneris, and in respect that thai thame selfis ar na ffriehalderis nor landit gentilmen, haifing nather landis nor rentis, bot ar removeable Tennentis, and sa nocht comprehendit vnder the saidis Proclama<sup>t</sup>ioun, thay thairfoir compeirit this day and place, in the hour of caus, and offerit thame selfis to the Tryell of the Law, and to vnderly the rigour thairof, gif it war fund that thai war ony wayis comprehendit vnder the said Proclama<sup>t</sup>ioun: And forder, offerit to mak the Kingis Maiestie assignay to thair haill landis and heritages within this realme, gif thai ony had, at that tyme. In respect of the quhilk premisses, and of thair compeirance this day and place, in the hour of caus, and offer maid be thame in maner aboue specifeit, thay Protestit for thair cautioneris releif; and that thai fould onnawayis be callit, charget, or trubillit for the said allegit cryme in ony tyme cuming.

#### **Resset and Intercommuning with Mr Alexander Ruthven, &c.— Soborie Conspiracy.**

Nov. 7.—DAVID SPALDING of Effintullie.

Dilaitit of the tressonable Resset and Intercowmoning with Mr Alexander

Ruthven, fone to vmq<sup>le</sup> Alexander Ruthven of Freland, and fuppoirting of him with money and vther intertenement, he being his Maiefteis declairit Tratur, fforfalt in Parliament, and fugitiue, for airt and pairt of the treaffonable affifling and pairt-taking with JOHNNE, fumtyme ERLE OF GOWRIE, Alexander Ruthven his brother, in the treffonable Conspiracie devyfet aganis his Maieftie, at Perth, vpone the fyft day of Auguft, 1600 yeiris.

THE Juftice continewis this dyet to the fourt day of Marche, quhilk is the firft Wednidday thair of : And ordanit the defender to find caution for his compeirance that day. *Plegio, Johanne Spalding de Innerrydray.*

PRELOCUTORIS for the pannell, Mr Thomas Nicolfoun, Mr Andro Aytoun.

(Mar. 4, 1612.)—My Lord Advocat defyres that this mater may be continewit to the tuentie day of Maij nixtocum, in refpect that, be his Maiefteis Letter, directioun was gevin that probatioun fould be miniftrat to the Affyfe, of the pannellis giltines of the fact lybellit : And that, in the meane tyme, his Maieftie may be acquentit with the informeris flaknes in the perfute.

THE Juftice continewis this matter to the tuentie day of Maij nixtocum. *Plegio, ut fupra.*

PRELOCUTORIS in defence.

Mr John Ruffell, Mr Andro Aytoun, Mr Thomas Nicolfoun, Mr James Oliphant.

(Maii 20, 1612.)—Compeirit Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Aduocat to our fouerane lord, and declairit, that informatioun was gevin to him be his Maieftie, to follow furth this perfute aganis the pannell, his Informeris furneiffing probatioun in that matter, vtherwayis to defift : And in refpect na diligence is vset be the Informeris in this eirand, for fortherance of this perfute ; he thairfoir declairit, that he wald nocht infift in perfute of the pannell, at this tyme, bot defyret that the dyet fould defert.—Quhairupoun the pannell and his prelocutouris askit instrumentis, and proteftit, that he be nocht callit, charget, or perfewit for the crymes aboue fpecifeit, in ony tyme cuming. And nochtwithftanding of the premiffes, in refpect of his innocence of the faidis allegit crymes, as he affirmet, offerit him felff instantlie to the tryell of the Law, diffaffenting to all maner of continuatioun ; protefting alfo, that na Letteris be direct aganis him for the faid Cryme in tyme cuming ; becaus this is the fourt dyet keipit be him in this matter.

### Slaughter.

Nov. 8.—JOHNNE FARQUHARSOUN of Innerchald, Allafter Farquharfoun, his brother, Donald Farquharfoun younger, Allafter Farquharfoun, his brother, James Farquharfoun in Achalater, Johnne Robertfoun of Straloch, *alias Barrone Reid*, Johnne Gairdin in Balliemoche, Findla Farquharfoun in Glenylay.



Dilaitit of airt and part of the Slauchter of vmq<sup>le</sup> James Clerk in Auldranie ; committit in anno 1610 yeiris.

Compeirit Thomas Sinclair indueller in Edinburgh, and Robert Auchinlek, wryter, as procuratouris, speciallie constitute be Elspeth Kow the relict, and be Andro Howie, now hir spous, for his entreis ; and be vertew of the Letter of Procuratorie grantit to thame, of the dait at Aberdene the third day of November instant, subscryuit be James Daidfoune and Mr Andro Clerk connoteris,<sup>1</sup> in name, and at command, of the said Elspect and hir spous, past simpliciter fra the perfute of the hail perfonas on pannell, &c.

The pannell protestis that thai nor nane of thame be callit or perfewit for the said allegit slaughtar in ony tyme cuming.

### Slaughter—Stouth-neft—Shooting of Culberings, &c.

Nov. 27.—WILLIAME FORBES of Monymusk.

Dilaitit, accuset, and perfewit off the crymes following, viz.

FORSAMEKILL as vpon the nynt day of Maij, the zeir of God I<sup>m</sup>. V<sup>c</sup>. fourfoir zeiris, vmq<sup>le</sup> Alexander Menzeis, sone to vmq<sup>le</sup> Gilbert Menzeis of Culrie, Proveist of Aberdene, being directit be the said vmq<sup>le</sup> Gilbert Menzeis of Culrie, his father, to vissie<sup>2</sup> ane Halk-nest appointit be him to haif bene keipit and preferuet to our souerane lordis vse and plesoure,<sup>3</sup> within the Craig<sup>4</sup> of Findoun, pertening heritabillie to the said Gilbert Menzeis, oy<sup>5</sup> to the said vmq<sup>le</sup> Gilbert Menzeis of Culrie, lyand within the Scherefdome of Kincairdin ; the said vmq<sup>le</sup> Alexander Menzeis, estir visitatioun of the samyn, and that he had ordanit the tennentis of the saidis landis of Findoun to geve earnestt attendance to the keiping of the said halk-nest<sup>6</sup> for his Maieftais vse, as said is ; he being in sober and quyet maner retarne- and thairfra, cumand agaitwardis to the burgh of Aberdene, trusting in the meane tyme na inquieta- tioun, truble, harme, nor iniurie to haif bene done to him, be ony perfonas ; bot to haif frelie past furth the hie way, as his hienes frie subiect, in respect that he had offendit na man, nather be word nor deid : Neuertheles it is of veritie, that the said Williame Forbes of Monymusk, accompaneit with Alexander Robertfoun, Thomas Dik, and . . . . Mylne, then his servandis, and vtheris thair complices, with convocatioun of our souerane lordis legis, to the number of aucht perfonas, or thairby ; bodin in weir- lyk maner, with secreitis,<sup>7</sup> steil-bonettis, gantiletis, suordis, culveringis, and pistolettis, expreslie prohi- beit to be borne, worne, vsed vpon thair perfonas or in thair companeis, privatlie or oppinlie, outwith houffis, or schote with, be the Actis of Parliament, vnder the panes thairin contenit ; vpon the said nynt day of May, the yeir of God foirfaid, the said Williame Forbes, with his complices, came tym- oullie in the moirning, befoir the sone-ryfeing, to the Cairne<sup>8</sup> of Lorieftoun, lyand within the sche- refdome foirfaid, quhair thay darnet<sup>9</sup> thamefelffis, maist obscurlie, behind the said Cairne, with thair

<sup>1</sup> Co-Notaries.      <sup>2</sup> Inspect.      <sup>3</sup> King James VI., like many others of his ancestors of the Royal House of Stuart, was passionately fond of the sport of Hawking, and appears to have spared no expense in procuring the finest breeds, from various parts of Scotland (chiefly from the North of Scotland and from the Western Islands and Orkney.) The choicest kinds seem to have been brought from Denmark and Norway ; and, in many instances, the Falconers, who had trained them in those countries, were taken under the King's immediate protection and patronage.      <sup>4</sup> Craig, a precipitous rock or crag.      <sup>5</sup> Grandson ; oe.      <sup>6</sup> The books of the Lord High Treasurer abound with entries of payments to men ' for watching a halkis-nest ' at such a place, so as to secure the brood, and give timely notice when they were fledged and ready to take wing.      <sup>7</sup> A shirt of chain-mail, secretly worn under the ordinary dress.      <sup>8</sup> A heap or pile of stones, commonly erected on an eminence, which marks the place of sepulture of some remarkable persons. Cairns were often reared to preserve the memory of a remarkable Murder, &c.      <sup>9</sup> Concealed ; hid.

chargit culveringis, placet vpon restis,<sup>1</sup> awaiting the said vmq<sup>le</sup> Alexanderis bycuming, for his slauchter: Lyk as, thay lay at await for his slauchter behind the said Cairne, continuallie, fra befor the sone-ryfeing, quhill about aucht houris in the moirning; till at last, haifing perfauet the said vmq<sup>le</sup> Alexander soliter, him self allane, in sober and quyet maner, cumand by the said cairne, thay, af thair restis, dischargit thair culveringis at him, or enir he was circumspect of thame; and thairwith schote him throw the heart and body with tua bullettis; and thairby, maift schamefullie, crewallie, and vnmercifullie slew him, vpon set purposis, prouisioun, be way of Briganciè,<sup>2</sup> in vmbefetting the hie way, and foirthocht fellonie: AND nocht being satisfeit thairwith, thay feing him fall doun deid with the said schote, thay incontinent thaireftir ruschet fordwaris to him, and with thair fuordis and quhingeris maift schamefullie, crewallie, and tirannouslie gaif the said Alexander nyne bludie woundis about his heart, nochtwithstanding that thay had perfauet him lyand deid and slane be thame of befor: As ALSO, at the samyn tyme, be way of stouthreif, staw,<sup>3</sup> rest, and away tuik with thame his fuord, quhinger, cloik, and uther graith being vpon him; had and convoyit the samyn with thame, and disponit thairupoun at thair plesour: And the said Williame Forbes of Monymusk is airt and pairt of the said crewall Slauchter of the said vmq<sup>le</sup> Alexander, and of the Maisterfull stouth-reif of his fuord, quhinger, cloik, and vtheris aboue writtin. FOR the quhilkis, and for contravening the tennour of the said Act of Parliament, in beiring, weiring, and schuiting of the saidis Culveringis, dagis, and pistolettis, he aucht and sould be puneift, conforme to the Lawis of this realme.

PERSEWARIS, Gilbert Menzies of Pitfoddellis, as eldest brother-sone; Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Aduocat, &c.; David Menzeis of Tilliepowreis, as brother.

PRELOCOUTOURIS in defence, My Lord of Mar, My Lord of Moirtoun, Mr Thomas Henderfoun, Mr Alexander Peiblis, Mr James Oliphant, Aduocattis.

Efter the reiding of the said Dittay and accusatioun of the said Williame Forbes of the saidis crymes, the Aduocat, with the pairteis persewaris aboue writtin, his informeris, befor all forder proces, past fra that article of the Summondis anent the 'Stouth-reif,' *pro loco et tempore*: As also declairit, that he wald nocht infist vpon that woird of the Dittay beiring 'foirthocht fellonie': And adherit allanerlie<sup>4</sup> to the Slauchter and committing thairof, in maner contentit in the Dittay, be schottis of hagbuttis and pistolettis; and in beiring and weiring of the saidis hagbuttis, contrair the Actis of Parliament: Quhairvpone instrumentis was tane be the said Williame Forbes of Monymusk and his prelocoutouris; quha, nochtwithstanding thairof, offerit thame selfis reddie to defend for the saidis crymes past fra. And as concerning the Slauchter aboue writtin and remanent crymes lybellit, allegit that the Justice could not put the samyn to the Tryell of ane Affyse, becaus nocht only had the said Williame obtenit tua feuerall Letteris of Slanes fra tua of the brether to the defunct, in respect of thair satisfioun contentit thairin; bot also, the Kingis Maiestie, of his speciall grace and mercie, hes, be his Letteris of Remiffioun, pardonit and remittit the said Williame Forbes of Monymusk for the saidis crymes: And for verificatioun

<sup>1</sup> When the culvering or musket was first introduced, the barrel was so heavy as to require a separate staff, called a *rest*, from which a deliberate aim could be taken. The circumstance of the culverings being placed upon their rests, is noted as an aggravation of the crime, and a strong proof of the malice of the parties. Specimens may be seen in *Grose*, or in the more recent publication of *Meyrick* on Ancient Armour, &c. <sup>2</sup> Fr. *brigand, brigancie*. <sup>3</sup> Stole. <sup>4</sup> Alone; only.

thairof, producet tua feuerall Remiffiones, baith vnder the Grit Seill ; the ane, for the Slauchter aboue writtin, daitit vpone the xxvij day of Junij laft, and the vther, daitit vpone the firft day of Auguft laftbypaft, for beiring and weiring of the hagbuttis and piftolettis ; and vpone the production thairof askit instrumentis. To the quhilkis Remiffiones, and his Maieftis pardoun fet down thairin, the faid Williame Forbes tuik him felff, and offerit cautioun to fatisfie fa mony of the kyn and freindis of the faid vmq<sup>le</sup> Alexander as ar nocht fatisfieit alreddie, according to the modificatioun of the Lordis of Sefsioun, and thair Declaratour to be gevin thairintill.

Quhilkis tua Remiffiones, the Justice admittit ; and ordanit the faid Williame Forbes of Monymusk to ffind the faid Caution for the parteis fatisfioun, in maner aboue fpecifeit : Quhairupoun the faid Williame Forbes askit instrumentis.

And for obedience of the faid Justice Ordinance, ffand Williame Forbes of Port-Lethem cautioun with him felf, coniunctlie and feuerallie, to fatisfie fa mony of the kyn and freindis of the faid vmq<sup>le</sup> Alexander, as ar nocht fatisfieit alreddie, for the Slauchter aboue fpecifeit ; conforme to the modificatioun of the faidis Lordis of Sefsioun, and thair declaratour to be gevin thairintill, as law will : Quhairupoun the faid Gilbert Menzeis of Pitfoddellis, as eldefst brother-foone, and the faid Daid Menzeis, as brother to the defunct, askit actis and instrumentis.

### **Murder under colour of Law—Drowning for a petty Crime, &c.**

[THE Case which follows seems to have taken its origin from feelings of vindictive malevolence, on the part of a Notary in Lanark, a dependent of the Laird of Lee ; who, to gratify his base and revengeful temper, adopted the plan of conspiring against his patron's life and fortune, by accusing him of Murdering a poor man, under colour of Law ! This tale was so well got up, that the Lord Advocate entertained his complaint, and raised Criminal Letters against Lockhart. A more effectual channel was likewise made use of by Weir the Notary, who directly complained, through the Marquis of Hamilton, to the King, who was at all times accessible to such accusations of oppression ; from the double motive of desire to redress the wrongs of his injured subjects, and from his overmastering 'greed of filthy lucre : ' for many were the schemes resorted to by the British Solomon to enrich his coffers with the proceeds of the heaviest fines and pecuniary compositions which could be exacted, as peace-offerings, to appease his Majesty's inflexible justice ! A doubt having arisen in the mind of the Editor as to the truth of the accusation contained in the Criminal Record, he made a pretty extensive search, and has fortunately been enabled to trace the matter to its origin. Without proper vouchers having been produced, the reader would naturally have inferred, from a close inspection of the Record, that the Lord Advocate had been tampered with by some powerful friends of this influential Baron of Lee—and that Lockhart had been really guilty of the atrocious crime imputed to him by his accusers. The Letter from the Privy Council to the King, and the Deposition of Weir, which are appended, satisfactorily explain the matter, and clear the character of the Laird of Lee from the slightest suspicion on this score.]

Dec. 3.—JAMES LOKHART of Lie.

Dilaitit for Drowneing and puting violentlie to death of vmq<sup>le</sup> James Watfone, in Auchcat-burne, and vtheris crymes fpecifeit in his Dittay.

In respect of the Advocate's absence, he protestis for relief of Johnne Lokhart of Bar his cautioner : And he farther protestet for relief of George Auchinlek of Balmanno, cautioner for ' his compeirance befor my Lord Justice and his deputis, in the Tolbuth of E', vpon the xx day of December instant, and that he be nocht haldin to compeir the said day,' &c.

Dec. 20.—Compeirit James Lokhart of Lie, quha proponit and declairit, fforfamekill as he being charget, &c., in the moneth of October lastbypast, to find caution to haif compeirit befor the Justice or his deputis, vpon the saxt day of November thairefter, now lastbypast, in the hour of caus, to haif vnderlyne the Law for the allegit Murthour and putting to death of vmq<sup>1</sup> James Watfone, vnder cullour of Law ; as he that was convict of sic meane crymes, as, be the Lawes of this realme, the dome of death could nocht be inflicted vpon ; and for certane vtheris allegit crymes, at lenth specifit in the Letteris direct thairanent. The said James Lokhart of Lie, the tyme of the geving of the said charge, being furth of this realme, in the pairtis of England, yit nevertheles, be the advyse of his freindis, in his absence, efter knowlege gevin to thame of the said charge, and for eschewing of the danger of Hoirning contenit in the saidis Letteris, in caice of difobedience, George Afflek of Balmanno became cautioner for his entrie, the said saxt day of November, to vnderly the Law for the saidis crymes ; at the quhilk day, the said George Afflek haifing, in respect of the said Laird of Leyis nocht returning, obtenit of the Lordis of Seffioun thair Lordschipis Warrant, direct to the Justice, for continuatioun of the dyet that day, to this present day : The Justice, for obedience of the said Warrant, of consent of my lord Aduocat, personallie present that day, as persewar, continewit the said dyet to this day. Lykas, the said George Afflek than become cautioner, &c.

In respect that my lord Aduocat nor na vther pairtie compeirit this day and place, as persewaris, to insist in his persute, being oft tymes callit to that effect, thairfoir Protestit for releif of the said George, &c. Quhilk Protestatioun the Justice admittit : Quhairupoun the said Laird of Lie askit instrumentis.

I. LETTER, *the Privy Council of Scotland to THE KING.*

MOST GRACIOUS AND SACRED SOUERANE,

ACCORDING vnto your Maiestie's direction, send vnto me, for trying of those contradictorie informationis maid to your Maiestie be the MARQUES OF HAMMILTOUN<sup>1</sup> and THE LAIRD OF LEE, anent the executionn of *vmquhile James Watfoun*, and setting to libertie of *Jannet Forrest*, his spous, I causit warne the Marques and the Laird of Lie to compeir this day, for iustifeeing of thair informationis. The

<sup>1</sup> James, *second* Marquis of Hamilton, a nobleman high in favour with the King, who granted him the Abbey of Aberbrothock, which was erected into a temporal Lordship, appointed him a Privy Councillor, one of the Gentlemen of the Bed-Chamber, Lord Steward of the Household—and subsequently, created him an English Peer, with the titles of Baron Ennerdale, and Earl of Cambridge, Jun. 16, 1619. Besides other great appointments, he was High Commissioner to the Parliament at Edinburgh, August 4, 1621, and was installed Knight of the Garter, Jul. 7, 1623. He died at Whitehall, Mar. 2, 1624-5, *etat.* 36. He married Lady Anne Cuninghame, fourth daughter of James, *seventh* Earl of Glencairn.

Marques comperit be Sir Johne Hammiltoun, his brother, who affermed, that Jedeone Weir, notair in Lanerk, and Clerk of the proces led againis the said vmq<sup>le</sup> James Watsoun, declairit and thew vnto the Marques, that this Watsone and his spous wer onlie callit and convict, and Watsoun execute, for steilling of ane lamb, and that the wyffe, after her convictioun, wes sett at libertie. And for verificatioun of this his affermatioun, he exhibite the said Jedeone Weir; who, vpoun examinatioun, confessit that he had gevin this informatioun to the Marques, as alsua to your Maiesteis Aduocat, the tyme of the raising of the Criminall Letteris aganis Lie; as your Maieftie, be his Deposition, heirwith fend vp, will perfave. The Laird of Lie compeirand, affermed constantlie, that this Watsoun wes callit and convict, vpoun his awin judiciall Confessioun; and accordinglie execute, for the steilling of nyne scheepe. And for verificatioun heirof, he produceit the proces, writtin enery worde with Jedeone Weiris awne hand; whilk, being showne vnto him, he could not deny the same.

This is all that hes bene tryit in this mater; whairby it appeiris, that the Marques hes bene abused<sup>1</sup> be the said Jedeone Weir, who, vpoun some priuat passiou and miscontentment aganis the Laird of Lie, maid this informatioun. And as for the wyffe, thair wes no thing verifeit aganis hir, bot the stealing of ane lamb, confessit be hir self. Whairupoun she wes dimittit,<sup>2</sup> in respect that the Affise could gif no verdite aganis hir. At this examinatioun, I wes assistit be the Archiebisshop of Glasgw,<sup>3</sup> the Erll of Glencairne,<sup>4</sup> the Lord of Scone,<sup>5</sup> the President,<sup>6</sup> Prenie Seill,<sup>7</sup> Secretair,<sup>8</sup> Justice Clerk,<sup>9</sup> Aduocat,<sup>10</sup> and Sir Robert Meluill;<sup>11</sup> who all thought meete that Warrant and directioun sould be gevin for deserting of the dyet appointit for the Laird of Lies tryale; whilk accordinglie wes done, whill the forder knowledge of your Ma<sup>tes</sup> gracious will and pleasour heiraient, whairvnto I full conforme my selff. And so, with my humble and hairtie prayeris vnto God, recommending your sacred Ma<sup>te</sup> and all your royall progenye to his faderlie and devyne protectioun, I rest for ever,

Your Maiesteis most humble and obedyent subiect and feruitour,

(EDINBURGH), 28 Nouember, 1611.

DUNFERMELINE.

To THE KING his most sacred Majestie.

II. 'JEDEAN WEIR, his DEPOSITION, 27 Nouemb. 1611, anent Laird Lie Lockhard,'  
*referred to in the foregoing Letter.*

JEDEONE WEIR, notair in Lanerk, sworne, and demandit vpoun the forme and maner of the Dittay and accusatioun of vinqhile James Watsoun in Lie Mure, and Jonnet Forrest, his spous, and of the convictioun and executioun following thairupoun: Deponis, that the said vinqhile James and his spous wer only callit and perfewit for the stealing of ane lamb; and that thay wer convict thairof: And that the said James Watsoun wes drownit for the stealing of the lamb; and that the said Jonnet Forrest, his spous, wes sett at libertie: And that this Deponner wes Clerk of the proces; and that the proces is writtin with his awne hand: And this he deponis, so fer as his memorie servis him. And deponis, that he gaif this informatioun to the Marques of Hammiltoun, as alsua to Sir Thomas Hammiltoun of Byris, knight, his Maiesteis Aduocat.

TENET *cum principali*, J. PRYMROIS.

### Chest—Falset (Forgery)—Imposture—Perjury, &c.

Dec. 12.—DAVID DONALDSOUN, chopman in the Cannogait.

Duped; imposed upon. <sup>2</sup> Dismissed *simpliciter* from the bar. <sup>3</sup> John Spotiswood, the Church Historian, &c. <sup>4</sup> James, *seventh* Earl of Glencairn. <sup>5</sup> David, *first* Lord Scone, who, while he was Sir David Murray of Gospertie, was successively Cup-bearer, Master of the Horse, Captain of the King's Guard, and Comptroller. For the share he had in rendering the King so essential service, on occasion of Gowrie's Conspiracy, he got the Barony of Ruthven, with the Abbacy of Scone, which last was erected into a temporal Lcd'ship; and he was afterwards created Viscount of Stormont. <sup>6</sup> John Preston of Fenton Barns, President of the College of Justice. <sup>7</sup> Sir Richard Cokburn of Clerkington. <sup>8</sup> Sir Thomas Hamilton, afterwards Earl of Haddington. <sup>9</sup> Sir John Cokburn of Ormistoun. <sup>10</sup> Sir Thomas Hamilton. <sup>11</sup> Of Bruntisland, one of the Extraordinary Lords of Session.

Dilaitit of the ffalfeifeing, fforgeing, and counterfuteing of ane fals Affignatioun, &c. fpecifeit in his Dittay following.

## PERSEWARIS:

Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Johnne Alshunder,<sup>1</sup> indueller in the Cannogait.

DAVID DONALDSOUN, chopman in the Cannogait, 3e ar indytit and accufet, fforfamekill as 3e, haifing ingyret<sup>2</sup> 3ourself in the acquaintance of Johnne Alschander, indueller in the Cannogait, ane pur, aged, fimple<sup>3</sup> man, wanting childrene and freindis;<sup>4</sup> of fet purpois to mak 3our advantage, vnlauchfullie, of him, and to defraud him of that fmall portioun of geir quhilk refted<sup>5</sup> to him for his intertenement,<sup>6</sup> in his decriped and decayed age; and be 3our flatteris and fubtelteis, promeiffing to him 3our affiftance in his actiones and effairis, with his intertenement in 3our houfe; haifing pairby obtenit of him credeit to handill and pervyfe his writtis and eidentis; 3e, in the moneth of September, or pairby, in the 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and ellevin 3eiris, thiftiouflic ftaw and conceillit frome him, and retaynit in 3our handis, tua Obligationis maid to him; the ane pairof, of the dait the xxj day of Januar, I<sup>m</sup>.V<sup>c</sup>.lxxxxviiij 3eiris, quhairby Johnne 3oung in Dudingftoun was obleift to pay to him the fowme of ane hundreth pundis, and fail3eing pairof to infeft him (in) ane annuel-rent; and the vper, of the dait the fyft day of Februaire, I<sup>m</sup>.Vj<sup>c</sup>. and ten 3eiris, quhairby Johnne and Thomas Carffis was bund to the faid Johnne Alschunder to pay to him þe fowme of ane hundreth and tuelf pundis: And redelyuering to him þe reft of his writtis, 3e affirmet to him, that 3e had delyuerit to him his haill writtis and eidentis. AND eftir that 3e had thiftiouflic ftowin fra him his faidis Obligationis, in maner and at þe tyme aboue fpecifeit, and had confiderit with 3our felf that þe faidis Obligationes wald be vnprofitable to 3ow vnles 3e war maid affignay pairto, and knawing alfo that þe pur man was nocht altogidder fo fenfles as to qdenude him felf of his haill guidis, geir, obligationes, and dettis in 3our fauour, being ane ftranger, to quhome he was nawayis obleift, and quhome he had no reffone to trust with his haill moyane and eftait; 3e, falllic, wiketlic, and effrontellie refoluet to fforge, counterfute, and ffalfesie to 3our felf and 3our awin behuife ane Affignatioun to the faid Johnne Alschunderis foirfaidis Obligationes and haill remanent guidis and geir: ffor performeance quhairof, knawing that 3e behovet to haif þe affiftance of fum man quho wald tak vpone him þe name and represent the perfonage of the faid Johnne Alschunder, 3e firft delt with . . . . Ramfay, ane aged begger, to play that perfonage; and eftir 3e had craftillie intyfed him to confent pairto, 3it foirfeing<sup>7</sup> with 3our felf the grit and mony

<sup>1</sup> Alexander.    <sup>2</sup> To ingratiate, by artifice and circumvention. From Lat. *m*, and *gyro*, to twist or turn round; to entwine, &c.    <sup>3</sup> Weak; facile.    <sup>4</sup> Childless, and having no blood-relations, &c. to care for him in his old age.    <sup>5</sup> Remained.    <sup>6</sup> Livelihood; maintenance.    <sup>7</sup> Foreseeing

differences, in fauour and stature,<sup>1</sup> betuix him and þe said Johnne Alschunder, wald easilie bewray 3our falsset, 3e delt with . . . . . Cuthbert, cordiner in the Kowgait, quha haifing refuifet to be actour in so pernicious and wiked ane interpryse, at last 3e delt with Johnne Henrie, cobler in the Cannogait, and finding him bothe fit and willing to play the pairt of so damnable a tragedie, and knowing that gif his face sould be sene bare and vncoverit, it wald be þaireftir easilie discoverid, that he haifing the sicht of bothe his eyis nicht easilie be discernit from Johnne Alschunder, quho is blind of one of his eyis, 3e caufit þe said Johnne Henrie cover one of his eyis and þe fyde of his face with ane blak clothe, vpone the tuelf day of November lastbypast, and than informet him sufficientlie of all the circumstances necessar to be vsed be him in the representatioun of the persone of the said Johnne Alschunder, for accomplieffing 3our wicket, pernicious, and fals purpois: And immediatlie þaireftir, convoyit him with 3ow to the toun of Leith; and þair travellit with Patrik Glasfurd, notter, to forme ane Assignatioun to 3ow of the foirsaidis Bandis, and of the said Johnne Alschunderis haill remanent guidis; quhilk being done at 3our desyre, 3e þair-estir convoyit the said Johnne Henrie, cobler, to þe wryting-buithe of the said Patrik Glasfurd in Leyth, in quhais presens, and in þe presens of Archibald Norwell, connotour,<sup>2</sup> and dyuerse honest witnesses, altogidder ignorant and innocent of 3our false, disfaueabill, and wicket purpois, the said Johnne Henrie, cobler, quhome 3e supposed in place of þe said Johnne Alschunder, and quho, of 3our speciall causeing, command, counsell and persuasioun, taking vpone him, falselie and mischantlie,<sup>3</sup> þe name and personage of þe said Johnne Alschunder, gaif command to the saidis connoteris to subscriue to 3ow and in 3our faouris the foirsaid Assignatioun<sup>4</sup> to the said Johnne Alschunderis Obligatiounes and guidis. Quhilk being done, and subscriuit be þe saidis Notteris and witnesses insert; and þe Notteris, for dischaarge of þair deutie, haifing proponit to 3ow, that resson and conscience requyret that 3e sould provyde for þe pure auld man Johnne Alschunderis intertenement, during his lyftyme, 3e consented that þai sould forme ane Bak-Band, obleiffand 3ow to him to þat effect, during his lyftyme; quhilk 3e subscriued and delyuered to the said Johnne Henrie, affirmeing him self falllie to be the said Johnne Alschunder: AND schortlie þaireftir 3e causet registrat the foirsaidis Obligatiounes, and gaif in the said Assignatioun to the Register; and

<sup>1</sup> In point of looks, complexion, personal appearance, and stature.    <sup>2</sup> Co-Notary.    <sup>3</sup> *Front O. Fr. meschant*, wicked, worthless, &c.    <sup>4</sup> By the Law of Scotland, blind or maimed persons, and those who cannot write, may execute Last-wills and deeds of the greatest importance and solemnity, through the medium of two Public Notaries, who, in presence of four or more witnesses, read over and explain the nature of the Deed to be then completed; and on getting the instructions of the party, write out an official and Notarial schedule, or '*docquet*,' as it is called, attesting the fact, and stating precisely the reason of their being called upon to subscribe the deed in question. On the Notaries adhibiting their official signatures—the witnesses likewise, in attestation of the fact, subscribing their names—the writing is perfectly valid in Law.

pairupoun and vpon the said fals Assignatioun 3e raifet Letteris of Poinding and Intromiffioun, and fallie, wicketlie, and thiftioufflie mellit<sup>1</sup> and intromettit with fourtene fcheip pertening to the said Johnne Alschunder, flew and difponit vpon tua of thame, fauld and difponit vpon the reft, and waifted and confumed the price pairof in fatisfeing the gluttonie of 3our deboifched<sup>2</sup> affociattis: AND being callit befor þe Lordis of Secretit Counfell, 3e abaid at þe verritie of the said Assignatioun, vpon 3our grit aith, and vpon the perrell of 3our lyfe: LYKAS, 3e haifing abiddin pairat, in prefens of the Lordis of Seffioun, and periuredlie avowed the fame to be ane trew evident, eftir that be þair dilligence in 3our Examinatioun, 3e was put frome all cullour of juftifeing pairof, 3it 3e malicioufflie and impudentlie preifed to cleir 3our felff, and bring wrangus imputatioun pairof vpon 3our innocent wyfe and hir ffather. QUHAIRBY, 3e haif committed the crymes of Thift, Impoifture, Periurie, Falfet, and Diffaitful fuppositioun of ane counterfute perfonage, fallie, wicketlie and diffaueabillie to affume and vfurpe the name and perfonage of the said Johnne Alschunder, to his diffait, preiudice, and manifest oppreffioun, in maner aboue writtin. For the quhilk, 3e aucht to be exemplarlie puneifchet, as ane Theif, abufear, impoifture, and periured falfer, and perfuader of ane pernicious villane to vfurpe, affume, and tak vpon him the name and perfonage of ane of his Maiefteis trew fubiectis, for his diffait and ouerthrow.

THE perfones of Affyfe being chofin, fuorne, and admittit, eftir accusatioun of new agane of the said Dauid Donaldfoun, be Dittay, in thair prefens and audience, of the crymes aboue writtin, and eftir productioun to thame, be our said fouerane lordis Aduocat, of ane Decreit of the Lordis of Seffioun, of the dait the ellevint day of December instant, ffinding and declairing the foirlaid Assignatioun allegit, maid and grantit to the said Dauid Donaldfoune be the said Johnne Alschunder, in maner fpecifeit in his Dittay, to be ffals and fenzeit in the felf, forget, and devyfet be the said Dauid; and thairfoir, decerning and ordaning him to be puneifchet in his perfone and guidis thairfoir with all rigour, in exampill of vtheris.

VERDICT. The Affyfe, be the mouth of Johnne Mathie, bonat-maker, chancellor, ffand, pronuncet and declairit the said Dauid Donaldfoune to be Giltie, culpable, and convict of the crymes of Thift, Impoifture, Periurie, Falfet, and Diffaitful fuppositioun of the said Johnne Henrie, cobler, ane counterfute knaif, fallie, wicketlie and diffaueabillie to affume and vfurpe the name and perfonage of the said Johnne Alschunder, ane pur, aget, fimple man, to his diffait, preiudice, and manifest Oppreffioun; in maner fpecifeit and at lenth fett down in the said Dittay.

<sup>1</sup> O. Fr. *mester*, to intermeddle, &c.

<sup>2</sup> O. Fr. *desbauché*, debauched, worthless, &c.



SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid; and his haill moveable guidis and geir to be efcheit and inbrocht to our fouerane lordis vse, as culpable and convict of the saidis crymes:—And lykwayis, Ordanit thir woirdis, ‘FOR THIFT, FOR FALSET, FOR IMPOSTURE, AND PERIURIE,’ to be writtin in grit letteris vpon tua feuerall paperis, and affixt, ane vpon his bak, the vther vpon his breift, the tyme of his executioun. Quhilk was pronuncet for Dome,

[*Sir Williame Heart, Justice-Depute.*]

ASSESSORES nominat to the Justice be the Lordis of Secret Counsell.

Mr Johne Prestoun of Pennicuik, President of the College of Justice; Sir Richard Cokburne of Clarkingtoun, Lord Previs Seall; Sir Alexander Drummond of Medope; Mr Williame Oliphant of Newtown.

‘**Inbasion**’—**Taking Captive**—**Wearing Hagbuts, &c.**

Dec. 21.—WILLIAME DOUGLAS, Younger of Drumlanerig.<sup>1</sup>

Dilaitit of the Invaiding and persewing of Williame Kirkpatrick of Kirkmichell; and for Vfurpatioun of our fouerane lordis royall pouer and autoritie, in taking him Captiue and Priffoner at Dreffitland, and thairfra transpoirting him to the place of Drumlanerig, quhair he was detenit; and keiping him in cloife priffone, within the Tour of Drumlanerig, for the space of sax or fevin dayis, or thairby, he being our fouerane lordis frie lege; committit vpon the fyftene day of July, 1610 yeiris: And for contravening of our fouerane lordis Actis of Parliament, in beiring . . . . . and weiring of hagbuttis and pistolettis.

PERSEWARIS, Williame Kirkpatrik, appeirand of Kirkmichell; Sir Thomas Hammikoun of Byres, kny<sup>t</sup>. PRELOCUTORIS in defence, Mr Alexander King, Mr Thomas Hoip, Aduocatis; my Lord of Angus; my Lord of Wigtoun; Sir James Douglas elder of Drumlanerig; my Lord Sanquhar.

It is allegit—na proces at Kirmichellis instance, becaus he is rebell; and producet the Hoirning for verificatioun thairof, at the instance of the Laird of Cloisburne elder, for nocht payment of the pryces of certane victuall. It is anfuert, aucht to be repellit, in respect he is relaxt; and producet the Relaxatioun thairupoune.—It is forder allegit, that he is at the horne for nocht payment of the Taxatioune.—Thaireftir, my Lord Aduocat declairit that he had Warrant of his Maiestie to persew, and conforme thairto, declairit he wald infist in the pannellis persute, for the crymes contenit in the summondis.

It is allegit be my Lord Aduocat, that this Hoirning for the Taxatioun aganis Kirkmichell can nocht debar him to persew, becaus, be Act of Parliament, in anno 1597, it is appointit that all Hoirningis execute aganis ony pairtie, fall ather be producet judiciaillie, or in presens of ane Notter and foure witnesses; And trew it is, that the Registratioun thairof is contrair to the said Act. It is

<sup>1</sup> See the Case of Alexander Kirkpatrick, sone to Sir Thomas K. of Cloisburne, kny<sup>t</sup>, Jun. 28, 1611.

anfuerit that the Act of Parliament in anno 1597 is tane away by a posteriour Act of Parliament, viz. in anno 1600.—It is allegit be my Lord Aduocat, that this Hoirning is nocht competent in the perfone of the pannell, feing it is nocht execute at the pannellis instance for ane criminall cause; and forder, the pairtie perfewar is relaxt, albeit he haif nocht his Relaxatioun vpoun him. It is anfuerit, it is verrie competent to allege na proces at the instance of the perfewar, sa lang as he standis rebell.

THE Justice, with advyse of the Assessoris, ffindis na proces at the instance of Kirkmichell, sa lang as he standis rebell, vnrelaxt.—Quhairupoun the pannell askit instrumentis.

My Lord Aduocat declairis he infistis, for his Maiesteis intreis, in perfute: quhairupoun the pannell askit instrumentis.

It is allegit, that my Lord Aduocat man (*must*) condiscend in the Summondis: *First*, that the pannell, anent the beiring of Pistolettis, thai war borne on his perfone: *Secundo*, gif thai war borne in his companie, man<sup>1</sup> condiscend vpon that perfone: *Tercio*, *non fuit dolo*, becaus gif any was borne in his cumpany, it was by<sup>2</sup> his knowlege.—It is anfuerit, aucht to be repellit, in respect of the Summondis beiring that the Laird of Drumlangrig and his complices, at the leift ane or vther of thame, buir pistolettis at the tyme lybellit, viz. thais quha ar expresfit in the Summondis, and euerie ane of thame, at the leift ane or vther of thame.

THE Justice, with advyse of the Assessoris, ffindis the fummondis, as thai ar fett down, to be relevant, beiring that the pannell, with thair complices, lurkit and darnit<sup>3</sup> thame selfis in maner lybellit.—Quhairupoun my Lord Aduocat askit instrumentis.

It is allegit, that the pannell can nocht be convenit for *Williame Douglas of Reidhous*, becaufe the said Williame, being convenit for pistolettis afoir the Counsell, was fynet be the Counsell thairfoir; and producet ane Decreit of Counsell, for verifeing thairof: And in respect of the Act of Parliament, in anno 1600, can nocht be perfewit afoir the Justice, for that cryme, of new agane.—It is anfuerit, aucht to be repellit, in respect of the Summondis. It is allegit, that Williame Douglas being perfewit at the instance of the pannell, befoir the Counsell, for bering of pistolettis, and the (injury) done to the pannell the tyme lybellit; as the Decreitis beiris: It is thairby tryit,<sup>4</sup> that the beiring thairof was in Kirkmichellis companie, and nocht in the pannellis company: *Secundo*, feing Douglas is fynet befoir the Counsell fen that cryme, as be the said posteriour Act of Parliament he fuld nocht be of new perfewit befoir the Justice for that cryme, *per consequentiam* the pannell can nocht be perfewit as haifing Douglas in his companie.—It is anfuerit be the Aduocat, that it is a verrie evill consequence,<sup>5</sup>

<sup>1</sup> Must.    <sup>2</sup> Without; contrary to.    <sup>3</sup> Concealed; hid.    <sup>4</sup> Decided.    <sup>5</sup> A very false conclusion.

and the allegiance aucht to be repellit, in respect of the Summondis.—It is allegit for *Hob Hunter*, that he was deid before the tyme lybellit; quhilk he offeris to preve, be Witnesses present at the bar.—It is anfuert, that that probatioun can nocht be ressaunt, bot man be tryit be the Affyse.—It is allegit that the Summondis is nocht relevant, except the persones contenit in the Summondis war the pannellis houshald serwandis, or cum furth of his house with him, be his directioun, and that thai<sup>1</sup> war borne *ex mea scientia*: And that na fact or deid is done with pistolettis to the hurt of ony persone, quhilk is nocht exprest in the Summondis.—It is anfuert, aucht to be repellit, in respect of the Act of Parliament and Dittay foundit thairupoun: And forder, seeing the lyk persute hes oft tymes bene decydet and fund relevant in this Judgement ofbefoir, desyres my lord Justice to advert thairvnto.—It is anfuert be the pannell, that the preceis wordis of the Law is not to be respectit, bot *anima et ratio legis*, for the Lawmaker is nocht to puneise persones for haifing pistolettis in thair cumpany by<sup>2</sup> thair knowlege, bot<sup>3</sup> the breker of the Law be schuting of pistolettis, and beir- ing of thame of purposis to offend thairwith.—Anfuert the Aduocat, aucht to be repellit, in respect of the Act of Parliament, quhairto he referris him self.

THE Justice, with advyse of the Assessoris, Repellis the allegeances, in respect of the lybell as it is fet doun, except for *Reidhous*, quhilk the Justice continewis that matter quhill<sup>4</sup> the Counsell be advyset thairwith.

It is forder alleget for the pannell, that feing the Judge has ffund the Dittay relevant, in respect he and his complices darnit and lurkit in maner lybellit; that thairfoir, the pannell can nocht be convenit for *Williame Douglas* beirring of pistolettis; becaus it is cleir, be the Decreit of Counsell productet, that *Reidhous* wes vpon the Ball-grene, playing with him, Kirkmichell, the hail lycht, and sa possibillie could nocht be darnit ofbefoir in the leght; and the persewer is nocht able to afferme that thai war darnit eftir the boilspell<sup>5</sup> dissoluit.—It is anfuert be the Aduocat, it is nawayis contrair, feing *Williame Douglas* mycht half bene in Kirkmichellis company afoir none, and with the pannell (efter none).

It is allegit be the pannell, that the taking of ane man is nocht capitall, bot is only persewit as ane Ryote befoir the Counsell; and productet tua practikis<sup>6</sup> led afoir the Counsell for the lyk cryme.—It is anfuert, aucht to be repellit, in respect of the cowmoun Law and praktik obseruit befoir the Justice in the lyk persutes ofbefoir: Repeittis *Dumbrekis* praktik, M<sup>c</sup>gregouris, and Fintreis for verifieing thairof.—It is anfuert, for *Dumbrekis* praktik, that he is nocht sa

<sup>1</sup> Viz. the pistols.      <sup>2</sup> Without.      <sup>3</sup> Unless.      <sup>4</sup> Until.      <sup>5</sup> After the party broke up. This term is commonly written and pronounced *Bonspeil*, signifying a contest between two parties or parties at 'curling' on the ice, archery, golf, &c. It is likely, in the present instance, to have been a match at 'golf,' or, more probably, *foot-ball*, both of them favourite games in Scotland. The *Ball-green* favours this conjecture.      <sup>6</sup> Decisions; instances; parallel cases.

mekill convict for taking of the Kingis frie lege, as for Thift and Stouthe-reif; quhilk he referris to his convictioun.—It is allegit be the Aduocat, that *Dumbrek* is convict of Treffone, for the taking and detening of Meldrum of Aquhorteis, and Andro Meldrum his brother. Allegis the lyk for *M<sup>c</sup>Gregouris*, quha war bayth convict and put to the death for the saidis crymes: And as for *Fintrie*, the Summondis was fund relevant, albeit he was abfoluet be þe Affyfe.—It is anfuerit be the pannell, thair was ma<sup>1</sup> cryme conioynet in thair Dittayis, nor<sup>2</sup> fimple Taking only, and mair nor ane Taking; and the Law Ordanis *exercitium Privati carceris*, only to be ane cryme, loco, ‘*Jubens*,’ codice, ‘*de Privatis carceribus*,’ et *Baldus ibid.*: Quhilk Law is also derogait be ane posteriour Law in that samyn Title, be quhilk (*exercitium privati carceris*) is only punifchet *pena*, . . . . and the practyk of . . . .<sup>3</sup> is only to puneife *pena pecuniaria*; and allegit *Julius Clarus*.<sup>4</sup>

It is allegit, the Laird of Kirkmichell, the tyme of his taking lybellit, was at the horne, and be vertew of Letters of Captioun, was tane be the Scheref of the fchyre, quhome the pannell affistit allanerlie<sup>5</sup> in the Taking: And producet the Hoirning and Letteris of Captioun, be the quhilk the Scheref-Depute, Robert Creichtoun, was charget to tak him, being rebell. It is anfuerit, that the allegance aucht to be repellit, in respect the Letteris quhairupoun the Laird of Kirkmichell is denuncet war fuspendit *simpliciter, in foro contradictorio*, and he relaxt be the fpace of ane half yeir of befoir.—It is allegit be the pannell, that the tyme of Kirkmichellis taking, thair was na Relaxatioun fchawin, and na knowlege was gevin of his Relaxatioun to the Schireff; and fa he was *in optima fide* in taking of the Kingis rebell, nocht knawin to him to be relaxt: And forder producet ane Act, quhair Robert Creichtoun was confitute Scheref-depute. It is forder allegit, that gif the Scheref had been perfewit for Taking of the Kingis fre lege, nocht knawn to him to be relaxt, bot charget to tak him; as na Dittay could be relevant aganis him, in lyk manner, na proces aganis the pannell for being in his companie, and affifting the Scheref at that tyme.—It is anfuerit, aucht to be repellit, in respect of the Summondis, Decreit fufpending the Hoirning, and Relaxatioun producet; and the lybell beiring that Young Drumlanerig and his complices hurt and woundit Robert Creichtoun for ftaying them to flay Kirkmichell; and fua can nevir allege that thai affistit him in execution of his office.

It is forder allegit, that this Dittay can nocht be comptit ane cryme, in respect the perfone tane was the Kingis rebell; and for verifeing thairof, repeittis the Hoirning producet for nocht payment of the Taxation; and thairfoir the Dittay can nocht be put to ane Affyfe: Quhilk Hoirning is daitit the xj of Februar

<sup>1</sup> More.    <sup>2</sup> Than.    <sup>3</sup> Obliterated in Record.    <sup>4</sup> An old Commentator.    <sup>5</sup> Only; merely.

1601. It is anfuert, that it is nocht onlie for Taking of the Kingis frie lege that the pannell is conuenit, bot for Vfurpatioun of the Kingis authoritie.—It is allegit, that except the perfone tane, the tyme of his taking, had bene the Kingis frie lege, it can nocht be fund that the pannell vfurpitt the Kingis authoritie.—It is anfuert, that the taking of ony perfone but<sup>1</sup> Commiffioun of the Prince is Vfurpatioun of the Kingis authoritie, quhidder he be rebell or nocht.

THE Justice continewis, with advyse of his Affeffouris, Interlocutour vpon the former allegeances to Tyfday nixt.

It is forder allegit, that as of the Law, *bannitus potest impune occidi, sic multo fortius capi et incarcerari*; quhilk is expreflie decydit be Baldus, in the foir-faid Law 'Jubens,' codice 'de Privatis carceribus,' numero finali: And be Julius Clarus, L. *sententiarum* § *Homicidio*.—It is anfuert be the Aduocat, that *Banniti*, of the Cowmoun Law, was only thay quha war declairit rebellis for ane capitall cryme.—It is duplyit for the pannell, that of the Ciuill Law, that *Banniti* war alfweill rebellis for crymes, as for pecuniall fowmes; and for preving thairof citit Julius Clarus, L. *sententiarum* § *Homicidium*.

THE Justice Continewis Interlocutour, with advyse of his Affeffouris, to Tyfday nixt.<sup>2</sup>

Dec. 24.—Compeirit Williame Douglas, younger of Drumlanerig, quha declairit that he offerit him felf reddie to anfuert and abyd tryell vpon the Summondis and Dittay, at the instance of his hienes Aduocat: And als, is content, that nochtwithftanding the Laird of Kirkmichell be rebell, and was declarit be Hoirning the laft dyet, to pas fra the faid Hoirning vset aganis him, and that he haif place and perfone to ftand in Judgement aganis him, and to infist in his perfute on the Summondis and Dittay producet aganis him: And in respect thairof, the pannell defyret my Lord Justice to pronunce Interlocutour vpon the allegeances and anfuertis maid in this caus vpon Setterday laft, quhilk was the laft dyet of this proces.

THE Justice Defertis this dyet, and that in respect that my lord Aduocat and the Laird of Kirkmichell, parteis perfewaris, quha war oft tymes callit to infist in this perfute, compeirit nocht to that effect.—Quhairupone the pannell askit instrumentis; and that nochtwithftanding thairof, he offerit him felf to defend according to the Law, for the haill crymes contenit in the Dittay.

(Apr. 24, 1612.)—MY Lord Aduocat declairit that he wald infist for baithe the crymes contenit in the Summondis, alfweill for taking and incarceration, as beiring and weiring of piftolettis.—The pannell, ffor cleiring of his In-

<sup>1</sup> Without.    <sup>2</sup> [On the margin of the Record,] "This haill proces preceeding, be ane Act maid vpon the xxiiij day of Apryle, 1612, is be the Justice, with advyse of the Lordis of Secreit Counfell, ordanit to be deleit furth of the Buikis of Adiornall," &c.

nocencie of the first pairt of the Summondis, concerning the taking of the Laird of Kirkmichell, &c., producet ane Letter, subfcryuit be the Laird of Kirkmichell, and certane famous Witneffes ; quhair of the tennour followis.

I, WILLIAM KIRKPATRICK, appeirand<sup>1</sup> of Kirkmichell, Testifeis and declairis, that þe tyme I went with Young Drumlanerig to the place pair of, quhilk was vpon the xv day of July, I<sup>m</sup>.Vj<sup>c</sup>. and ten zeiris, it was at my speciall defyre to gang with him, for efchewing of farther inconvenient to my brother and sic vtheris as war in my companie, for allegit wrangis done to his faper ; quhair of I was innocent : And declairis þat I wes nocht tane þair against my will ; and that efter I come to the Place of Drumlanerig, I was honestlie and courteoullie interteneit, haifing frie libertie to pas quhair I pleifit, as ane frie Gentilman : And being on the morne pairstir oft and dyuerse tymes requyret be Young Drumlanerig to pas quhair I pleafet, I refuset to go forth, in respect of sum informatioun I had ressauid ; and remanet þair against his will, quhill he forcet me to pas away, always with sic forme of courtesie as he could vse to sic ane Gentilman : And that I was nawayis detenit nor keipit as Captiue or Prisoner : And that þe Letteris raifit at my instance aganis him befoir þe Justice, was by<sup>2</sup> my knowlege or advyse : Quhilk I testife to be of treuthe. AND consentis þat þir presentis be infert and registrat in the Buikis of Counsell or Adiournall : And to that effect, Constitutis Mr Alexander King, aduocat, my Pro<sup>r</sup>, to compeir and consent to þe registering heirof ; quhilk is writtin be Williame Penman, wryter in Edinburgh, and subfcryuit with my hand, AT ED<sup>m</sup>, the ellevint day of Januar, the zeir of God I<sup>m</sup>. six hundreth and tuelf zeiris, befoir þir Witneffes, Thomas Greirfone of Bariarg, James Greir his bro<sup>r</sup>, Sir Williame Greirfone of Lag, kny<sup>t</sup>, James Dowie, wryter, and George Bryce, inferter of þe dait and witneffes heirintill.

KIRKMICHELL, Younger.

Lag, witness, THOMAS GRIERSONE, witness, JAMES GRIERSONE, witness,  
J. DOWIE, witness, GEORGE BRYCE, witness.

Compeirit the said Mr Alexander King, as pro<sup>r</sup> for Williame Kirkpatrick, younger of Kirkmichael, and defyrit the samyn to be infert and registrat in the Buikis of Adiornall, to the effect foirfaid ; and alledges, that the said cryme of Taking and Incarceratioun of Young Kirkmichell, can nawayis be put to the knowlege of ane Assyse, in respect of the said Letter and contents thairof : And for better securitie, defyret, as of befoir, the said Letter and Declaratioun to be infert and registrat in the Buikis of Adiornall, therin to remane *ad futuram rei memoriam*.

My Lord Aduocat takis instrumentis of the productioun of the said Letter and Declaratioun thairin contenit. The Pannell declairis he will vse na vther defence in this matter, bot the allegiance immediatlie preceiding, and renunes all vther exceptiones proponit be him in this caus of befoir for this cryme, or competent to him aganis the same. My Lord Aduocat producet HIS MAIESTEIS LETTER, and defyret the claufe following, infert thairintill, quhilk concernis this perfute, to be infert in the Buikis of Adiornall ; quhair of the tennour followis.

AND as for that vther poynt of your Letter, concerning the forder following of that perfute intentit aganis YOUNG DRUMLANERIG, fforasmuch as We understand that he, being laitlie reconceillit to Kirkmichell younger, is to compeir befoir our Justice at þe day and place specifit in your last Summondis raifit aganst him, and þairby (for clearing him self of that cryme quhair of he is accuset) to alledge that he did naper violentlie apprehend, nor detene the said Kirkmichell. It is pairfoir our speciall

<sup>1</sup> Heir-apparent.

<sup>2</sup> Contrary to ; without.

pleasour, that at þe foirlaid dyet 3ow continow 3our persute againt him, and that vpon his allegeing þe foirlaid exceptioun, 3ow do demand of him, gif he will nocht halilie rely þairupoun, renouncing all vther exceptiones formerlie proponit in his defence : And vpon his Declaratioun that he will do so, 3ow fall than insift for remitting þe Tryell and furdur confideratioun þair of to the Lordis of our Counsell ; insifting, in the meane tyme, earnestlie, that theafe vther exceptions heirtofor vsfēt in his defence, being so dangerous, and by no president warranted, may nocht heireftir be recoirdit in the Registeris of Ad-iornal, as lauchfull or tollerable Defences to be proponit in the lyk Caiffis, in ony tyme cuming :<sup>1</sup> Qubairin, nawayis douting of 3our cair and reddines, We bid 3ow ffairweill. Frome our Court, ATT QUHYTEHALL, the nynteneth of Merche, 1612.

And in respect thair of, and of the allegiance proponit be the pannell and his Judicial Declaratioun, that he renunes all his former Defensfis, proponit of befoir in this cause, for this cryme, or competent to him aganis the samyn, except vpon the particuler allegeance foundit vpon Kirkmichellis Declaratioun aboue mentionet, subscryuit be him, and producet be the pannell this day ; ffirft, desyres, according to his Maiesteis commandment, that the tennour of the former Defensfis proponit be the pannell in this cause, be deleit furth of the Register of Ad-iornall ; quhilk the Justice hes presentlie ordanit to be done : And nixt, desyret my lord Justice, that he will be advyset with the Counsell, concerning the allegeance aboue writtin, proponit this day be the pannell. My Lord Aduocat declairit that he past fra the persute of the pannell, for the last pairt of the Summondis, for the beiring and weiring of pistolettis at this tyme and place : Quhairupone the pannell askit instrumentis.

*INTERLOCUTOR and Decifion of the Justice and Lords of Secret Council.*

THE JUSTICE, In respect of this Letter producet be Mr Alexander King, subscryuit be the Laird of Kirkmichell, and circumstances contenit thairin, with advyse of the Lordis of Secretit Counfall, findis that this matter can nocht be put to the knowlege of ane Assyse : And siclyk, in respect that the pannell hes this day past fra the hail former Defensfis proponit be him in this cause, for the said cryme, of befoir, in maner contenit in his former Declaratioun, the Justice, with advyse of the Lordis of Secretit Counfall, sittand this day in Counsell, Ordanis the hail former allegeances proponit in that matter of befoir, to be deleit furth of the Buikis of Adiornall.

Quhairvpon my Lord Aduocat askit instrumentis ; lyk as the pannell also askit instrumentis, vpon the first pairt of said Interlocutour.

### **Slaughter.**

Feb. 12, 1612.—ROBERT SCOTT and ADAME SCOTT, Bailleis of Hawik ;  
Jok Scott, belman in Hawik ; Williame Donald, alias  
*Nymbill*, in Hawik ; John Lidderdaill, thair, callit *Jok  
the Deacon* ; Hob Scott, thair, callit *Hob the Lonkie* ;

<sup>1</sup> It is obvious that steps had been taken by the Officers of the Crown, in this remarkable Case, to procure the private agreement of the parties ; and on this being effected, the ' *dangerus*' Defences, so boldly and ably urged by the eminent Counsel and fore-speakers, would forthwith be expunged from the Record ; or, at all events, never be permitted to be cited as precedents in future. The Defences were accordingly withdrawn, on this understanding, that the matter would be privately adjusted by the Lords of the Privy Council, as umpires. No deletion appears on the face of the Record.

Jok Schorte, thair; and Williame Johnnestoun, seruitour to *Mariones Hob*.

Dilaitit for airt and pairt of the Slauchter of vmq<sup>16</sup> Johnne Ellote in Redden, callit Johnne of Rynfiegill, committit within the said Jok Schortis duelling hous in Hawik, in the moneth of July, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and ten yeiris.

PERSEWAR, Bessie Ellote as relict, with the fyve fatherles bairnes, &c.

PRELOCUTORIS for the pannell, Mr Thomas Nicholfoun and Lawrence Scott, Advocatis.

The persewar producet the Letteris deulie execute and indorfate; and in respect thairof, and that scho offeris hir self reddie to persew, protestis for the releif of George Elphingstoun of Glenfakisbarneheid, and Williame Elphingstoun his brother, of thair cautionerie.

It is allegit, that the Dittay is nawayis relevant to be put to ane Affyse, in respect that the Dittay beiris that he was fund lying deid in the Irnes;<sup>1</sup> bot it is of verritie, that vpon the morne thaireftir his committing to waird,<sup>2</sup> he hangit him self in his awin belt; and sa, haifing desperatlie put hands in him self, the pannell can nocht be put to the Tryell of ane Affyse, as airt or pairt of his death.—It is anfuert, aucht to be repellit, in respect the allegeance is contrair to the lybell.

THE Justice remittis the matter, anent the Slauchter of the defunct, and tryell of the treuth of pannellis allegeance, concerning the putting handis in him self, to the knowlege of ane Affyse.

ASSISA, Jok Ellote, in Braidlie, Will Scott, in Branzholme, George Airmestrang, in Grundunfyde.<sup>3</sup>

*Robert Layng*, being suorne, in presens of the pairtie and Affyse, and being inquyret concerning Jok Ellotes death, quhat he kenis thairof? Deponis, he is ane mercheand; being in the Kirkzaird of Hawik priking fum skynnis,<sup>4</sup> and heirring that Jok Ellote was hingand in the steppill,<sup>5</sup> come, vpon the repoirt thairof, into the steppill, quhair he saw the defunct hingand, in his awin belt; quhilk belt he cuttit, and thair being lyfe in the defunct, was brocht out, bot shortlie thaireftir he deceist.—*Robert Scott*, being examinat and solempnelie suorne in the premisses, *est conformis precedenti, in omnibus*

VERDICT. The Affyse, all in ane voce, be the mouth of James Greiff in Bowmanehill, chancellor, ffand, pronuncet, and declairit the saidis perfones, and ilk ane of thame, to be Cleane, innocent, and acquit of airt and pairt of the Slauchter aboue specifit.—Quhairvpon thai, and ilk ane of thame, askit actis and instrumentis.

<sup>1</sup> *Irons*, or fetters.

<sup>2</sup> After his commitment to prison or confinement.

<sup>3</sup> Niniane

Qubigholme in Peilbrae, (now written *Whigham* or *Wigham*), and nine other 'Affysfouris' names follow.

<sup>4</sup> Being a leather merchant.

<sup>5</sup> The accomodation for prisoners (in England as well as Scotland) was at this period of the most wretched description. Steeples were often fitted up with fetters in their square or lower parts, riveted into the wall, where these luckless victims were detained until Trial, without any Jail allowance. In cases of Witchcraft; &c., iron collars were added; and it is highly probable that cases of suicide were by no means infrequent, owing to the desperate circumstances of these miserable creatures. See *Sir Walter Scott's Letters on Demonology, &c.*



“RODGER SCOT, Capitane of the Airmetage, Robene Ellote of Dunlabyre, Robene Ellote of Cop-schaw, Frances Ellote his brother,” and nine others of lesser note, “vnlawit and americiat, ilk ane of thame, in the pane of ane hundreth merkis,” for thair nocht compeirance to haif past vpon the Assyse.

### Irreverend Speeches against the King, his Council, &c.—Thift, &c.

Mar. 11.—WILLIAME TUEDIE, callit *Coill-hoill*, in Heuchbrae.

Dilaitit of airt and pairt of certane poyntis of Thift, &c. : And for certane vnreverent and difdanefull speiches vtterit be him aganis the Kingis Maiestie, his hienes Counsell, and Justices of peax.

*DITTAY against the Pannell.*

FORSAMEKILL as it is statute and ordanit, be dyuerse Actis of Parliament, alweill maid in his hienes awin tyme, as in his hienes prediceffouris tyme, of guid memorie, that na maner of perfone or perfones presume nor tak vpon hand to vtter or geve out sclanderous, reprochefull, or treffonabill speiches, aper be woird or writ, aganis HIS MAIESTIE, his Counsell or Nobillitie, vnder the pane of deid ; as the saidis Actis at lenth beiris : Nochtwithstanding quhairof, it is of verritie, that pe said Williame Tuedie, in the moneth of December lastbypast, haifing committit, ofbefoir, dyverse Oppressiones aganis findrie of his hienes peceable subiectis, and speciallie aganis Richerd Powrie, Minister at Dawik, quha haifing complenit vpon pe said Williame Tuedie to the Justices of peax within the Sheresdome of Peiblis for pe samyn, thay directit Johnne Mathiesone in Stobo, and James Russell, tua of the Constabillis of the said Scheresdome, to summond and arreist him, to compeir befor thame, in the Tolbuth of Peiblis, at ane certane day, to haif ordour tane with him for the saidis Oppressiones ; quha, accoirding to pair directioun, cam and summond and arreistit pe said Williame, first in his Maiesteis name, and than in the name of pe Lordis of his hienes Secreit Counfall, and of the saidis Justices of peax, to the effect foirsaid ; nochtwithstanding quhairof, he, altogidder vnmynndfull of his deutie, first towardis his God, our Souerane lord, and Lordis of his hienes Secreit Counfallis auctoritie, and of the saidis Justices of peax, his hienes Judges and ordiner Magistrattis ; nocht only irreverentlie, reprochefullie, and sclanderusslie vtterit and gaif vnfemelic speiches to the saidis Constables against the saidis Justices of peax, be saying that he ‘wald nocht gif ane scab of his erse for thame!’ And desyret thame ‘to cum and kifs his erse!’ Bot lykwayis, the said Williame, at pe same tyme, maist treffonabillie, vnreverentlie, sclanderusslie, and vndewtiefullie said to the saidis Constables, that he ‘wald nocht gif pe scab of his erse’ for his sacred Maiestie and Lordis of his hienes Secreit Counsell ; and bad ‘his Maiestie and thame cum and kifs his erse!’ And sua, be vttering of the saidis treffonabill, vndeutfull, vnreverent and sclanderus speiches, he hes contravenit pe tennour of pe saidis Actis of Parliament, and incurrit the panes of death appointed aganis pe contraveneris pairf : Quhilk aucht and sould be execute vpon him, with all rigour, to the terrour and exampill of vperis. AND siclyk, being Indytit and accuset, ffor cuming, in pe moneth of November 1583, to Carrane-mouth, in Stobo-hoip, and pair thiftiousslie staw,<sup>1</sup> rest, and away-tuik, fra tua cowmoun Thevis, xxiiij auld scheip, quhilkis war stowin<sup>2</sup> be pame furth of Cliddisdail : And for letting the saidis Thevis to frie libertie, and nocht presenting of pame to pe Justice. ITEM, ffor airt and pairt of the steilling and away-taking of ane beir stak,<sup>3</sup> contening tuelf schevis of beir, committit in Januar, 1600 zeiris. ITEM, ffor airt and pairt of the steilling of ane quhite wedder-lamb, pertening to Williame Russell in Eistertoun of Stobo, furth of the Knovell-fald ; committit in the moneth of Junij, 1601 zeiris. ITEM, ffor airt and pairt of pe Slauchter of vmq<sup>le</sup> Eduard Curres in Braidfurd, be casting of ane stane at him, quhairwith he strak him ane deidlie straik on the bert ; be the quhilk straik, he tuik bed and dwynet in pe space of ane zeir, and in end deceiffit of pe said hurt ; committit in Junij, 1596. ITEM, ffor airt and pairt of the steilling of ane blak zeild<sup>4</sup> kow, fra James Foulden in Harro of

<sup>1</sup> Stole.

<sup>2</sup> Stolen.

<sup>3</sup> Stack of barley.

<sup>4</sup> Barren ; not giving milk.

Stobo, furth of the Hammer-bank, callit the Braid-flak-heid, in the moneth of November, 1607 zeiris. ITEM, ffor airt and pairt of the steilling fra Patrik Mathiesone, in Harro, of ane quhyte zow,<sup>1</sup> furth of pe grund of Harro, in the moneth of December, 1607 zeiris. ITEM, for dryveing to ane bucht<sup>2</sup> at pe Blak-hill-stell, in Harro-heid, of aucht zowis, pertening to Johnne Alexander, in Harro-heid: And ffor the thiftious clipping of the said aucht schein, and steilling and away-taking of the hail aucht fleiffes of woll; committit in the moneth of Junij, 1602. ITEM, ffor airt and pairt of the steilling, cutting-doun, and away-taking of tuelf grit allour-treys,<sup>3</sup> furth of Dawik-woid, in the moneth of August, 1607 zeiris. ITEM, ffor airt and pairt of the Murthour and Slauchter of . . . . Mathiesone, his spouse, be striking her in dynerse pairtis of hir body, quhairof scho deceiffit paireftir. ITEM, ffor Cowmone Thift, Cowmone Reffet of Thift, outputting and inputing of Thift fra land to land, fra cuntrie to cuntrie, baith of auld and new.

PERSEWAR, Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Aduocat to our souerane lord.

PRELOCUTORIS for the pannell, Mr Laurence McGill and Mr David Aytoun, Aduocatis.

It is allegit, that the pannell aucht to haif bene citet vpone xv dayis wairning. It is anfuert, aucht to be repellit, in respect the pannell is brocht furth of waird to the Bar; quha hes bene wairdit this foure monethis for the crymes lybellit.—It is allegit that *Johnne Mathiesone* can nocht pas vpone this Assyse, becaus he is pairtie and vpgeter of the Dittay, and is Constable, to quhome the allegit speiches was vtterit. Aucht to be repellit, in respect of the perfute at the instance of the Minister of Dawik, quha perfewit the pannell afoir the Counsell, for injurie done; and the said Johnne Mathiesone was alredie reffaut Witness, and examinat be the Counsell; and sa may be ane Assyfour.<sup>4</sup>

ASSISA.

Johnne Mathiesone, Constable of the parochin of Stobo; James Ruffell, Constable thair; James Rammage, Constable thair; Johnne Reidfchaw in Wester Hoprew; Adame Ruffell, smyth thair.<sup>5</sup>

The Aduocat, for verificatioun of the Dittay, &c., producet ane Decreit of the Lordis of Secreit Counsell, finding the speiches aboue writtin to be cleirlye provin; and protestit for Wilfull Errour, in caise thay Acquit.—The pannell askit instrumentis, that nane compeir to sweir the Dittay.

VERDICT. The Assyse, all in ane voce, be the mouth of the said Johnne Mathiesone, chancellor, ffand, pronuncet, and declairit the said Williame Tuedie to be ffylit, culpable, and convict of the sclanderus, reprocheful, and vnreuerent speeches vtterit be him aganis his Maiestie, his hienes Secreit Counsell and Justices of the peace, in maner specifeit and contenit in the first Article of his Dittay, and Decreet of the Lordis of Secreit Counsell, producet, for verificatioun thairof: And as to the remanent crymes aboue writtin, contenit in the said Dittay, ffand, pronuncet, and declairit the said Williame to be Cleane, innocent, and acquit thairof.—Quhairvpone the said Williame askit instrumentis.

<sup>1</sup> Ewe.      <sup>2</sup> 'Ewe-bucht,' a pen or fold, where sheep are sheltered at night.      <sup>3</sup> The *aller* or alder-tree.      <sup>4</sup> The admission of this person and his fellow-Constables, was contrary to every principle of justice; and very strongly shows how extremely arbitrary the proceedings of the Court were, at this period.      <sup>5</sup> Ten other names are inserted, but they were persons of no note.

THE Justice continewis the pronunceatioun of Dome, to ffryday next, that in the meane tyme he may tak advyse with the Lordis of Secreit Counsell thair-  
anent.

(Mar. 13.)—SENTENCE. The Justice, with advyse of the Lordis of his hienes Secreit Counsell, be the mouth of Alexander Kennydie, dempfter of Court, decernit and ordanit the said Williame Tuedie, in Heuchbra, to be SCURGET through the Burgh of Edinburgh: And thaireftir to be BANISCHET furth of his Maieftis hail dominionis: And nawayis to returne agane within the samyn, vnder the pane of hanging to the deid, but<sup>1</sup> forder Dome: And being scourget throw the towne, that the Magistratis of Edinburgh returne him bak agane to his waird, within thair Thevis-hoill, thairin to remane quhill ane schip be provydit to transpourt him furth of his Maieftis dominions, in maner foirfaid.

### Slaughter.

Mar. 13.—ALEXANDER FRENCHÉ, Tutour of Thorniedykis,<sup>2</sup> and James Wicht, at Gordoun-mylne, his sifter-sonne.

Dilaittit of airt and pairt of the Slauchter of vmq<sup>10</sup> Johnne Cranftoun, brother to Patrik Cranftoun of Corbie; committit be thame vpon the grund and landis of Boun, in the Merse, vpon the tent day of Februare lastbypast, be wounding of him in the heid, leg, and dyuerse vtheris pairtis of his bodie, to the effusioun of his bluid in grit quantitie: Off the quhilkis straikis and deidlie woundis the said vmq<sup>10</sup> Johnne nevir thaireftir convalescit: bot, vpon the first day of Merche instant, depairtit this lyfe, of the saidis hurtis and woundis.

PERSEWAR, Patrik Cranftoun of Corbie, as brother.

The perfewar, be his grit aithe, declairis that he hes most caus to perfew: And fueris the said Dittay to be of verritie, and takis instrumentis thairupoun; and Protestis for Wilfull Errour, gif the Assyse Acquit. As also, for verificatioun thairof, haifing vsset and producet the Depositiones of certane famous Witneffes, quhilk was oppinlie red in Judgement.

VERDICT. The Assyse, all in ane voce, be the mouth of Hew Bell in Blithe, chancellor, ffand, pronuncet, and declairit the said James Wicht to be ffylet, culpable, and convict of the crewal and vnmerciefull Slauchter of the said vmq<sup>10</sup> Johnne Cranftoun. AND ficlyk, for the maist pairtis, Declairit the said Alexander Frenché, to be ffylet, &c.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis; and all thair moveable guidis to be escheit and inbrocht to his Maieftis vsé, as convict, &c.

<sup>1</sup> Without.

<sup>2</sup> See the Trial of Sir Patrick Chirnesyde of East Nisbet, and others, Nov. 8, 1616, for Forcible Abduction and Marriage of Adam Frenché of Thornydykes, &c.

**Raid of Glenfrone—Fire-raising—Slaughter.**

May 8.—DOUGALL M<sup>c</sup>GREGOUR alias *Dougall M<sup>c</sup>candochie*, Callum M<sup>c</sup>gregour callit *M<sup>c</sup>calester scoir*,<sup>1</sup> and Duncane M<sup>c</sup>carlich Culzame M<sup>c</sup>gregour.

Dilaitit for being in companie with THE LAIRD OF M<sup>c</sup>GREGOUR and his complices, at the Raid and ffeild of Glenfrwne,<sup>2</sup> in the moneth of ffebruare 1603 yeiris, aganis the Laird of Lufe, his kyn and freindis: And for being in cumpanie with the Laird of M<sup>c</sup>gregour, at the burning of Barnehill, pertening to Colene Campbell of Laweris,<sup>3</sup> quhair thai slew nyne men and thre bairnes; Robert Abroche M<sup>c</sup>gregour, and Johne M<sup>c</sup>ffadrik, being thair with thaim.

THE Justice continewis the puting of the perones foirfaidis to ane Assyse to Thurisday nixt.<sup>4</sup>—Thaireftir, the perones on pannell, be Ordinance of the Counfall, war ordanit to be delyuerit to the Erle of Lynlythgow, and he to hald Court vpon thame, conforme to ane Commiffioun gevin to the said Erle to that effect.

**Treasonable Intercommuning with John, sometime Lord Maxwell, &c.**

May 16.—NINIANE AIRMESTRANG callit *Ninianes Thome*, sone to Thomas Airmestrang; and Johnne Amulliekyn, in Cruikis.

Dilaitit ffor the tresonabill Resset, supplie, Intercowmoning, and accompaneing of JOHNNE, sumtyme LORD MAXWALL,<sup>5</sup> his Maiesteis declairit Tratour, fforfalt in Parliament, for dyuerse crymes of Treasone and Lesmaiestie, at lenth specifeit and contenit in the proces and dome of fforfaltour deducet aganis him: And namelie, the said Johnne Amulliekyn, for Ressetting, Suppleing, and Intercowmoning with the said sumtyme Lord Maxwell, within his awin duelling hous in the Cruikis, and in his barne thairof, vpon the tuentie sax day of Apryle last-bypast; at the quhilk tyme, he haifing ressaut fra the said sumtyme Lord Maxwell the sowme of ten pundis; he, for obedience of the said Lord Maxwellis directioun, past thairwith vpon the morne thaireftir to the Toun of Dumfreis, to the said Niniane Airmestrang, quhair thay bocht ane hagbut and ane pair of schone,<sup>6</sup> quhilk was delyuerit be the said Johnne Amulliekin to the said Niniane, to be gevin to the said sumtyme Lord; conforme to the said Johnne Amulliekyn his Depositioun, maid be him in presens of my Lord Chancellor, and vtheris Lordis of his Maiesteis Previe Counsell: AND siclyk, the said Niniane, for Intercowmoning and keiping companie with the said Johnne, sumtyme Lord Maxwell,

<sup>1</sup> M<sup>c</sup>allaster scoroch, q. d. *buck-toothed*. <sup>2</sup> See Jan. 20, 1604. <sup>3</sup> This person is understood to have been Colin Campbell of ABERUCHILL, and the *Barnehill*, which is here stated to have been burned, is likely to have been some appendage of that property. <sup>4</sup> In consequence of the subsequent order, no further procedure took place before the High Court of Justiciary. <sup>5</sup> See his Trial, Jun. 24, 1609, &c., III., 28, &c. <sup>6</sup> Shoes.

declairit Tratour, in the said moneth of Apryle lastbypast, be the space of fyve dayis togidder, in the Langwoid and Schillingtonehill; and for bringing of ane hagbut fra James Louk, and delyuering the same to the said Lord Maxwell, his Maiesteis declairit Tratour; and bringing of the said vther hagbut, with the pair of schone reffaut be him fra the said Johnne Amulliekyn, within the toun of Dumfreis, and delyuering the samyn to the said Lord Maxwell; as at lenth is contenit in thair Dittayis. IN doing quhairof, the saidis Johnne and Niniane had committit manifest Treasone: And thairfoir, according to the Lawis of this realme, had incurrit the panes and pwneischment of tynsell<sup>1</sup> and fforfaltour of lyfe, landis, and guidis, to be inflictit vpon thame; to the terrour of vtheris.

VERDICT. The Assyse, be the mouth of Daid Bailzie, burges of the Cannogait, chancellor, ffand, pronuncet, and declairit, all in ane voce, the saidis Johnne Amulliekyn, and Niniane Airmestrang, and ather of thame, to be ffylit, culpable, and convict of the crymes aboue specifeit in thair Dittay; and that in respect of thair awin Judiciall Confessioun and Depositiones product.—SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill thai be deid: And all thair landis, heritages, guidis, and geir, gif thai ony haif, to be fforfaltit and escheit to his Maiesteis vse, as convict, &c.

**'Unbesetting the hie-way'—Slaughter.**

Jun. 3.—GAWIN HORNE in Inner Kethie, and Isobel Jak, mother to the said Gawin.

Dilaitit, accusit, and persewit, that thei with their complecis, being bodin in feir of weir, with swordis, durkis, and vther vapones *invasiue*, laitlie, vpon the saxt day of Januar lastbypast, haifing confaut ane deidlie feid, rancour, and malice causles, aganes wmq<sup>1</sup> Patrik Low in Naderdaill, came vnder silence and clud of nycht to the toun of Nether Kethie, quhair he was going hame to his duelling hous, in maist peciabil maner, vnder Godis peax and our souerane lordis, and thair Vnbefet his hie-way and passage,<sup>2</sup> and crewallie Invaudit him for his Slauchter, hurt and voundit him in his body and breift, with durkis and swordis, to the effusione of his bluid in grit quantitie: Of the quhilkis hurtis he newer convalessit, bot continewing bedfast in grit dollour and difeis thairof, vnder the cuir of chirurgeanes, be the space of fourtein dayes, or thairby; quhill at last, the said vmq<sup>1</sup> Patrik, vpon the tuenty day of the said moneth of Januar, depairtit this lyfe: And fwa wes crewallie and vnmercifullie flane be thame; and thei and ather of thame wer airt and pairt of the said crewall Slauchter.

<sup>1</sup> Loss; deprivation.      <sup>2</sup> Waylaid; lurked, or lay in ambush for, for the purpose of 'besetting.' See various Trials in this Collection, where this phrase repeatedly occurs. The highway was likewise said to be 'umbefet,' when one party blocked up the road with his retainers, for the purpose of *daring* his rival to pass—or to give battle, and thus force a passage, if he could.

PERSEWAR, Andro Low as sone. PRELOCUTOR for the persewar, Mr Williame Livingstoun.  
PRELOCUTOR for the pannell, Mr Johnne Ruffell, Aduocat.

Protestis for Wilfull Errorr in caise they Acquit.

Mr Johnne Ruffell takis instrumentis, that thair is nane to sweir the Dittay bot ane young boy of saxtene yeir awld ; and swa can mak na faith.—Produces ane instrument subscryuit be the Justice of Peax and the Constabill, for verificatioun of the Slauchter of vmq<sup>h</sup> Patrik Low and cleiring of the samyn, subscryuit be the said Constabill, Johnne Innes of Knockorth, ane of the Constabillis of peax ; and schawis that Williame Smairt confessit that he hurt and voundit the said vmq<sup>h</sup> Patrik.—Quhilk cryme the pannell alluterlie denyit.

VERDICT. The Assyse, be the mouth of George Leslie in Drumblair, chancellor, for the maist pairt, stand, pronuncit, and declairit the saidis Gawin Horne and Isobell Jak to be Clein, innocent, and acquit of airt and pairt of the said Slauchter.

#### Abiding from the Raid of the Isles.

JUN. 5.—ROBERT MAXWALL of Potterak, Alexander Fergusone of the Yle, Johnne Charteris in Redingwoid, Johnne Wallace in Carnezell, Thomas Edzger in Holme, and Mr Samuell Kirkpatrik.

Dilaitit for Contravening the Proclamatioun in abyding fra the Raid of the Yles, in anno 1608.

PERSEWAR, Andro Lord Stewart of Vchiltrie.

My Lord Vchiltrie passis fra perfute of Mr Samuell Kirkpatrik. He also passis from the pursuit of *Hew Douglas* and *Thomas Douglas in Dalvene*.—*Williame Greir* provin to be feik, be the Depositioun of Johnne Broun, Minister of Glencairne.—*James Fergusoun of Crochedow*, provin to be feik, be the said Ministeris Depositioun.

THE Justice continewis this matter to the morne, *in eodem statu quo nunc est*.

JUN. 6.—IN respect na partie compeiris this day to insift in thair perfute, Protestis for thair cautioneris releif ; and that thai be nocht charget or trubillit for the said allegit cryme, in ony tyme cuming. And thairupoun askit instrumentis.

#### Mutilation and Demembration.

JUN. 12.—WILLIAME RUTHERFURD of Synewallis, and George Well his seruand.

Dilaitit for the Mutilatioun and Demembring of James Weir, seruitour to Williame Weir in Softlaw ; committit in ffebruar 1611, of the formeft finger of his left hand.

PERSEWER, James Weir.

PRELOCUTORIS in defence.

Sir Robert Stewart, Mr Johnne Rutherford, Mr Johnne Ruffell, Mr Johnne Dauling.

JAMES WEIR, feruitour to Williame Weir in Softlaw, Dilaitit of airt and pairt of the Mutilatioun of Williame Rutherford of Synewallis of his . . . hand, at the leift of the mid-finger thairof; committit in ffebruar 1611.

PERSEWAR, Williame Rutherford of Synewallis.

PRELOCUTORIS in defence.

The Laird of Blaikwoid, The Laird of Lammington, The Laird Symontoun,  
The Guidman of the Caveris, Robert Hammiltoun, Aduocat.

It is allegit be Mr Johnne Ruffell, that the Dittay is altogidder irrelevant; and thairfoir can nocht pas to ane Affyse: And as to that article of the Dittay, concerning the demembring James Weir of the finger, quhilk is the only point that fould be tryit in this Judgement, nather mutilatioun nor demembratioun is relevant; becaus, except the haille hand had bene cuttit af, it can nocht be comptit demembratioun; and the finger is nocht ane member, *sed tantum est pars membri*. It is forder allegit, that this Dittay aganis Rutherford and his man can nocht pas to ane Affyse, becaus, gif ony mutilatioun or hurting was done to Weir, the samyn was done in Rutherfordis awin defence, he being in sober maner passand out the hie-way, convoyand ane gentilman to his hors; at quhilk tyme, vnder nycht, Weir, with ane drawin fuord, invaidit Rutherford; and sa, gif ony hurt wes gevin to Weir, it was in Rutherfordis defence.—It is anfuerit, that the Dittay is relevant, nochtwithstanding of the allegeance; and defyres the Affyse to cognosce, quhidder the samyn was done in Weiris defence or nocht; quhilk Weir altogidder denyis.—It is allegit be James Weir, that the lybell at the instance of Williame Rutherford aganis him can nocht pas to ane Affyse; and gif ony mutilatioun was done to the said Williame Rutherford, the samyn was done in Weiris awin defence.

Compeirit, Williame Lord Cranftoun, Commiffioner for his Maiestie, and defyret my Lord Justice, that thir tua perfutes, movet in this Judgement, may be remittit to the Commiffioneris, to be tryit befoir thame, feing the factis lybellit was done within the boundis of thair Commiffioun: And siclyk, feing thair is ane Court affixt to be haldin within the boundis thairof, quhair justice fall be ministrat to ony partie, conforme to the Lawis of this realme.

THE Justice continewis this matter to Thurisday nixt, vnto the tyme he be advyset with the Counsell, concerning my Lord of Cranftones defyre.

Lawburrows are granted at the instance of the parties against each other, viz. Mr Johnne Rutherford become fouertie and Lauborrus for Synlawis and his ferwand, &c. vnder the pane of ffyve hundreth merkis, and thre hundreth merkis. William Rutherford of Synlawis for the said Mr Johnne, vnder the pane of thre

hundreth merkis. And James Douglas of Todhoillis for George Weir of Blaikwoid, and for the pannell James Weir, vnder the pane of ane thowfeand pundis, and thre hundreth merkis.'

Thaireftir the Justice abfolutelie, without forder continuatioun of this matter, Remittit the tryell of baith thir actiones, perfewit be ather pairtie aganis vtheris,<sup>1</sup> to the Commiffioneris, to be cognofcet and tryet be thame as accoirdis of the Law.

### Abiding from the Raid of the Isles.

Jun. 25.—ROBERT HEREIS, in Lafoun, and five others.<sup>2</sup>

Dilaitit for contravening of his Maieftis Proclamatioun, in nocht paffing forward with Andro Lord Stewart of Vchiltrie, his hienes Lieutennent, to the Raid of the Yles, in anno 1608.

PRELOCUTORIS in defence, Mr Johnne Halyday, Mr Johnne Belfis.

The perfones on pannell takis instrumentis of thair compeirance, and declairis that thay war nawayis fubiect to the tennour of the Proclamatioun; in respect thai ar nather Erles, lordis, barrones, feweris, frehalderis, or landit gentilmen; and gif the famyn can be tryit<sup>3</sup> that thai war fic men, the tyme of the making of the faid Proclamatioun to the faid Raid, thay ar content to affigne, and be thir presentis affignis, thair haill landis and heritages to the Kingis Maieftie, &c. And in respect thair is na pairtie perfewer present to infist in thair perfute, protestis for thair cautioneris releif, and that thai be nocht callit or perfewit, for this matter, at ony tyme heireftir.

### Slaughter.

Jul. 1.—ROBERT FORBES, fone to James Forbes of Mylnebowie.

Dilaitit, accuset, and perfewit by DITTAY following.—FORSAMEKILI as he, accompaneit with Williame Forbes, callit of Mylnebowie, and Patrik Forbes his brother, now rebellis and att the horne for the cryme vnderwrittin, and diueris vtheris thair complices, haifing confaut ane deidlie feid, rancour, and malice aganis the faid vmq<sup>10</sup> Johnne Ker, vnderftanding him to haif bene att the Kirk-toun of Skene, att the mariage of his wyfes fifter; thay, vpon the fyftene day of October laftbypaft, darnit thame<sup>4</sup> in the hie-way, betuix the faid Kirk-toun of Skene and the faid vmq<sup>10</sup> Johnne Ker guidfatheris hous, in . . . , quhair the faid vmq<sup>10</sup> Johnne had his refidence for the tyme; and thair, bodin<sup>5</sup> with fwordis, dageris, gantilletis, and vtheris wapponnis invafue, lay att wait all that day for the faid vmq<sup>10</sup> Johnnis hame-cumming: Lyke as, about the ewening, vnder filence and cloud of nycht, the faid vmq<sup>10</sup> Johnne, lipning for na ewill, harme, or

<sup>1</sup> By both parties against each other. <sup>2</sup> This case was continued from Jun. 23. <sup>3</sup> Proved; instructed. <sup>4</sup> Hid; concealed themselves. <sup>5</sup> Furnished; provided.



iniurie of ony perfonnes, bot to haif paft hame to his hous in peceabill maner, vnder Godis peax and our fouerane lordis, haifing tane his hors with ane young woman on behind him ; in his hame-paffing to his faid guidfatheris duelling hous, was vmbefett in the hie-way, be the foirnameit perfonnes ; quhair, befoir ewir he wes aduertefit of thame, thay, with thair wappinnis foirfaidis, maift fchamefullie strak him fra his horfe, and maift crewallie inuidit him for his flauchter, gaif him twa crewall and deidlie straikis in the heid with their fwordis, and hurt and woundit him in dyverfe pairtis of his body ; to the effufioun of his blude in grit quantitie : Off the quhilkis crewall woundis, he newir thair-eftir convaleft, bot continewand in grit dolour and payne thairof, vnder the cuir of cherurgeanis, be the fpace of ellevin oulkis<sup>1</sup> or thairby thaireftir ; quhill<sup>2</sup> at laft, the faid vmq<sup>le</sup> Johnne Ker, in the moneth of Januar laftbypaft, deceiffit of the faidis deidlie woundis ; and fwa wes crewallie and vnmerciefullie flayne be the faidis (perfonnes) : And the faid Robert Forbes is airt and part of the faid crewall flauchter of the faid vmq<sup>le</sup> Johnne Ker ; committit vpoun fett purpois, prouifioun, and foirthocht felony.

PERSEWAR,

Johnne Ker at the mylne of Clwney, as father ; Alexander Gordoun of Clwney, affifter in this perfute.  
PRELOCUTORIS for the pannell, Mr Johnne Ruffell, (Advocate.)

It is allegit, that this matter can nocht pas to ane Affyfe, becaus in November 1611, eftir the allegit hurting, this perfewar haifing intentit actioun befoir the Counfell aganis Williame Forbes of Mylnebowie, and Patrik Forbes, his brother, committeris of the flauchter, to haif hard and fene thame decernit to haif committit ane oppin and manifest Ryote and Oppreffion : ffor preving of the quhilk complent befoir the Counfell, the faid Johnne Ker vset the pannell as ane witness to verifie the fame ; and fua, haifing anes vset him as witness in the faid matter, thai can nevir be hard to follow him as partie. For verifeing quhairrof, producet the Counsellis Act, and ane testificat of his fummoning, fubfcriuit be Alexander Watfone, meffinger. Anfueris, thair was na witness led in the proces afoir the Counfell ; and albeit at that tyme na knowlege of the pannellis giltines was cleirly knawin, yet that can nocht liberat him fra pwneifchment, his giltines being tryit<sup>3</sup> thaireftir.

THE JUSTICE remittis the fame to the Affyfe.

VERDICT. The Affyfe, be the mouth of Alexander Thome in Eifter Cairny, chancellor, all in ane voce, ffand, pronunceit, and declairit the faid Robert Forbes to be Cleane, innocent, and acquitt of the flauchter of the faid vmq<sup>le</sup> Johnne Ker ; and of airt and part of the faid Slauchter.

<sup>1</sup> Weeks.

<sup>2</sup> Until.

<sup>3</sup> Proved ; established.

**Slaughter.**

Jul. 3.—THOMAS MAXWALL of Arenyning,<sup>1</sup> brother to Alexander Maxwell of Logane; Johnne Huttone, messenger in Carlingwark.

Dilaitit of the crymis sett down in the Letteris and DITTAY following. FOR-SAMEKILL as the said Thomas, accompaneit with Johnne Maxwell, sone to the said Alexander Maxwell of Logane, now fugitiue and at the horne for the slauchter vnder writtin, vpon the tuentie nyne day of Apryle lastbypast, haifing coufaet ane deidlie feid, rancour, and malice against vmq<sup>10</sup> Johnne M<sup>c</sup>nacht of Kilquhannatie, and vnderstanding that thair was ane tryft<sup>2</sup> affixt to be keipit at the toun of Carlingwark, betuixt him and Dauid Maxwell of Newark, the said day; the said Thomas and Johnne, his brother-sonne,<sup>3</sup> and vtheris thair complices, bodin<sup>4</sup> with fuordis, quhingeris, and vtheris wapponis inuassue, come to the said toun of Carlingwark, quhair the said vmq<sup>10</sup> Johnne M<sup>c</sup>nacht was rydeing vp and down, attending vpon the said Dauid Maxwell of Newwarkis cuming, in sober and quyet maner for the tyme, lipning for na harme, iniurie, or persute of ony persone, bot to haif leuit vnder Godis peax and our souerane lordis; and haifing first violentlie drawin him af his horse, and thaireftir compellit him to pas with thame in to Johnne Huttone messengeris hous, in Carlingwark, thay thair, efter dyuerse ruche<sup>5</sup> and hard speiches vtterit to him, drew thair quhingeris and fuordis, and within the said hous persewit him for his slauchter: The said Thomas Maxwell grippit him be baith the airmes, and held him, vnto<sup>6</sup> the tyme the said Johnne Maxwell, his brother-sonne, gaif him tua fraikis, the ane at the hert, and the vther on the left airme: Off the quhilkis, he immediatlie thaireftir deceiffit; and sa was crewallie and vnmerciefullie flane be the saidis Johnne and Thomas Maxwellis: And thay and ather of thame ar and war airt and pairt of his said slauchter; committit vpon set purpois, prouisioun, and foirthocht fellonie; in hie and manifest contempt of our souerane lordis auctoritie and lawis.

PERSEWARIS, Johnne M<sup>c</sup>nacht, burges of Edinburgh, neir kynfman; (Capitane) Charles Geddes of Raehan; [Margaret Gordoun, Lady Kilquhannatie, the relict, with the thrie fatherles bairnes, kyn and friendis of vmq<sup>10</sup> Johnne Maknacht of Kilquhannatie.]

PRELOCUTORIS for the pannell, Alexander Maxwell of Logane; Johnne Maxwell of Couhaithe; Robert, Maister of Maxwell; Mr Williame Maxwell of Caveris; Mr Alexander King, Aduocat; Adame Cunninghame, Aduocat; Sir Robert Maxwell of Spottis; The Guidman of Cowhill.

The persewaris, vnderstanding Johnne Huttone to be innocent of the slauchter, passet *simpliciter* fra his persute; quhairupoune Johnne Huttone askis instrumentis.

VERDICT. The Assyse, be the mouth of James Cannane of Killochie, chancellor, all in ane voce, ffand, pronuncet, and declairit the said Thomas Maxwell to

<sup>1</sup> In the Dittay called of Aremein. furnished.

<sup>5</sup> Rough; uncouth.

<sup>2</sup> An appointed meeting.

<sup>6</sup> Until.

<sup>3</sup> Nephew.

<sup>4</sup> Provided;

be Cleane, innocent, and acquit of the slauchter of the said vmq<sup>le</sup> Johnne M<sup>c</sup>nacht of Kilquhannatie, and of being airt or pairt thairof.

Alexander Maxwell of Logane become plege and fouertie for Thomas M. his brother germane—and Capitane Charles Geddes of Rachan, and Johnne M<sup>c</sup>nacht, mercheand burges of Edinburgh, ather of thame become pleges and fouerteis for vtheris,<sup>1</sup> that thai and ather of thame fall obserue and keip his Maiesteis peax to all our souerane lordis legis, and nawayis to molest or trouble thame in thair perfonas, guidis, or possesseiones, vtherwayis nor<sup>2</sup> be ordour of law and justice; ather of thame vnder the pane of ffyve hundreth merkis.

### Murder under trust—Slauchter—Theft.

Jul. 11.—PETRIE M<sup>c</sup>GILLIEVORICHE in Brachloche.

Dilaitit of the crewall Murthour and Slauchter of Duncane M<sup>c</sup>allaster and M<sup>c</sup>gilliecreift,<sup>3</sup> his tua sifter-sones; and for dyuerse poyntis of thift, (viz.) FOR airt and pairt of the crewall and abhominabill Murthour vnder Trust of vmq<sup>le</sup> Duncane M<sup>c</sup>allaster, his sifter-sones, be schuitting him with ane hagbut throw the body; committit in the moneth of Apryle, the yeir of God I<sup>m</sup>.Vj<sup>o</sup>. and thre yeiris. ITEM, for airt and pairt of the thiftious steilling, at the leift ressetting, of fourtie scheip, pertening to the Guidman of Campbell-Burnet. AND for airt and pairt of the thiftious steilling of tua oxin and ane kow, pertening to Johnne Leith in Edingerroche; committit a tua yeir syne, or thairby. ITEM, for airt and pairt of the steilling fra Adame Leith of foure oxin; committit a tuelf yeir syne, or thairby. ITEM, for cowmoun thift, cowmoun resset of thift, outputting and inputting of thift, fra land to land, fra cuntrie to cuntrie, baith auld and new.

PERSEWAR, Mr Williame Oliphant of Newtown, Aduocat to our souerain lord.<sup>4</sup>

#### ASSISA.

Williame Forbes of Monymusk,	George Jope in Cowclarachie,	Mr Johnne Horne, seruant to the
Younger,	Johnne Woid in Mylnebowie,	Laird of Fren draucht,
Mark Mawer of Mawerftoun,	Andro Meldrum of Dumbrek,	Johnne Forbes, seruitour to my
Edmond Gradane in Kinloche,	Alex. Irwing, Younger of Lenturk,	Lord Forbes,
Williame Lummissden, brother to	Patrik Mortimer,	George Gordoun, seruitour to the
the Laird of Cufchnie,	Mr Patrik Grant, Minister at	Laird of Lesmoir,
Tho <sup>s</sup> Cowie, burges of Abirdene,	Cromedail,	Mr Robert Elphingftoun, Tutor
		of Glak.

VERDICT. The Assyse, be the mouth of the said Williame Forbes of Monymusk, chancellor, all in ane voce, ffand, pronuncet, and declairit the said Patrik to be ffylet, culpable, and convict, according to his awin Confessioun, set down in his Depositiones, of the crymes *respectiue* aboue specified.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair, vpon ane gibbet, to be hangit quhill he be deid: And all his landis, heritages, &c.,

<sup>1</sup> For each other.      <sup>2</sup> Otherwise than by form of Law.  
in the Dittay or proceedings of this murder of M<sup>c</sup>gilliecreist.  
time, in the Record, as Lord Advocate.

<sup>3</sup> No mention is otherwise made  
<sup>4</sup> He appears here for the first

guidis and geir pertening to him, to be fforfault and escheit to his Maiesteis vse, as convict and culpable of the saidis thiftious and abhominable crymes.

### Slaughter, &c.

Jul. 17.—SUBMISSION betwixt GEORGE (*fifth*) ERLE OF CAITHNES, (WILLIAM) LORD BERRIDAILL, his sone, and (JOHN *seventh*) ERLE OF SUTHERLAND.<sup>1</sup>

Compeirit Mr Johnne Mansone and Mr Johnne Sinclair, feruitouris to George Erle of Caithnes, and producet ane WARRANT of THE LORDIS OF SECREIT COUNSALL, anent the deserting of the criminall perfutes appointit, *hinc inde*, aganis the Erles of Caithnes and Sutherland, to be disputit and reffonit afoir the Justice this day: off the quhilk Warrant the tennour followis.

MY LORDIS of Secreit Counsell, vnto your lordschipis humlie meanis<sup>2</sup> and schawis, we your feruitouris, GEORGE ERLE OF CAITHNES, . . . . . LORD BORRIEDAILL, his sone, ffor our selffis, and in name of our friendis and servandis, quho ar charget in the matter vnderwritten: That quhair, pe xvij day of Julij instant is appointit vnto ws for our compeirance befoir pe Justice and his deputis, in the Tolbuthe of Edinburgh, to vnderly the Law, for the slauchter of Neill Nathmarne; the hurting and wounding of Johnne Gordoun of Golfspitour, Donald M'ky, fear of Far, and some vther friendis and servandis to THE ERLE OF SUTHERLAND; the taking and detening priffoner of Angus McWilliam;<sup>3</sup> and for certane vtheris crymes, specifeit and contenit in the Letteris raifit and execute aganis ws at pe instance of pe saidis perfonas, and of his Maiesteis Aduocat for his hienes intreis: Lyk as, pe Justice intendis to proceid in pis matter aganis ws, althocht it be of verritie, that howbeit we wer most willing and reddie to haif submittit our selfis to the Tryell of the lawis, for pe haill crymes contenit in the saidis Letteris; and for this effect, to haif presentit our selfis in judgement befoir the Justice the day foirsaid: Zit it was your lordschipis plefour to burdene ws with ane Submissioun of all matteris questionable betwix ws and the Erle of Sutherland, and M'ky and pair freindis; in the quhilk Submissioun, pir matteris ar speciallie and perticulerlie comprehendit: AND seing thay ar now in your lordschipis handis, vnder Submissioun, as said is, the dyett appointit to ws afoir pe Justice aucht to desert. Heirfoir we beseik your lordschipis to geve command to the Justice, Justice clerk, and pair deputtis, to desert pe said dyet, and to desist and ceise fra all proceeding pairintill, and to dispens with our personall compeirance: Quhairanent pir presentis falbe vnto thame a Warrant, and your lordschipis anfuer.

APUD ED<sup>B</sup>, xvij Julij, 1612. *fiat ut petitur.* AL. CANCELL<sup>R</sup>. J. PRYMROIS.

At command of the quhilk Warrant, the Justice ordanit baithe the dyettis appointit, *hinc inde*, to this day to desert.

Lykas, Johnne Gordoun, appeirand of Sydra,<sup>4</sup> compeirand personallie in judgement, in name of Sir Robert Gordoun, brother to my Lord of Sutherland, Duncane M'ky, fear of Far, Johnne Gordoun, appeirand of Gordoun of Golfspitour,

<sup>1</sup> *Vid.* Jul. 30, 1612. In order to a proper understanding of this FEUD, reference may be made to *Gordon's History of the Family of Sutherland*, Edinburgh, 1813, p. 317, &c. It would occupy too much space to give a suitable outline of the various disputes in which these families were embroiled.

<sup>2</sup> Complains; literally, *moans*.

<sup>3</sup> *Alias* Herrach (Herraugh).

<sup>4</sup> The eldest son of John Gordon of Sidderay.

and producet the Letteris raifit be thame, and remanent complineris infert thairin, aganis my Lord of Caithnes, my Lord of Berriedaill, his sone, and remanent defenderis thairin contenit; be the quhilkis, thay and everie ane of thame ar charget to find cautioun for thair compeirance befor the Justice or his deputis, this day and place, in the hour of caus, to vnderly the law for the slauchter of Neill Nathnear, vmq<sup>le</sup> Airthour Smyth, taking captiue and priffoner of Angus M<sup>c</sup>Williame, *alias* Herrach, but Commiffioun; and dyuerse vtheris crymes specifit in the saidis Letteris—askit instruments, and protestis for relief of the said Sir Robert Gordoun, kny<sup>t</sup>, of his cautionerie.

**Slaughter—Fire-raising—Theft—Intercommuning with  
Clan Gregor.**

Jul. 28.—GREGOUR BEG M<sup>c</sup>GREGOUR, sone to vmq<sup>le</sup> Gregour M<sup>c</sup>eane; Gregour M<sup>c</sup>Allafter Galt<sup>1</sup> Johnne M<sup>c</sup>inleithe;<sup>2</sup> Johnne Dow M<sup>c</sup>gilliephadrik V<sup>c</sup>robert; Allafter M<sup>c</sup>allafter V<sup>c</sup>coule; Patrik M<sup>c</sup>gregour Craiginfche; Duncane M<sup>c</sup>coule cheir; Patrik Roy M<sup>c</sup>Gregour, sone to Johnne M<sup>c</sup>phadrik, in Rannache; Gregour M<sup>c</sup>eane V<sup>c</sup>coulcheir; Johnne Dow Moir M<sup>c</sup>gregour, in Rora.

Being all presentit vpon pannell, dilaitit, accuset, and perfewit be Dittay, at the instance of Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intreis, of the crymes *respectiue* following, viz. THE saidis *Gregour Beg M<sup>c</sup>gregour, Gregour M<sup>c</sup>Allafter Galt, Johnne Dow M<sup>c</sup>inleith, and Johnne Dow M<sup>c</sup>gilliephadrick V<sup>c</sup>robert*, ffor airt and pairt of the tressonabill raiseing of ffyre, burning and distroying of the hail houffis and biggingis of Glenlocha and Achallader: And for the Slauchter of . . . . M<sup>c</sup>coleane, bowman to the Laird of Glenvrquhie, with dyuerse vtheris perfones, to the number of aucht perfones: Burning of thre 3oung bairnes, dochteris to Johnne M<sup>c</sup>kischak: And for Steilling of sax scoir ky and oxin furth of Glenlyoun, committit in Apryle, 1604. AND siclyk, the saidis *Allafter M<sup>c</sup>allafter V<sup>c</sup>coule, Patrik M<sup>c</sup>gregour Craiginche, Duncan M<sup>c</sup>coule cheir, Gregour M<sup>c</sup>eane V<sup>c</sup>coule cheir, and Patrik Roy M<sup>c</sup>gregour*, sone to Johnne M<sup>c</sup>fadrik in Rannache, being indytit and accuset, ffor airt and pairt of the burning and distroying of the hail houffis and bigingis vpon the fourtie merk land of Abervrchill, pertening to Colene Campbell: And for the Slauchter of Duncane Wobster, Johnne Seatone, Patrik Stavache, Johnne M<sup>c</sup>gillievorich: Burning of the thre dochteris of Johnne M<sup>c</sup>kischak, steilling and away-taking of auchtene scoir ky, saxscoir peise of horsis,<sup>3</sup> aucht scoir scheip and gait, pertening to the said Co-

<sup>1</sup> The stranger, or travelled.  
son of rough, or dark John.

<sup>2</sup> M<sup>c</sup>inleiche, son of the leech, or doctor. Query, M<sup>c</sup>indreiche?

<sup>3</sup> One hundred and twenty *piece* of horses, as we say *head* of oxen.

lene : And lykways for burning of the mylne of Bolquhafter, with the haill houffis and bigingis vpone the grund and landis of Carne, Downe, and Dillater, pertening to Robert Campbell of Glenfalloche, and of his haill houffis and bigingis vpone his landis of Ardcan knockaur ;<sup>1</sup> committit be thame in the moneth of Junij, 1611. ITEM, the said *Gregour M'gregour Beg*, ffor airt and pairt of the Slauchter of vmq<sup>12</sup> Solomon Lany, *alias* Buchannane ; committit at the Kirk of Kilmaheug, at tuentie yeir fyne, or thairby. ITEM, the said *Johnne Dow Gilliephadrik*, ffor airt and pairt of the steilling and away-taking furth of Glenfynles of ane grit heirschip<sup>3</sup> of ky and oxin, pertening to the Laird of Lufe and his tennentis : And Slauchter of vmq<sup>16</sup> Johnne Reid, wobster, and Patrik Lang, iervand to the Laird of Lufe ; committit vpone the saidis landis of Glenfinles, in the moneth of December, 1602. AND ficlyk, the said *Johnne Dow Moir M'gregour*, in Rora, ffor steilling and away-taking of ane grit number of guidis,<sup>3</sup> pertening to my Lord Ogilvie, furth of Glenylay : And ficlyk, for taking and keiping of the Ileand calit Ileand-Varnak,<sup>4</sup> against his Maiesteis Commiffioner, and herreing<sup>5</sup> and oppreffing of the haill tennentis and inhabitantis of the cuntrie about ;<sup>6</sup> taking and inbringing of thair haill guidis and bestiall, to the number of aucht scoir ky and oxin, xvij scoir scheip and gait, quhilkis war eittin and flane be thame, wi hin the said Ileand.<sup>7</sup> ITEM, the haill foirnamet perfones indytet and accuset, ffor cowmone thift, cowmone reffet of thift, cowmone foirning,<sup>8</sup> and oppreffing of his Maiesteis peceable and guid fubiectis ; and for Intercowmoning with the rest of the surname of M'gregouris, fugitiues and at the horne, and ffurneiffing of thame with meit, drink, and money ; and keiping of tryftis, counfallis, and gadderingis<sup>9</sup> with thame, contrare the tennour of his Maiesteis Proclamationes—war all put to the knowlege of ane Assyse of the perfones following.

## ASSISA.

Colene Campbell, appeirand <sup>10</sup> of Glenvrquhie,	James Campbell, feruitour to the Laird of Lundie,	Johnne M'cdowngall of Raray, Duncan Menzeis of Comereife,
Johnne M'farlane of Arrochar,	Duncane Campbell, Capitane of Carrick, <sup>11</sup>	Williame Sterling of Achyle, Mr James Schaw of Knokhill,
James Campbell of Laweris,		
Dauid Drummond, feruitour to my Lord of Perth,	Johnne Drummond, feruitour to my Lord of Perth, and Chal- merlane of Stratherne,	Johnne Buntene of Ardoche, Mr James Kirk, feruitour to my Lord of Argyle.
Alexander Menzeis of that Ilk, Alexander Schaw of Cambusmoir,		

The Aduocat takis instrumentis of the fwering of the Assyse, and proteftis for

<sup>1</sup> Archenachrochtan, the now celebrated inn and farm at the Trossachs. <sup>2</sup> Plunder, or spoil.  
<sup>3</sup> Stock, cattle. <sup>4</sup> A small Island, near the western extremity of Loch Katrine, on its north shore,  
 opposite Portnellan. <sup>5</sup> Spoiling ; plundering. <sup>6</sup> Circumjacent. <sup>7</sup> The Clan-Gregor had a  
 garrison here, in January 1611 ; and were besieged by Campbell of Glenurchy's second son, Robert  
 Campbell of Glenfalloch, who abandoned the siege, owing, as is alleged in *the Book of Taymouth*, to  
 a storm of snow. <sup>8</sup> Taking free quarters by violence, &c. <sup>9</sup> Appointed meetings, councils, and  
*gatherings*, or convocations. <sup>10</sup> Heir-apparent. <sup>11</sup> Captain of the Castle of Carrick, on the banks  
 of Lochfyne.

Wilfull Error, in caice thay clange the pannell of the crymes contenit in thair Dittay; in respect of the notoriety thair of, and of thair Confessioun.

VERDICT. Eftir accusatioun of the foirsaidis perfonis enterit vpon pannell of the crymes *respectiue* aboue writtin, be our said souerane lordis Aduocat, quhilk was verifeit be thair Depositiones and Confessiones, maid in presens of ane grit number of the saidis perfonis of Assyse, the said Dauid Drummond, chancellor, in name of the said Assyse, all in ane voce, exponit, pronuncet, and declairit the saidis perfonis on pannell, in respect of thair awin Confessioun, to be ffylit, culpable, and convict of the crymes *respectiue* aboue specifeit, contenit in thair Dittayis.—SENTENCE. To be tane to the Burrow-mure of Ed<sup>r</sup>, and thair to be hangit quhill thai be deid; and thair hail landis, heritages, and annuelrentis, takis, possessiones, guidis and geir pertening to thame, to be fforfalt and efcheit to his hienes vse, as convict and culpable of the saidis crymes.

**Slaughter — (Pannell ordained to satisfy the Private Party, notwithstanding of the King's Remission, and 'Letters of Slains' from the Eldest Son of the Deceased.)**

Jul. 29.—WILLIAME MURRAY, sone to Williame Murray in Glasfurd, sumtyme seruant to James Hammiltoun of Eviudaill.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Archibald Stevinfoun, in Gallowfarvene; committit with schottis of hagbuttis and pistolettis, vpon the xxiiij day of Marche, I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris.

PERSEWARIS, Archibald and Thomas Stevinsones, as sones; Agnes Finlay, as relict; Gawin Stevinsone, baxter, burges of Ed<sup>r</sup>, as neir kynsman.

The said Williame tuik him self to our souerane lordis Remissioun, grantit to him vnder his hienes Grit Seall, vpon the nynt day of Januar lastbypast, beirand,<sup>1</sup> that his Maiestie, of his speciall grace and mercie, had pardonet and forgevin the said Williame all actioun, cryme, and offence that mycht be imput<sup>2</sup> to him, for airt and pairt of the Slauchter of the said vmq<sup>le</sup> Archibald; and in respect thair of, and of his Maiesteis clemencie, mercie, and pardoun expressit thairin, allegit, that the Justice could nawayis put him to ane Assyse, for the said crymes.—To the quhilk it was ansuerit be the persewaris, that the foirsaid Remissioun is null, and thairfoir sould nocht be admittit; in respect, be Act of Parliament, maid be our souerane lord and thre Estaitis, in the moneth of Julij, 1593, cap. 174, it is expresse provydit, statute and ordanit, be his Maiestie and Estaitis foirsaidis, that na Respekt nor Remissioun be grantit to ony persone or perfonis, at na tyme thaireftir, that passet to the horne for thift, reif, slauchter, burning, or heirfchip, quhill the pairtie skaithed<sup>3</sup> be first satisfeit; and gif<sup>4</sup> the samyn be

<sup>1</sup> Bearing.

<sup>2</sup> Imputed.

<sup>3</sup> Until the party injured, &c.

<sup>4</sup> If.

vtherwayis grantit, without satisfioun of pairtie, all sic Respettis and Remiffiones to be null, alswell be way of exceptioun as reply: And trew it is, that the pairtie perfewar is nawayis satisfeit, conforme to the said Act; and thairfoir, nochtwithstanding of the foirfaid Remiffioun, the pannell fould be put to ane Assyse, for the said cryme.

To the quhilk it was duplyit be the pannell and his prelocutouris, that the foirfaid Remiffioun man<sup>1</sup> be admittit, in respect the samyn is grantit vpon the ficht of ane Letter of Slanes gevin be Andro Stevinsoun, eldest lauchfull sone to the said vmq<sup>2</sup> Archibald, and nerrest of kyn to him, with consent of Agnes Finlay his mother, and Mathow Thomesone, his vncl, beiring satisfioun maid to the said Andro for the said slauchter: And for verificatioun thairof, producet the said Letter of Slanes, of the dait the penult day of Julij, I<sup>m</sup>.Vj<sup>c</sup>. and ellevin yeiris: And vpon the productioun thairof, togidder wth the Remiffioun aboue writtin, askit instrumentis.

THE JUSTICE, in respect of the Letter of Slanes producet, Admittis the Remiffioun; and ordanis the pannell to find caution to satisfie the pairtie, conforme to the lawis of this realme.—James Murray of Guidisburne, and Gawin Murray of Vdftounheid, become cautioneris, &c.

### Slaughter.

Jul. 30.—DONALD M<sup>c</sup>KY, fear of Far, Johnne Gordoun, younger of Golfpitour, and vtheris.<sup>2</sup>

Dilaitit ffor being airt and pairt of the Slauchter of vmq<sup>1e</sup> Johnne Sinclair of Stirkco, and James Sinclair of Dyn, and remanent crymes contenit in the Letteris.

Compeirit perfonallie George Murray, feruitour to my Lady Sutherland, quha produceit ane Warrant of the Lordis of Secreit Counfall, &c. off the quhilk the tennour followis.

JUSTICE, Justice clerk, and 3our deputis. Quhairas, thair ar Letteris direct at pe instance of George Sincler of Dyn, as brother to vmq<sup>1e</sup> James Sinclair of Dyn, and mother-brother to vmq<sup>1e</sup> Johnne Sinclair of Stirkco, and Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our fouerane lord, for his hienes intreis, aganis *Donald M<sup>c</sup>ky*, fear of Far, *Johnne Gordoun*, 3ounger of Golfpitour, *Adame Gordoun* in Geartie, *Murdo Neill*, *Johnne Williamesoun* in Achines, *Neill M<sup>c</sup>allaster Neillfoun* and *Donald Myller*, feruitouris to the said Donald M<sup>c</sup>ky, fear of Far, and remanent perfonas defenderis, pair complices, contenit in the saidis Letteris, chargeing thame to compeir befor 3ow, in the Tolbuth of Edinburgh, the penult day of Julij instant, to vnderly the law, for airt and pairt of the Slauchter of pe saidis vmq<sup>1e</sup> Johnne and James Sinclairis. And feing all matteris questionable betuix THE ERLE OF SUTHERLAND and M<sup>c</sup>KY, and pair kyn and freindis, on the ane pairt, and THE ERLE OF CAITHNES, his kyn and freindis, on the vther pairt, is be our moyane and travellis submittit; in the quhilk Submissioun the saidis tua Slauchteris of pe saidis Johnne and James Sinclairis ar speciallie comprehendit, and pe decyding pairof restis in our handis, to be discussit be ws. It is pairfoir our Will, and

<sup>1</sup> Must.

<sup>2</sup> Vid. Jul. 17, 1612.



We command 3ow to DESERT þe said dyet appointit to þe said pennit day of Julij instant, for tryell of þe saidis crymes, and nawayis to proceed in vnlawing of the saidis persones defenderis, or þair cautioneris; dispensing with thair non-compeirance, in that respect: Quhairnent þir presentis fall be to 3ow ane sufficient Warrant. Subscryuit be ws AT ED<sup>a</sup>, the xxv day of July, 1612.

AL. CANCELL<sup>r</sup>. LOTHIANE. S<sup>r</sup> T. HAMILTOUN.

At command of the quhilk Warrant, the Justice ordanit the said dyet to desert, &c.

### **Slaughter—Beiring, Weiring, and Shooting of Hagbutts and Pistolets.**

Jul. 31.—JAMES HALL of Foulebar; Mr Williame Hall, indueller in Dumbarten, his brother-germane; Thomas Stewart, at the Ferrie-boit of Inchynnane.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>h</sup> Johnne Montgomerie, younger of Scottiftoun; committit with schottis of hagbuttis and pistolettis, within the burgh of Renfrew, in the moneth of November, the yeir of God I<sup>m</sup>.V<sup>c</sup>. fourfcoir nine yeiris: And als, for contravening of the Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis, schoiteing and slaying of the said vmq<sup>h</sup> Johnne Montgomerie younger thairwith, at the particuler tyme and place aboue mentionet.

#### **PERSEWARIS.**

Johnne Montgomerie, elder of Scottifloun, as father; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTORIS for the pannell, Mr Alexander King, Mr Laurence M<sup>c</sup>gill, Aduocatis.

Sir Johnne Buchannan of that Ilk, kny<sup>t</sup>, become souertie for Thomas Stewart his entrie, vpone xv dayis wairning, to vnderly the law for the slauchter aboue writtin, vnder the panes contenit in the Actis of Parliament.—The said James Hall, and Mr Williame Hall, his brother, tuik thame selffis to tua feuerall Remiffiones, grantit to thame be our souerane lord; the ane beirand, that his Maiestie, of his speciall fauour and grace, remittis and gevis pardoun to the saidis James Hall of Foulbar, and to Mr Williame Hall, his brother, for airt and pairt of the slauchter of the said vmq<sup>h</sup> Johnne Montgomerie Younger of Scottiftoun, and for all actioun and cryme that may follow thairupoun, or may be imput to thame thairfoir; quhilk is daitit at ffalkland, the aucht day of Julij, the yeir of God I<sup>m</sup>.V<sup>c</sup>. fourfcoir fyftene yeiris (1596), vnder his hienes Grit seill: The vther of the saidis Remiffiones beirand, that his Maiestie, of his speciall grace and mercie, gevis pardoun and remiffioun to the said James Hall, seruitour to Archibald Erle of Argyle, and to the said Mr Williame Hall, his brother, and to ather of thame, for all cryme and offence that mycht be laid to thair charge, ffor thair beiring, weiring, or schuiting with hagbutis and pistolettis, contrair to his Maiesteis Actis of Parliament, at ony tyme bygane, preceeding the day and dait of the

same Remiffioun, quhilk is daitit at Edinburgh, the tent day of Julij infant, I<sup>m</sup>.Vj<sup>c</sup>. and tuelf yeiris.

THE JUSTICE admittit the samyn, nochtwithstanding of dyuerse allegeances maid be our fouerane lordis Aduocat in the contrair ; and Ordanit the saidis persones vponne pannell to find caution to satisfie the pairtie, conforme to the lawis of this realme : Quhairupone the saidis James and Mr Williame Hallis askit instrumentis : And for obedience of the said ordinance, ffand, with thame selfis, Williame Sempill of Foulewoid, and James Wallace of Johnnstoun, cautioneris for thame, to satisfie the pairtie, &c.

**Slaughter, committed by a Youth fourteen years of age.**

Aug. 26.—JAMES MIDDELTOUN, sone to v<sup>m</sup>q<sup>h</sup> Robert Middeltoun, tailzeour, burges of Edinburgh.

Dilaitit off airt and pairt of the crewall Slauchter of v<sup>m</sup>q<sup>h</sup> Clement Mauchane, sone to v<sup>m</sup>q<sup>h</sup> James Mauchane, mercheand, burges of Edinburgh, be streking of him with ane durk, vnder the schorte ribbis, vpwardis, on his left syde, the lenth of aucht or nyne inches, vponne the *diaphragma*, or midreid, quhilk is ane noble pairt ; committit within the burgh of Edinburgh, within the duelling hous or hudgeing of Alexander Hunter, burges thair, vponne the threttene day of August infant : Off the quhilk crewall and deidlie straik sa gevin to him, he nevir thair-eftir convalesschet, bot immediatlie thaireftir taking bed within the foir chalmer of v<sup>m</sup>q<sup>h</sup> Henrie Lummsiden, chirurgane, to the quhilk he was led and cayreit, remanit bedfast in grit dollour and pane, vnder the cure of chirurganes, the space of nyne dayis togidder, or thairby ; and at last, vponne the xxij day of August infant, about nyne houris afoir none, he departit this lyfe, of the said deidlie straik : And sa, was crewallie flane be the said James Middeltoun, vponne set purpos, prouiffioun, and foirthocht fellonie ; in hie and manifest contempt of our fouerane lordis auctoritie and lawis.

PERSEWARIS, Mr James Mauchane, as brother ; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord.

PRELOCUTOURIS in defence, Mr Johnne Ruffell, Mr Laurence M<sup>c</sup>gill.

The persewaris producet the Dittay, with the roll of the Assyse, and desyret proces.—THE JUSTICE Ordanit the Dittay to be red.

Mr Laurence M<sup>c</sup>gill, prelocutour, in name of Johnne Carmichell, decone of the Tailzeouris, Alexander Miller, tailzeour to his Maiestie, and of the mother and certane vtheris the pannellis freindis, befoir ony forder proces, and to eschew forder disputioun in this matter, offerit to the persewaris, that for thair satisfioun for the slauchter aboue writtin, that thai war content to caus the pannell ather imbrace the Sentence of perpetuall Banischment ; or vther wayis, to thair power,<sup>1</sup> to mak sic vther satisfioun, baith of honour and guidis, to the

<sup>1</sup> To the utmost extent of their means.

perfewar, as be the advyse of friendis fould be inioynet to him, his lyfe being faifit.—The said Mr James Mauchane, as brother, and perfewar of this mater, for anfuwer declairit, that, feing his brother is flane, aganis the Law of God and his Maiefties lawis and Actis of Parliament, refuifet altogidder to enter in capitulation of agreement of this matter; and thairfoir defyret that iustice be miniftrat, accoirding to the lawis of this realme.

THE JUSTICE, in respect of the perfewaris anfuwer and defyre aboue writtin, Ordanis proces.

It was allegit be the pannell and his prelocoutouris, that this matter fould nocht pas to the knowlege of ane Affyse ffor tua cauffis; *ffirst*, becaus he is nocht wairnit vpone fyftene dayis wairning, conforme to the Act of Parliament; *secundo*, he was nocht tane *in fragranti crimine*; in respect be the Dittay it is affirmet, that the fact was committit vpone Thurisday the xij day of August instant, and vpone the fyftene day of the said moneth, being Setterday, was tane be the Magiftratis of Edinburgh, as fufpect giltie and culpable of the said fact, albeit<sup>1</sup> the Magiftrattis of the said bur<sup>t</sup> had na power fa to do, the tyme limitat to thame being expyret, viz. xxiiij houres allanerlie<sup>2</sup> eftir the committing of the fact; and fa, he nocht being tane *in fragranti crimine*, bot within thre dayis eftir the allegit time of the committing thairof, the pannell, of all equitie, aucht to haif bene fummond vpone fyftene dayis wairning.—It is anfuwerit be my lord Advocat, that the foirfaid allegeance aucht to be repellit, in respect of the Dittay beiring the slauchter to be committit vpone the xij day, be the pannell, and he to be tane and apprehendit be the Magiftratis vpone the xv day thaireftir, and committit to waird; quhairin he hes remanit to this hour. And fa, the Slauchter being committit recentlie, and the pannell tane thairfoir *in fragranti crimine*, he aucht to be put to ane Affyse, but<sup>3</sup> ony citatioun preceiding; speciallie, in respect he is brocht fra the priffone to the bar, be the Magiftratis, his takeris.

THE JUSTICE Ordanis the pannell to pas to ane Affyse, nochtwithstanding of the former allegeances.

It is forder allegit be the pannell, that my lord Justice can nocht put the pannell to the knowlege of ane Affyse, for this cryme; becaus, be ane text of the Cowmone Law, *de delictis puerorum*, the fyft of *the Decretallis*, it is speciallie declairit, that minoris within xiiij yeiris of age committing crymes, ar nocht *doli capaces*, quhilk can nocht be estimat to be done be thame *ex certa scientia*; and thairfoir, can nocht be perfewit thairfoir: Lyk as, in the accident that fell furth be the scolleris of the Grammer-scole of Edinburgh, in flaying of Johnne M<sup>c</sup>morrane, being ane bailzie, and in the executioun of his office, this allegeance being proponit in the perfute intentit aganis thame for the said Slauchter, it was ffund, be Interloquitour of the Judge, in respect of thair minoritie, that thai war nocht

<sup>1</sup> Although.

<sup>2</sup> Only.

<sup>3</sup> Without.

*doli capaces*, and sa wer affoilzeit,<sup>1</sup> and na perfute followit furth aganis thame: Quhilk practique the pannell repeittis, and sayis, that in respect of the Cowmone-law and practique aboue writtin, he being minor *et non doli capax*, he can nocht pas to ane Affyse for the said cryme. *Secundo*, the slauchter aboue writtin was nocht committit vpon set purpos or foirthocht fellonie; in respect thair was na querrell betuix the defunct and the pannell ofbefoir, bot only the defunct missing his dager, quhilk was tane fra him be Capitane Erskine, quha also was with him in companie, and was cassin vp be him vpon ane almerie heid,<sup>2</sup> the defunct, for wanting thairof, challanget the pannell, and maist outrageoullie abusset him, baith with langaige and straikis;<sup>3</sup> lyk as, the pannell, finding him self sa vset, and seing ane durk vpon the buird beyde him, tuik vp the said durk and defendit him self thairwith, vpon the quhilk durk, haldin out be the pannell for his awin defence, the defunct ran him self; and sa was the caus, him self, of his awin slauchter: And thairfoir, fould nocht pas to ane Affyse.

To the quhilk it is anfuert, be my lord Aduocat, that the foirlaid allegeance of minoritie fould be repellit, becaus it is nocht condiscendit be the proponer of the said James Middeltones age, quhidder he be past xiiij yeiris or within the samyn, quhilk of necessitie man<sup>4</sup> be condiscendit vpon; becaus he being past xiiij yeiris of age, *est doli capax*, and sua may be perfewit and pwneist to the daith for the slauchter: Always,<sup>5</sup> to mak the matter cleir to my lord Justice, it is affirmet be the persewer that he is past sevintene yeiris of aige, befoir the committing of the slauchter, as is manifest, nocht onlie be ocular inspectioun, bot be the extract of the tyme of his birth furth of the Register of the Kirk-buikis of Edinburgh, he being baptizet vpon the 23 day of Julij I<sup>m</sup>.V<sup>c</sup>.lxxxv.—As to the practique allegit betuix Johnne M<sup>c</sup>morrane and the Chancellor of Caithnes sone, and the rest of the bairnes, quhome the pannell allegis to haif bene perfewit for the said Johnne M<sup>c</sup>morrane's slauchter, it is certane that all the bairnes that war perfewit and accusset for that slauchter war within fourtene yeiris of age; and thair was na Interlocutour gevin in that cause, bot the matter was tane vp be his Maiesteis expres Warrant.—And acceptis the Confessioun of the durk in his handis, and Slauchter thairwith.

Thaireftir the pannell, for satisfeing the desyre of my lord Aduocatis allegeance, condiscendis that he was within fourtene, at the leift fyftene yeiris of age, the tyme of the committing of the slauchter lybellit. And quhair, it is allegit and affirmet that the haill bairnes perfewit for Johnne M<sup>c</sup>morrane's daith war within fourtene yeiris, thair is na thing producet to verifie the samyn. And laft, as to the Tef-

<sup>1</sup> Absolved; dismissed.  
by words and blows.

<sup>2</sup> Cast or thrown by him on the top of a cupboard or press.  
<sup>4</sup> Must.

<sup>3</sup> Both  
<sup>5</sup> Nevertheless; at all events.

timoniall producet be the perfewar, anent the pannellis baptifme; *ffirst*, it is anfuerit, that na fayth can be gevin thairto, becaus it is nocht registrat; *secundo*, it hes na witnesfes; *tertio*, of the Law, *testibus et non testimonijs credendum est*.—The perfewar repeitis his former anfwer, with the Testimoniall extractit furth of the Kirkis Register.

The Justice Repellis the allegeances proponit be the pannell; and Ordanis him to be put to the knowlege of ane Affyse.

## ASSISA.

Jo <sup>o</sup> Quhyte, culteller, burges, Edr,	Patrik Craig, mercheand, burges	James Cathkyn, librar, burges of Edr,
Johnne Naper, tailzeour in Poket-sleve,	Johnne Mitchelhill, mercheand,	Dauid Laufone, mercheand, burges thair,
Johnne Gilbert, tailzeour in the Cannogait,	Patrik Meayne, couper, burges thair,	Thomas Cuthbertfone, culteller, Troyalus Laufone, baxter, burges of Edr,
Johnne Smyth, mercheand, burges of Edr,	Robert Zoung, maltman,	James Halyburtoun, mercheand, burges of Edr,
Clement Ruffell, mercheand, burges thair,	Johnne Johnnestoun, tailzeour, burges of the Cannogait.	

It was allegit aganis Johnne Quhyte, that he can nocht be admittit vpon this affyse, becaus *ultro citroque gessit se hoc negotio*, in furtherance of this perfewer, in perfute of the pannell; and defyret the Judge to tak his ayth thairupoun, and to purge him of partiall counfall; quha being fuorne, declairit, that he had gevin na partiall counfall in that matter: In respect quhairof, the Justice admittis him vpon the Affyse.

The Defender, eftir his accusatioun be Dittay of the Slauchter aboue writtin, vpon his confcience, denyis the samyn; and allegit, that thair was nathing producet to the Affyse to verifie his giltines of that fact.

Mr James Mauchane, perfewer, and brother to the defunct, being fuorne, gaif his ayth vpon the Dittay, that he had juft caus to perfew the pannell for the slauchter of his brother: And repeitis to the Affyse the notorietie of the slauchter, in maner fet doun in the Dittay.—My Lord Aduocat takis instrumentis of the fweiring of the Affyse; and repeitis, for their forder instructioun, the offer maid be the pannell to the perfewer, ather to imbrace the sentence of Banifchment, or vtherwayis, in honour or guidis, to mak satisfacioun to thair power; quhairin the pannell hes confest his giltines of the fact, in maner fet doun in the Dittay. And protestis, in respect thairof, for Wilfull Errour aganis the Affyse, in caice thay acquit.—It is allegit be the pannell, that the offer allegit maid be him to the pairtie perfewer, in the begynning of the cause, was nocht maid be him, bot be Johnne Carmichell, deacone of the Tailzeouris, and vtheris his brether, the pannellis freindis and weill-willeris, out of thair awin box,<sup>1</sup> quhilk offer was

<sup>1</sup> Out of the box or funds belonging to the Incorporation.

nocht maid to induce ony Confessioun of the cryme, *sed ad evitandum litigationem*.—My Lord Aduocat, as ofbefoir, repeitis the offer, and notorietie of the fact committit; and protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse, all in ane voce, be the mouth of the said James Cathekyn, buikfeller, ffand, pronuncet, and declairit the said James Middletoun to be ffylet, culpable, and convict of the crewall slauchter of the said vmq<sup>le</sup> Clement Mauchane; commititt at the tyme and in maner specifreit in the said Dittay.—SENTENCE. The Justice, be the mouth of John Dow, dempster of Court,<sup>1</sup> decernit and adiudget the said James to be tane to the Mercat-croce of Ed<sup>r</sup>, and thair his heid to be strukin frome his body; and all his moveable guidis and geir, gif he ony hes, to be escheit and inbrocht to his hienes vse, as convict of the said Slauchter.<sup>2</sup>

### Horse and Sheep Stealing—Theft—Perjury.

Sep. 18.—ALEXANDER IRWING, sone to vmq<sup>le</sup> Gilbert Irwing of Wyf-bie, James Irwing, sone to vmq<sup>le</sup> Williame Irwing, brother to the said vmq<sup>le</sup> Gilbert.

Dilaitit, accuset, and perfewit, be Dittay, at the instance of Williame Mannecht in Echt, and Alexander Wilfone, gairdner thair, and be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, aduocat to our souerane lord, off the feuerall pointis of Dittay following, viz.

FOR airt and pairt of steilling and away-taking of thre lynning wobbis furth of the houffis of Gulielandis, pertening to ane pure woman thair; committit in Julij, 1610 yeiris. ITEM, ffor airt and pairt of the steilling of sevin naigis and meiris<sup>3</sup> furth of the landis of Moufwall and Drummwre; committit in the moneth of October, 1610 yeiris. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of aucht schein furth of Dronnok, fra James Quhyte thair; committit in September, 1609. ITEM, ffor airt and pairt of the steilling and away-taking of tua naigis and ane mere, pertening to Johnne Gillespie, and George Ker, in Robiequhat; committit in October, 1610. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of sax oxin furth of the landis of Lochirgrane, within Drummwre; committit be the said Alexander, in the yeir of God I<sup>m</sup>. sax hundreth and aucht yeiris. FOR the quhilkis feuerall crymes, the saidis Alexander and James Irwingis being arreistit to the Justice Court, haldin be the Commissioneris in the Tolbuthe of Dumfreis the fyftene day of October, I<sup>m</sup>. Vj<sup>c</sup>. and ellevin yeiris, thay, for thair non-compeirance, war declairit fugitiues and put to the horne, as rebellis and fugitiues, for the saidis crymes. ITEM, the saidis James and Alexander Irwingis war indyttit and accuset, at the instance of the saidis perfewaris, ffor airt and pairt of the steilling and away-taking furth of the waird of Echt of ane gray naig, pertening to the said Williame Mannecht, and of ane broun naig, pertening to the said Alex<sup>r</sup> Wilfoun, gairdner in Echt; committit vnder silence of nycht, vpon the first day of August lastbypast; quhilkis tua naigis war brocht Southe ower be thame to Ed<sup>r</sup> to Thomas Lokeis hous, at the Wast-Poirt thairof, quhair thair war keipit for the space of thre

<sup>1</sup> This person appears, for the first time, as dempster, in the Record.      <sup>2</sup> See Nov. 18, 1618, when, after six years' imprisonment, the party relents, and Myddiltoun goes into voluntary exile for life. This arrangement is sanctioned by the Privy Council and the Justice, to whom the matter had previously been submitted.      <sup>3</sup> Riding horses and mares.

dayis and thre nyctis ; and vpone the . . . day of the said moneth, being Mononday, the ordinar mercat day of the said burgh,<sup>1</sup> presentit thame to the horse-mercat thairof to be sauld, quhair the saidis tua horffis war challanget in thair possessioun, be Airthour Forbes of Sonnahony ; and thair thairefter apprehendit and committit to waird within the Tolbutth of Ed<sup>r</sup>, thair to haif remanit quhill thair tryell. ITEM, ffor airt and pairt of the steilling and away-taking of ane horse furth of the Heuch of Duris, pertening to Thomas Frazer, sone to the auld Laird of Duris ; committit in Junij lastbypast. ITEM, ffor airt and pairt of the steilling, conceilling, and away-taking of ane blak horse, pertening to Johnne Clark in Auchroffe ; committit in the moneth of Maij, 1<sup>m</sup>.Vj<sup>c</sup>. and ten yeiris. ITEM, ffor the detestable and odious cryme of Periurie, in the periureing and menfweiring<sup>2</sup> of thame selfis, the tyme of thair examinatioun and vptaking of thair Depositiones ; the said James Irwing, be his grit aithe, affirmeing him self to be namet Johnne Poole, quhairat he still abaid quhill the contrair was verifeit vpone him, and he maid to confes the treuth thairof ; quhilk was also sworne and affermet be the said Alex<sup>r</sup> Irwing, that the said James was namet Johnne Pole. ITEM, thay and ather of thame war indytit and accuset for Cowmone thift, Cowmone reffet of thift, fra the South to the Northe, and fra the Northe to the Southe, in outputing<sup>3</sup> of the samyn.

My lord Aduocat, for verifeing the first point of Dittayis, producet ane Precept of the Commiffioneris, be the quhilk the pannell ar denuncet fugitiues, for certane poyntis of thift gevin vp aganis thame ; and repeitis the sueiring of the Dittay be the tua persewaris, anent the steilling of thair tua naigis : And in respect thairof, and of the notorietie of the pannellis thiftious lyfe, protestis for Errour, gif thay acquit.

VERDICT. The Assyse, be the mouth of Johnne Abercrombie, in Leith, chancellor, stand, pronuncet, and declairit the saidis Alexander and James Irwings to be ffylit, culpable, and convict of the haill crymes *respectiue*, aboue expremitt.— SENTENCE. To be tane to the Castell-hill of Ed<sup>r</sup>, and thair to be hangit vpone ane gibbet, quhill thay be deid : And all thair guidis and geir to be escheit, &c.

### Slaughter.

Nov. 5.—JOHNNE HAY, servitour to James Henderfone, chirurgane.

Dilaitit, accuset, and persewit be Cristiane Adamesfone, the relict of vmq<sup>le</sup> Niniane Paterfone, staibler in Ed<sup>r</sup>, and Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, of the crymes following, viz.

FORSAMEKILL as the said Johnne Hay haifing, in the moneth of Maij bypast, hyret and conductet the said vmq<sup>le</sup> Niniane Paterfones horse to Roiffing-mylne, for hame-bringing of pe said James Henderfones bairne ; and pe said Niniane haifing past with him, of purpois, at his lychting,<sup>4</sup> to haif attendit vpone his said hors, the said Johnne Hay, be the way, directit the said vmq<sup>le</sup> Niniane to ryn befoir, and to attend<sup>5</sup> his cuming, becaus he was him self to repair to Lesuaid, thair to speik with his saper and vtheris his freindis ; lyk as, about ten houris at evin, the said Johnne, haifing cum to the said mylne, altogidder ouerfet with drink, and sa, nawayis being able at that tyme of the nycht, and in sa beifflie estait, to governe him self, let be to haif horfet and cayreit befoir him his said maisteris bairne, without danger of bothe pair lyves ; becaus pe said vmq<sup>le</sup> Niniane maid sum oppositioun and resistance to that his intentioun, in ryding at pat tyme of the nycht ; he pairfoir, in his beifflie rage and furie, ran vpone

<sup>1</sup> Now held on Wednesdays.  
Fr. *attendre*.

<sup>2</sup> Manswearing.

<sup>3</sup> Selling ; disposing of.

<sup>4</sup> Alighting. . . <sup>5</sup> Await.

him, and with his kneysis and feit poffit<sup>1</sup> him vnder his feit, beft and dang<sup>2</sup> him in pe heid, bellie, breiftis, and fydis, and brak and birfet<sup>3</sup> his haill intrallis within him : And nocht being fatisfeit with that his crewall and outrageous abufe, the faid vmq<sup>le</sup> Niniane, being riffin vp on his feit, the faid Johnne come to him and hurrillit him maift violentlie over the brae beyde pe mylne, of purpois to haif drowned him in the dambe, quhilk, be reffone of pe faid downeward fall, he had nocht failzeit to haif done, war nocht, be pe Providence of God, he was haldin and stayit be pe ftobe and rute of ane trie, his face and heid, nochtwithftanding, being maift fchamefullie demanit<sup>4</sup> and hurt, be occaifoun of pe faid fall : Off the quhilkis fraikis, hurtis, and woundis, fa gevin to the faid vmq<sup>le</sup> Niniane, in maner foirfaid, he nevir paireftir convaleffit ; bot being borne and cayreit hame to his duelling hous, tuik bed, quhairin he remanit bedfaft, in grit dollour and payne, continuallie paireftir, to pe tyme of his daithe ; and at lenth, vpone Lambes day<sup>5</sup> paireftir, quhilk was pe first day of Auguft laftbypaft, he deceiffit of pe faidis hurtis and woundis ; and at pe hour of his daith, and dyuerfe tymes of befoir, during his feiknes, left his deid,<sup>6</sup> and pe only caufe pairof, vpone pe faid Johnne : And fa was fchamefullie, crewallie, and vnmercifullie flane be pe faid Johnne Hay ; and he is airt and pairt of pe faid crewall flaunchter, committit vpone fet purpois, prouifione, and foirthocht fellonie ; in hie and manifest contempt of his hienes auctoritie and lawis.

PRELOCUTORIS in defence, Gilbert Hay, as fader to the defender ;

Mr Lawrence M<sup>c</sup>Gill, Adame Cuninghame, Johnne Elphingstone of Schank.

It is allegit, be the pannell, that this lybell is nocht relevant, in respect the perticuler day of the moneth of the allegit committing of the fact lybellit, is nocht condiscendit vpone.—To the quhilk it is anfuerit be the perfewar, that the allegeance aucht to be repellit, in respect of the Summondis beirand the cryme lybellit to be committit, be this defender, in the moneth of May laft ; and that be the fraikis gevin to the defunct, at that tyme, he deceiffit thairof in Auguft thaireftir.

THE JUSTICE, nochtwithftanding of the allegeance, in respect of the perfewaris anfuer, remittis this matter to ane Affyfe.

VERDICT. The Affyfe, all in ane voce, be the mouth of Thomas Inglis, burges of Ed<sup>r</sup>, chancellor, ffand, pronuncet, and declarit the faid Johnne Hay to be clene, innocent, and acquit of the Slauchter of the faid vmq<sup>le</sup> Niniane, and of airt and pairt thairof.—Quhairupoun the faid Johnne Hay askit instrumentis.

### Chett.

Nov. 24.—THOMAS MOWAT, fumtyme fervand to Williame Lord Keith.

Dilaitit of airt and pairt of the thiftious steilling and abstracting fra Williame Lord Keyth, his maifter, of ane purse, togidder with fax scoir Angellis of gold, being thairintill, vnder nycht, furth of ane foir chalmer in Ed<sup>r</sup>, quhair his faid maifter was ludget for the tyme ; committit vpone the xij day of Marche laft.

This cafe was continued to Dec. 23, Jan. 29, Feb. 5 and 12 ; and at length

<sup>1</sup> Pushed. Fr. *pousser*.      <sup>2</sup> Beat and struck.      <sup>3</sup> Bruised. It is sometimes in the Record expressed by '*braff*,' burst.      <sup>4</sup> Used ; treated.      <sup>5</sup> Lammas-day, 1st August, or the Feast of St Peter ad Vincula (in bonds) ; supposed to be so named, because lambs were offered at this Mass, in commemoration of the command of our Saviour to the Apostle, 'Feed my lambs.' This metaphorical expression was, as usual, seized upon by the Romish Church, and converted into a source of substantial profit.      <sup>6</sup> Death.



was prorogated to the Justice-air of ' Sterling, tertio Itineris, vel super premonitione xv dierum.' No procedure is recorded, saving these continuations, owing to the absence of Lord Keith, &c.

**' Englisch Pirattis'—Piracy—Theft.**

Feb. 2, 1613.—JOHNNE DAUIDSOUN, borne at Ratleiff, besyde Lundoun,  
Johnne Lowis, borne in Cairleill, baith Inglisch Pirattis.

Dilaitit of Piracie and Thift, committit vpon dyuerse his Maiesteis subiectis, bothe in Ingland and Scotland, viz.

FOR the thiftious steilling of ane schip-boit furth of Ratleif; committit vpon the fourtene day of Januar last, and passing thairwith to the sie: AND for airt and pairt of the buirding of ane catche or oifter-bott, and thiftious away-taking of the samyn, vnder silence of nycht; and passing thairwith, furth of the river of Thames to Liefwall, quhair thai buirdit ane Harwadge Hoy, and be way of maisterful thift and stouthe-reif, reft and away-tuik furth thair of ane piece of stuff worth threttie schillingis sterling, togidder with breid, beir, and vther victuallis: AND thairfra, foranent Harwadge,<sup>1</sup> persewit and buirdit ane Yarmouth bark, and tuik furth thair of thre caidis of reid heiring, and ane half barrell of quhyte heiring, with the barkis topsail, the skipperis cloik, and ane stand of apparell, laid over with siluer laise: AND thaireftir, come to Yarmouth-Raid, quhair thai persewit and buirdit ane Scottis bark, pertening to Alexander Law in Kirkcaldie, invalidit the skipper with his companie, being thairin, hurt and woundit the said Alexander Law, skipper, in the heid: AND for dyuerse vtheris crymes of Pirracie, at lenth specifeit in the Dittay.

Quhilkis (' feuerall crymes') war confessit judiciallie be thame to be of verritie.

VERDICT. The Assyse, be the mouth of Walter Lukkie, skipper in Leyth, chancellor, ffand, pronuncet, and declairit the saidis Johnne Dauidson and Johnne Lowis to be ffylet, culpable, and convict of the perticuler crymes of Thift and Pirracie aboue specifeit.—SENTENCE. To be tane to the Sandis of Leithe, within the fluid-mark thair of, and thair, vpon ane gibbet to be hangit quhill thay be deid; and all thair moveable guidis to be escheit, &c.

**Fire-raising—Burning—Murder—Theft—Piracy.**

Mar. 30.—NEILL M<sup>c</sup>CLAUD, sone-naturall to vmq<sup>h</sup> Rorie M<sup>c</sup>claud, sumtyme of LEWIS.

Dilaitit of airt and pairt of the crewall Burning of dyuerse houffis, erectit and biggit be the Lairdis of Balcomie, Airdrie, Wormestoun, &c. vpon THE ISLE OF THE LEWIS, and for dyuerse vther crymes, set down in his DITTAY following.

<sup>1</sup> Opposite to Harwich.

NEILL MACCLAUD, sone naturall to vmq<sup>le</sup> Rorie M<sup>c</sup>claud, sumtyme of Lewis. 3E ar indytit and accuset, sforamekill as, from 3our verrie 3outhie, 3e being tranet vp in all maner of barbarous crewaltie and wicketnes, and following pe pernicious example of 3our godles parentis, kynsfolk, and cuntrie people, haifing committit innumerable oppreffiones, heirschipis, and violent factis aganis sic persones as 3e mislyket, duelland within the cuntrie of THE LEWIS, and vtheris HIELAND YLES pairabout, to the heich offence of Almychtie God, displefour of the King's Maiestie, contempt of his royall authoritie, and violatioun of his hienes lawis; sfor forder manifestatioun of 3our extreame and vnnaturall mischancie,<sup>1</sup> vnderstanding that THE KINGIS most excellent Maiestie, for repreffing of the abhominable villaneis, crewalteis, and oppreffiones committit be 3ow and 3our associattis duelland within pe Yleand of the Lewis, out of his princelie wifdome, had directit ane grit number of his hienes peceable and guid subiectis furth of pe Lawlandis, bodin<sup>2</sup> with all maner of furnitour, and necessar prouisioun for pair intertenement, towardis pe said Ile of pe Lewis, thair to haif plantit and sett down Tounes and Villages, and to haif establischet all guid ordour and ciuilitie; of purpois, pairby, to haif extirpat and ruteit out pe name of barbaritie furth of thais pairtis: 3E, accompaneit with *Tormond M<sup>c</sup>claud*, 3our broper, and with tua hundreth barbarus, bludie, and wiket Hielandmen, foirneris and avowed malie-factouris, ancient inhabitantis and lawles persones within the Lewis, quhome 3e conuenit to 3our selff, to resist and withstand the purpois and godlie intentioun resoluet vpone be his Maiestie, anent pe quyeting of pat cuntrie—come, all bodin in feir of weir,<sup>3</sup> with bowis, darloches, tua-handit-suoidis, hagbuttis, pistolettis, and vperis wappones *invasuè*, in oppin and hosteill maner, about a fourtene 3eir syne, or pairby, to the said Ileand of the Lewis, quhair vmq<sup>le</sup> WILLIAME LORD PITTINWEME, the *Laird of Wormestoun*, the *Laird of Fingask*, the *Laird of Balcomy*, the *Laird of Airdrie*, accompaneit with dyuerse Inlandis Gentilmen, his Maiesteis peceable and obedient subiectis war landit, and in planting of dyuerse houffes, pairtie of tymmer, and pairtie of stane and fail,<sup>4</sup> for pe tyme, lipning for nothing lefs nor to haif bene inuidit and withstuid in thais pair vertious<sup>5</sup> proceidingis; and pair, maist fearcelie inuidit and persewit the saidis Lawland Gentilmen and pair companeis, maist crewallie murdreift and slew vmq<sup>le</sup> Robert Traquair, vmq<sup>le</sup> James 3oung, vmq<sup>le</sup> . . . . Wedderburne, and dyuerse vtheris, to the number of tuentie tua persones, maist tressonabilie put handis in the persone of the said *Laird of Balcomie*, be taking him as captiue and priffoner: AS ALSO, maist tressonabilie raifit ffyre, brunt and distroyit to the grund the haill houffis erectit vp be thame, with pe victuall and furnitour of meill, malt, and vther prouisioun, to the avail<sup>6</sup> of tuentie thousand merkis: AND pair-estir, be way of maisterfull Thift and Stouth-reiff, thiftiouffie stall and away-tuik the haill horsis, ky, oxin, scheip, and vther bestiall, pertening to pe said Lawland gentilmen, to the avail of ten thousand pundis. And 3e, the said *Neill*, ar airt and part of the saidis tressonable and barbarus crymes, and was pe special ringleider and Chiftane, with the said *Tormond*, 3our broper, in putting of the samyn to sic mercieles executioun: quhilk 3e can nocht deny. ITEM, 3e ar Indytit and accuset, sforamekill as *Johnne Pullet* and *Robert Blair*, burgesfes of Perth, haifing past, with ane Schip pertening to thame, to *Loche-Brwme*, to the fischeing, 3e, vnderstanding pairof, come with ane number of thevis and lymmeris, 3our associatis, to pe number of fourtie men, or pairby, all bodin in feir of weir; and haifing devydit 3our companie in tua severall companeis, and enterit in tua boittis, 3e pairestir rowit af pe land towardis the said schip; and pair, as Pirattis, Thevis, and Sea-robberis, estir dischargeing of dyuerse muscattis, hagbuttis, and vperis ingynges of fyre-work at the said schip and companie pairof, 3e buirdit the samyn, intromettit with the haill furnitour, mercheandice, wynes, claithe, and vper prouisioun being pairintill, disarmet the merchandis, skipper, and marineris, and tuik af pame pair haill clething, and abulzementis,<sup>7</sup> pat tua (of) pe companie of the said schip a land, and in maist pitiefull<sup>8</sup> maner murdreift and slew pe rest of the companie, to the number of sevin or aucht men; and pairestir,

<sup>1</sup> O. Fr. *meschancie*, *meschanceté*, wickedness.    <sup>2</sup> Provided.    <sup>3</sup> In warlike array.    <sup>4</sup> Thickly cut turf, of a particular quality.    <sup>5</sup> Virtuous; honourable.    <sup>6</sup> Value.    <sup>7</sup> Dress; apparel.    <sup>8</sup> Pitteous.

disponit vpon the said Schip, mercheandice and guidis being pairin, at pair plefour: And the said *Neill* was and is airt and pairt of the Thiftis and crewall Murthouris aboue writtin. ITEM, 3e ar indytit and accufet, fforfamekill as 3e, perfeveiring in 3our former devillifche and abhominable tred of lyfe, 3e, accompaneit with dyuerfe thevis, foirneris, and brokin men, 3our complices, to the number of thre hundreth perfones, or pairby, all bodin in feir of weir, with fuordis, durkis, bowis, darloches, hagbutis, muscattis, and piftolettis, refolveing with 3our felff to putt the hail Lawland Gentilmen being than within the said Ileand of pe Lewis to pe fuord, quhairby thay nor na vperis fould haif any power or commandiment in that Ileand to withftand 3our wicket attemptis, in the moneth of Apryle, the 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and fevin 3eiris, 3e of new agane come to that pairt of the said Ileand, quhair pe said Lawland Gentilmen had biggit dyuerfe Townes and Villageis, and erectit dyuerfe houffis: And the bettir to bring 3our wicket refolutionn to pas, 3e, in freindlie maner, humbillit and offerrit 3our felffis to becum peceable and obedient people, and defyrit thame to accept 3ow in fervice, to quhome 3e wald be willing to do all maner of guid and fteidable<sup>1</sup> offices, as 3e fould be imployit, in regaird 3e fand (as 3e declairit) pair cuming to pat land to be for na evill intent, bot for guid: And pe saidis Gentilmen, beleveing 3our fair promeiffis, and lipning nathing les pan that ony Treafone fould haif bene practizet be 3ow, haifing grantit 3ow fum ouerfight,<sup>2</sup> 3e, with 3our affociattis, maift treflonabillie, vnder trust and freindschip, and in pe dark and maift quyet tyme of the nycht, enterit within the Campment belonging to the said Lawland Gentilmen, raifit ffyre, and brunt and diftroyit with fyre ane hous erectit and pertening to *Sir George Hay of Nether Liff*, ane vper hous pertening to *the Laird of Airdrie*, ane vper hous pertening to *the Laird of Wormefoun*, ane vper hous pertening to *Johne Dalgleifche*, with dyuerfe vperis houffis, newlie buildit within the said Ileand, and alongis pe Sea coift pairof, brunt and diftroyit the haill victuallis, furnitour, inficht and pleniffing being within the saidis houffis, to the avall and eftimatioun of ten thowfeand pundis: And at pe famyn tyme, maift crewallie Murdreift and Slew vnto<sup>3</sup> *Patrik Giffert*, fervand to the Laird of Airdrie, with dyuerfe vtheris fervandis and office men within the said Campment, in pair cuming out of pe saidis houffis, to fave thame felffis frome the rage and violence of the ffyre, being all his Maieftis faithfull and guid fubiectis: And 3e, the said *Neill*, ar and war airt and pairt of the saidis treflonable and crewall factis. AND finallie, 3e, the said *Neill*, in regaird of 3our former abhominable lyfe, feiring 3our awin apprehenfoun, and haifing, for 3our gritter furetie and releiff, fled af pe Mayne and Continent-land to ane Craig callit *Birfay*, ane myle within ane Loche, quhilk 3e mannit and fortifeit with men, munitionn, and all maner of prouifoun for 3our intertenement; and haifing alfo tua boittis provydit, for 3ow and 3our complices paffage and repaffage fra pe land to pe said Craig, 3e, with 3our affociattis, during 3our abyding within the said Craig, and keiping pairof, come a land, and ran dyuerfe furrowes<sup>3</sup> throw the cuntrie, and in maift thiftious maner ftaw, reft, and away-tuik with 3ow, to pe said Craig, dyuerfe guidis and beftiall fra pe inhabitantis of the countrie about, namelie, fra *Gilliechallum Mcallafter Coule* and *Gilliechallum Mconeill*, fra aper of thame, tuelff ky and oxin; quhilkis, with dyuerfe heirschapis of coirne, victuall, and vther necessaris, ftowin and reft be 3ow, was tranfpoirtit be 3ow to pe said Craig, in maift thiftious maner; quhair-upoun 3e difponit and interteneit 3our felffis at 3our plefour: And 3e, the said *Neill*, was airt and pairt of the saidis crymes. To the taikin, 3e haif confeffit the haill premiffes to be of veritie, the tyme of 3our lait Examinatioun, in prefens of the Lordis of his Maieftis maift honourabill Previe Counfell.

The pannell, be the interpretatioun of Andro Monro, Duncane Cunninghame, and James Logie, fuorne to the trew interpretatioun of all that fall be anfuerit be the pannell,<sup>4</sup> Confest the haill poyntis of Dittay producet aganis him. Quhair-

<sup>1</sup> Serviceable.    <sup>2</sup> Oversight; superintendence.    <sup>3</sup> Forays.    <sup>4</sup> This is one of the earliest instances on record of sworn Interpreters being allowed to Highlandmen or foreigners. The practice had no doubt been common long before this period, though the circumstance has not been entered in the Books of Adjournal.

upoune the Aduocat tuik instrumentis. In respect of the quhilk Judiciall Confessioun, the Justice referit the samyn to the Tryell and knowlege of ane Assyse. And for forder verificatioun of the said Neillis giltines, producet his Depositiones tane in presens of the saidis Lordis of Secreit Counfall, confessing the hail premisses to be of verritie. And in respect thair of, Protestis for Wilfull Errour aganis the Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouth of Daid Weymes, skipper in Leyth, chancellor, ffand, pronuncet, and declairit the said *Neill*, be reasone of his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the hail treffonable crymes of ffyre-raiseing, Burning, Murthour, and feuerall Thiftis at lenth fett down in his Depositiones, and Dittay foundit thairupoune.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid; and thaireftir, his heid to be strukin frome his body, and affixt and set vpon ane priket, aboue the Neper-boll Point<sup>1</sup> of the said burgh: And his hail landis, heritages, takis, steidingis, rowmes, possessiones, guidis, and geir, pertening to him, to be forfalt and escheit to his Maiesteis vse, &c.

### Slaughter.

May 19.—JOHNNE WEIR, callit of the Quhytecleuch; Mungo Weir, his brother.

Dilaitit of airt and pairt of the slauchter of vmq<sup>le</sup> Johnne Hammiltoun, mercheand burges of Edinburgh; committit be thame in the moneth of September, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris: AND siclyk, the said Mungo Weir, for airt and pairt of the slauchter of vmq<sup>le</sup> Walter Couthird, in Crawford-Johnne; committit at Lambes laft, be schuiting him throw the body with ane pistolett.

PERSEWARIS, Jonet Small, the relict of vmq<sup>le</sup> Johnne Hammiltoun; Williame Hammiltoun, as brother; Johnne and Mungo Couthirdis, as sones to vmq<sup>le</sup> Walter Couthird.

#### ASSISA.

Johnne Gordoune of Earlstoun, Johnne M<sup>c</sup>mathe of Corbank, Eduard Creichtoun of Peiltoun, Johnne Creichtoun of Craufurdstoun, Harie Gordoun of Kilture, Johnne Mafoue, burges of Ed.<sup>2</sup>

Quhilkis crymes war judiciallie confest be thame to be of verritie, in presens of the said Justice and Assyse.

VERDICT. Fand the saidis Johnne and Mungo, accoirding to thair awin Judiciall Confessioun, to be ffylet and convict of airt and pairt of the said Slauchter.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis and geir to be escheit, &c.

<sup>1</sup> The Nether-Bow-Port.

<sup>2</sup> The rest of the Assise were burgeses.

**Slaughter.**

Jun. 2.—DAVID ERLE OF CRAWFURD; Harie Lyndfay, callit of Blarie-fadden; Harie Stewart, sone to vmq<sup>le</sup> James, Lord Stewart of Newtoun; and Johnne Bellenden, fervandis to the said Erle.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Sir Walter Lyndfay of Balgaweis; committit betuix the Citie of Brechin and the Place of Edzell, vpon the xxv day of October, 1605 yeiris.<sup>1</sup>

PERSEWARIS, Margaret Lyndfay, as dochter; Duncane Hunter of Ballagane, hir spous; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTORIS in defence, Mr Alexander King, Mr Robert Lermonthe.

Continewit, of consent, to the ix day of Junij instant. My Lord of Tulliebairne<sup>2</sup> cautioner for the entrie of the pannell, this day aucht dayis, the ix *instantis*.

Jun. 9.—Margaret Lynd with consent of the said Duncane Hunter of Ballagan, hir spous, for his entreis, being baith personallie present, passis *simpliciter* fra the perfute of the said David Erle of Crawford, &c., and renunes all actioun, instance, and perfute quhatsumeuir, &c. And forder, producet to my Lord Justice, his Maiesteis Remmissioun grantit to the said Erle and remanent his complices, enterit vpon pannell for the said slauchter, daitit at Newmercat, the xxiiij of Nouember, I<sup>m</sup>. Vj<sup>c</sup>. and aucht yeiris, togidder with tua feuerall Letteris of Slanes, the ane grantit be David Lyndfay of Balgaweis, sone to the said Sir Walter, daitit the xx of Nouember, 1607, the vther gevin and grantit be the said Margaret, with consent of hir said spous, daitit the sevint day of Junij instant, beiring satisfioun and Afflythement to be maid be the said Erle to thame for the foirsaid Slauchter, &c.

THE JUSTICE Admittit the protestatioun, and Ordanit the said dyet appointit to this day to desert; as also, that Johnne, Lord Lindsay of Byres, Harie Lyndfay of Kinfawnes, and . . . Maister of Tilliebairne, cautioneris for the said Erle, fould be fred and exonerit, &c.

**Incest — Adultery.**

Jun. 16.—JAMES STEWART, sone to Allane Stewart, Capitane of Dalkeith.

Dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, knycht, for his hienes intreis, of the cryme vnder written, viz. FORSAMEKILL as the abhominable, vyld, and filthie vyce of Incest, being sa odious and detestable in the presence of Almychtie God, and be the same eternall God his expres woird, sa cleirlye condempned: Thairfoir our souerane lord, out of his godlie dispositioun and zeale, be dyuerse his hienes Actis of Parliament, hes expresse statute and ordanit, that quhatsoeuir persone or persones committis the said abhominable

<sup>1</sup> See this Collection, Jul. 9, 1607, and Sep. 19, 1609.    <sup>2</sup> William, *second* Earl of Tullibardine.

cryme of Incest, fall be pwneifched to the deith; as the saidis Actis of Parliament in thame selfis proportis: Nochtwithstanding quhairof, it is of verritie, that the said James Stewart, being mareit with Aleifoun Clogie, his lauchfull spous, dochter to Johnne Clogie, cordiner, burges of Edinburgh, maift schamefullie, but<sup>1</sup> feir of God, or respect to our fouerane lordis lawis, hes gevin the vse of his body to Katharene Clogie, his wyfes sifter, in the monethis of Marche, Apryle, and Maj, I<sup>m</sup>.Vj<sup>c</sup>. and tuelff yeiris, in his and hir journeying togidder betuix the burgh of Edinburgh and the toun of Elgyn, and within the said toun of Elgyn: In the quhilk filthie and incestuous copulation, scho hes procreat to him ane bairne; committing thairthrow the detestable crymes of Incest and Adulterie, to the heiche displefoure and offence of Almychtie God, violatioun of the Kingis Maieftis lawis, and evill exampill of vtheris to ryn in the lyk filthie and abhominable vyce, gif the samyn be sufferit to remane vnpwneift.

VERDICT. Fylet, culpable, and convict of the said cryme.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir his body to be brunt in asches: And all his moveabill guidis to be efcheit, &c.

**Theft—Slaughter—Fire-raising—Oppression, &c.**

Jun. 22.—DUNCANE M<sup>c</sup>PATRICK M<sup>c</sup>GREGOUR, Allafter Cafe (Cafs)<sup>2</sup> M<sup>c</sup>gregour, Johnne Dow M<sup>c</sup>condochie Vayne M<sup>c</sup>Robert, Patrik Roy M<sup>c</sup>coulecheir, Ewin Crowbache<sup>3</sup> M<sup>c</sup>gregour, Johnne M<sup>c</sup>neill Corroche.<sup>4</sup>

Dilaitit of airt and pairt of dyuerse pointis of Thift, Slauchter, Burning, and Oppressioun following, viz. THE said *Duncane M<sup>c</sup>patrick M<sup>c</sup>gregour*, ffor being in cumpanie with Gregour M<sup>c</sup>condochie Glen, at the burning of the Castell of Achallader and landis of Glenlocha: And ffor being at the feild of Benvek,<sup>5</sup> quhair vmq<sup>6</sup> Patrik Dow M<sup>c</sup>nab, Donald Campbell Oig, sone to Johnne Campbell, and dyuerse vtheris, to the number of sevintene perfones, war flane: And ffor airt and pairt of the slauchter of vmq<sup>6</sup> Allane M<sup>c</sup>dougall, fervand to the Laird of M<sup>c</sup>coule. THE said *Allafter Cafe M<sup>c</sup>gregour*, ffor the crewall slauchter of vmq<sup>6</sup> Neill M<sup>c</sup>weyane, chopman, be streking him in the bellie with his awin knyfe, quhairof he deit: ITEM, ffor cowmone soirning, thift, and oppressioun. THE said *Johnne Dow M<sup>c</sup>condochie Vayne*, ffor being at the feild of Glenfynles, and of airt and pairt of the heirschip,<sup>6</sup> rest and tane away af the Landis, pertening to the Laird of Lufe and his tennentis: ITEM, ffor airt and pairt of the steilling of certane ky and horsis, pertening to Walter Sterling of Ballagan, furth of the parochin of Campsie: ITEM, ffor being in companie with the rest of the

<sup>1</sup> Without.    <sup>2</sup> Short-tempered; passionate.    <sup>3</sup> Deformed.    <sup>4</sup> Hasty; precipitate.    <sup>5</sup> Bintoik?    <sup>6</sup> Spoil; booty; plunder.

CLAN-GREGOUR at the Burning of Abervrchle, and heirschip brocht furth thair-  
of: As also, ffor airt and pairt of the Slauchter of vmq<sup>1</sup> Johnne M<sup>c</sup>gillip, ane  
fidler, vnder my Lord of Tulliebairne: And for cowmoun Thift and soirning.<sup>1</sup>  
THE said *Patrik Roy M<sup>c</sup>coule-cheir*, ffor being in companie with *Duncane M<sup>c</sup>-  
ewin M<sup>c</sup>gregour*, callit THE TUTOUR,<sup>2</sup> at the Burning of Abervrchle, quhair  
sevin men war flane, thre bairnes war brunt, tuentie ky and oxin war stowin,  
reft, and away-tane: And for Cowmone-thift, Soirning, and Oppreffion. THE  
said *Ewin Crowbach M<sup>c</sup>gregour*, ffor airt and pairt of the steilling of ane meir  
fra Robert M<sup>c</sup>laren: And ffor airt and pairt of the steilling of tua horsis fra M<sup>c</sup>-  
Innerich, in Cregan: And for breking of ane puir mannis hous in Kynnaldie,  
taking of the said puir man and binding vp his eyne, and steilling and away-  
taking of the haill inficht pleniffing of the said hous: And for steilling of ane  
kow fra Donald M<sup>c</sup>conneill Vayne, furth of Johnne Stewart Neilsones landis.  
THE said *Neill Corroche*, ffor being in companie with the said Duncane M<sup>c</sup>ewin  
M<sup>c</sup>gregour, callit *the Tutour*, at the Burning of Abervrchle, and slauchter and  
heirschip aboue writtin, committit be thame: And ffor affisting and taking pairt  
with the rebellis and fugitiues, that tuik in the Ile callit Ileand-Vernache; and  
in taking in to the said Ile of aucht scoir ky and oxin, auchtene scoir scheip and  
gait, stowin, reft, and away-tane fra the Inhabitantis of the cuntrie about: And  
siclyk, ffor airt and pairt of the steilling of ffyve ky fra James Chifholme, Don-  
drwne: And for cowmone Thift, Soirning, and Oppreffion.

War all sax put to the knowlege of ane Assyse of the perfones vnderwritten.

## ASSISA.

Mr James Kirk, servand to my Lord of Argyle,	Johnne Buntene of Ardoche, Patrick Colquhoun of Trafeill,	Allaster M <sup>c</sup> Rannald of Gargow- oche, <sup>3</sup>
Johnne Stewart Neilfoun of Gra- niche,	Allaster Colquhoun V <sup>c</sup> James, in Calvin,	George Stewart of Downe-Mach- reif,
Johnne Makfarlane of that Ilk,	Robert Alexander, notter in	Johnne Stewart of Pitfowrie,
Dauid Drummond, callit the Chal- merlane,	Drymmene,	Patrik Stewart of Balliachan,
Alex <sup>r</sup> Schaw of Cambusmoir,	Johnne Buchannane, servand to my Lord of Madertie,	Dauid Chirnesyde of Poffo.

VERDICT. The Assyse, be the mouth of the said Johnne M<sup>c</sup>farlen of that Ilk,  
chancellor, ffind, pronuncet, and declairit the saidis sax perfones vponne pannell,

<sup>1</sup> Taking free quarters by force and violence. <sup>2</sup> The TUTOR OF GLENSTRAE, styled, in the  
Record of Secret Council, 21st December, 1613, 'Duncan M<sup>c</sup>Ewin of Moirinsche, Tutour of Glen-  
strae.' In the same Record, 31st January, 1611, he is spoken of, to the prejudice of his Ward, as  
'now callit THE LAIRD;' and, in the Justiciary Record, 8th May, 1612, as 'THE LAIRD OF M<sup>c</sup>-  
GREGOUR!' In a Letter from the King, from his Court at Roystoun, 23d October, 1611, to the  
Scottish Council, (who took it into consideration 17th November following,) he is described as 'Dun-  
can M<sup>c</sup>Ewne, alias Duncane THE TUTOR.' He was cousin-german of Allaster M<sup>c</sup>Gregor of Glen-  
stray, executed at Edinburgh in 1604; and was Tutor to Gregor M<sup>c</sup>Gregor, otherwise John Murray,  
nephew and heir of Allaster, and who, on the King's recommendation, was restored to the Lands of  
Glenstray, in 1624. Duncan the Tutor assumed the protective surname of DOUGLAS, in compliment,  
probably, to the *Dowager Countess of Argyle*. <sup>3</sup> Lineal ancestor of Macdonald of Keppoch. In  
the Record, he is sometimes styled 'the Laird of M<sup>c</sup>Rannald.'

be reffone of thair awin Confessiones, maid in prefens of the maift pairt of the faid Affyfe, to be ffylet and convict of the haill crymes aboue reherfit.

SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be hangit vpon the cownoun gibbit, quhill thay be deid : And all thair moveabill guidis to be efcheit and inbrocht to oure fouerane lordis vfe, as culpable and convict of the faidis crymes.

**Fire-raising — Slaughter — Intercommuning with MacGregors  
— Slaughter and Houghing of Oxen, &c.**

Aug. 3.—DONALD DARG<sup>1</sup> M<sup>c</sup>ALLANE, fervand to Johnne Calder ; Donald M<sup>e</sup>eane V<sup>c</sup>Allaister Bayne ; Johnne M<sup>c</sup>fyndlay M<sup>c</sup>quiben.

Dilaitit of the crymes *respectiue* following, viz. THE faidis *Donald Darg M<sup>c</sup>allane*, and *Donald M<sup>e</sup>eane V<sup>c</sup>allaister Bayne*, ffor being in companie with Johnne and Donald Calderis, fones to Thomas Calder in Delneis, vpon the xxj day of Majj laft, at the trefsonabill Raifeing of ffyre, burning, and diftroying of the Hall, kitching, and remanent office-houffis within the precink of the clois of Clwnes, pertening to Colène Campbell of Clwnes : And ffor airt and pairt of the faid ffyre-raifeing and burning. As alfo, ffor airt and pairt of the Slauchter of four horfis and meiris, being vpon the landis of Clwnes at that tyme, pertening to the tennentis thairof : As alfo ffor cuming, vpoun the xxiiij day of the faid moneth, bak agane to the faidis landis of Clwnes, and thair, for airt and pairt of the Burneing of the haill houffis and biggingis within the Myd-toun of Clwnes, callit the Thornyfurd, and Burning of tua barnes and ane ftale, in the Nether-toun, quhilkis war left vnbrunt ofbefoir : AND ficlyk, ffor airt and pairt of the crewall Slauchter and Hocheing<sup>2</sup> of threttie heid of ky, oxin, and vther beftiall, pertening to Mr Williame Campbell of Breachlie his tennentis ; committit vpon the xxv day of the faid moneth of Majj laft : AND ffor airt and pairt of the crewall and vnnatural Slauchter of fourtie heid of guidis, within the Forreft of Leonache ; committit vpon the Mononday befoir St Colmes-mefs laft. AS ALSO, the faid *Johnne M<sup>c</sup>fyndla M<sup>c</sup>quiben*, off airt and pairt of the Slauchter of vmq<sup>16</sup> Patrik M<sup>c</sup>greffie Roy in Budzet, with ane durk ; committit be him a tua yeir fyne, or thairby : AND for being in cumpanie with Robert Abroche M<sup>c</sup>gregour, his kyn (and) freindis, Thevis and Soirneris, be the fpace of ane moneth, in dyuerfe thair wiket and thiftious deidis.

Quhilk Dittay was verifeit be the faidis perfones Depofitiones, producet in proces.

The Aduocat repeittis the Depofitiones alreddie producet, and in the Clerkis keping ; takis instrumentis of the fweiring of the Affyfe ; and proteftis for Wilfull Errour, gif thai acquit.

<sup>1</sup> Red-skinned ; ruddy-complexioned. *Roy* fignifies red-haired.

<sup>2</sup> Ham-stringing.





Dilaitit of saying and heiring of Messis, contrair the tennour of the Actis of Parliament, &c.

FORSAMEKILL as, be dyuerse Actis of Parliament, speciallie be the fyft Act of our souerane lordis first Parliament, and be the first Act of his hienes fourtene Parliament, it is speciallie provydit, statute, and ordanit, that na maner of persone or persones, of quhatfameur degre or condition thay be of, preswme nor tak vpon hand to say Mess within this kingdome, or zit heir Mess, nor be present pair-at; vnder the pane of deid, with confiscatioun of thair hail moveabill guidis; as the saidis Actis of Parliament in thame selfis proportis: Nochtwithstanding quhair of, it is of verritie, that the said *Mr Robert Phillope*, Preist, quha ressaunt the ordour of Preistheid in Rome, haifing remanit furth of this kingome sen the zeir of God I<sup>m</sup>.Vc. fourscor nyntene zeiris, studeing the Catholique Romane Religiou; in the moneth of Maij lastbypast, he returnet hame to this cuntrie, off purpos and intentioun (as he hes declairit) to convert faules to the Romane Religiou; sen the quhilk tyme of his hame cuming, viz. in the monethis of Maij, Junij, and Julij lastbypast, ffor performeing of his former Idolatrous intentioun, expres contrair the tennour of pe saidis Actis of Parliament, as ane Seminarie Priest, and perverter of his Maiesteis guid subiectis frome the trew Religiou, professit presentlie within pis realme, he hes seducet and conferrit with dyuerse of his hienes subiectis, doing quhat in him lay, be his fals and hereticall doctrine, to pervert pair faules from the treuth, and to convert thame to his erroneus opinioun: AND for that effect, hes, within the said space, said and celebrat, to pe number of sax or sewin Messis, in dyuerse pairtis and places of pis realme, secretilie, in dyuerse houffis within the samyn, namelie; ANE of the saidis Messis was said be him in grit solemnitie, with his Mess-claites, consecrat alter, Mess-buik, and with his vther superstitious rites and ceremonieis belonging pairto, within foure or fyve myles to the burgh of Dumfreis, Mr George Aflowane, sone to the Laird of Garroche, being Clerk pairto, and bringer in of the fyre to lycht pe candillis; quhairin the said Mr Robert hes contravenit pe tennour of the saidis Actis of Parliament, and incurrit the panes and pwnement mentionat pairintill, quhilk aucht and fould be execute vpon him, with all rigour: LYKAS also, it is of verritie, that *James Stewart*, callit of *Jerusalem*, indueller within the burgh of Ed<sup>r</sup>, being ane oppin and professit Papist, keiping and beiring companie with Jesuitis, Seminarie Preistis, and excommunicat traffiqueing Papistis, and ane cowmone reffoner in all companeis for pe said Romane Religiou, aganis pe trew Religiou, professit be his Maieftie and his hienes loyall subiectis within this his kingdom, expres contrair the tennour of pe saidis Actis of Parliament, in the monethis of Januare, Februare, Marche, Apryle, Maij, Junij, Julij, August, September, October, November, December, in the zeiris of God I<sup>m</sup>. sex hundreth and nyne, sex hundreth ten, sex hundreth ellevin, and sex hundreth tuelff zeiris,<sup>1</sup> at the leif, in ane or vther of the saidis monethis and zeiris of God, he hes hard and gevin his bodielie prefence to dyuerse Messis, said be dyuerse Preistis within this realme, in dyuerse places of pe same; and namelie, the said *James Stewart*, avowing himself to be ane Catholik Romane, in pe zeir of God I<sup>m</sup>.Vjc. and nyne zeiris, or pairby, was present at ane Mess said be *Mr Patrick Anderson*, Jesuite, within his duelling hous of *Patrik Abercrombie* in Ed<sup>r</sup>, in the *Laird of Leyis land*, besyde the buriall zaird of the said burgh: Lyk as, the said *James Stewart*, accompaneit with the said *Johnne Logane*, portioner of Restalrig,<sup>2</sup> about ane quarter of ane zeir paireftir, was present at the heiring of ane vther Mess, quhilk was said in the said James awin duelling hous in Ed<sup>r</sup>, a littill aboue the Nether-boll-Point, quhair he duelt for pe tyme, be *Johnne Burd*, Preist, quha was brocht to pe said hous be pe said *Johnne Logane* to the effect foirsaid, nane being present at that Mess bot pe Preist, the said *James Stewart* and his wyfe, with the said *Johnne Logane*, and ane vther blak man. ITEM, schoirtlie paireftir, the thrid Mess was said within the said *James Stewartis* duelling hous in the Cowgait of Ed<sup>r</sup>, quhair he duelt for pe tyme, the said *James* being present him self at the heiring and saying pair of be the Preist. BE the quhilk wilfull heiring and present-being at pe saidis

<sup>1</sup> There was a Messe the same moneth (May 1613) in Edinburgh, in *James Stewart's* house, who was called *James of Jerusalem*. The Preist and the said *James* fled. Sundry of the company were taken and wairdit.—*Calderswood's MS. Church Hist. Adv. Lib.*

<sup>2</sup> See his Trial, immediately following the present.

feuerall Messis *respectiue* foirfais, the said James Stewart hes contravenit pe tennour of the saidis Actis of Parliament, and hes incurrit the panes and pwnschment mentionet pairintill, quhilk sould be execute vpon him with all rigour to the terrour of vperis.

Quhilk Dittay being red, in presens of the saidis Mr Robert Phillipe and James Stewart, and thay accuset, be vertew thairof, of the feuerall crymes aboue specifeit; thay and aither of thame confessit, in face of judgement, that thai had contravenit his Maiesteis lawis and Actis of Parliament, in heiring, saying, and being present at dyuerse Messis, in maner specifeit in thair Dittay, ffor the quhilk thay offerit thame selffis, and become in his Maiesteis will: Quhairupoun instrumentis was tane be my Lord Aduocat.

Nochtwithstanding quhairof, the Justice ordanit thame to be put to the knowlege of ane Assyse.<sup>1</sup>—The Aduocat, for verificatioun thairof, repeittit to the saidis perones of Assyse thair former Judiciall Confessioun maid of thair crymes, aboue specifeit; and thairwith producet thair Depositiones and Confessiones, maid in presens of dyuerse Lordis of his Maiesteis Previe Counfall, and of the Ministeris,<sup>2</sup> subscryuit with thair awin handis; and tuik instrumentis vpon the production thairof.

VERDICT. Fylet, culpable, and convict of the contravening of his Maiesteis Actis of Parliament, viz. the said *Mr Robert Phillipe*, for saying of the feuerall Messis set down in his Dittay; and the said *James Stewart*, for heiring and being present at the feuerall Messis, also set down in his Dittay: conforme to their awin Depositiones, and ratificatioun thairof in judgement.

THE JUSTICE Ordanit the perones convict to be returnet to waird,<sup>3</sup> thairin to remane, in strait firmance, vnto the tyme DOME be pronuncet aganis thame.

(Nov. 19.)—COMPEIRIT Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, and producet ane Warrant, direct fra the Lordis of his hienes Counfall to the Justice; quhairof the tennour followis.

JUSTICE, Justice clerk, and your deputis: 3ow fall, vpon the fight heirof, appoint ane Justice Court to be haldin within the Tolbuthe of Ed<sup>r</sup>, at suche convenient and lauchfull day as 3ow fall think meit; and pair call befoir 3ow JAMES STEWART, callit of *Jerusalem*, and MR ROBERT PHILLOPE, Preist, and pronounce DOME aganis thame, vpon the Sentence of convictioun alreddie gevin aganis pame, as followis, to wit: Decerne the saidis James Stewart and Mr Robert Phillope to be BANISCHET his Maiesteis dominiones; and to depairt furth pairof, within the space of ane moneth; and nevir to returne agane within the samyn, without his Maiesteis Licence had to that effect, vnder the pane of deid. Quhairanent pir presentis fall be 3our Warrant. AT ED<sup>r</sup>, the xvj day of November, 1613.

AL. CANCELL<sup>r</sup>. SANCTANDROIS. ARGYLE.

'DOME' pronounced, according to the terms of the above Warrant.

### Hearing of the Mass.

Sep. 16.—JOHNNE LOGANE, portioner of Restalrig.

Dilaitit for the wilfull heiring of ane Mess, and being present thairat, in com-

<sup>1</sup> All tradesmen.

<sup>2</sup> Of the gospel; clergy.

<sup>3</sup> Prison.

panie of James Stewart, callit of *Jerusalem*; quhilk Mefs was said in James Stewartis hous, a littill aboue the Nether-boll-Poirt of Ed<sup>r</sup>, quhair he duelt for the tyme, in the yeir of God I<sup>m</sup>. sex hundreth and ~~nyne~~ <sup>nyne</sup> yeiris, or thairby, be Johnne Burd, Preift.<sup>1</sup>

Andro Logane of Coitfield protestis, in respect of the entrie of the pannell this day, that the vnlaw quhairin he was adiudget the last dyet,<sup>2</sup> be nocht buikit nor gevin out aganis him: And producet the Counfallis Warrant, subscryuit be my Lord Chancellor, daitit the xv of this instant, Ordaning the said vnlaw nocht to be buiket; bot the said Johnne Logane, for quhome he became cautioun, and now enterit vponne pannell, to be put to ane Tryell for the cryme specifeit in his Dittay.

My lord Aduocat producet the Dittay; and efter reiding thairof, desyret the pannell to be put to the Assyse for the crymes specifeit thairintill.

It is allegit be the pannell, that, as to the first Act of the first Parliament halden be our souerane lord and Estaitis, he can nocht, be vertew thairof, incur the pane and pwneischment of daith mentionat in the Dittay, becaus the maist that the said Act extendis to, is only daith to be inflictit for sic as the thrid tyme fall be fund culpable and convict of heiring of Mefs, or beis wilfullie present at the heiring thairof: And trew it is, that in the said Dittay, producet aganis him, thair is only mentioun maid of ane Mefs hard be him: *Igitur*, &c.—To the quhilk it is anfuerit be my lord Aduocat, that he infistis only in persute of the pannell for contravening the first Act of his Maiesteis fourtene Parliament, maid aganis wilfull heiraris of Mefs, sen the moneth of Junij 1594, quhilk is the dait of the said Act, quhairvponne the Dittay is speciallie foundit: In respect quhairof, the pannell sould be put to ane Assyse, for heiring, and wilfullie being present at ane Mefs, in maner, and at the tyme contenit in the Dittay.

It is forder allegit be the pannell, that he can nocht be put to ane Assyse for contravening the Act of the xiiij Parliament, becaus he nevir was present at ane Mefs within this realme, bot anes, sen his cuming out of Flanderis, quhilk is four or fyue yeir fyne; and the Act aucht only to be extendit aganis sic as hes hard mony Messis: Lykas, the pannell was drawin to the said Mefs be seniftrous information, and at the instigatioun of James Stewart, quha inveitit him to his hous to the heiring thairof; and sa, in effect, come thairto contrair his will; ffor the quhilk cryme he is maist penitent, and craves first God, and nixt his Maieftie and Counfall, and the Kirk, pardoun for the samyn: Lyk as, in respect of his penitence and greif for the said offence, he was ressaunt in fauour with the Kirk

<sup>1</sup> The Dittay is conceived in terms precisely similar to the preceding case. <sup>2</sup> On Sep. 14. This marking is inserted—' M<sup>p</sup>. The Guidman of Coitfeild being vnlawit pis day, for nocht entrie of Johnne Logane, portioner of Restalrig, to haif bene tryit for pe said crymes; the Act of buiking pairof, be pe Counfallis Warrant, was (in respect of Johnne Loganis entrie in waird) dischargit.'

and Seffioun of the parochin quhair he duellis ; and hes senfyne borne office in the Seffioun thairof, resoirtit continuallie to the heiring of the woird, and at all tymes was presnt at the celebratioun of the Communioun and ministratioun of the Sacramentis : Protesting, be God's grace, to continew ane trew and constant Professour of the trew Religioun, presentlie professit within this realme, to his lyves end ; and for the offence aboue writtin maist humlie becumis in his Maiesteis will.—It is anfuert be my lord Aduocat, that the allegeance maid be the pannell is na relevant cause, of the Law, to stay the puting of him to the tryell of ane Assyse, vpone the Dittay lybellit ; becaus all persones man be comptit wilfull heiraris of Mefs that cumis voluntarlie thairto, and patientlie abydis and heiris the samyn ; and it is nocht allegit be the pannell that he was compellit to cum and heir that Mefs ; nather can the samyn be sustenit, except he purge the samyn be ane violent deid compelling him to resoirt thairto : And albeit the pannell hes communicat senfyne, and borne office in the Kirk, he anis haifing wilfullie hard Mes, quhilk is ane cryme capitall, be the said Act of Parliament, na deid done be him, without his Maiesteis pardoun and Remiffioun past, can purge that cryme : And forder, to mak it knawin that he was ane wilfull heirar of the Mefs lybellit, it is affirmet that he come to James Stewartis hous at the Nether-boll, and brocht with him Johnne Burd, Preift, quha cravet seruice, James Stewart then being sleiping in his bed ; and being walknit, he anfuert, that for releif of his conscience he was content to heir him : And than the Mefs was said in the said James Stewartis hous, quhair thairefter thay dynet altogidder. This is verifeit be James Stewartis awin Depositioun, subscryuit with his hand, and heirwith producet, for verifeing the premiffes.

THE JUSTICE Repellis the allegeances aboue writtin, and ffindis the Dittay relevant ; and Ordanis the pannell to pas to the tryell of ane Assyse, for the cryme lybellit.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Fischer, mercheand, chancellor, fand, pronuncet, and declairit the said Johnne Logane, conforme to his awin Depositioun, subscryuit with his hand, and ratificationis thairof maid in judgement, in thair presens and audience, to be ffylet, culpable, and convict of the heiring of ane Mefs said be the said Johnne Burd, Preift, within the duelling hous of the said James Stewart ; in forme and maner, and at the perticuler tyme specifit in the said Dittay.

THE JUSTICE Ordanit him to be tane bak agane to waird within the Tolbuth of Ed<sup>r</sup>, thair to remane quhill DOME war pronuncet vpone his former convictioun, &c.

(Nov. 26.)—The Lord Advocate produced a Warrant of the Privy Council, dated ' at Ed<sup>r</sup>, the xvj day of November, 1613,' ordaining the Justice to ' pro-

nunce DOME aganis him, vpon þe Sentence of Convictioun alreddie geven aganis him, as followis, viz.<sup>1</sup>

SENTENCE. That he mak payment to his Maiesteis Thesaurer depute and Ressaurer, in his Maiesteis name, of the fowme of ane Thowseand pundis money, as a fyne imposit vpon him.

### Incest and Murder.

Sep. 24.—JOHNNE RAMSAY of Pryour-Lethame.

Dilaitit for the filthie and abhominable cryme of Incest, committit be him with Margaret Ramsay, his awin dochter: As also, for airt and pairt of the crewall Murthour and slauchter of vmq<sup>10</sup> Williame Ofett, his awin servand; and remanent crymes contenit in the Letteris.

Mr Vmphra Blinshell, Aduocat, as bailzie and procuratour for George, Archebifchope of St Androis, Lord of Regalitie thairof, quha exponit and declairit that the said Johnne is duelland within the boundis of the regalitie of St Androis, and thairby is subiect to the said Lord of Regalitie, his judgement and jurisdiction, for the crymes aboue specifit: And thairfoir Protestit, that quhatfoeir war done be the Justice this day, sould nawayis preiudge the said Lord of St Androis, nor his privilege of Regalitie thairof.

Michell Ramsay of the Forther vnlawit and amerciat in the pane of fyve hundredth merkis, for nocht entrie of the said Johnne. And siclyk, that the said Johnne, for his nocht compeirance, be denunciect rebell and put to his hienes horne; and all his moveabill guidis to be efcheit, &c.<sup>1</sup>

### Fire-raising—Houghing of Cattle—Oppression, &c.

Nov. 5.—THOMAS CALDER, in Delneis; Robert Caddell (Calder), sone to Johnne Caddell in Flines.

Dilaitit for airt and pairt of the coming to the landis of Clunes, pertening to Colene Campbell of Clwnes heretable, and maist tressonable and awfullie Rasing of ffyre in the hall, chalmeris, barnis, byris, and scheip-coit thairof, and burning and distroying of the samyn, and be Maisterfull Oppressioun, hoching<sup>2</sup> and slaying of thre meiris (*mares*) and ane horse, pertening to the said Colene; committit vpoun the xxij day of Maij lastbypast, vnder sylence and cloud of nycht. AND siclyk, for cuming to the said landis of Clunes, on the xxiiij day of the moneth of Maij lastbypast, att tuell houris in the day licht, and willfullie, awfullie, and tressonabillie Rasing of ffyre, in ane toun,<sup>3</sup> callit in Erfch<sup>4</sup> *Andraane*, and in

<sup>1</sup> No farther notice is taken of this case, which had likely been quashed by Archbishop Gladstones, (translated from the See of *Caitness*, A.D. 1606,) or privately compromised within his Regality.

<sup>2</sup> Hamstringing.

<sup>3</sup> Farm-steading.

<sup>4</sup> Gaelic.

Scottis *Thorne-furd*; and to the Cot-toun of Clune, and Burning and distroying of the famin, togidder with the haill infycht and pleneiffing, pertening to the said Colene Campbellis tennentis thair: And fwa, for committing of oppin and manifest Treasoun.

PERSEWARIS, Colene Campbell of Clunes; Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat, &c.

THE Justice, of consent of the persewaris, Continewis this matte to the fyftene day of December nixt.

(Dec. 15.)—James Cuming of Alter, cautioner for the said James, vnlawit and amerciat in the pane of tua hundreth merkis, for his non-entrie; and Colene Campbell of Both, cautioner for the said Robert Calder, in the pane of ane hundreth merkis: And the pannels Decernit to be denuncet our fouerane lordis rebellis, &c., and all thair movable guidis to be escheit, &c.

#### **Murder—Theft—Fire-raising.**

NOV. 24.—ALLANE CAMRONE *alias* M<sup>c</sup>Eandowie of Lochzell; Eugen Camrone in Caldort; and Allane Dow in Clinschphairne, &c.

Dilaitit for airt and pairt of the crewall Murthour and Slauchter of Johnne Camrone, *alias* Bodache, Allafter Camrone of Glennevas, and vmq<sup>l</sup>o Ewin M<sup>c</sup>conneill V<sup>c</sup>ewin, and remanent crymes of Murthour, Slauchter, Thift, and fyre-raiseing, at lenth specifeit and fett down in the Letteris.<sup>1</sup>

James Gordoun of Knokaspek, as cautioner, for repoirting the Letteris, deulie execute and indorfate, purchest at the instance of Marie Neane Jeane Oig, the relict of the said Johnne; Meriorie Ewin, the relict of the said Allafter; Marie Neane Lauchlane V<sup>c</sup>allane, relict of vmq<sup>l</sup>o Ewin; with the remanent kyn and freindis, producet the saidis Letteris, deulie execute, &c., be the quhilkis thai ar all denuncet rebellis, and put to the horne.

#### **Usurpation of King's authority—Destroying green Corn, &c.**

NOV. 26.—WILLIAME FORBES, elder of Monymusk; Robert, Johnne, and Mr James Forbis, his thre sones; Johnne Forbes, callit of Burnegrans; James Geillis and Johnne Farquhar, domestik seruitouris to Monymusk; and George Raitt, in Coiff.

Dilaitit for vsurpatioun of his Maiesteis authoritie, in taking of Williame Dougat, (Duguid?) seruitour to George Gairdin; committit the 24 of Julij last: And for contravening the Actis of Parliament, in cutting of certane grene grow-and coirnes, pertening to Gilbert Menzeis of Pitfoddellis, growand vpone his landis of . . . . .

PERSEWARIS, Gilbert Menzeis of Pitfoddellis; Williame Dougat, seruitour to George Gairdin; Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat.

<sup>1</sup> The Dittays are not inserted in the Record.

THE Justice, with advyse of my lord Aduocat, Continewis this dyet to the thrid day of the Air (of Aberdeen), or soner, vpone xv dayis wairning; and Ordanis cautioun to be fund be the pannell. Plegio, Joanne Kynnaird de eodem.

### Cutting and Destroying Corn.

Nov. 26.—MARGARET IRWING, Lady Pitfoddellis; Gilbert Menzeis of Pitfoddellis, hir spous, for his entreis; Daud Knowis, his domeftik fervand; Johnne Ramsay, his greif; Johnne Philp, Williame Daveny, Williame Dougatt, and Johnne Ramsay.

Dilaitit of airt and pairt of the contravening of our fouerane lordis Actis of Parliament, in cutting and distroying of coirnes; committit in the moneth of July lastbypast.

PERSEWARIS.

Williame Forbes, elder of Monymusk; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat.

This case<sup>1</sup> also continued to the same Air. Plegio, Pitfoddellis.

### Slaughter.

Dec. 1.—HEW SOMERVELL of Drum.

Dilaitit for airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Bryfone, in Gilmertoun, be gevin to him of dyuerse straikis, hurtis, and woundis, with ane lang battone or girth-fling,<sup>2</sup> in his fydis, schoulderis, breift, and bellie, and dyueris vtheris pairtis of his body, at the dur of his duelling hous in Gilmertoun, vpone the xxiiij of September last; off the quhilkis straikis, he haifing tane bed, and remaning bedfast the space of aucht dayis, in grit dollour and pane, deceiffit thairof vpone the first day of October thaireftir.

PERSEWARIS, Agnes Mcindo, the relict; Patrik and Margaret Bryfone, as bairnes.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Laurence Mcgill.

It is allegit be the pannell, that the Dittay is nocht relevant, in sa far as it is nocht qualifeit thairin, that the cryme was committit vpone foirthocht fellonie; without the quhilk war condiscendit vpone, na cryme can be inferrit: And thairfoir, as the Dittay is qualifeit, it can nocht pas to ane Assyse. And forder, it is affermit be the pannell, that the said Johnne Bryfonis death nawayis proceidit vpone ony straik or hurt gevin to him the tyme lybellit; bot be the contraire, the said Johnne, that same day of the allegit refflaueing of the straikis, past to the Coilpot-hill, and thairfra with his coillis<sup>3</sup> come to Ed<sup>t</sup>, quhair he fauld the

<sup>1</sup> It is obvious that the preceding cases arose out of the deadly feuds which then raged between the families of Monymusk and Pitfoddels. No information is afforded by the Record, how these Cases terminated—but from their withdrawal to 'the Air,' it is likely they were compromised by the intervention of mutual friends.

<sup>2</sup> Dr Jamieson interprets this word to signify a pole from which a girth, gird, or barrel hoop is made.

<sup>3</sup> Coals. GILMERTON, at that period, as well as now, was famous for its collieries and stone quarries, and appears to have been, even in these early times, peopled by a most barbarous and regardless race. The recent atrocious case of Rape and Murder is too fresh in the public mind to require any farther notice of the proverbially savage nature of the colliers and carters inhabiting that village. A bare allusion to the evidence adduced in that shocking Trial is more than enough to justify the preceding observation.



famyn ; and passing hame, that same nycht, to his awin hous, lay doun hail and feir ;<sup>1</sup> and his hail famelie being viffeit with the hett-fever,<sup>2</sup> be the space of ane moneth ofbefoir, the said Johnne being also viffeit thairwith, in aucht dayis thair-estir, fa reaget thairin, that in end, at the tyme lybellit, he deceiffit of the said ffever, notourlie knawin to the hail cuntrie about. And fa, can nocht pas to ane Assyse, for ony cryme fet doun in the summondis.

THE Justice ffindis the Summondis relevant, nochtwithstanding of the former allegances : and Ordanis the famyn to pas to ane Assyse.

## ASSISA.

Mr Pat. Edmestoun of Wowmet,	Nicoll Crawford, in Nether Lib-	Mr Jo <sup>n</sup> Wardlaw, in Libbertoun,
George Ramsay, Nether-houffis,	bertoun,	Symone Henderfoun, thair,
Robert Eddislaw, in Lefuaid,	Henrie Arnote, in Lefwald,	Dauid Ramsay, in Pethheid,
Nicoll Ramsay, thair,	Michael Craufurd, at Libber-	Geo. Pacok, in Nether Libbertoun,
Gilbert Hay, thair,	toun-Kirk,	Thomas Andro, in Lefuaid.

It is allegit be the pannell (that) George Ramsay, Robert Eddislaw, Nicoll Ramsay, can nocht be ressaunt vpon his Assyse, becaus thai ar tennentis, haifing na frie landis of thair awin ; and the pannell being ane landit Gentilman, within the degrie of ane Barroune, halding his landis of Drum, and vtheris pertening to him, immediatlie of the Kingis Maiestie, fould thairfoir be tryit be his peiris, viz. be Barrones ; at the leift, the maist pairt of thame fould be in that rank ; *igitur*, &c. Repeitis the former allegeance aganis the remanent Assyfouris of the lyk qualitie.

THE Justice, vpon tryell of the said George Ramsay and remanent Assyfouris rank and estait, finding thame to be honest, substantious men, Admittis thame vpon the said Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Andro, in Lefuaid, chancellor, ffand, pronuncet, and declairit the said Hew Somervell of Drum to be Cleane, innocent, and acquit of the said slauchter.

### Witchcraft—Poisoning—Creasonable Murder.

[THE Case of ROBERT ERSKINE, which follows, and the subsequent Trial of his three sisters, HELEN, ISOBEL, and ANNAS,<sup>3</sup> afford very lamentable proofs of the baneful effects of an all-engrossing spirit of covetousness. There cannot be a doubt that the sordid avarice of these individuals, habitually indulged, and permitted to acquire the entire ascendancy over their minds, rapidly terminated in the perpetration of the highly revolting crimes for which their lives were justly forfeited to the offended laws of their country.

It is melancholy to reflect that these atrocious criminals, whose cold-blooded and calculating crimes form the subject of these Trials, were immediate descendants of the eminently good and pious John Erskine, Baron of Dun, and Superintendent of Angus and Mearns, one of the most active promoters of the Reformation of Religion in Scotland, whose character and public services are well known. This excellent man died Mar. 12, 1591, in the 82d year of his age, having, throughout his long and useful life, bestowed much of his time in attending to the religious and moral education of his children and

<sup>1</sup> Whole and sound.

<sup>2</sup> Probably the Scarlet fever.

<sup>3</sup> See their Trial in this Collection, Jun. 22, 1614.

their numerous descendants. The Superintendent was the eldest son of John Erskine of Dun, by Margaret Ruthven, daughter of Sir William de Ruthven, first Lord Ruthven, and relict of Alexander, second Earl of Buchan. He married Lady Elizabeth, third daughter of David, seventh Earl of Crawford. John Erskine, the next Baron of Dun, married Margaret, eldest daughter of James, fifth Lord Ogilvy of Airlie. His son, John Erskine of Dun, married Margaret Keith, second daughter of Robert Lord Altrie, last mentioned. This Baron was succeeded by John Erskine of Dun, who married the Honourable Margaret Lindsay, daughter of Sir Alexander Lindsay, first Lord Spynie, (slain 1607,) and was probably the father of Robert and his sisters, Helen, Isobel, and Annas. David Erskine of Dun, the brother of these criminals, and father of their victims, John and Alexander Erskine, married Jean, eldest daughter of Patrick Maule of Panmure, by Margaret daughter of John Erskine of Dun.

It must therefore be obvious, owing to the high respectability of the ancient Family of Dun, and the rank and power of the numerous connexions of the pannels, that every influence must have been used for averting the stain of a public Trial and an ignominious execution; but their crimes were of too deep a dye to admit of the public prosecutor waiving this imperative duty.

One very striking feature of this remarkable Case is, that the brother was urged forward to the perpetration of this crime by the repeated suggestions and solicitations of his sisters; who, with desperate wickedness, goaded him forward to consent to the act. These wretched females were both the prime movers and the actors in this shocking tragedy. Their brother appears to have been a passive instrument in their hands.

It only remains for the Editor to state, that, after much research, he has only been able to procure the following notices, from an authentic source.<sup>1</sup>

(Nov. 30, 1613.) 'ROBERT ERSKINE, vnclie to THE LAIRD OF DYNNE, being examinat be foure of the Counsell, depute to that effect, vpon the practize of poifone aganes his tua nephewes, the brether of the House of Dynne; after dyuerse denyallis and confrontationes with some who avowed that mater vpon him, he is come to a cleere Confession of the haill treuthe of that mater; to wit, that he wes a deallar, consultor, and confentar to the Murthour of his tua nephewes by poyfone; and that his thre sifteris wer the first movearis of him to that wicked deide, that therby he might atteane to the right of the leving of Dynne. Direction is gevin to the Justice to putte him to the tryall of the lawes, and Commiffion is gevin to the Erle of Mar to apprehend the three sifteris, and some otheris gevin vp be the said Robert, as guyltie, and to present thame heare to there tryell.'—(Dec. 1, 1613.) 'Robert Erskyne wes this day execute for the practize of poifone, wherin he wes a counsellour and confentar againes the tua bretherine of the House of Dynne.']

Dec. 1.—ROBERT ERSKYN, sone to Johnne Erskyn, appeirand of Dwn, callit *Johnne of Logy*.

Dilaitit, accuset, and persewit, be Sir Williame Oliphant of Newtoun, kny', Aduocat to our souerane lord, for his hienes intereis, of the crymes following, viz.

DITTAY *against Robert Erskyn.*

FORSAMEKILL as, be the Law of the Almychtie God, loveable Constitiones of all Christiane kingdomes, and Municipall Lawis of this realme, all Witchcraft, Sorcerie, Consultatioun with Witches, feiking of help or resposnes of thame, and vsfearis of Poyfone or Poyfoneable herbis, quhairthrow ony Cristiane man, woman, or bairne may take hearme, is prohibeit and dischargid, vnder the pane of deid, confiscatioun of all the offendouris moveabillis, and dyuerse vtheris grevous

<sup>1</sup> Minutes of Privy Council Proceedings, Denmylne MSS. Adv. Library. *Balf. Annales*, II. 44.

panes and pwnesichmentis, at moir lenth expreffit in the faidis Lawis, Actis, and Ordinances : Nochtwithftanding quhairof, it is of veritie, that þe faid Robert Erskyn, being blinded with the godles and infatiable defyre of þe landis and leving of Dwn, and knowing perfytlie that he could nevir attene to be full Laird pairof, fo long as Johnne and [Alexander] Erskynis, the tuo lauchfull fones of vmq<sup>le</sup> Daid Erkin, his elder lauchfull brother, was on lyfe : ffor removeing of the quhilk impediment, vpone a pretendit miscontentement confauet be him and his thre fifteris, Iffobell, Helene, and Annas Erskinis, becaus vmq<sup>le</sup> . . . . . Erskyn of Dwn, quho was fone-in-law to the Laird of Pitcur, vpone his deid-bed had nominat Johnne Erkin, Minister at St Ceres Kirk, to be Tutour Testamenter to the faidis tuo zyoung boyis, his brother-fones, and that be þe faid nominatioun of Tutorie, the faid Robert, as nerrest agnat of bluid to thame, was defraudit of the charge of pais bairnes and pair Estait ; albeit þe faid Robert his cheif difcontentment was, becaus, be þe furvieing of the faidis tuo bairnes, zour (*his*) rycht of fuceffioun to the faid leving was impeidit. The faid Robert, pairfoir, ffor removeing of the faid impediment, in his devillifch difpositioun, conuenit to him felf his faidis thre fifteris, Iffobell, Annas, and Helene, within the Place<sup>1</sup> of Logy, about Mydsomer, in the zeir of God I<sup>m</sup>. sex hundreth and ten zeiris, and pair treited, confulted, deliberat, and refolued vpone the destructioun and Murthour of þe faidis tuo zyoung childrene, his broper-fones,<sup>2</sup> be Witchcraft and Poyfoun : AND for this effect, tuo of his fifteris, haifing proponit to ane Daid Blewhous, that gif<sup>3</sup> he wald vndertak to get ane Witche, that, be fum finifterous meanis, wald tak away the lyves of þe faidis tuo boyis that war betuix þe faid Robert and the leving of Dwn, that þe faid Daid fould reffauie for his rewaird ane poffeffioun, for his lyfytyme, out of the landis of Dwn, and fyve hundreth merkis of filuer ; and promeift to caus þe faid Robert, vpon the morne paireftir, ratifie to þe faid Daid the former conditioun : Lykas, fchortlie paireftir, þe faid Robert, cunning to the faid Daid Blewhous duelling hous, and haifing forgadderit<sup>4</sup> with him pair, he þan demandit of þe faid Daid, quhat he had done concerning the purpois impairtit be his fifteris to him, anent þe diftructioun of þe faidis tuo bairnes ? And becaus, be þe anfuer maid be him to þe faid Robert and his fifteris, the faid Robert could nocht get his wicket purpois effectuat be þe faid Daid Blewhous, thairvpon the faidis Annas and Helene, his tua fifteris, of the speciall caufeing, fending, hounding out, airt, pairt-taking, counfell, and devyfe, paff, in ane evening, fra þe faid Place of Logy, over þe Cairnemoth, towardis þe Mure-ailhous, and pair forgadderit with ane woman, quha namet hir felf Jonet Irwing, ane notorious Witche and abufer of þe people ; and eftir conference with hir in the faid purpois, thay, for accomplifchment pairof, reffauit of hir ane grit

<sup>1</sup> Mansion-house.<sup>2</sup> Nephews.<sup>3</sup> If.<sup>4</sup> Met.

quantitie of herbis, quhilkis war brocht with thame (with iniunctioun how to vse the saidis herbis) hame to Logy. Quhilk being sene be þe said Robert, in pair handis, and he altogidder distrusting that thais herbis war hable<sup>1</sup> to do that wicket turne for the quhilk þai war brocht, ffor clering of his dout, he, togidder with Johnne Kirk, past over þe Month towardis the Mure-ailhous, quhair he consultit and conferrit with the said Jonet Irwing, Witche, off quhome at þat tyme he ref-faueit ane full resolutioun that þe herbis delyuerit be hir to his sifteris was forceable aneuche to effectuat þe former wicket turne: LYK AS, schortlie paireftir, þe said Robert, returning hame agane, he concurrit and consultit with his sifteris in all pair wicket resolutiones, to þe tyme that þe said poyfoneable drink was gevin be þame to the saidis tuo boyis; quha paireftir, be þe said Robert his counfall and advyse, tuik þe saidis herbis, and steipit þame amangis aill ane lang fpace; and paireftir, it being in deliberatioun betuix þe said Robert and his sifteris, quhidder it fould be caffin out or vset, in end, it was vniformelie aggreit and concludit amangis thame, that þe drink quhairin the saidis herbis war steip-pit fould be gevin to the saidis tuo boyis: ffor accomplifchment quhairof, tuo of the saidis sifteris, accompaneit with Gilbert Campbell, his horse-boy for þe tyme, haifing also in companie with thame the said *Johnne Erskine*, the eldest of the saidis tuo boyis, past altogidder furth of Logy to þe burgh of Montrois, quhair þe vther boy with his mother remanit and duelt for þe tyme; and pair, of þe said Robert Erskine his knowlege, counsell, and devyse, the said poyfoneable drink was gevin to the saidis tuo boyis, his brother-sones: Quhilk drink, eftir pair ressaueing þairof, wrocht so violentlie vpon þame, that immediatlie paireftir thay tuik sic ane extraordiner preise<sup>2</sup> of vomeiting, that na persone expected for þair lyfe: Be occasioun of the quhilk poyfoneable drink, sa ministrat and gevin to thame, the said *Johnne Erskine*, the eldest of the tuo, contracted sic a deidlie diseas and feiknes, that his skyn turning all blak, and his hail nobile pairtis inwardlie consumeing, he daylie and continuallie paireftir dwynet<sup>3</sup> in grit dollour and pane, to the tyme of his death, viz. to the terme of Witsunday laft; at quhilk tyme, he in maist lamentable maner deceiffit, of the said vennemous and poyfoneable drink, vttering befor his death thir or the lyk woirdis, to all sic as war present, "Wo is me, that I evir had richt of successioun to ony landis or leving! ffor gif I had bene borne sum pure coitteris sone, I had nocht bene sa demanet,<sup>4</sup> nor sic wicket practizes had bene plottit aganis me for my Landis!" AND sa, was crewallie and treffonabillie Murthoret; and be þe foirsaid vnlawfull and poyfoneable drink, cuttit aff be þe said Robert Erskine, his uncle: And he was airt and pairt of the said treasonabill Murthour, and of þe damnable consulting and devyseing with the said Jonet Irwing, ane notorious Witche, ffor

<sup>1</sup> Lat. *habilis*.<sup>2</sup> Literally, *press*.<sup>3</sup> Pined away.<sup>4</sup> Treated.

making and ministrating of þe said poyfoneable and vennemous drink, for the saidis tuo bairnes Murthour and destructioun. LYKAS, the vther of the saidis tuo boyis remanis as zit fair visseit with intollerable payne, and seiknes vniuerfall throw his haille body, be occasioun of the said drink gevin to him at þe time foirsaid; off quhais lyfe þair is na hoip. TO THE TAIKIN of the quhilkis premisses, þe said Robert being examinat be the Lordis of his Maiesteis Previe Counfall; quhairupoune, eftir lang deilling with him þairintill, in end, come to his Confessioun, in maner specifeit in his Depositiones: Lyk as, he being charget, be vertew of Criminall Letteris, to haif compeirit and fund cautioun that he sould vnderly the Law for þe saidis crymes, was, for his nocht finding cautioun, denuncet to the horne, and declairit fugitiue fra his Maiesteis Lawis, for the crymes aboue specifeit; at the quhilk Hoirning he hes ever sen syne remanit vnrelaxt þairfra. As þe saidis Letteris of Hoirning, producet aganis him, in the self proportis.

Eftir reiding of the quhilk Dittay, and accusatioun of the said Robert Erskine, be vertew thairof, of the crymes aboue expremit, quhilkis war Confessit be him to be of verritie, the Justice, of his awin consent, referrit the samyn to the Tryell of ane Assyse of the persones following.

## ASSISA.

Mr Ja <sup>s</sup> Durehame of Duntervie,	Sir George Ramsay of Dalhousie,	Johnne Beatone of Falay,
Mr Francis Bothuell, brother ger-	Mr Alexander Seatoun of Gormok,	Patrick Maxwell of Newark,
mane to vmq <sup>le</sup> Johnne, Lord Cuthbert Cuninghame,	Proveist Aulay M <sup>c</sup> caulay of Ardincapill,	
Halyrudhous,	of Dumbarten,	Duncane Menzeis of Comerie,
Robert Falconer of Ballandro,	. . . . . Menzeis of Weyme,	Mathow Bailzie of Littillgill.
Sir Johnne Prestoun of Vallafeild,	Patrik Auchterlonie,	. . . . . Dunlope of that Ilk.

Quhilkis crymes the said Robert Erskine of new, in the said Assyse presens and audience, confessit and acknowlegit to be of verritie. Quhairupoun instrumentis was tane be our said souerane lordis Aduocat; and quha, for the said Assyse forder resolutioun, producet to thame the said Robert Erskines Depositiones, subscryuit with his hand, and dyuerse of the Lordis of his Maiesteis Previe Counfall; togidder with the saidis Letteris of Hoirning, beiring him to haif bene fugitiue fra his Maiesteis lawis, continuallie sen the committing of the said fact.

VERDICT. The Assyse, all in ane voce, be the mouth of Mr James Durhame of Duntarvie, chancellor, be resson of his former Depositiones, and ratificatioun thairof, maid in judgement, ffind, pronuncet, and declairit the said Robert Erskin to be Giltie, culpable, and convict of airt and pairt of the Murthour and distructioun of the said Johnne Erskine, his brother-sonne, be ministrating to him and his said brother of the poyfoneable drink, in maner specifeit in the said Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair hisheid to be strukin from his body: And all his moveabill guidis to be escheit, &c.<sup>1</sup>

<sup>1</sup> See the Trial of Helen, Issobel, and Annas Erskine, Jun. 22, 1614.

**Horse and Sheep Stealing.**

Jan. 28, 1614.—PETER DAUIDSOUN in Heddene; James Wallace, sumtyme duelland in Dundie; and Donald Smyth in Dumbarthen.

Dilaitit as follows, viz. The said *Peter Davidfoun* ffor the thiftious steilling, conceilling, refsetting, and away-taking of ane cut-luggit stanet naig, moufeshewit and ftug-taillit;<sup>1</sup> togidder with ane foird baffoned meir,<sup>2</sup> haifing thre quhyte feit, also ftug-taillit, a faxtene myles bezond Beruik in Ingland; committit about Mydfomer laft. ITEM, for the thiftious steilling and away-taking of ane gray ambland meir, with ane littill foired meir, a fevin or aucht myles abone Annik,<sup>3</sup> in Ingland; committit at Lambes laft, &c. AND the saidis *James Wallace* and *Donald Smyth*, ffor airt and pairt of the thiftious steilling, conceilling, refsetting, and away-taking of tua horfe, furth of the landis of Kerfe, &c. &c.

VERDICT. Fylet, culpable, and convict, conforme to thair awin Judiciall Confessiones.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill thai be deid; and all thair moveabill guidis to be efcheit, &c.

**Theft of Title-deeds, &c.**

May 20.—PATRIK EVIOT, fone to Finlay Eviot in Mwretoun, and sumtyme fervand to Patrik Eviote of Mwretoun.

Dilaitit, accusit, and perfewit be Sir Williame Oliphant, &c. and Johnne Mathow of Balhouffy, of the crymes following.

**DITTAY against the Pannell.**

FORSAMEKILL as Johnne Mathow of Balhouffie, in the moneth of Apryle, the zeir of God I<sup>m</sup>. sex hundreth threttene zeiris, haifing repairit towardis the Citie of St Androis, to haif procurat Confirmation of certane his landis, haldin be him of pe Proveist of pe Auld College pairof; and haifing tane his evidentis<sup>4</sup> with him to that effect, lyke as, vpon the 26 day of the said moneth of Apryle, being the Senzie-fair-day<sup>5</sup> of St Androis, the said Johnne Mathow, being within pe said burgh, in his cuming alongis the Hie streit pairof, accompaneit only with Alexander Blair, than his fervand, quba than had cayreing vnder his airme the said Johnne Mathow his wallet, quhairin thair was ane grit number of his evidentis and writtis, with tua pair of filk schankis,<sup>6</sup> ane pair of worfet schankis, ane pair of fyne filk gairtanes, with ane certane quantitie of gray veluet; and vther fmall necessaris pertening to him, all bund vp togidder within the said wallet; and at pair cuming foiranent Robert Ruffell his stable, quhair pe said Johnne Mathowis horfe was stablet for pe tyme, the said Alexander Blair, his fervand, haifing than past in to the said staibleris house, to geve the saidis Johnne Mathowis horfe sum corne; and in this meane tyme, haifing laid down pe said wallet, with the saidis evidentis and vtheris foirfaidis being pairin, vpon pe buird;<sup>7</sup> it is of verritie, that pe said Patrik Eviote, fervand to the said Patrik Eviote of Myretoun, of the speciall causeing, directioun, hounding out, and command, refsett, affiftance, and raihabilityoun of his said master, being for the space of tua or thre dayis of befoir, ever attending and following adreich<sup>8</sup> vpon the said Johnne Mathow and his boy, in all pairtis of pe said Citie of St An-

<sup>1</sup> A crop-eared stoned horse, mouse-coloured and dock-tailed.  
<sup>2</sup> Alnwick.  
<sup>3</sup> Title-deeds.  
<sup>4</sup> Synod-fair.  
<sup>5</sup> Stockings.  
<sup>6</sup> Table.  
<sup>7</sup> Dodying,  
and following at a little distance.

<sup>8</sup> A sorrel-coloured mare, marked with white on her face.

drois quhairvnto thay maid ony repair: And haifing perfauet the said Alexander Blair pafs fra his maisteris bak, and to enter within pe said Robert Ruffellis duelling-hous, and pair to haif laid down pe said wallet vpon the burd-heid pairof, in maner foirfaid; in maist thiftious maner, he convoyed him self within pe said Robert Ruffellis hous, as the said Alexander Blair was in geving corne to his maisteris horse, and thiftioullie past vp, staw, conceillit, resset, and away-tuik furth pairof, the said wallet, with the evidentis, silk schankis, worfet schankis, silk gartenis, gray veluet, and vperis his necessaris pertening to him, being all bund vp togidder pairintill, had and transpoirtit the samyn away with him to sic partis and places as he pleisit, nevir making ony restitution nor redelyuerance pairof to the said Johnne Mathow, just awner of the samyn, to his grit hurt and perrell of pe securitie of his landis, be abstracting and withholding of pe saidis evidentis pairof. AND siclyk, ffor the thiftious fleilling and away-taking of ane pair of blanketis, pertening to the Lady Balhouffie; and of ane pair of fyne marillit<sup>1</sup> plaidis, pertening to . . . . Roife of Cragie. And for cowmone Thift, and Resset of thift, &c.

VERDICT. Fylet, culpable, and convict of the haill thiftious crymes aboue specifit.

THE JUSTICE Continewis the pronunceatioun of Dome to the morne: And Ordanit the pannell to be committit to waird, in the meane tyme.

May 21.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid: And all his moveabill guidis to be escheit, &c.

#### Taking Captive — Slaughter.

Jun. 1.—WILLIAME M<sup>c</sup>INTOSCHE of Effie; Martene M<sup>c</sup>ewin V<sup>c</sup>ewir; and Lauchlane M<sup>c</sup>oneill V<sup>c</sup>lauchlane in Bancher, (and others).

Dilaitit for the taking of Colene Campbell of Clwnes captiue and priffoner; And for the slauchter of vmq<sup>o</sup> Donald M<sup>c</sup>intailzeour, and vtheris crymes.

Colene Campbell of Clwnes producet the Letteris, be the quhilkis thay ar denuncet rebellis, and put to the horne, for nocht finding cautioun to haif compeirit, &c. And producet lykwayis ane Warrant, subscryuit be my Lord Chancellor, Secreter, and Thesaurer, for deserting the saidis Letteris aganis *Duncane M<sup>c</sup>intoshche of Aberairdour*, Williame M<sup>c</sup>lauchlane V<sup>c</sup>williame M<sup>c</sup>intoshche, Angus Rofs, fervand to Williame M<sup>c</sup>intoshche in Boirlum, and Williame Bayne M<sup>c</sup>oneill V<sup>c</sup>allafter Vayne, in Delnavert.

#### Consulting with Witches — Poisoning — Treasonable Murder.

[THE Editor begs to refer the reader to a short introductory Notice prefixed to the Trial of ROBERT ERSKINE,<sup>2</sup> the brother of the pannels, whose crimes form the subject of the following Trial. It only seems necessary in addition to state, that he has been so fortunate as to obtain the following authentic memorials<sup>3</sup> of the proceedings against these unhappy victims of ungoverned passions, and of base and unbridled avarice. Their fate is written in letters so legible, that he who runs may read.

(Dec. 16, 1613.)—"THE tua sifteris of the deceassed ROBERT ERSKYNE, who iustlye suffered

<sup>1</sup> Variegated; mottled; marbled; or chequered.

<sup>2</sup> See Dec. 1, 1613.

<sup>3</sup> From *Denmylne MSS.*

Adv. Library, "Minutes of Privy Council Proceedings." See also *Balfour's Annales*, II., 53.

deathe, for the practyse of Witchcraft and Poyson vsed be him against his twa nephewes, the breetherine of THE HOUSE OF DYNNE, are brought to this Toun; and being examined, are obdured in a constant denyall of all that mater, nochtwithstanding that there late brother past constantlye to deathe, with avowing that detestable cryme vpon thame, as being the first devyfares therof, the motionaris therof to him, and the executoures therof in there own perfones. They are to be confronted with on who assited thame in confell and executioun of that deede; and thairefter, in caise of there perfeverance in there denyall, thay are to be pute to the Torture."<sup>1</sup>—(Jun. 22, 1614.) "THE xxij day of Janij nixt is appoyntit for the Tryell of HELENE and ISSOBELL ERSKENIS, for the Poysoning of the twa brether of the Hous of Dynne; and directioun is gevin to the Justice and his Maiesteis Aduocat to proceid in the perfute, tryall, and punifchment of that mater accordingle."—(Jun. 23.) "THE thrie sifteris of the Houffe of Dinne wes this day pannelled, accoofed, and convicted of the Poysoning of there two coofinges, the brether of Dinne; and Sentence is geven aganes thame to lose there heades; whilk wilbe execute vpon the xxiiij of this instant."]

Jun. 22.—HELENE ERSKINE, Issobell Erskine, and Annas Erskyne, Sifteris to vmq<sup>10</sup> Robert Erskyne, brother to the Laird of Dwn, and dochteris lauchfull to vmq<sup>10</sup> Johnne Erskine, appeirand of Dwn, callit Johnne of Logie.

Dilaitit of airt and pairt of the Poyfoneing of vmq<sup>10</sup> Johnne Erskine, thair brother-sonne,<sup>2</sup> be ministrating to him and to Alexander Erskine, his brother, of ane poyfoneable drink; of the quhilk the said vmq<sup>10</sup> Johnne Erskine depairtit this lyfe; committit about Witsonday, in anno 1610 yeiris.<sup>3</sup>

PERSEWAR, Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our souerane lord. PRELOCUTOURIS in defence, Mr Thomas Wilfone, and Mr Laurence M<sup>c</sup>gill, (Advocates,) Mr Johnne Erskine, Minister,<sup>4</sup> Mr Williame Keithe, Patrik Bruce.

Mr Thomas Wilfoun and Laurence M<sup>c</sup>gill, Aduocatis, produces ane WARRANT of the Lordis of Secreit Counfall, be the quhilk thai war charget to compeir for the thre sifteris on pannell, in thair defence; and in respect of the schortenes of tyme quhairupoun thay ar charget, and of the wechtines of the caus quhairupoun the pannell is dilaitit, desyres my lord Justice to grant ane continuatioun to ffryday nixt, that in the meyne tyme thay may haif lafure to advyse with the pairtie in the caus.—The Aduocat answeries, that na continuatioun can be grantit, in respect the perfones on pannell was charget vpon fyftene dayis wairning; and ane autentik coppie of thair Dittay was delyuerit to thame, at the geving of the said charge.

THE JUSTICE Ordanis proces; and the Summondis to be red.

It is allegit be the pannell and thair prelocutouris, that the Dittay is nawayis relevant, in thre feuerall poyntis, viz. *ffirst*, in the allegit consulting with Jonet Irwing, Witche, nocht condiscending vpon the woirdis of consultatioun, or quhat

<sup>1</sup> The Editor has found no satisfactory evidence to establish that the Torture was actually put in force, in this Case.

<sup>2</sup> Their Nephew, who was the heir-apparent of David Erskine, their eldest brother.

<sup>3</sup> The 'Dittay' is a mere echo of their brother Robert's, and is therefore unnecessary to be inserted here. See Dec. 1, 1613.

<sup>4</sup> At St Ceres Kirk.



response was given to the pannel be the Witche. *Secundo*, anent the allegit reffauing of the venemous or poyfoneable herbis, for the vse contenit in the Dittay, *non relevat*, except the perfewar war speciall vpon the names of the herbis, and qualitie thair of. *Tertio*, as to the allegit iniunctiones given for vse-ing of the saidis herbis, *non relevat*, except the perticuler woirdis of iniunctioun war speciallie fet down in the Dittay.—To the quhilk it is anfuert, that the alle-giance aucht to be repellit, in respect of the lybell, quhilk he vses *coniunctim* in the haill pointis, as is qualifeit, viz. that the pannel past and consultit with ane Witche, fra quhome thay reffaut the poyfoneable herbis, with iniunctiones how to vse the samyn, for the away-taking and distructioun of thair brother-sones,<sup>1</sup> in maner specifeit in the Dittay; in respect quhair of, the Dittay fould pas to the knowlege of ane Affyse.

THE JUSTICE findis the Dittay relevant, *coniunctim*; and nochtwithstanding of the allegiance, Remittis the samyn to ane Affyse. Quhairvpon the Aduocat askit instrumentis.

## ASSISA.

James Douglas of Todhoillis,	Adame Cunninghame of Chapell,	Mr Robert Stratoun, in Strathe,
Mr Joseph Hadden,	William Somervell of Pole,	Mr Robert Purves, in Ballache,
Thomas Craingelt of that Ilk,	Johnne Norie, in Brechin,	Johnne Moncur, in Blacok-mure,
Thomas Inglis of Eiftscheill,	Mr Thomas Ramsay, thair,	Johnne Barclay, in Balmakellie,
James Somervell of Spittell,	Robert Barclay, at Marie Kirk,	Johnne Barclay of Johnntoun.

The Aduocat, for verificatioun of the Dittay, produces ane Letter writtin be Mr Airthour Erskine, the pannellis father-brother,<sup>2</sup> thair Confessioun of the cryme lybellit, and thair penitence for the same; with a defyre of his lordschipis supplie and help, to transpourt thame furth of the cuntrie.

The said Letter being presentit to Johnne Erskin, Minister, now Tutour of Dwn, and being inquiryet gif the samyn was the said Mr Airthouris hand-writ or nocht, Declairit that the samyn was everie woird the hand-writ of the said Mr Airthour. Quhairupoun the Aduocat askit instrumentis.

Thaireftir my lord Aduocat producet the Depositiones maid be vmq<sup>le</sup> Robert Erskine, thair brother, quha past to the deid at the Mercat-croce of Ed<sup>r</sup>, that the pannel war the only first proponeris of that wicket fact to him; and that the samyn was committit and done be the persones on pannel, in maner specifeit in the Dittay.—Repeittis the affirmatioun maid judiciallie be *David Blewhous* of his former Depositiones; quhilk my lord Aduocat causet reid ouer to Blewhous. Producet lykwayis the Depositiones maid be *Gilbert Campbell*, and *Johnne Kirk*, in the said matter; and defyret the Affyse to cognosce thairupoun; And protestit for Wilfull Errour, in caice thai acquit the pannel of the saidis crymes.

VERDICT. The Affyse, be pluralitie of voittis, fand, pronuncet, and declairit

<sup>1</sup> Nephews.<sup>2</sup> Paternal uncle.<sup>3</sup> Death.

the saidis Ifobell, Helene, and Annas Erskynis to be ffylet, culpable, and convict of the haill crymes specifeit in the said Dittay; and that be the repourt and Declaratioun of the said Thomas Craingelt of that Ilk, chancellor.

SENTENCE. To be tane to the Mercat-croce of Ed<sup>r</sup>, and thair thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis to be escheit, &c.

DOME OF BANISCHEMENT *vpone Helene Erskine.*

(Mar. 22, 1615.)—Helene Erskine, ane of the thre lauchfull dochteris of vmq<sup>l</sup> Johnne Erskine, appeirand of Dwne, callit *Johnne of Logie*, being brocht furth of waird, out of the Tolbuith of Ed<sup>r</sup>, quhairin scho had remanit sen her laft convictioun, and presentit vponne pannel, to heir DOME of new agane pronuncet aganis hir, as scho that was convict and the dome of daith pronuncet aganis hir, &c. Ane ACT of *Secretit Counfall* was presentit, and delyuerit to the Justice; quhair of the tennour followis.

· APUD ED<sup>r</sup>, *decimo sexto die mensis Marcij, anno Domini millesimo sexcentesimo decimo quinto.* FORSAMEKILL AS, by the executioun to the daith of *Robert Erskine* and his tuo sifteris, the impoysoning of the tuo bretherene of Dwne is sufficientlie pwneisched: And whearas, thair remaneth 3 it, in fure custodie, for the same offence, HELENE ERSKINE, who being moir penitent, thogh les giltie, than the rest, doith mereit the moir commiseratioun: HIS MAIESTIE is thairfoir graciousslie pleasit to spair hir lyfe, zit so as scho fall nocht eschape the pwneischment of hir pairt of the said offence; bot pat scho be BANISHED out of this kingdome, during hir lyfytyme. THAIRFOIR, the Lordis of Secretit Counfall, accoirding to the Kingis Maieftis will, plesour, and directioun, fend vnto thame in this matter, Ordanis and commandis his Maieftis Justice, Justice clerk, and pair deputis, to appoint and set ane new Justice Court, to be haldin be thame in the Tolbuthe of Ed<sup>r</sup>, at such tyme as thay pleis (to) affix; and pair to call the said *Helene* befoir thame, and to pronounce new sentence and dome aganis hir; ordaning hir to be BANISHED this kingdome, and nevir to returne agane within the same during hir lyfytyme, without his Maieftis Licence had and obtenit to pat effect; and to depairt furth of this realme, within the space of fourtie dayis estir pe pronouncing of the said new dome, vnder the pane of deid: With certificatioun to hir, and<sup>1</sup> scho failzie, and depairt nocht furth of this realme, within the terme soirsaid prescryuit vnto hir; and being depairtit furth of pis realme, yf scho returne agane within the same, without his Maieftis Licence had and obtenit to that effect, that the pane of deid salbe execute against hir, without fauour or mercie.

EXTRACTUM de Libris Actorum Secreti Consilij s. d. n. regis, per me, Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

THE JUSTICE, for obedience of the will and ordinance thairin contenit, be the mouth of Johnne Dow, dempster of Court, Ordanit, nochtwithstanding of the former dome of daith first pronuncet, the said Helene Erskine to be BANISCHET, &c.<sup>2</sup>

**Child-Murder.**

Jun. 25.—JONET BROUN, dochter to Johnne Broun in Bigger.

Dilaitit, fforfamekill as Johnne Stewinsone in Bigger, haifing this last yeir

<sup>1</sup> An; if; in case.

<sup>2</sup> The terms of the Warrant are repeated, *verbatim*, in the Record.

gottin ane bairne with hir, in the filthie cryme of ffornicatioun, fcho, for avoid-  
ing the fclander and pwneifchment, conceillit the faid bairne, fua that nane of  
the parochin knew hir to haif bene thairwith ; and about the moneth of Marche,  
or thairby, laft, being cum to the tyme of hir delyuerie, fcho pafit furth of hir  
fatheris duelling-hous to the feildis, neir to the faid toun of Bigger ; and without  
feiking of ane meidwyfe, or vther ordiner help, fcho travellit, and was delyuerit of  
ane quik madin-bairne ; quhilk chyld fcho ftrangillit immediatlie, and tuik the  
fame to ane dyk-fyde outwith the faid toun of Bigger, and coverit the famyn  
with ane number of turves : And fa, be neglecting the ordiner meanis in hir  
birth, fcho crewallie murdreift and flew the faid bairne.

The pannell denyis the Murthour of the bairne ; and fayis that the bairne  
deit fchortlie efter the beiring, being ane lafs-bairne ; and being deid, fcho eirdit<sup>1</sup>  
the famyn in the grund of ane truff ftak,<sup>2</sup> in maner fpecifeit in the Dittay.

VERDICT. The Affyfe, be the mouth of Williame Flemyng of Perfilandis,  
chancellor, ffand, pronuncet, and declairit the faid Jonet to be ffylet, culpable,  
and convict of the Murthour and diftructioun of hir faid infant bairne, conforme  
to hir Dittay.—SENTENCE. To be tane to the Caftell-hill of Ed', and thair to  
be hangit quhill fcho be deid : And hir moveable guidis to be efcheit, &c.

### Theft.

Jun. 25.—ANDRO 3ULE, borne in Clermond, vnder the Laird of Dairfie.

Dilaitit and accuset for the fteilling and away-taking of tua pair of fcheittis,  
ane pair of blankettis, ane littill panne, and ane fuord, pertening to Williame  
Perfone, in the Hill of Bathe.—Grantit the famyn to be of verritie, and cravet  
God mercie thairfoir ; and offerit him felf in our fouerane lordis will, and his  
hienes Juftice will, for the faidis crymes : Quhome the Juftice reffaut.

SENTENCE. To be SCURGET throw the burgh of Ed', and to be BANISCHET  
furth thairof for euir : And gif euer he war apprehendit for Thift heireftir, fould  
be hangit to the deid, but fauour.

### Cattle-stealing—Slaughter.

Jul. 15.—GILBERT JOHNNESTOUN, brother to Gawin Johnneftoun in  
Annand-holme.

Dilaitit, accuset, and perfewit, be Hew Douglais of Dalwein, as fone, Sir  
Robert Dowglais of Carschogill, as neir kinfman, of vmq<sup>1</sup> Hew Dowglais of Dal-  
wein, ffor airt and pairt of the thifteous Steilling, conceilling, and away-taking,  
vnder filence and clud of nycht, furth of the landis and Maines of Dalwein, of  
threttie fax heid of ky and oxin, pertening to the faid vmq<sup>1</sup> Hew and his ten-

<sup>1</sup> Earthed ; buried.

<sup>2</sup> Peat or turf stack.

nentis ; committit be him, and vtheris his complices, cowmone and notorious thevis, rebellis, and fugitiues, vpone the xxviiij day of Auguft, I<sup>m</sup>.V<sup>c</sup>. fourfcoir fevintene yeiris : AND ficlyk, ffor airt and pairt of the crewall Murthour and flauchter of the faid vmq<sup>ie</sup> Hew Douglas of Dalvene, in the following and redding of the faid guidis, at the tyme foirfaid ; vpoun fet purpois, prowifioun, and foirthocht fellonie.

## ASSISA.

Johnne Lyndfay of Auchinkeoch,  
Robert Johnneftoun of Vamphra,  
James Greir of Pitfillan,  
Capitane James Hunter, burges of Ed<sup>r</sup>,

Mr Samuel Kirkpatrik of Auchinlek,  
Williame Johnneftoun of Lokerbie,  
James McMath of Schaw,  
Johnne Bell, burges of Edinburghe.<sup>1</sup>

VERDICT. Fylit, culpable, and convict.—Sentence continewit quhill the Justice war advyfet with the Lordis of his Maiefteis Previe Counfall thairanent.

Jul. 16.—SENTENCE. The Justice, ffor obedience of ane WARRANT, direct to him be the Lordis of Secreit Counfall, fubfcryuit be my Lord Prefident, my Lord of Roxburgh, my Lord of Bynning, Secretar, my Lord of Blantyre, and be my Lord of Kildrummye, be the mouth of Johnne Dow, dempfter, decernit and ordanit the faid Gilbert to be tane to the Castell-hill of Ed<sup>r</sup>, and thair to be hangit vpoun ane gibbet, quhill he be deid ; and all his moveabill guidis to be efcheit, &c.

**Slaughter.**

Dec. 9.—SIR PATRIK HEPBURNE of Vachtoune, kny<sup>t</sup> ; James Ker, Patrik Dikfoun, David Allan (Ellem), Patrik Mortoun ftewart, Andro Gyller cuik, George Quhyt horskeipar, Diones Smart huntifman, Williame Carfrae fcheiphird, Williame Drummond, all feruitouris to the faid Sir Patrik.

Dilaitit for airt and pairt of the flauchter of vmq<sup>ie</sup> Robert Broun, feruitour to Mr Richart Dowglais of Brokhollis.

Patrik Dowglais, baxter, burges of Ed<sup>r</sup>, producit the Letteris, dewlie execute and indorfat, purcheft be Johnne and George Brounes, as brether, and the faid Mr Richart, as maifter and neir kynfman of the faid vmq<sup>ie</sup> Robert, and our fouerane lordis Aduocat, and proteftit for releif of his cautionerie ; the quhilk the Justice admittit.—Mr John Hepburne of Gilmertoun, as cautioner for the faidis Sir Patrik, for his releif of the faid cautionerie, producet the Counfallis Warrant, ordaning this dyet to be defert, &c.

JUSTICE, Justice clerk, and 3our deputtis : fforfamekill as the nynt day of December instant is appointit to Sir Patrik Hepburne of Vachtoun, kny<sup>t</sup>, James Ker, Patrik Dickfone, David Ellem, and vtheris, his feruitouris, for thair compeirance befoir 3ow in the Tolbuith of Ed<sup>r</sup>, to vnderly our lawis for the flauchter of vmq<sup>ie</sup> Ro<sup>t</sup> Broun, feruitour to Mr Richart Dowglais : And feing pe pairteis ar now

<sup>1</sup> The rest were burgeses of Edinburgh.

agreit, and hes chopin<sup>1</sup> handis, in presence of diueris of our Nobiletie and of his Maiesteis Counfall : Theis ar thairfoir, in his Maiesteis name, to command 3ow to defert the said dyet, and forbeir all forder proceeding pairintill : Quhairanent pir presentis falbe 3our Warrant. AT ED<sup>a</sup>, the fewint day of December, 1<sup>m</sup>.Vj<sup>c</sup>. and fourtein 3eiris.

AL. CANCELL<sup>a</sup>. AL. MAR. R. CAITHNES. LYNLY<sup>a</sup>GOW. KINGORNE. LOTHEANE.

### High Treason—Resisting the King's Lieutenant and his Forces —Rebellion in Orkney, &c.

[THE proceedings which were adopted against PATRICK EARL OF ORKNEY, in the years 1610 and 1611, have already been noticed in a former part of this Collection ;<sup>2</sup> and as THE REBELLION IN ORKNEY, as a matter of history, has been recorded in almost every History of Scotland, it is unnecessary here to enter into any minute detail or recapitulation. Owing to the relationship which existed between the Earl of Orkney and the King, and the high favour in which that Nobleman had long stood with his Majesty, every device appears to have been resorted to, on the part of the Privy Council and the Lord Advocate, for the purpose of enabling the Earl to prove his innocence of the former accusations of cruel Oppression and Tyranny, which had been brought against him by the wretched inhabitants of Orkney and Shetland, after they had submitted, as long as was consistent with human nature, to endure such barbarous treatment. The Earl was accordingly confined in Edinburgh Castle; and in the meantime, the Privy Council deputed the Bishop of Orkney to enquire into the truth of these serious charges, and to report to them within a reasonable time.

Owing to his attempts to escape from ward in Edinburgh Castle, the Earl of Orkney was conveyed, as a state prisoner, to the Castle of Dumbarton; where it was considered he would be in more sure custody, and would, besides, be farther removed from the intrigues in which it had long been conjectured he was busily engaged. Notwithstanding of the vigilance of his keepers, he contrived to instruct his 'base son,' ROBERT STEWART, one of the subjects of the following Trial, to proceed to Orkney, under the pretence of uplifting the rents which were due by his tenants, but, in reality, his design was to seize upon the Castle of Kirkwall and other strengths in Orkney, which had been confided to the custody of the Bishop, the Sheriff, &c., to raise the standard of Rebellion, and, finally, to throw off his allegiance to the Crown of Scotland. The Earl had anticipated that, by means of the money to be thus raised, he would easily overcome the fidelity of his keepers, or otherwise provide the means of his own escape. Having ordered ammunition and other supplies to be procured from Norway, he calculated, that in those remote regions, which were rendered almost inaccessible during many months in the year, at that period, when the art of navigation was at so low an ebb, he might assume the despotic rule of these Islands, as an independent Prince.

The successful termination of the Earl of Caithness's Commission of Lieutenantcy, the capture of the Castle of Kirkwall, and all his remaining strongholds, the capitulation and unconditional surrender of Robert Stewart and the other rebels, together with the subsequent execution of the ringleaders in this Rebellion, for ever dispelled the absurd reveries and the wicked plots of this guilty man, who was doomed, in February 1615, to forfeit his life upon the scaffold. Reference is here generally made to his two Trials, for the sake of brevity.

It only remains to state, that *Calderwood*, in his MS. Church History,<sup>3</sup> preserves the following notice of the Execution of these unhappy and deluded criminals.—(Jan. 6, 1615.) 'ROBERT STEWART, sone naturall to the Erle of Orkney, with other five of his complices, convicted of treasonable taking, keeping, and defending of the Castle of Kirkwall and the strengths in Orkney, were hanged at the market croffe of Edinburgh, and died penitent. The said Robert confessed his father, the Earle, who

<sup>1</sup> Struck; shaken hands.

<sup>2</sup> Vol. III., p. 81, &c.

<sup>3</sup> *Calderwood's Church Hist.*, MS. Adv. Library.

then was wardit in the Castle of Edinburgh, commandit him to doe that which he did ; but granted he gave him a contrare-mand, before he entered in executione. The Gentleman, not exceeding 22 years of age, was pitied of the people, for his tall stature and comely countenance.'

As the details of this Rebellion are entirely unknown to the public, the Editor has the pleasure of laying before his readers a mass of Original State Papers, Dispatches, Examinations, Confessions, and other interesting Documents, which he has appended to this Trial, and to that of the Earl of Orkney, Feb. 1, 1615. As usual, the sources from which these Illustrations have been procured are noted ; and it is hoped, that the whole will be considered as an acceptable addition to the history of that period.]

Jan. 5, 1615.—ROBERT STEWART, base sone to Patrik, lait Erle of Orkney ;<sup>1</sup> Thomas Blak, alias Dowglas, sumtyme Chalmerlane and Bailzie to the said Erle ; Archibald Murray, wricht in Birsay ; Andro Mairtene, sumtyme servand and secretar to the said lait Erle ; Alexander Layng, also his servand ; and Thomas Layng, indueller in Kirkwall.

Dilaitit of the Treffonable taking and surprising of his Maiesteis CASTELL OF KIRKWALL, KIRK, and STEIPLE OF KIRKWALL ; treffonable refisting of THE ERLE OF CAITHNES, his Maiesteis Lieutenant ; and vtheris treffonabill crymes, contenit in thair Dittayis following.

*DITTAY against Robert Stewart and others.*

FORSAMEKILL AS, albeit it was mair nor nottour and manifest to zow, that our souerane lord the Kingis Maiesteie, and Lordis of his hienes Previe Counfall of his Kingdome, had depute and autorizet *Sir James Stewart of Killeith*, kny<sup>t</sup>, to be Chalmerlane of the Erledome of Orkney and Lordschip of Zeitland ; quha, be resson of þe said office, nocht only became in possessioun, in vplifting to his Maiesteis vse of þe haill rentis, casualities, and deuties of the said Erledome, lordschip, and leving pairof, bot lykwayis, be him self, his servandis, and substitutis, obtenit the charge, custodie, and keiping of þe haill Palices, Houffis, Castellis, and strenthis within the samyn ; speciallie, þe Castell of Kirkwall, the Hous and Palice of Birsay, and remanent houffis sumtyme pertening to þe said *Patrik, lait Erle of Orkney*. As also, ze, þe said *Robert Stewart*, being bundin, vpon zour grit aithe, nocht to haif repairit to þe boundis of þe said cuntrie of Orkney and Zeitland, without his Maiesteis Licence, grantit to zow for that effect ; nochtwithstanding quhairof, it is of verritie, that ze, the said Robert Stewart, being oft tymes thraitnet and minasset be the said lait Erle zour father, vpon a miscontentment confauct be him aganis zow, ffor zour supposet overgeving of þe said Castell of Kirkwall and vtheris Houffis tane and keipit be zow, maist treffonabillie schaiking af zour allegiance and obedience to our souerane lord, and preferring the vnhappie plott and counfall of zour said ffather to the dew reuerence and regaird of his Maiesteis authoritie and lawis, and thairwith making schip-

<sup>1</sup> See Trials of Patrick, Earl of Orkney, Aug. 2, 1610 ; and Feb. 1, 1615.

wrak of your faith, honour, and credeit, quhairin ze stuid bund vpone your grit and solemne aith, as said is : Off the speciall causeing, sending, hounding out, command, counfall, devyse, and directioun of the said lait Patrik, lait Erle of Orknay, your ffather, in the moneth of Maij lastbypast, or pairby, exprellie aganis your former faith and former promeis, adressit your selff furth of thir pairtis to the said cuntrie of Orknay ; quhair ze, togidder with *Patrik Halcro*, quha also was imployit and directit be your said ffather to assist zow in your intendit Rebellioun, convenit to your selffis the saidis *Archibald Murray, Thomas Blak, Andro Mairtene, Alexander Leggat, and Thomas Layng*, with dyuerse vtheris mwrtinuous and evill dispozet perfonas, your associatis, plotteris, and practizeris with zow, in your haill rebellious and tressonabill courses following : AND *ffirst*, be your craftie and subteill meanis, convoyit and posseffit your selff and your associattis within þe Palice of Birsay, and violentlie expellit furth þairof Barnard Stewart, Keiper of the samyn ; drew in to your selff, within the said hous, to the number of threttie perfonas, bodin with hagbutis, muscatis, poulder, leid, and vther maner of weirlyk preparatioun : Lykas, the taking of the said Hous and manning þairof, in maner foirsaid, be zow and your rebellious associattis being maid knawin to *Mr Johnne Fynlaystone*, Schereff depute ; and he, in regaird of his office, and for preventing of your intendit Rebellioun, haifing assemblit ane grit number of the best affectionat gentilmen and cowmonis of þe cuntrie, in the said moneth of Maij, or pairby, lastbypast, cuming fordwardis to the said Hous of Birsay, tane and keipit be zow and your rebellious associattis, as said is ; and haifing, at his cuming þairto, be found of trumpet, in our souerane lordis name and autoritie, caufit charge zow to cum furth of his Maiesteis Hous, and to rander þe samyn to him, as Judge and Magistrat of þe cuntrie, vnder his Maieftie, without forder trouble to follow þairupoun, under þe pane of Tressone ; ze, with your associattis, nocht only maist tressonabillie and contemptuouflie disobeyit þe said charge (and) refusit altogidder to rander the said Hous, but schote furth þairof dyuerse schotis of hagbutis and muscatis at þe said Schereff and his companie, than cled<sup>1</sup> with our souerane lordis autoritie, in þe executioun of his office, and geving of þe former charge : At quhilk tyme, the said Schereff and his cumpany being vnwilling to encounter with zow, be way of deid, than left zow with your rebellious company, within the said Hous, and returnet to Kirkwall, of intentioune to haif stayit your Rebellioun fra haifing ony forder course. Bot ze, altogidder myndet to pas fordwardis þairintill, eftir þe Schereffis depairting fra the said Hous, convocat your rebellious company togidder, and be the space of ane moneth togidder, keiping your daylie consultations and meitingis with vther,<sup>2</sup> ze þair plottit, devyfet, and concludit the tressonabill intaking and man-

<sup>1</sup> Clothed.<sup>2</sup> One another; each other.

ning of the Kirk and Steiple of Kirkwall, the Castell pairof, and Place of the Zairdis, the slauchter and ruiting out of þe Schereff, þe Commiffar, and fic as wald tak pairt with thame aganis zow ; and for this effect, convocat to zow þe haill parochineris and cuntrie people about, pat zour selff with thame in airmes, and at tua feuerall tymes maid zour mufteris and wappone-fchawingis, and mufterit togidder the number of nynefcoir perfones, furneift and airmet, for þe maift pairt, with corflettis, hagbuttis, poulder, leid, lances, and vther weirlyk preparatioune : Quhilkis perfones, fa convocat be zow, ze brocht altogidder within the faid Hous of Birlay and vperis houffis pairabout, quhair thay war feiftit and bankettit be zow : Zour Captanes and Commanderis war than chofin, and mony promeiffes and vowis maid, that na bak-ftarting fould be, fra zour intendit Rebellioun, be ony of zow, at ony tyme thaireftir, bot to tak eafald<sup>1</sup> pairt with vther to<sup>2</sup> þe tyme þe lait ERLE OF ORKNAY war repoffeffit to his ancient and former government in that cuntrie. At quhilk tyme, ffor zour gritter affurance of þe faidis vowis and promeiffis, ane BAND was plottit, maid, and devyfet be zow and zour rebellious affociattis, all writtin be þe faid Andro Martenis hand ; quhilk being presentit and producet to zour haill rebellious company be zow, the faid Band (eftir grit aithes maid vpoun zour fuoirdis<sup>3</sup>) was fubfcryvit be fa mony of zow and zour company as could wryte ; and fa mony as could nocht wryte put to pair markis, and gaif pair folemne aithes to abyde pairat to pair lyves end ; quhair-in thay war bund to die and leue with zow, and to tak eafald pairt with zow, in all zour treflonabill courfes, aganis all perfones quhatfumeuir, his Maieftie, our gracious fouerane, nocht being exceptit, nor his royall authoritie fet apairt ; committing thairthrow oppin and manifefte Treffone. LYK AS Ze, ffor bringing to pas of zour former Rebellioun and devillifch conclufioun, about ane moneth or pairby paireftir, vnderftanding that þe Schereff and Commiffar war in securitie within the Toun of Kirkwall, nocht expecting ony fuddane perfute, refolveing with zour selffis to haif þe Schereff in zour power, either deid or quik, ze, the faid Robert Stewart, accompaneit with the faid Archibald Murray, Thomas Blak, Andro Mairtene, Alexander Leggat, Thomas Layng, and vperis, zour rebellious affociattis, to the number of threttie perfones, all bodin with hagbutis, mufcatis, poulder, leid, and all vther weirlyk prouifioun, vpone the xvij day of Julij laft-bypaft, come frome the faid Place of Birlay towardis þe faid Toun of Kirkwall, of intentione to haif affailzeit þe faid Schereff within his ludgeing, and haifing rankit zour companie at þe Bowa-croce, ze pair reflaut adverteifment of þe Schereffis being within the Castell ; and pairthrow, finding zour selffis difapointit of zour expectatioun, ze pair difcharget zour volie of mufcattis, and enterit within

<sup>1</sup> Literally, *one-fold* ; steadfast ; true, &c.    <sup>2</sup> Until.    <sup>3</sup> An ordinary form of military oath, on such occasions ; which was borrowed from times of the remotest antiquity.



the Toun, quhair ze abaid all that nycht, quhill<sup>1</sup> the morne paireftir ; att quhilk tyme ze, with Patrik Traill, Williame Paterfone, and vtheris your affociattis, come to the duelling hous of Bernard Stewart, within the Toun of Kirkwall, about the brek of day, in the moirning, pryset vp his bak zet,<sup>2</sup> enterit within his clofe, dang at his hall dur with ane garroun ;<sup>3</sup> and nocht getting entrie, went about þe faid hous to the hall window, quhair efter vp-dinging of þe faid window, the faid Archibald Murray, in gripping of Bernardis hagbute, was hurt be him with ane rapper<sup>4</sup> in the hand. Eftir the quhilk tyme, ze, haifing reteirit your selffis bak agane to Birlfay, and finding with your selffis that your rebellious courfes had tane bot littil or na effect ; ze, to haif the famyn brocht to ane finall poynt, conuenit your haill forces togidder, and eftir deliberatioun tane be you, the faid Patrik Halcro, with þe faidis Thomas Blak, Archibald Murray, togidder with tuentie perfonen of your rebellious number, of þe speciall directioun of you, þe faid Robert, paft all, bodin in feir of weir, with muscattis, hagbuttis, poulder, leid, and vther weirlyk furnitour, to the faid Toun of Kirkwall, and þair, vnder nycht, furpryset and tuik in þe Kirk and Steiple þairof, quhilk ze furneift with men, munitioun, poulder, bullet, and vþer neceffer prouifioun for halding and keiping of the faid Steiple : And vpone þe morne paireftir, ze, þe faid Robert, vnderftanding of þe guid succes had be Halcro and his companie, in þe wyning and taking in of þe faid Kirk and Steiple, ze, accompaneit with the faid Thomas Layng, Andro Mairtene, Alex<sup>r</sup> Leggat, and vþeris your rebellious affociattis, to the number of threfcoir fouldiouris and men of weir, come forwardis to þe faid Toun of Kirkwall, in oppin and arrayit battell, with founding of trumpettis, freking of drumis, fchuiting of muscatis, in figne of triumph and victorie, and all vþer weirlyk advancement ; the faid Patrik Halcro and his affociattis of your rebellious troupe being than within the Steiple, fchuteing out þairof at all perfonen that durft kithe in your contrair,<sup>5</sup> and founding vp þair horne to you, for your forder incurragement to proceid in your trefsonabill attemptis. AND being enterit within the faid Toun, maift trefsonabillie affaget the faid Castell, and compellit þe Keiperis þairof to rander the famyn, thay being bot of a few number, and nocht able to withftand your violent affault ; quhilk being tane in be you, ze immediatlie paireftir cuttit the brig<sup>6</sup> þairof for your gritter furetie : At quhilk tyme, ze lykwayis trefsonabillie tuik, be force, þe Houfe and Place of þe Zairdis, with the Victuall-hous, and feafit vpone þe haill furnitour of meill, malt, and vther prouifioun for keiping þairof : At quhilk tyme, ze trefsonabillie pat handis in the perfone of þe faid Mr Johnne Fynlafoun, Scheref, being than within þe faid Castell ; as alfo, come to the duelling hous of the faid Barnard Stewart,

<sup>1</sup> Until.<sup>2</sup> Forced up his back-gate by means of a lever.<sup>3</sup> Beat at his hall or front

door with a beam, used as a battering ram, to shatter the door to pieces, or to start it from its hinges.

<sup>4</sup> Rapier, orsmall sword.<sup>5</sup> Come forward to take part against you.<sup>6</sup> Drawbridge.

vnder filence and clud of nycht, brak vp his durris, and tuik him violentlie and aganis his will furth of his bed, led him captiue and priffoner to þe said Castell of Kirkwall, quhair he and the said Schereff war keipit in strait firmance and captiuitie be the space of fyve dayis togidder; and paireftir war cayreit and transfportit, as captiues and priffoneris, to certane crawis or schipis, to be brocht fouth to sic places as 3e had appointit; thay being his Maieftis loyall and faithfull fubiectis, doing quhat in þame lay to haif stayit the courfe of 3our former Rebellioun. THE VERRITIE and trew repoir of the quhilkis 3our treflonabill and deteftabill villaneis cuming to the eiris of HIS MAIESTIE and Lordis of his hienes PREVIE COUNSALL of this kingdome, and thay, for the mair fpedie staying and repressing of the saidis enormities, haifing burdenit and imployit GEORGE ERLE OF CAITHNES, as Leutennent and Commiffioner for his Maieftie to pas over with forces to the said cuntrie of Orknay; and for that effect, ane grit number of fouldiouris and men of weir being wadget and listit, vpoun his Maieftis charges; as also, certane peces of ordinance, poulder, bullet, and vper furnitour for battering of þe saidis strenthis and holdis fupryfet and keipit be 3ow; togidder with tua schipis and ane pynnadge, being also frauchtit, alweill for transfporting of þe said Leutennent and his companie, with þair furnitour and vther victuallis be fea, as convoying and overtaking of þe said Ordinance, poulder, and bullet towardis the said cuntrie of Orknay, for paciefeing of 3our former Rebellioun, and trubillis raifit be 3ow pairintill: 3e, making littill or na accompt pairof, nor of þe pernicious example gevin be 3ow to vtheris his Maieftis guid and peceable fubiectis, in vtheris partis of his dominionis, in plane contempt of his Maieftie and of his royall authoritie, vpone knowlege gevin to 3ow of the said Leutennentis over-cuming, in maner foirfaid; 3e maift treflonabillie convenit and mufterit 3our haill forces and cumpaneis togidder; and for augmenting of 3our number, drew in dyueris of þe cuntrie people, quhilkis war preft and forcet, be 3our tyrannie and oppreffion, to tak part with 3ow in 3our former Rebellioun, making vp in number ane airmie of ffyve hundreth men, airmit for 3our guaird and defence, in fo dampnable ane caus. With the quhilk number of airmet fouldiouris, 3e marchet furth in battel array, out of þe said Toun of Kirkwall, towardis the Carnes, dyuerfe dayis of þe moneth of August last, of purpois þair to haif withftud and resistit þe said Leutennent and his schipis landing: LYK AS, eftir þe said Leutennent and his companie war landit, 3e, accompaneit with the number aboue writtin, being all bodin in feir of weir, with hagbuttis, muscattis, poulder, leid, enfignes displayit, and founding of drummis, rankit 3our selffis in battell array, at the Baw-feild, ane littil fra the said Toun of Kirkwall, quhair 3e, be schuiting of 3our muscattis, maift treflonabillie maid refiftance to the said Leutennent and

his companie, in pair forward-cuming to the said Toun, thay being cled with his Maiesteis authoritie and Commiffioun to repres your Rebellioun : And vpone the tuentie foure day of þe said moneth of Auguft, *Robert Wynrahame*, ane of his Maiesteis Herauldís,<sup>1</sup> cled with his hienes displayit coit of airmes, accompaneit with Johnne Johnnestoun, trumpetour, Mr Williame Moffet, Gilbert Dundas, and Johnne Moffet, as witnesses, accoirding to the directioun of his Maieftie and Counfall, and of þe said Erle of Caithnes, his Maiesteis Leutennent, being repairing to the Mercat-croce of Kirkwall, thair to haif charget zow, in his Maiesteis name and authoritie, be found of trumpet, to haif randerit the said Castell, Place of the Zairdis, Kirk, and Steiple, and vtheris houffis and strenthes keipit and haldin be zow and your rebellious affociattis, ze, and your airmet foul-diouris and men of weir, nocht only tressonabillie stayit and maid resistance to the said Robert Wynrahame, his Maiesteis Herauld, in nocht suffering him to repair to þe said Croce, for discharge of his Message, bot maift presumptioulie pat violent handis on his persone, tuik him, with the said trumpetour and witnessis, as captiues and prissoneris, and cayreit him to the said Place of þe Zairdis, quhair thay war keipit and detenit be zow as prissoneris be þe space of nyne houris, or þairby, ane pairt of þe said Herauldís coit was revin ; and efter delyuerie of the said charge be him to zow, þe said Robert Stewart, for randering of the saidis Houffis, his Maiesteis letteris and charges was tane be zow frome him, quhilkis ar keipit be zow as zit : And nochtwithstanding pairof, þe saidis Houffis and Castell was maift tressonabillie keipit and haldin be zow. VPOUN the forward-cuming of the quhilk Leutennent, with his forces, towardis the said Toun, ze finding your selfis vnhabable<sup>2</sup> to keip the feildis, or to hald him out of the Toun, ze maid your flicht and retreit to þe saidis Kirk and steiple, and to the said Castell and Place of the Zairdis : And dyuerse schotes of ordinance being schote at þe said Castell, Steiple, and vþeris Houffis fortfeit and keipit be zow, with dyuerse messages fend to zow for þe peceable overgeving pairof, ze neurþeles maift rebellioullie dissobeyit the saidis messages and charges, and tressonabillie schote furthe agane at the said Leutennent and his companie, and flew with the saidis schottis, Williame Irwing, lauchfull sone to vmq<sup>le</sup> Williame Irwing of Saba,<sup>3</sup> James Richesoun, Andro Adamesoun, William Robertfoun ; and hurt and woundit James Kneilland, Andro Purves, Williame Flemyng, and Alexander Sudderland, thay being his Maiesteis servandis and faithfull subiectis, than in seruice with the said Leutennent ; tressonabillie keipit and held the said Steiple the space of fourtie aucht houris þaireftir, or þairby ; and held and keipit the said Castell be the space of ffyve oulkis, or þairby ; nochtwithstanding of fevin scoir schote of ordinance schote þairat, and that ane grit pairt pairof was

<sup>1</sup> He was 'Yla' or Islay Herald.

<sup>2</sup> Lat. *inhabilis*.

<sup>3</sup> Elsewhere called of Cava.

batterit and dung doun with the force of the said cannoun. OFF THE QUHILKIS Treffonabill crymes aboue writtin, viz. the Treffonable disfbeying of the charge gevin be þe said Schereff, in his Maieftis name and autoritie, ffor randerig of the said Houfe and Palice of Birsay, eftir þe intaking pairof; the Treffonable convocatioun and raifeing of men of weir, and mustering of thame in airmes, to þe number foirsaid, and cuming forwardis with a pairt of thame in battell-aray to þe said Bowa-croce, for the slauchter of the said Schereff; the Treffonabill forgeing, making, and subscryveing of the foirsaid Band, for taking pairt with the said Robert, in his former treffonabill courfes; and causeing the subscryveris, and vperis pair aideris and affisteris, be solemne aithes, to fueir to die and leve with him, aganis all maner of perfones, his Maieftie our sacred fuerane nocht being exceptit; the Treffonabill taking and surprifing of þe said Castell of Kirkwall, Kirk, and Steiple pairof, Place of the Zairdis, and vtheris houffis, mannit and keipit as said is; the Treffonabill taking of þe said Mr Johnne Fynlafoun, Schereff, and Barnard Stewart, captiues and priffoneris, being his Maieftis frie and faithfull subiectis; the Treffonable refisting of the said Erle of Caithnes, his Maieftis Leutennent and Commiffioner, in vseing of his said Commiffioun, with his cumpanie and men of weir, and slauchter of his Maieftis faithfull subiectis, being in his Maieftis seruice; and beiring out of the said assault maid be the said Leutennent, to the saidis Castell, Kirk, and Steiple; the Treffonabill taking of þe said Robert Winrahame, his Maieftis Herauld, being directit be his Maieftie and Counfall, with his Maieftis displayit coit of airmes, to charge the said Robert and his companie, to rander the saidis Houffis and strenthis, be vertew of his Maieftis Letteris direct for þat effect; and Treffonabill disfbeying of the said charge, and taking of the letteris and charges fra þe said Herauld, and keiping pairof, in maner foirsaid; 3e, the said Robert Stewart, Andro Mairtene, Thomas Blak, Archibald Murray, Alexander Legget, and Thomas Layng, and ilk ane of 3ow, ar airt, pairt, red (*advice*), and counsell; att the leift, of ane or vther of the saidis Treffonabill crymes, committit be 3ow and 3our rebellious affociattis aboue writtin; off the special causeing, sending, hounding out, airt, pairt, counsell and devyse of the said PATRIK, lait ERLE OF ORKNAY; quhilk is notourlie knawin. LYK AS, 3e haif Confessit the samyn, be 3our Depositiones.—FOR the quhilkis 3e aucht and fould be pwneift and denuncet as Tratouris; to þe terrour and exampill of vperis to attempt the lyk Rebellioun heireftir.

MY LORD ADUOCAT producet ane WARRANT of the Counsell, direct to his Lordschip, anent the formeing of the Dittay aganes the perfones on pannell, and thair perfute for the crymes contenit in the Depositiones; quhilk Warrant is daitit the 28 December, 1614. My Lord Justice and Justice Clerk producet, also, ane Warrant, direct be the Counfall to thair Lordschipis, for halding of Court,

and ministrating of Justice vpon the persones on pannell. My lord Aduocat producet the Dittay; and conforme to the Counfallis Warrant, and for obedience thair of, declairit, he was reddie to infist in the pannellis perfute, for the crymes thairin contenit; and thairupon askit instrumentis.

The pannell being askit, Gif thai had ony prelocutouris for thame to defend; or gif thay had ony thing to allege, quhy the Dittay producet be my lord Aduocat fould nocht pas to the knowlege of ane Affyse? For anfuer thairto, Robert Stewart declairit, that thai wald vie na prelocutouris, bot God, in this matter.

## ASSISA.

Mr Robert Henderfoun of North Rannaldsfay,	Andro Anderfoun, also his seruant,	Williame Sinclair of Tullope,
Eduard Scola, sumtyme Scheref of Orknay,	Henri Sinclair, also his seruant,	Andro Purves, indueller in Edt,
George Mowat of Sewnane,	James Hammiltoun, wrycht,	Williame Robiefoun, thair,
James Irwing, seruant to my lord (Erle of Caithnes),	James Workman, paynter, burges of Edinburgh,	Clement Kincaid, thair,
	Johnne Quhyte, wricht, burges of the Cannogait,	George Redik of . . . . .,
		Robert Keith, mercheand burges of Edinburgh.

It is allegit be Thomas Layng, ane of the persones on pannell, that George Mowat, James Irwing, (and) Andro Anderfoun ar seruantis to my lord of Caithnes; and thairfoir, ha i nor nane of his lordschipis seruantis can pas vpon the pannellis Affyse; in respect, that the said Erle and his seruantis war perfewaris of the pannell within the Toun of Kirkwall, Kirk, Steiple, and Castell thair of; and thay war tane and apprehendit be him (the Erle), and (thay) behavet thame selfis as partie, in thair perfute of thair lyves.—It is anfuerit be my lord Aduocat, that the allegeance aucht to be repellit; in respect my lord of Caithnes and his seruantis had na particular<sup>1</sup> of his awin aganis the pannell; bot only was imployit as Commiffioner and Leutennent for his Maieftie to pas to Orknay, and thair, in his Maieftis name and authoritie, to apprehend the persones on pannell, for thair Rebellioun, and halding and surpryfeing of his Maieftis Castellis and Houffis thair: ffor how fall the pannellis giltines of the crymes contenit in thair Dittay be tryit,<sup>2</sup> bot be sic as best knawis the verritie of the factis mentionat thairintill? And thairfoir, nochtwithstanding of the said allegeance maid aganis the Erle of Caithnes seruantis, they aucht to be admittit vpon this Affyse.<sup>3</sup>

THE JUSTICE Admittis THE ERLE OF CAITHNES *seruantis* vpon the Affyse, nochtwithstanding of the allegeance; and that, in respect of my lord Aduocatis anfuer maid thairto.

<sup>1</sup> Quarrel; feud.      <sup>2</sup> Proved; established.      This forcibly illustrates the remarks which have frequently been made, in various parts of this work, regarding the anomalous character of a Juryman; who was generally selected, as personally knowing the facts of the case; and was *therefore* considered as best qualified to return a true verdict, being in fact a witness in the Trial; and accordingly, deciding on his previous knowledge, whereby he was liable to be biassed by his prejudices.

[PRIVILEGE of his Majesty's Servants in THE CASTLE OF EDINBURGH, as being exempted from passing upon Assises.]

James Hammiltoune, wricht, and James Workman, ffor thame selffis, and in name of the remanent ordiner servandis of his Maiesteis CASTELL OF EDINBURGH, summond to pas vpone this Assyse, declairit, in respect thai war ordiner servandis to his Maieftie within the said Castell, and thairfoir war, be the Law and daylie practik, exemit<sup>1</sup> fra all maner of Assyses, desyret, according to thair privilege, thay sould nocht pas vpone this Assyse.—My Lord Aduocat declairit, that thair passing vpone this Assyse sould nawayis preiudge thame of thair Privilege: And thairfoir, seing this persute is a matter that concernis his Maieftie him selff, for Rebellioun committit aganis his royall authoritie, he thairfoir desyret my Lord Justice, that thai sould be admittit vpone the said Assyse, vnder protestatioun, that thair Privilege be nawayis hurt or preiudget heireftir.

QUHILK Protestatioun maid be my Lord Aduocat, in fauouris of the ordiner servandis of the Castell, the Justice Admittis; and Ordanis thame to be Assyfouris at this tyme, but<sup>2</sup> preiudice of thair Privilege.

My Lord Aduocat takis instrumentis of the sweiring of the Assyse; and eftir reiding of the Dittay, and the pannellis accusatioun, be vertew thairof, of the tressonabill crymes mentionet thairintill; ffor verificatioun thairof, producet my lord of Caithnes Commiffioun of Leutennendrie, grantit to him, to the effect thairin contenit, of the dait the saxt day of August, 1614 last; the pannellis hail Depositiones, maid be thame in presens of the lordis of his hienes Previe Counsell; and thair Confessiones, mentionet thairintill; togidder with Robert Wynerahame, Herauld, his Executioun<sup>3</sup> and deforcement, with the forme and maner thairof, at lenth insert in the said Executioun, subscryuit and stampit be him; all ratifeit and approvin (be his grit aith Judicialle tane be the Justice) to be of veritie, in presens of the pannell: Quhilk Declaratioun his lordschip repeitis to the Assyse, with the Judicial Confessioun maid in thair presens be the said Robert (Stewart), of his giltines of the hail Dittay; and be Andre Martene, of the wryting of the Band, and being within the Castell with Robert the tyme of the Assault maid thairto be my Lord of Caithnes; the Judicial Confessioun maid be Thomas Blak, of his taking and halding of the Steiple; the Judicial Confessioun maid be Archibald Murray, of his being in the said Steiple, and cuming with Robert to the Castell, at the intaking thairof, and cutting of the brig; the Judicial Confessioun maid be Thomas Layng, of his being with Thomas Blak

<sup>1</sup> *Exemed*, exempted.      <sup>2</sup> Without.      <sup>3</sup> An official attestation by Heralds and Messengers-at-arms, that they had *executed* the duty entrusted to them. After the rough usage of Islay Herald, already related, and his subsequent '*Execution*,' it is startling enough to the mere English reader, to be informed of his appearance before the Justice, and his making oath, and so forth.

and Patrik Halcro, at the taking of the Steiple; and the Judicial Confessioun maid be *Alexander Legget*, of his keiping of the House of the Zairdis vnder the said Robert and his companeis aganis the Leutennent: And in respect of the premisses, protestis for Wilfull Errour aganis the Assyse, gif thai Acquit.

ROBERT STEWART offeris him selff in his Maiesteis will, ffor the hail crymes contenit in his Dittay.—ARCHIBALD MURRAY offeris him self in his Maiesteis will, ffor being in cumpany with Robert, at the cutting of the brig of the Castell, eftir surpryng thairof.

SPECIAL VERDICT of the Assyse.

THE ASSYSE, all in ane voce, be þe mouth of þe said Mr Robert Henderfoun, chancellor, fand, pronuncet, and declairit the foirnamet perfonen on pannell to be GILTIE and convict of the perticuler crymes following, to wit: THE said *Robert Stewart*, bafe sone to þe said Patrick, lait Erle of Orknay, to be Giltie, culpable, and convict of the tressonabill disobeying of the charge gevin be þe said Mr Johnne Fynlafone, Schereff Depute, in his Maiesteis name and authoritie, for randerig of þe Hous of Birsay, eftir his craftie taking and surpryng thairof: OFF the tressonabill convocating and raising of men of weir, and mustering of thame in airmes, to the number of nyne scoir perfonen, and cuming forwardis with a pairt of thame, in battell aray, to the Bowa-croce, of intencion to haif slane the Schereff: OFF the tressonabill forgeing, making, and subscryveing of ane Band, for taking pairt with the said Robert in all his tressonabill courses, and in causeing the subscryueris and vtheris pair aideris and assisteris, be pair solemne aithes to sueir to die and leve with him aganis all maner of perfonen, his Maiestie our sacred souerane nocht being exceptit: OFF the tressonabill taking and surpryng of þe said Castell of Kirkwall, Kirk and Steiple of þe said Toun, with the Place of the Zairdis, and vtheris Houffis pertening to his Maiestie within the said Toun: OFF airt and pairt of þe tressonable taking of þe said Mr Johnne Fynlafoun, Shereff depute, and of Barnard Stewart, captiues and prissoneris, thay being his Maiesteis frie and faithfull subiectis: OFF the tressonable resisting of þe Erle of Caithnes, his Maiesteis Leutennent and Commiffioner, with his companie of men of weir, in executioun of his Commiffioun; and of the slauchter of dyuerse of his Maiesteis faithfull subiectis, being in his Maiesteis seruaice with the said Leutennent. AND in the tressonabill beiring out of þe said Assault maid be the Leutennent aganis þe Steiple, Castell, and vtheris strentis keptit be him within the said Toun of Kirkwall: OFF airt, pairt, red, and counsell of the tressonable taking of Robert Wynrahame his Maiesteis Herald, cled with his Maiesteis coit of airmes, being directit be his Maiestie and Counsell to charge þe said Robert Stewart and his rebellious affociatis to rander þe saidis Houffis and strentis, be vertew of his Maiesteis Letteris to that effect: AND of the tressonabill disobeying of the charges, and taking fra the said Herald of his Maiesteis Letteris and charges, and keiping pairt, in maner specifeit in his Dittay: AND that, conforme to þe said Robert and his complices Depositiones; and of his Judiciall acknowledgment of his giltines of þe saidis crymes, and of his Judiciall offer of becuming in his Maiesteis Will, as giltie and culpable pairt. THE said *Thomas Blak, alias Douglas*, to be ffylet, culpable, and convict of the tressonable surpryng and taking in of the said Kirk and Steiple of Kirkwall, and halding the samyn aganis þe Erle of Caithnes, his Maiesteis Leutennent: AND for cuming forwardis with þe said Robert Stewart, in oppin and arrayit battell, aganis þe Leutennent at þe Baw-ley; and withstanding of him and his companie, a littill after his landing, and repairing towardis the Toun of Kirkwall for discharge of his Commiffioun: AND for the tressonabill assisting of þe said Robert Stewart, in all his tressonabill interpryses aganis þe said Leutennent and his companie, fra his intaking of þe said Kirk and Steiple, to þe tyme of þe randerig pairt to þe said Leutennent. THE said *Archibald Murray*, to be Giltie and convict of the tressonabill plotting, and being vpon the counsell with the said Robert Stewart, within the Palice of Birsay, of þe taking and surpryng of þe

Kirk and Steiple, and of pe said Castell; and pairestir, accoirding pairto, ffor pe tressonabill cuming with Patrik Halcro, Thomas Blak, and vtheris, and taking and surpryfeing of the said Steiple: AND in the tressonabill affisting of pe said Robert in taking and surpryfeing of the said Castell, and cuting of pe brig pairof, estir pai war maisteris of pe same: AND of the tressonabill keeping of pe Houfe and Palice of Birsay vnder Robert, as Maister pairof, to the tymæ he was charget be the Leutennent to rander the samyn. THE said *Andro Martene*, to be Giltie and convict of the tressonabill making of pe Band specifeit in the Dittay, and devyfeing pairof: AND of his tressonabill being within the said Castell with Robert, and halding pairof aganis the Leutennent: AND of airt, pairt, red, and counfall with pe said Robert Stewart, in his haill Rebellioun in Orkney, in maner contenit in his Dittay. THE said *Thomas Layng*, to be Giltie, culpable, and convict of his tressonabill being in companie with Robert at his cuming with displayit benner, in battell aray, to the Bowa-croce, of intentioun to haif slane pe Schereff: AND of the tressonabill taking and suppryfeing of pe Kirk and Steiple of Kirkwall: AND of his tressonabill being in company with Robert, at his cuming with ffyve hundreth men in airmes to the Baw-Ley, aganis the Leutennent: AND for his cuming bak to the Place of the Zairdis, and remaning pair with Robert till a littill befoir pe randereng of the Hous pairof; conforme to his Depositiones. AND the said *Alexander Legget*, to be Giltie, culpable, and convict of the tressonabill affisting and being in companie with the said Robert, with displayit benner, at pe Bowa-croce: AND for being in companie with Robert, and affisting him aganis the Leutennent, in keeping of pe Houfe and Place of pe Zairdis: AND for the tressonable affisting and taking pairt with the said Robert, and being in companie with him at the Carnes, in resisting pe Leutennent pair; conforme to his Deposition.

Vpone the quhilk determinatioun of the said Assyse, my lord Aduocat askit instrumentis.

SENTENCE. In regard of the quhilk convictioun, my Lord JUSTICE, be the mouth of Johnne Dow, dempster of Court, Ordanit the saidis perfones on pannell to be tane to the Mercat-croce of Edinburgh, and thair to be Hangit vpone ane gibbet, quhill thay be deid: And all thair landis, heritages, takis, steidingis, rowmes, possessiones, guidis and geir to be fforfalt and escheit to his hienes vse, as Giltie and Convict of the saidis tressonabill crymes.

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## APPENDIX OF ORIGINAL DOCUMENTS,

### ILLUSTRATIVE OF THE TRIAL OF ROBERT STEWART AND OTHERS.

#### I. MINUTES OF THE PROCEEDINGS OF THE PRIVY COUNCIL OF SCOTLAND.

(1.) Jan. 14, 1614.—ROBERT STEWART, bafe sone to THE ERLE OF ORKNEY, being brocht befoir THE COUNSELL, for giveing of suirtie not to repair to these boundis, without HIS MA<sup>TIES</sup> Licence; THE BISCHOP OF ORKNEY hes gevin his word and promeis for him; and the Counsell hes tane his awin aithe and promeis, that he fall not repair to the saidis boundis. And this courfe is tane be the Bischopis advyse and speciall procurement.

(2.) Jun. 28, 1614.—THE ERLE OF ORKNEYIS bafe sone having latlie gone to Orkney, aganis his faith and promise maid to the Counfall in the contrair; and he having tane with him some fouldiouris, and surpryfit the *Place of Birswall* (Birsay) in Orkney, THE COUNSALL, vpoun the first information maid to thame thairof, directed charges aganis him for randereng of the Houfe; and with that, thair wes ane Proclamatioun direct, prohibiting all his Ma<sup>TIES</sup> subiectis to supplie him with onie neces-



fairis, or to mak payment to him of ony of the dewtyis of *Orkney* or *Zelland*. The chairges for rander of the Houfe being execute aganis him, he immediatlie caufes found his trumpet vpoun the heid of the Houfe, and difchairges xxx or xl fchote of muscat at the Officer and witnesfes, as wes this day affirmit in prefens of the Counfall be *Sir James Stewart of Killith*.<sup>1</sup> Whairvpoun THE COUNSALL has exped ane Commiffione to him, in ample forme, for perfute and affadginge of the Houfe, with all kynd of force and wearlyk ingyne.

(3.) Jul. 28, 1614.—THE ERLE OF ORKNAY his bafe fone, accompanyeed with three or four fcore of perfones, doeth yett continve there foolifche courfes in Orknay, and ftill keepes *the Houfe of Birfay*. There hes beene fome conferrence in THE COUNSALL anent the fuppreffing of his infolenceis; and it is thocht be the moft parte of the Counfale, that *Sir James Stewart*, in refpect he is Schiref, Judge, and Chalmerlane of the countrey, fhould be employed in that bufynes. The queftion ftandes anent the forme, how *Sir James* fhall go there, and how he fhall be accompanyed? Some ar of oppinion that the forces of the countrey ar fufficient to fuppres this REBELLION, althocht the authoures wer ten tymes mo in number. Otheres ar of oppinion, that it is hard for *Sir James Stewarte* to hazard him felf with the countrey people; and that it is expedient that he have three fcore men, vnder wages, to attend vpon him. THE COUNSALE, at there nixt meeting, ar to tak fome courfe in this bufynes.

(4.) Jul. 29, 1614.—SENCE the wrytting of the Notes aboue written, there is fure aduertifment come from ORKNAY, that the faide *Erle* his bafe fone hes furpryed *the Churche and Steple of Kirkwall*, and the *Girnell-houfe*, (whiche ar places of gryte ftrengh,) and that *the Scheref-depute* hes retereed him felf to *the Caftle*, where he is inclofed be *the Bafarde*; and that there is a publick and oppen REBELLION professed and avowed in that countrey. THE COUNSALE, beeing enformed heer-of, this morning airlie (the 29 of this instant) thay conveened in the Over Counfale-hous; and *Sir James Stewart* beeing at lengthe hard anent his refolution and purpofe in this bufynes, he hes vnder-tane to go there in perfone, and to adventur and hazard his owne lyff in the fuppreffing of this REBELLION. He hes gotten a Commiffioun to tak vp fyve hundrethe men, vnder wages, and he is verie bufye to amaffe this companyee togidder, at the leaft fa mony as vpon the fuddane he may gett; and both be found of trumpett and ftryking of drwm, warning is geven to all fuche as will ferue to adreaffe thame felves to him, to inroll there names and refaue there pay. He is of oppinion that within three or four dayes he fhall have iij<sup>c</sup> fhouldiours in reddynes, whome he entendes to fend away be fea with the firft occafion. He is to go him felue, be land, accompanyeed with fuch voluntares of his kin, frendfhip, and acquentance, as he may enduce to go with him; of whome he is of oppinion to mak vp a companyee of three or four hundrethe men. *The Lord Lovat* hes promefed him the affiflance of two or three hundreth hable footemen, well furnifhed in all thinges neceffar. There is a ample Commiffion of Lieutennandrie and Jufticiarie exped vnto him, for the perfute of the lymmaris, with fyre and fworde. PROCLAMATIONES ar exped againes all betweene sextie and faxteine yeeres, within the boundes off *Caithnes*, *Sutherland*, and *Orknay*, to go fordward with *Sir James*, and to affift him in this feruice; and a other Proclamations, prohibiteing the reflatt, fupplee, or furnifheing of thir Rebelles with ony thing comfortable or neceffar vnto thame; with a promefe of pardoun to fuche of thir Rebelles (who ar not cheef), that will leave *the Bafard*, adreffè thame felues to *Sir James*, and do feruice worthie of favour.

All fchippes and vefhelles bowne to *Orknay* ar ftayed, till *Sir James* and his company be imbarked and away.

*Sir James* will, God willing, have his whole forces togidder to fett fordwart, him felf be land, and his footemen be fea, within fyve or fax dayes; and aduertifment fhall be fra tyme to tyme fend vpe, of the progres of his proceidinges, and of his fuccesse in his feruice.

<sup>1</sup> Afterwards Lord Ochiltree.

(5.) Jul. 7, 1614.—INFORMATION being maid to some of THE COUNSALL, that ane poist-boy was cum frome *Orkney* with Lettres to the lait ERLE OF ORKNEY, and that he was to returne agane with ane answere to theis Lettres, directionn was gevin for the feircheing of him: Lyikas, he was apprehendit vpon the fyft of this instant within this Burgh, and producet befor the *Counfall*, with ane number of Letteris, the most part of thame direct to *Caitnes* men. Becaus the poist-boy was to go towardis *Orknay*, that way, he was verie straitlie examinat vpon many particularis; whois DEPOSITION, with the copie of that Letter send be the *Erle* to his sone *Robert*,<sup>1</sup> is heir incloisit, imediatlie vpon his examinationn. Thrie of the *Gaird* was directed to *Dumbartane* to mak feirche for the *Erle* his wryttis; and to bring frome thence one *Scharp*, the *Erle* his servand, by whome his Letteris is writtin. They departed frome this Burgh vpon Twysday the fyft of this instant, about ten of the klok at night, and come to the *Castell of Dumbartane* the morne thairefter, about fyve of the klok in the esternone, bat could not have entrie; being answereit be sum servandis from the wall-heid, that the *Constabill* was in *Edinburgh*, and that one *Robert Knok*, wha had the chaarge of the Hous vnder the *Constabill*, was in the *Toun of Dumbartane*; and whill his return the zettis could not be opined. The *Gaird*, vpon this refusall, going to the *Toun*, they forgadered,<sup>2</sup> in the mid-way betuix the *Castell* and the *Toun*, with the said *Robert Knok*; vnto whome they haveing impairted thair Comission and warrand, he tauld thame plainlie, that thair was no entrie to be had, that night, within the *Castell*; and appoynted thame the morne, at awght of the klok. They haveing preceissie keipit that tyme, and come to the *Castell-zett*, thair was many idill ceremonies vsed, befor they could haue entrie; and at last, being ressaued within the *Castell*, *Sharp* was amiffing, and had eskaiped; and feirche being maid for the Letteris and wryttes, thair was ane number of comptis and wryttes gottin, bot serving nothing to the purpois.

Thair is an ampill COMMISSION past and exped to *Sir James Stewart*, *Shereff of Orknay*, and his deputtis, for the perfute and assaidgeing of the *House of Birsay*, with fyre and sword, and for apprehending *Robert Stewart*, and exhibitionn of him befor THE COUNSALL.

(6.) Aug. 3, 1614.—COMMISSIONS being past and exped to *Sir James Stewart of Killeith*, for suppressing of THE REBELLIONE IN ORKNEY; and he being in the preparatioun of his forces to haue gone thair for that eirand; and promise being maid to him, be the *Lord Lovatt*, of sum thrie or four hundreth *Hiland-menne*, to haue assailed him in that seruice; sum Gentlemen of the Cuntrey of *Orkney*, being heir, and feiring that suche a number of peple as wald accompany *Sir James* wald be a greit burdyn to the pure cuntrey, and that they wald appease the cuntrey people at thair pleasure, they thairfore delt with *Robert Monteith of Eglefchaw* to mak ane ouerture to THE COUNSALL, for doing of this seruice, with les chaarges to HIS MA<sup>TIES</sup> and greittare ease to the cuntrey nor possiblie could be done be *Sir James*. ROBERT MONTEITH being admittit to audience, he hes offerit and vndertane, in respect of the freindschipe and assurance whilk he will find in the cuntrey, to do this seruice, with the supplie of threescore souldiouris allanerlie,<sup>3</sup> and ane *Herald* and *Trumpett*, at HIS MA<sup>TIES</sup> charges, with ane ship to transport, he hes vndertane to recover the hail Houses and strenthes tane and hauldin in that cuntrey aganis HIS MA<sup>TIES</sup>; and outhere to apprehend the Rebellis, or then to put theme of the cuntrey: He hes vndertane, yf ony Houses or strenthes be assaidged, to raise the seage within fourty-aucht houris astir his cumming in the cuntrey. And for the performance of thir his OFFERIS, he hes offerred the *Erle of Caithnes* and *James Sincler of Murchill* cautionouris.

*Sir James Stewart* being hard vpon the Offeris maid be *Robert Monteith*, he hes willinglie aggreit that the chaarge of the seruice be committit vnto him. Whilk accordinglie is done; and he is to imbarck with his forces betuix and the tent of this instant; and he hes presentlie fend away sum of the Gentlemen of the cuntrey, to haue the hail cuntrey in reddines to attend<sup>4</sup> his landing.

<sup>1</sup> See this Appendix, No. (20.)

<sup>2</sup> Rencountered; met with.

<sup>3</sup> Only.

<sup>4</sup> Await.

(7.) Aug. 24, 1614.—THE EARLE OF CAITHNES,<sup>1</sup> with two shippes well provyded with all warre-lyk prouision, made saile towardes ORKNAY, vpon the xx of this instant, haueing the wynd verie fauorable; and it is looked that he wes in *Orknay* vpon the 22 of this instant, in the morning. How sone ony aduerteifment shall come from him, or ony otheres in that countrey, HIS MAIESTIE shall gett notice thereof, with all convenient diligence.

(8.) Oct. 5, 1614.—DIRECTION is geuen to the Captane of the Guarde, to fend tuelf of his company to Dumbartane, and to bring frome thence, to this burgh, THE EARLE OF ORKNAY. And direction is gevin to the Shiref of Dumbartane to affist the convoy of the Earle from Dunbartane to the Falkirk, where the Shireff of Linlithgow is to receane him, and to mak his convoy frome thence to this burgh.

(9.) Nov. 17, 1614.—THE ERLE OF CAITHNES, having left THE LAIRD OF RATTER, his brother, as depute for him, in the Officeis of JUSTICIARIE and SHEREFSHIP of ORKNAY; and having gevin directioun to him to demolishe *the Castell of Kirkwall*, conforme to the Warrant of *the Counsell* send to him for that effect, the said *Laird of Ratter*, by his Petitioun, gevin in this day to THE COUNSALL, meant him self,<sup>2</sup> that he wes a Gentleman of small moyene,<sup>3</sup> having nouter landis nor rentis in *Orknay*; and that his remaining thair vnder the burdeyne and chearge of the saidis Officeis, wald draw him, in shorte tyme, to spend all his rentes, to his greit hurt and inconvenient; beydes the neglect of his awin affaires and bufynes, at home. And thairfoir, his desyre was, that he might vnderstand, vpoun what conditione he sould remaine in that cuntry, and vpoun whose chargeis and expensfis the House sould be dimolished? His Petitioune being hard and deulie confiderit, THE LORDES hes allowit vnto him ane hundreth markes monethlie, dureing his aboade in that cuntry, for his charges and expensfis. And tuitching the dimoleifching of the House, thay haue ordanit him to do the turne, and the expensfis that he fall bestow thairvpone, according as the same salbe verified and testified be *the Bishop of Orknay*, vnder his hand, salbe repayit vnto him be *the Thefourare Depute*.<sup>4</sup> And whareas, the remaning of *the Laird of Ratter* in that cuntry, wilbe chargeable to HIS MAIESTIE, the cuntry being now reasonable weele sated, without appeirance of ony new commotioun or trouble; thairfoir, his Maieftie wold be pleasit to resolue vpon some course, anent the Gouvernament of that cuntry, and whom his Maieftie will putt in the trust of that charge; to the effect that, vpoun the signification of his Maiefties pleafour thairanent, *the Counsell* may tak ordour, and gif directioun thairin accordinglie.

## II. DISPATCHES FROM THE EARL OF CAITHNESS, &c. TO THE KING AND SECRETARY OF STATE,<sup>5</sup> &c.

(10.) LETTER, *the Earl of Caithness to Lord Binning*. (Aug. 25, 1614).<sup>6</sup>

RIGHT HONORABILL MY VERIE GOODE LORD,

PLEIS your lo. We arryved at Castell Sincleir vpon the 22 of this instant; whair I stayit that night, and aduerteifed the Caithnes men to be reddie to follow me to Orknay, when I suld command theme. I imbarked with me about threttie of theme, and cam to Selwik, within tuo myles to Kirkwall, vpon the 23, about sex estir none.

The 24 I sent the Herald with Notairis, Messingeris, and Witnesfes to mak proclamatioune at Kirk-

<sup>1</sup> The procrastinating conduct and vacillation of THE PRIVY COUNCIL, in a matter which bore such a formidable aspect at its commencement, says very little for their ability or zeal, in the discharge of their important trust. The only apology which can be framed for them, is the circumstance of their subserviency to THE KING, who was resident at so great a distance, and without whose fiat they dared not take any important step. <sup>2</sup> Made supplication and complaint; humbly remonstrated. <sup>3</sup> Means; fortune. From Fr. *moyen*. <sup>4</sup> In the Books of the Accounts of the *Lord High Treasurer of Scotland*, Gen. Register House, the following entry occurs, under date April, 1615. 'ITEM, to ane Poist passand to Edr. to my Lord Chancellor, at Dunfermling, to subscriue ane Commissioun for Walter Richie, for demolishing of THE CASTELL OF KIRKWALL, xxliij s.' <sup>5</sup> Thomas Lord Binning, afterwards Earl of Melrose, &c.; which last title he afterwards exchanged for the Earldom of Haddington. <sup>6</sup> From the Original in the *Denmylne Coll.* of MSS. Adv. Library.

wall; who wes presentlie taikin, as he entered the Towne, most iniuriouſlie and diſpytfullie abuſed, bothe in word and deid; the Letters taikin frome him be Robert; and him ſelf, with ane Miniſter, and all otheris that accompanied him, keipit in diuerſe houſes, all that day, till the evening; to whiche they, the ſame day, did ad this alſo, that to the number of thrie hundreth menne, with diſplayed enſigne, did fort<sup>1</sup> out of the Towne, and maid prouocatione to me, whair I lay vpoun the ſhip-board. For that the Proclamationes (were) thus impedit, I wes forced vpoun the 25 to wreitt diuerſe Letteres, and ſend throuche the cuntrey, to aduerteis and command the Gentlemen and vtheris to reſort to me; in whome, for the moſt part, I did not find that reddie willingnes whiche I expected; ſo that I wes forcit to ſend to Caithnes, for ſupplie of my owne menne; who, coming to me vpoun the 26, and having then aſſembled about two hundreth of the cuntrey menne, we tuik land; and at the ſame tyme, about ten houres, we landit the battering peice with hir careage, whiche, by great force of men, and ſome difficulties throuche the deipnes of the ſoyll, wes presentlie, and with all poſſibill diligence, drawin neir tuo myles, towardis the Towne; and the ſame day, about thrie aſtirnone, planted at Weyland, within ane half quarter of myle to the Caſtell. We merched in good ordour, with colouris diſplayed; and as we approached, the Rebellis ſorted out,<sup>1</sup> boasting that they wold fight with ws, thought we had bein tuentie to one; and having their Ordinance in reddines to haue played vpoun ws from the Caſtell, Stepill, and Tour of the Zeardis, and diſchaingeing one or tuo of the ſame againſt ws, ſo ſoone as we cam vnder their fight, I commandit the Cannoners<sup>2</sup> to ſhute at the Caſtell; who did their part ſo weil, that be the ſecund ſchott one of the turrettis vpon the heade of the Houſe wes pearfed and almoſt beaten down, to the great terrour of the Traitouris; and other thrie being ſhott, one aſtir another, did all hit, bot not hurt ſo muche.

In the meantyme the Rebellis being provoking and braking ws vpoun the Ball-ley, to the number of ſex ſcoir men, our Captanes and ſouldiouris went directlie, and with goode courage, toward theme—and without ony reſiſtance or hurt did compel theme to retreat ſchamefullie. In whiche flight, about fyve of preſſed poore menne of the cuntrey did abandon theme.

The Captanes, ſouldiouris, and Gentlemen of the cuntrey, with thair menne, did presentlie follow theme at their heillis, entered the towne the ſame night about ſex houres, incloſed theme in their holdis, and now poſſeſſes the Towne. That night I ludged about the Ordinance, and guairdit it and our ſelfis with the reſt of our menne.

This day we ar buſie about the landing of the great Peice of Ordinance, that we may batter bothe the Caſtell and the other Houſes, which annoyes ws and our men in the Towne; and mak our ſervice the ſchorter.

The Rebellis ar moſt obſtinate, and maliciouſlie reſolued to hold out to the deathe, thought I have ſent Miniſteris and their owne freindis to inſtruct, admoniſh, and threatin theme.

Their is heir no bread, nor drink, nor vther victuallis to be had for pryce, prayer, or command; ſo that I muſt ather ſeik preſent releif of ſome victuall from Caithnes, or ſuffer the ſouldiouris to ſtarue for want. And if they ſhall endure and continew in thair obſtinacie, as they haue wowed to do, thair will not be powder, leid, billettis, nor matche to ſerue for this ſervice; in the which I ſie great dangeris, and manie more difficulties then I culd foirſie.

In reſpect whairof, I will intreat your goode lo. to acquent my Lord Theſaurer and remanent Counſallouris; and with all cair and diligence prouyde, betyme, that money, powder, pillettis, and chieffie ſum reaſonabill quantitie of victuall, whiche can not be had heir, may be ſent to be diſpenſed and ſold to the ſouldiouris and vtheris that haue neid, vpoun reaſonabill pryce; whairby our great neceſſities may be ſupplied, with litle or no hurt to his Ma<sup>ties</sup> money.

As thingis fallis out, ſo ſhall your lo. be aduerteifed from tyme to tyme. And now, after the trew

<sup>1</sup> Fr. made a *sortie*.

<sup>2</sup> Artillery-men.

narratione of our proceedingis and present estaitt, I refer the consideratione and cair of all to your lo. wifdome, and fall euer rest,

Your lo. euer to be commanded,

CAITHNES.

To the right honorabill my verie goode lord, MY LORD OF BINNING, his  
Maiesteis SECRETARE OF SCOTLAND.

(11.) *The Erll of Caithnes LETTER to my Lord Theſaurar Depute.*<sup>1</sup>

MY VERREY GUD LORD AND COUSING,

I HAUE reſſaut findrie of your ll. moſt kynd Letteris, and your ll. greit cair in ſending all thingis neceſſar for ending of this ſeruice. I can not gif your l. dew thankis; bot I will account it ever to procede of pe luſe pat ze beir to HIS MA<sup>tie</sup> and luſe ze caryit to me as your kynniſman, quhome your l. fall ever haue pouer to command me, ſo long as I braith. It hes pleaſit God, of his mercie, the penult of pis inſtant, to mak ane finale end of pis ſeruice in my handis. The forme, maner, and all pat hes hapnit, I haue writtin at greit lenth to my gud *Lord Secretar*. I haue directit pe Pinage home and pe Bark<sup>2</sup> pat come laſt; and hes diſchargit the Captane, Officeris, and ſouldaris, pe laſt of pis inſtant. I grant pis ſeruice hes bene expenſiue to his Ma<sup>tie</sup>; bot quhat hes bene wairit,<sup>3</sup> I hoip at my cuming to put it all vp agane, be munitioun, to pe *Caſtell of Ed<sup>r</sup>*. I hop to bring with me more then tuentie thouſand merks worth of braſin ordinance.<sup>4</sup> As for my painis, hazard, and travellis, I will remit that to his moſt ſacred MA<sup>tie</sup>. This,<sup>5</sup> leving to faſche<sup>6</sup> your ll. with mony woirdis, I end, willing your ll. ever to eſteme of me as ane kynniſman pat your ll. fall have ever pour to command, according to my pithe. This taking my leiſ, I commit your ll. to God, and I fall ever reſt

Your ll. couſing, ever reddie to be commandit,

CAITHNES.

AT KIRKWALL CASTELL, pe laſt of September, 1614.

(12.) *The Erle of Cathnes LETTER to the Secretar,*<sup>7</sup> reſſaued 10 Oct. 1614.

MY VERRIE SPECIAL GOOD LORD,

IN reſpect your Letter, daitit from Ed<sup>r</sup> the fyfte of September, and come in my hands the fourteint of this inſtante, declaring your lo. diligence for expeding of all neceſſars for this ſeruice, quhich I haif more nor neid for daylie, I and all that is beir with me hes hote ſeruice with thir moſt bluidie and barbarous Rebeles and Traitouris. They haue killed four, and the laſt is ane Willeam Iruine, ane Orkney Gentleman,<sup>8</sup> one quho, ſince his deathe, I haue hard was ane inoyenour, and ane greit freind to the Traitour. God is juſt in his judgementis, for amongs ws all ſtanding by him he is ſchote dead, vponne the nyntente of this month, at twa houres in the eſter none; ane cuntrie man of myne ſchote throughe the arme; and ane ſouldiert ſchott behind beneth the bak; and one ſlaine in the Caſtell. All this is done this laſt dayis ſkirmiſche. Thair is not one day that I am idle, except the Sabothe. My lord, I will aſſure your lo. thay ar moſt deſperat and cruell Tratours, and (this) is ane verrie ſtrong hould, and nothing can do to thame except the rannone.

Quhair your lo. hes ſett doune in your Letter of his Ma<sup>ties</sup> advyſe, that I ſould be ſpairing to grant pardone to notorious Rebellis and malefactoures, my lord, God forbid pat I ſould tak vponne me to grante ony pardone to ony quho hes ſo heigblie offendit his ſacred Ma<sup>tie</sup>. Befoir his Ma<sup>tie</sup> were not repairit, to his honour, be all the lyſſes of thir bluidie Tratoures that is within this diuilifch Caſtle, I (wald) rather be buried. Heirfoir, my lord, I will be plane with your lo. as to ane faithfull counfellour

<sup>1</sup> From the Original, *Denmyhe MSS.*    <sup>2</sup> Two veſſels which had been ſent with ſupplies and diſpatches to this Expedition, which were known by the name of the Pinnacle and the Barque.    <sup>3</sup> Expended.    <sup>4</sup> See Notice to the Trial of the Earl of Orkney.    <sup>5</sup> Thus.    <sup>6</sup> Fr.; trouble.    <sup>7</sup> From a copy preſerved in the *Denmyhe Collection* of MSS. Adv. Library.    <sup>8</sup> In this ſiege the Lieutenant loſt four men only; namely, *William Irwyn*, ſon to William Irwyn of Saba, *James Richardson*, *Andrew Adamſon*, and *William Robinſon*; who were killed all by ſhots from the Caſtle. Many were wounded and hurt, but thereof recovered.—*Spotswood's Hiſt.* p. 520.

to his Maieftie. I find none bot the name of *Sinclar* in all this land bot hes bene in counfell of this Rebellioune, or eles airt and pairt; for thair is ANE BAND, fufcryuit be SEVIN HUNDRED of this cuntrie people, to *Robert Stewarte* and Patrik Halcro, to die and leue with thame. This REBELLIOUNE was devyfit in Edr Castell in Winter laft; and giue God grant me that gud fortune to get on lyue *Robert Stewart* or *Patrik Halcro*, his Maieftie will hear of good fporte. I haue *Andro Martine*, quhome I mynd, quhen I find occafoun be Sea, to fend him to be examined be your lo. of his Ma<sup>ties</sup> moft honourable PRIUIE COUNSALL. I haue caufit him fufcryue his awin Depofitioune, vpoun the quhilk your lo. will get mater eneuche to gar him fpeak Scottis, giue he lyk to blot his maifter to be the bounder out of his fone to do all that he hes done.

I cannot nor may not ftop the Inhabitanes of this Toune from fpeiking with the Traitoures, geving of thame meit and drink, making thame advertifit quhat I am doing, and making daylie and nightlie advertifmentes of all that thay can aither heir or fie. I will intreat your lo. to mak me advertifit, with dilligence, of THE COUNSELS mynd quhat I fall do to thame, both men and wemen? I have takin nyne or ten men of Birlay, quho was with *Robert*, and was platters with him in this REBELLIOUNE, and fpeciall keiparis of the Hous of Birlay, quhom I mynd to put to ane Affyfe; and giue thay be conuict, to hang thame, for ane exemple to vthers.

My lord, this feruice is not lyk to have fo haiftie ane end as I would. Your lo. knawis my Commiffioune grantit to me is no longer than two moneth; of the quhilkis thair is fyue weikis and more outgone: And, giue it will pleas your lo. of his Maiefties Priue Counfell hould me heir, till it pleas God that I putt ane finall end to this mifchante REBELLIOUNE, I would haue ane new Commiffioune, with all priuilege neidfull, to<sup>1</sup> the feruice be endit; for I proteft to God I neuir, nor nevir fall, cum to ane cuntrie that may be compairitt in falsett to this cuntrie people! I vfe thame both with lenitie and fair formes, as *the Bifchope* will informe your lo.; and for all pat I can do, thay haue thair fetret moyen and traffeche with the Traitoures. And as for *Mr Johne Finlafoune*,<sup>2</sup> thair is no remaneing heir to him, giue<sup>3</sup> I wer once oute of this cuntrie; for man, wyffe, and bairne haits him to the deathe. Thay haue myntit<sup>4</sup> twyfe to kill him, fince his comeing heir with me, war not I;<sup>5</sup> bot now, feing thay fie me to tak plaine pairte with him, thay ar begune to behauld him.

Since the beginning of this Letter, I haue stayit to wryte to your lo., hoping evir vpoune better news. The Bark and poift came heir the twentie twa or tuentie thrie,<sup>6</sup> with all permiffioune neccellar for the feruice: And efter thair arryvall, I fent to thame in the Castell, if thay wold cum out and put thamefelffis in HIS MAIESTIES will, *fimpliciter*, I wald lett thame cum out.

The penult of this instante, it hes pleafit God, of his mercie, to end this feruice in my hands. The Houfe is myne, *Robert* in my hands, and all cumed to me except *Patrik Halero*, quhom as yit I haue not feine. All is cumd to his Ma<sup>ties</sup> honour, praifit be God. I haue fex flaine to me; many hurte. The fouldier I wraite was hurte is dead. I will affure your lo. it is one of the ftrongeft Houffes in Breitane; for I will bring with me to your lo. cannone billetes, both brokkin lyk goulfe balls vpoune the Castelle, and clovin in twa halfis. I could not till now enter withe extremitie with the followars of *Robert*, till I was maifter of the Houfe, for fear of making more adoe, feing the Houfe was fo ftrong; bot now I fall not be flaw to puneifch feueirlie, to mak exemple to vthers to play the lyk. Presentlie, I am going to drink his Ma<sup>ties</sup> good healthe vpoune the Castell heid. *Mr Johne Finlafoune* would haue the Caste in keiping, bot I will not till I heir from HIS MA<sup>ties</sup> and your lo., feing it hes cofte his Ma<sup>tie</sup> fo deare, and I and myne the dangeour of our lyffes. I will not geiue it him quho fo beiftlie gaiue it ouer for four fchote of mufcate. Always,<sup>7</sup> quhat your lo<sup>s</sup> of his Ma<sup>ties</sup> Priue Counfell will command me, vpoune your advertifment, I will follow, and geiue the Houfe to quhome your lo<sup>s</sup> pleafis.

<sup>1</sup> Until.      <sup>2</sup> The Sheriff Depute, whose oppressive cruelties made him to be detested by the inhabitants of Orkney.  
<sup>3</sup> If.      <sup>4</sup> Attempted; aimed.      <sup>5</sup> Had it not been for me.      <sup>6</sup> The 22d or 23d of September.  
<sup>7</sup> Nevertheless.

I am to expedie the Bark and Pinnage to your lo. with all diligence, and this day to discharge the Capitane, Officers, and foldiers, the last of this moneth.

My lord, by your lo. good care of me, it has pleased his Ma<sup>ties</sup> to graunte me ane Remission, and, to honour me of that I am vnworthie, to prefer me to be one of his Ma<sup>ties</sup> most honourable Priuie Counsell. I cannot say more bot this much, I fall preise to my deathe to stryue, with invye, for loyaltie and obedience; and hopes in my Saviour to do his Ma<sup>ties</sup> more better seruice nor this, or then to die; for I protest to God, I craue no grittar honour in this earthe then, by my death in his Ma<sup>ties</sup> seruice, my treuth and loyaltie may be knawin at my end.

As to your lo. manifold good will, and prouises I haue euir had of your lo. fauour, vnmeritit be me, your lo. fall haue this assurance of me, I fall euir be your lo<sup>s</sup>, and<sup>1</sup> ye fall neuir speak or do any thing to me bot as ane trew and faithfull seruand to his Ma<sup>ties</sup>, and one pat fall euir please, so far as lye in me, to be anfuerable to his Ma<sup>ties</sup> lawis. Thus, crauing your lo. pardone that I am so longsum,<sup>2</sup> I most humbly tak my leuie, committing your lo. to the tuitione of the Almychtie; and I fall euir rest and remaine  
Your lo. euir bund to serue yo<sup>r</sup> lo. [CAITHNES.]

AT KIRKWALL CASTELL, the laste of September, 1614.

QUHAT cair and quhat panes and haifard I haue beine in since my comeing heir, I will remitt to others to declair; bot befor it had not procedit as it hath done, I rather I had bene buried heir. I assure your lo. the Cannonar has don his dewtie in this seruice.

(13.) LETTER, *the Earl of Caithness* to THE KING.<sup>3</sup>

PLEIS YOUR MOST SACRED MAIESTIE,

I HAIFE taikine this boldnes to wryt thir lynes, fins it pleisit your most grauis Maieftie to honour me so far as to mak schofe of me before many thousandis of your subiectis of grytter vourthe, and of more vailloure and visdome then I, to vndergo this seruice of THE ORCADS, quiche, praifit be to God, is endit now. This last of September, the Castell is in my handis. The REBELIS for the most part taikin, to dispone vpon at your Maiefties plefoure; and all the countray maid peffabile. And now, I haif no more ado heire, bot to do vther directionis, gifine me be directionis and command, be your Maiefties most honorabile Counsell. And quhan I haife maide ane accunt to thame, conforme to my employment, I mynd, if it wille pleis your Maieftie that I cum to you, to haife that honour as ane kife of your Maiefties most grauis hand; houping in God to do your Maieftie more exseptabile seruice then this, and<sup>4</sup> euer your Maieftie haif ado, or thene to lose my lyfe; for I protest to God, I craife no grytter honour in this eird nor to die in your Maiefties seruice, that be my end your Maieftie may know my effectioun and trouthe. Thus, most humbly taiking my liue, my seruice euer remembered, I end, committing your Maieftie to the tuitione of the Almighty. I fall euer remane

Your Maiefties most humbly and obedient deuoted seruand, to the deithe,

KIRKUALLE CASTLE, the 1 October, 1614.

CAITHNES.

(14.) LETTER, *the Bishop of Orkney* to Lord Binning, Secretary of State.

(“ Reffaued 15 Oct. 1614.”)<sup>5</sup>

RIGHT HONOURABLE MY VERY GOOD LORD,

IT was nather of carelesnes, negligence, nor oblauioune, that my lord and I did not wryte so frequently; bot our instante cair and diligence to bring the seruice to sum happie end, did hault us from wryting, till we did see the expectit fruit of labours, which we knewe wauld not be vnpleasing to HIS MA<sup>ties</sup> and your honouris. I hoip my Letters with the last poist, *James Gairdner*, and *Robert Winrame*, relatiue to the former, fall prevent thir and geiue satisfiounne to your lo. in all anent the end-

<sup>1</sup> If.      <sup>2</sup> Prolix; tedious.      <sup>3</sup> From the Original, *Denmylne MS. Collections*, Adv. Lib.      <sup>4</sup> If.  
<sup>5</sup> From Copy, preserved in *Denmylne Coll. of MSS.* Adv. Library.

ing of this actionne, quhairin thair is nothing promesit nor done, quhilk is not agreable to his Ma<sup>ties</sup> pleafour and your lo. defyre. *Robert (Stewart)* and *Patrick Halcro*, ar transportit this day to be exhibite to your lo. The rest ar keipit priffonars in the Castle; and my lord and I (efter that *Roberte* and *Patrik Halcro* be dispatchit with *Yung May*,<sup>1</sup> and ane sufficient number of hable men to guaird thame) ar presentlie going to examine euirie one; and the nixt day, God willing, thay fall suffer judgement and condigne puneifment. The winds, hailes, snaws, raines, ar so extraordinarie in thir places, that all had bene done and accomplisfed befor this day, giue<sup>2</sup> it had bene possible. *Andro Martine*, quho was sent with *Robert Winrahame*, would be weill examined be your lo. I hoipe to cum by THE BAND itself, quhairof I sent the coppie with his Depositiones. Thair is one *Margaret Bicchane*,<sup>3</sup> spous to *Simeone Stewart*, and now Adulteres to *Patrik Halcro*, quho hes revealit and confessit to me more then any other. If your lo. think that hir Depositiones or prefence falbe necessar, direct me, and it fall be obeyit; for I purpose to put hir oute of this cuntrie, for hir Adulterie. Anent the Articles sent in my last Letters to your lo., I befeik you to advyse, and advertteis. And since your lo. hes geuin me assurance of the passing of my rightes, (for the quhilkes I fall euir be cairfull to expres my thankfulnes, in all dewtie and seruice,) I fall be disposed at your lo. pleafour, aither to come South with *the Earle*, or stay heir a litle efter, for my awin buffines, or ony seruice fall be committit or commandit to me. As for other things, your lo. will knaw thame be my Letters writtin to *my Lord Theafurar*. So praying God euir to fanour, prosper, and preferue your lo., I rest

Your lo. awin assured and obliged in all dewtie,

KIRK WALL, 6 Oct., 1614.

[JA. B. OF ORCADS.]

(15.) LETTER, *the Earl of Caithness to Lord Binning*.<sup>4</sup>

("Reffaued 15 Oct. 1614.")

MY MOST SPECIALL GOOD LORD,

I RESSAUIT your Letter, datit at Edinburgh the twentie, &c. and cam in my handis the fourte of October. Befoir the reffett of your lo. Letter, I wrait greit lenth of the haill proceedingis heir, and of the ending of this seruice that God of his mercy hes maid to come, vtherways nor any man expectit. My lord, war not I vsed the mater so cannelie,<sup>5</sup> and maid *Patrik Halcro* to faill thame that was thair in the Castell, it wald haue bene ane longfum saidge; for I protest to God the Hous hes neuir bene biggit by<sup>6</sup> the consente of the Diuil; for it is one of the strongest houlds in Britane, without fellow. I sie be HIS MA<sup>ties</sup> Letter direct vnto your lo<sup>s</sup> of his intentione to *Robert Stewart*, quhilk I thank God I haue nather send to him, bot this, and vpoune that condition he cam out: Quhilk conditione was in this forme, gif he wald come furth and put himself *simpliciter* in his Ma<sup>ties</sup> will, to dispone vpoune him at his Ma<sup>ties</sup> pleafour, I sould keip and preferue him from euerie danger of my folkis, till his Ma<sup>ties</sup> pleafour and will wer knawin. He defyrit that I wald promise vpoune my honour to preserve him, till I brocht him to his Ma<sup>tie</sup>. That I plainlie refudit; for I said I could not promeis that my selfe might haue acces to his Ma<sup>tie</sup>, without the speciall licence of the Lordis of his Ma<sup>ties</sup> most honourable PRIVE COUNSELL. To conclud, he plainlie submittit him self to his Ma<sup>ties</sup> will. Bot befor he did this, *Patrick Halcro* had left him, and said plainlie to him, in the Castle, 'he wald geive it ouer.' Quhich maid him come out, vpoune the foirsaidis conditiones, and no vtherways. As I fall anfuere to God, *Robert Stewart* hes no farder of me; for I spak with him, and smellit that he wald neuir geiv over that Hous to be Torterit, and to be compellit to reveill vpoune his father, to be his wrak. I finding this, I defyrit, gif he wald let *Patrik Halcro* cum oute and speik with me, vpoune that sam plaidge that was in for him. He plainlie refudit. I seing it so, I maid me to be weill contentit with his anfwair, and said, 'I wald go fordwart with the siedge.' He past to the Castell; and in his companie I put in secret woord to *Patrik Halcro*, to sie giue the morne he wald

<sup>1</sup> Sinclair of May. <sup>2</sup> If.

<sup>3</sup> Buchanan. See her Deposition, Nov. 1, 1614.

<sup>4</sup> From a copy in

*Denmyne MSS.* Adv. Library.

<sup>5</sup> Had not I handled (or managed) the matter so cautiously.

<sup>6</sup> Without.



cum out and speik with me, in the Kirk, vpoune plaidges; quho grantit, and cam furth to me. And efter four houres conferens, he and I hand to hand, I maid him to zeild, that he wald giue it ouer and mak the Hous to be in my handis, vpoune conditione I fould promeife him his lyffe—quhilk I did. Then he willit me to caus ane *Minifter* come in and preiche to thame, quhilk he fould (vfe) meanis that the rest fould be contentit to heir; and fo, he fould mak the mater fo that he fould be out of fufpitione, to<sup>1</sup> the gritteft pairte of thame war out of the Caftell; and as they cam out, to geiue thame fair countenance. And fo, be thir meanis, *Patrik Halcro* maid the Hous and all thefe that war thair to be in my handis.

The Proceedingis and Ceremoneis tuik mekle of aucht dayes, quhilk was the occaifoune that your lo. was fo long of getting word; quhairfoir I craue your guid lo. to haue me appardonit; for praifit be God, albeit the word hes bene long of comeing, it is good quhen it comes!

I luik pat my word and promeis gevin to *Patrik Halcro* fall not be fulfillit. Befoir it wer, I rather be in my grave.<sup>2</sup> As to the rest I haue in my handis, except *Robert Stewart*, (they) falbe hinged within twa dayis at the Caftell yett,<sup>3</sup> with fundrie vtheris of the cuntrie men that war ring-leaders to *Robert*, to the exemple of vtheris. The number that fall hang, that was in the Caftell, is twelue. I haue fent *Robert Stewart* and *Patrick Halcro* to CASTELL SINCLAIR, to be fuirlic keipit thair, till I haue done all that your lo. hes gevin me Commiffioune: For now, fince the feruice is done, I haue no pleafour to byd heir, for the wedder is both euill and varient, and fo is the people; for he that wald rewle heir hes both neid of wit and manneheid, and manie earis and eis. Quhair your lo. willes me to conforme all my actionnes to HIS MAIESTIES mynd, I hoipe in my Sauour neuir to do, fay, nor think that fall be offensue to his Ma<sup>tie</sup>. Befoir, willingelie, I did any thing that war offensue to his Ma<sup>tie</sup>, I rather be buried quik. As to this peece of small feruice, I think it bot ane beginning; bot give his Ma<sup>tie</sup> haue ony feruice of grittar importance, I houpe ather to die, or giue his Ma<sup>tie</sup> ane grittar pruiife of my affectionne and luife. Thanking your guid lo. for the grit cair your lo. hes had that I fould wante nothing that fould funder this feruice, in my panes, I can render your lo. no farther than the affuurance and continewance of my feruice, as I fall euir remane,

Your awin

KIRKWALL, 7 Oct., 1614.

[CAITHNES.]

(16.) *The ARTICLES fent be THE ERLE OF CAITHNES to THE SECRETAR, to be refolued be THE COUNSALL.*

(“Reffaued 10 Oct. 1614.”)

I. PLEAS your Honorable lo. to refolue and direct, quhat fall be done with the CASTELL, which is now in my custodie? Whither it falbe repaired or demolished? Thocht it be ane ornament for *the towne of Kirkwall*, and may be eftemed ane place of refuge and securitie for the holl cuntrie, in tyme of forrane Inuafions, if any fould happin to be, zit fince it is nather neccellare for any ordinarie feruice of his Ma<sup>tie</sup>, nor ane Hous fitt for the habitation of his Ma<sup>ties</sup> Officiaris, and may be mor easilie takin be forrane foes, in cais they fould inueid, then recovered agane from them; I remit it to your lo. wifdome, to confider what falbe done with it.

II. Pleas your lo. to giue some directioun for gouernment of thir people. The prefent Officer, *the Shereff-deput*,<sup>4</sup> is hated, to the death, be all fortis of men; is of no fufficient qualites for fuch a place and office; and by his former euill demanor, is fo contemned of the bafeft, that he fall neuir, by all apparence, recouer credit, authoritie, and regaird heir; zie,<sup>5</sup> iff he remane heir after me, he is in danger of his lyff, and some new broyl may arryfe.

<sup>1</sup> Until. <sup>2</sup> Such cold-blooded and perfidious treachery has seldom been equalled. A King's Lieutenant binding himself by the most solemn engagements to a Rebel on giving up a stronghold, without loss of blood, that a free pardon shall be granted to him—and yet, in his Dispatches, strenuously recommending that his pledge shall be recalled, and that the repentant Rebel shall be put to death, without mercy! <sup>3</sup> Gate. <sup>4</sup> Mr John Finlaystone. <sup>5</sup> Yea.

III. Thocht ther be great spoyll and losse of horse, cattell, scheip, boatis, and now of armour which belonged to HIS MA<sup>TIES</sup>, your lo. wald be plesed to give direction quhat falbe done with that which remanis, and may be recouered from vniust detainers, that his MA<sup>TIES</sup> be not defrauded and hurt.

IV. For BIRSAV, which was the place whence the troubles did spring, your lo. may be plesed to consider, whither it falbe demolished or keiped, with some allowance; and be whome?

V. The Ordinance, which is in the Castell and Zeardis, in number 8 of brase and fax of irone, falbe, God willing, transported vpon the schippis, with all the armour whiche can be had.

VI. *Robert Stewart* and *Patrik Halcro* falbe keiped and brocht with my self.

CAITHNES.

(17.) LETTER, *Lord Binning to his brother Mr Patrick Hamilton.*<sup>1</sup>

BROTHER,

THIS morning, *John Stewart* is arrayued from *Orkney*; and hes broght in his ship, be direction of *the Erle of Caithnes*, foure of his Prifoneris, with thair Depositions; whom I have re-examined this forenone, and have send to yow the copies of thair Depositions sent from *Orkney*, and of my examination of thame this day; together with the copie of the Letter which *the Bischop of Orkney* sent with thame. They ar now in the Towbuth, in the Irne-houfe,<sup>2</sup> becaus the Chancelar and Counfall will be in this Towne this night. I will advyse with thame, whether it be more fit to execute thame to-morrow, or to delay thair Execution for sum dayis, least thair suddane death might mak the detainers of the Castell of *Kirkwall* more desperat and obtinat.

The ERLE OF CAITHNES, with great dexteritie, hes maid himself maister of the Steple and Howse of the Yairdis. He has no losse, praysed be God, bot of two of his men slayne and ane hurt. We ar perswaded, that all the prouisions which thay requyre, be thair Letter, wer in *Orkney* before thair Letter came to my handis. I have this day sent to *Leith* two hundreth bullets for the canon and batard,<sup>3</sup> and am provyding all vther necessaris, which fall be reddie this night and imbarcked to-morrow, God willing, to the effect the ship make saile the morne, if God grant thame prosperous wind.

This I have thocht fit to wryte to yow, to be signified to HIS MA<sup>TIES</sup> and my Lord Chamberlane; thinking that the copie of *the Bischop's* Letter, and the prifoners' Depositions, ar the best information I can gine yow.

I pray yow recommend to his Ma<sup>tie</sup> and my Lord Chamberlane the fauorable and spiedie expedition of the Erle of Caithnes and Bischop of *Orkney's* buffnes; and vse all possible haift in the return of HIS MA<sup>TIES</sup> commandments. So, in haift, I commit yow to God. ED<sup>N</sup>, this 13. Sep. (1614.)

Your loving brother,

BINNING.

I HAVE send for the *Justice-depute* and *Justice-Clerk*, and aduerteifed my *Lord Chancelar*, who came yesternight to *Pinkie*, and will be heir this esternone.

To my beloued brother, *Maister Patrik Hamilton*, at COURT.

III. (18) BAND OF ASSOCIATION SUBSCRIVIT BY THE REBELLIS IN ORKNAY.<sup>4</sup>

BE IT KEND till all men by thir presentis, Vs, the GENTLEMEN OF ORKNAY, after subscrivand: Forfameikle as, by the frequent intrantis of extraniers in this countrie, the estate of the commonwealth is in danger, and like to perifche, throw the corruption of the Lawes, partialitie of Judges, the greid of Officeris, and Oppression of Magiftratis; quhilk dwanger<sup>5</sup> the poor ones vnder the yock of servi-

<sup>1</sup> Mr Patrick Hamilton was the fourth son of Thomas Hamilton of Priestfield; and was appointed Under-Secretary of State to his brother. He usually resided at Court, for dispatch of Scottish affairs; and tended, in no small measure, towards elevating his brother's fortunes to the almost unprecedented station and offices which he successively held.

<sup>2</sup> The *Iron-house*, or *Cage* as it was termed, was constructed for the safer custody of desperate offenders, in the Tolbooth of Edinburgh, whence they were easily conducted to the Court-room, and to execution, without the danger of rescue.

<sup>3</sup> Petard; battering piece.

<sup>4</sup> From a collation of two Copies, preserved amongst the *Dumylna Coll. of MSS.* Adv. Library.

<sup>5</sup> Dings, drives.

tude and flaverie; confuming his Ma<sup>tie</sup>s rentis in their own adoes, but<sup>1</sup> vtilitie or good service to his Ma<sup>tie</sup>. QUILK to prevent, by assistance of God, and favour of his most excellent Ma<sup>tie</sup> our Souerane Lord, WE, be the faith and truth of our bodies, now touching the Evangel of oure Saviour Iesus Christ, Bindis and Obleiffis vs, coniunctlie and feuerallie, as neid requires, to be in readines by our persons, with oure servendis, kin, freindis, and dependares, in armour, to repreffe all oppreffions and iniquities quhilk fall happin to be intendit aganis the commonwealth of this countrie, at any tyme hereafter; swa that better order may be establisched, whereby God eternalle may be pleased, and our Souerane lord obeyed and serued, according to oure dewty, in all respectis. And that this may be the better effectuat, WEE Bind and Obleiffe vs and our afoirfaidis, to concur, attend, and depend vpon ROBERT STEWART, sone naturall to oure native Lord and Maister PATRIK ERLE OF ORKNAY, as our Heade and Commander, during the absence of his father, and to mentyne and defend him be our bodies, goodis, and geir, in execution of the premisses, and all other lawfull actions and affaires quhilkis he shall have to do at ony tyme hereafter, vnder the payne of Periurie and everlastig defame: BECAUSE the said Robert Stewart is reciproquallie bundin and obleift to vs, that he shall take no weightie matter in hand, without consent and assent of vs, at least any two of vs, under the same payne, BE this present, subscryved with oure handis, as followis, At . . . . the . . . . day . . . . , the year of God I<sup>m</sup>. Vj<sup>c</sup>. fourtene yeares.<sup>2</sup>

R. STEWARD.

PAT. GORDON, with my hand.

THOMAS LOWAT, to pe dei<sup>t</sup>.

ROBERT MOWAT, with pe hart and handis.

JOHNE REID,<sup>3</sup>

R. SALETER, to pe dethe; Belie of Birsay.

WILLAME KERKTOUNE, to the dethe.

R. I., in Gerfettar, to the dethe.

R. S., in Nissohous, in Marwick, to pe dethe.

PA. HALCRO, to the deth.

THOMAS DOUGLAS, to death.

GILBERT GRAY, to pe deithe, with my hand.

WILLAME SINCLARE, to the dethe.

O. S., in Swrne, in Marwick, to the dethe.

O. Q., in Marwick, to pe dethe.

ROBERT GRAY, to the dethe.

T. ST., in Marwick, to the dethe.

#### IV. EXAMINATIONS AND DEPOSITIONS OF THE REBELS, &c.

##### (19.) DEPOSITION of *Duncan Mitchel*, 'Poist-boy in Edinburgh.'<sup>4</sup>

*At Edinburgh, the fyst day of July, 1614. In presence of the Lordes of Binning, Secretary, the President, Theaurair-depute, Clerk of Register, Aduocat, Sir Alexander Drummond, and Sir Andro Ker.*

DUNCANE MITCHELL, Poist in Edinburgh, sworne and examinat, deponis, that quhen the *Erll of Orknay* was caryed from this Towne towardis *Dunbartane*, the *Erll* directit the Depouner with a Letter to his sone *Robert*, who wes in ORKNAY for the tyme; and the depouner past with the Letter to *Orknay*, and delyverit the same to the said *Robert*, fra whome he ressaufit ane anfuer, in wryte, to the *Erll*; and broght the same heir with him to this burgh of *Edinburgh*: And after he had stayit heir twa dayis, he past with the Letter to *Dunbartane*, and delyuerit it to the *Erll*.

Deponis, quhen he delyverit the Letter to *Robert*, the said *Robert* wes in *Birsay*; and sayis, that he had a verball directioun and message from the *Erll* to *Robert*, that yf he had the *House of Birsay* in his keeping, that he sould keepe the same to the *Erllis* vse; for the *Erll* saw litle apeirance of relief.<sup>5</sup> And yf the *House* were not in his keeping, that he sould vse the best meanes he could to come be it; and that he sould lift frome the *Tennentis* so much of thair mailles and dewyteis as he could gett; and that he sould keepe the *House*, in maner foirfaid.

Deponis, when the depouner come to *Birsay*, *Barnard Steuartis* wyffe had the keeping of the

<sup>1</sup> Without.      <sup>2</sup> The various dates are not preserved in the copy of this Bond. It is asserted that no less than SEVEN HUNDRED persons signed it. See p. 289.      <sup>3</sup> A rude attempt at the shape of a heart follows this person's subscription.      <sup>4</sup> From a transcript preserved among the State Papers in *The Denmyne Coll. of MSS.* Adv. Library.      <sup>5</sup> From imprisonment.

Houfe, and that *Robert Stewart* had onlie fyve perfonis with him in the Houfe: And the yett was kept, as the depouner thocht, be one of *Robertis* feruandis. And the depouner stayed in *Birfay* fouretene nightis: And in the mean tyme of his being thair, *Robert* fend to *Kirkwall*, for some ma company, and for muscattis, poulder, and leade; and sayis that xvij perfonis, or thairby, armed with muscattis, come to *Birfay*; and at thair comeing, thay then avowit the keeping of the Houfe; tooke and brocht in some of *Barnard Steuartis* goodis to victuall the Houfe, and payit not for thame.

Deponis, that afoir the depouner come away, *the Sheref-depute*, accompanyit with thre or fourefcoir perfonis, come and lay aboute the Houfe, and fend in Message to *Robert Steuart*, desyring him to come oute, and he wald gif him libertie for xiiij dayis to remayne in the cuntrey, to vplift the *Takmaillis*<sup>1</sup> whilk he alledgeit wes dew to his fader, for auld byrunis:<sup>2</sup> And that *Robert* refuifit to come furthe. Quhairpoun, *the Sheref* caufit charge the Houfe to be randerit; quhilk wes refuifit be *Robert*, with found of trumpett, and discharge of some muscattis out of the Houfe. Lyke as, *the Sheref-depute* schoit in at the Houfe, with the schoit quhair of one Downye Lyell wes hurte. And the depouner stayed bot ane night, after the Houfe was chargeit. And sayis, that *Robert* caufit prepar ane boit to transporte the depouner, be water, to *Caitnes*; and he fend with him a Letter to *the Erll*, and by tung bad him inquire, quhat *the Counsell* wes doing in his busynes—and quhat wes *the Erllis* will that the said *Robert* fould do in Orkney? Denyis, that he brocht ony message from *Robert*, to ony perfonis within this burghe.

Deponis, that vpoun Thursday, the last of Junij, aboute tua of the cloke in the ester noone, the depouner come to *Dunbartane*, and fand *the Erll* walking in the cloife; and he delyuerit *Robertis* Letter to *the Erll*. And when the depouner tauld *the Erll* that the Houfe of *Birfay* wes tane, *the Erll* anfuerit, 'The Devill stik him! He might haif tane ane better Houfe!' And forder, deponis, that *the Erll* said, 'The Devill stik his foillis head!' (meaneing be *Robert*,) 'He might haif mellit with *the Scheref-depute*—and yf he had maid him quyte of him, he wald haif had lesse ado!' And forder, deponis, that *the Erll* said to him, Yf his sone had assaillzeit *the Castell of Kirkwall*, the Keeperis thair of wald haif delyuerit the same to him, becaus they wer *the Erllis* auld feruandis! And deponis, that *the Erll* desyrit the depouner to commend him to thofe who assistit *Robert* in the Houfe. And sayis, that vpoun the morne *the Erll* caufit his man, *Shairp*, write ane Letter to his sone; whilk wes vnsubscryuit be *the Erll*, and had no directione on the bak. And the depouner ressaufit lyke wayes ane Letter from *Shairp* to *Robert Steuart*, without subscription or direction on the bak, saulf onlie ane corse,<sup>3</sup> that it might be knowne frome the other Letter. And quhen the depouner come away, *the Erll* desirit him to will *Robert* 'to keepe the Houfe; and in no caise to rander the same: And, or<sup>4</sup> he war tane, it wer better for him to dee with honnour—ffor he wald be putt in perpetuall warde, yf he wer tane!' Deponis, that *the Erll* inquirit, 'quhat fauour *Robert* had of the Commonis, and yf thay resortit vnto him?' And desyrit *Robert* 'to fend him money, of that quhilk he fould gett frome the *Tak-men*, for auld restis.' And sayis, that nane wer present, quhen *the Erllis* Letter wes writtin, bot *the Erll*, his man *Shairp*, and the depouner.

DUNCANE MITCHELL.

(20.) COPIE of the *Erle his Letter to his Sone*.  
(Appended to Duncan Mitchell's Deposition.)

ROBERT,

I HAVE red and confidderit your Letter. Yow haue done verie weill in wrytting of your Letter in pe forme ze do; bot I feir it fall do littill goode. Always,<sup>5</sup> ze fall do the best with it, gif we haue ado with it; bot it may be we haue no thing ado with it; for thair is vper materis heir to think vpoun nor fuche thingis, as that I beleive HIS MAIESTIE thinkis littill of theis materis. Tak tent that your Holy spaper betray zow not, as he did befoir. The berar sayis, ze gaif him bot sax pundis. Trewlie

<sup>1</sup> Rents of possessions let upon Lease.    <sup>2</sup> Arrears.    <sup>3</sup> Cross or mark.    <sup>4</sup> Ere; rather than.    <sup>5</sup> Nevertheless.

it is littill aneugh to cum and go. Gif yow cum in this cuntrie vponie onie conditionn, *the Tolbush* will be your best; ffor quhat conditionn beis promiseit zow be onie in ORKNAY, thay bot skorne zow; ffor *the Counfall* will not kenne<sup>1</sup> quhat conditionn thay mak to zow. Seing ze haue proceedit so far as zow have done, thair is no being heir for zow. War not<sup>2</sup> *Kinlevin* and *pe Bisshop*, my Lord had not seine *Dumbartane*, at this tyme. This berar sayis, he will venture to fetche fuche money heir as yow will gif him; bot yow send Jo<sup>n</sup> Prence with it; for heir he is ane honest man to zow. Tak his Band, and send it with *pe beirar*, for that that zow delyuer unto him; for my lord hes more than mistare<sup>3</sup> of it. Restis, the last of Junij, 1614.

POSTSCRIPPT. Caus gif the berar ane coitt,<sup>4</sup> for he is wirthe<sup>5</sup> it; and latt him haif his hail waidges; for I will haue nane to gif him, when he cums heir. His wadges is systene pundis. Haift *pe berar* heir agane, for we will get no more silwer frome the Thesaurer. Lat him not stay xxiiij houris.

(21.) DEPOSITION of *Barnard Stewart*.<sup>6</sup>

AT EDINBURGHE, *the xj of August*, 1614. *In presence of my Lordis Binning, Prefident, The-saurer-depute, and Aduocat.*

BARNARD STEUART, sworne and examinat, deponis, that *Robert Halcro of Cava* tauld to the depouner, that he saw a Letter directit be *the Erll of Orknay* to his sone *Robert*; quhairby, *the Erll* willit *Robert* to tak the depounaris lyffe. Demandit, yf he wes persuadit or delt with, be *the Erll*, to joyne with his sone *Robert*, in the present REBELLIOUN IN ORKNAY? Deponis, that he being informit that *the Erll* had gevin ane Commissioun to his sone *Robert*, to intromett with certane dewyteis of *Orknay*; the depouner past to *the Erll*, and demandit of him, yf he had gevin ony fuche Commissioun to *Robert*, becaus he feirit that *Robert*, vnder coulour of that Commissioun, wald mell with the depounaris geir? And that *the Erll* ansuerit, 'Yf *Robert* be gone to *Orknay*, THE KING nor yow will be able to mend it—and it is your best to beholde him!'

The said *Barnard Stewart*, for explaining his former depositions, deponis, that he haueing said to *the Erll*, that seeing *the Duke of Lennox* and *the Erll of Marr* had intreated HIS MAIESTIE in his fauour, that thairfoir, he had done verie happelie, in directing *Robert* to *Orknay*. And *the Erll*, seameing to be in a choler and anger at thir speecheis, thrawing<sup>7</sup> his bearde with his hand, said to the depouner, 'Yf *Robert* be gone to *Orknay*, THE KING and yow will not mend it—and your best wilbe to beholde him!'

The said *Barnard* being demandit, at quhat tyme he gatt knowlege of the Letter directit be *the Erll* to his sone *Robert*, to take the depounaris lyffe? Deponis, that after *Robert* had bene in *Birsay* systene dayis, and behavit him selfe somequhat civille; and thairefter, had maid him self, publiche and be force, maister of *Birsay*, and expellit the depouner furthe thairof, and detenit his wyffe aganis hir will, the said *Barnard* directit *Robert Halcro of Cava* to persuade *Robert* to putt his wyffe to libertie; and after conference had be *Robert Halcro* with *Robert Stewart*, for that purpois, at *Robert Halcrois* bak-comeing from *Birsay*, he declairit to the depouner, that *Robert Stewart* had showne him a Letter of *the Erll of Orknayis* to his sone, commanding him to tak the said *Barnardis* lyffe.

BARNARD STEUART.

(22.) DEPOSITIONS of *Thomas Black, Thomas Layng, Archibald Murray, and Alexander Leggatt*.

AT EDINBURGHE, *the xij day of September*, 1614. *In presence of the Lord Binning, Secretar.*

THOMAS BLAK, borne in the Mernis, and one of the Baillies and Chalmerlaine to *Patrik, laite Erll of Orknay*, examinat, deponis, that quhen *Robert Stewart* tooke the Castell of Kirkwall, this depouner

<sup>1</sup> Recognise.    <sup>2</sup> Had it not been for the interference of Kinlevin and the Bishop, &c.    <sup>3</sup> Necessity; need.  
<sup>4</sup> Coat.    <sup>5</sup> Worthy; deserving.    <sup>6</sup> From transcript in *Dennyne Coll. of MSS.* Adv. Library.    <sup>7</sup> Twisting.

was in the Steple of Kirkwall, and xii perones with him. The said Thomas, being desirrit to declair the simple treuthe of all his pairt in THE REBELLIOUN OF ORKNAY, deponis, that, when Robert Stenart had tane the House of Birfay, the Schereff past, and causit the house to be randerit, quhilk was refusit, and this depouner past with the Shereff to assist him, and broght with him twa hundreth men, and stayed ane night with the Shereff, and vpoun the morne the depouner come bak with the Shereff; and sayis, that aboute tuentie dayis thairefter *Robert Steuart* send *Patrik Halcro* and *Williame Paterfoun* to the depouner, to will him to come to Robert, to mak and perfyte his comptis of the restis, whilkis he was awand to his fader;<sup>1</sup> and the depouner, according to thair desyre, past voluntarlie to *Robert*, to the Place of *Birfay*, and stayed thair with him ane night, and come bak agane to his awne house, and provydit xvij lb. to pay *Robert*, quhilk he caryed bak to him the nixt day. Quhilk all wes done after that the depouner had bene present with the Shereff and forceis of the cuntrey, at the chargeing of the said Robert and his compliceis, to delyver to him, as his Ma<sup>tes</sup> Commiffioner, the House of *Birfay*, vnder the pane of Treffoun: And that the said *Robert* had not onlie difobeyit the charge, but schoit some muscat shoitis at the Shereff and his company.

Thairefter the depouner come to the Steple of Kirkwall, the day befor the Castell was affedgeit be *Robert*, and enterit thairin with *Patrik Halcro*, *Archibald Murray*, *Thomas Layng*, and some otheris, to the number of ten peronias. And how sone *Robert* and his company come in sight of the Toun of Kirkwall, he causit found his trumpettis, and the depounaris company, within the Steple, blew thair borne. And sa sone as *Robert* come and tooke the Castell, *Patrik Halcro*, *Archibald Murray*, and *Thome Laing* past oute of the Steple to *Robert*; and thair stayed onlie three or foure in the Steple with the depouner ane night or twa. And howsone the Castell was assured in *Robertis* possessioun, he send in some otheris to the depouner, and maid his number to be tuelff peronias, with whome the depouner kept the Steple till the *Erl of Caithnes* his comeing to Orkney. The depouner grantis that *Archibald Murray* and *Alexander Leggatt* wer at the taking of the Castell.

Deponis, that he aggreit with the *Erl of Caithnes*, for him selff, and in name of the rest of his companie, anent the randering of the steple; and he procurit leve of the Erl to carye out of the steple his victuallis, armour, and quhat els he had in the steple pertening to him self or his company; and grantis that he wes Captane of the companie, being within the Stepill, and maid appointment with the Erl, in maner foirfaid. And declairis, that *Patrik Halcro*, *Archibald Murray*, *Gilbert Gray*, *Johnne Guild*, and *Andro Martine*, wer farrest vpoun *Robertis* counseill of ony in the haille company. Grantis, that euery man within the Steple had a muscat, and thay had onlie sax pund of poulder among thame. Grantis, that he boght some trunfcheour plaittis,<sup>2</sup> and ane pott, with some linning cloathe for thair furnishing in the Steple. And sayis, that *Robert* send him in ane fedder bed. And the depouner had ane boy of his awne with him all this tyme.

THE said THOMAS BLAK, being deiplie sworne, and demandit, yf he askit of *Robert*, quhat wes his purpos or drift in this REBELLIOUN; or by what meanes he wald beare it oute? Deponis, he nevir askit any fuche questioun of him. Grantis, that the *Erl of Caithnes* had the Steple maid fuir vnto him or<sup>3</sup> it wes renderit; and that *Johnne Guild* had delt with the Erl in that mater. And this depouner, how soone the *Erl* send vnto him, randerit and come furthe to him; and maid appointment, for him self and his fouldiouris, to rander the steple to the said *Erl*; who, be his moyen, formarie maid with *Johnne Guild*, had the Steple in his pouer, befor the depouner returnit vnto it.

Deponis, that thair was no bloode spilt be thame within the Steple, except that one of thame schoit *Robert Chalmers* throughe the hand, the tyme that the *Commiffair of Orknay* wes inclofit within the Place of the Yairdis: And the said *Robert Chalmers* wes assisting the *Commiffair* in defence thairof.

THOMAS LAYNG, sworne and examinat, deponis, that, at his laite being in *England*, quhen he wes comeing home, *Thomas Davettie* gaif to the depouner tua Letteris, in *Skairsburgh*,<sup>4</sup> to bring home to

<sup>1</sup> The arrears of rent, &c., which he was owing to his father.

<sup>2</sup> Trenchers.

<sup>3</sup> Ere; before.

<sup>4</sup> Scarborough.

*the Erll of Orknay*, quhich he delyuerit to *the Erll*. And deponis, that he being one of the Keeparis of *the Castell of Kirkwall*, vnder *Sir James Stewart*, thair fell oute some difference and variance betuix the Shereff and the depouner, anent his pairt of the contentatioun<sup>1</sup> quhilk he fould haif had for taking of the Pirott Schip; wherupoun the deponar fled from *the Town of Kirkwall* to *Robert Stewart*, and stayit with him thair ten or tuelf days, befor his comeing to *Kirkwall*. And the depouner wes with *Robert* quhen he come with displayit banner and trumpett to the Bow-Croce, accompanied with ane hundreth men in armes, or yairby.

Grantis, that he wes one of these who surprifit the Kirk and Steple of Kirkwall, and that he stayed in the Steple with *Patrik Halcro* and *Thomas Blak* tua dayis.

Grantis, that he wes with the Shereff quhen he chargeit *Robert* to rander *the House of Birfay*, quhilk *Robert* diffobeyit, and shoit some shoitis oute of the House at the Shereff. And grantis, that ane moneth efter this, the depouner past to *Robert Stewart*, and joynd with him.

Deponis, quhen *the Castell* wes tane, the depouner wes in the Steple, and after *the Castell* wes randerit to *Robert*, the depouner left the Steple and went to *Robert*, and remanit with him in the Place of the Yairdis, quhill the Erll of Caithnes come in the cuntrey. Deponis, that he accompanyit *Robert*, quhen *Robert*, with fyve hundreth men, went to the feildis aganis *the Erll of Caithnes*, his Ma<sup>ties</sup> Lieutenant; and that *Robert* musterit aganis *the Erll*, at the Bal-feild, and vtheris pairtis about *Kirkwall*.

ARCHIBALD MURRAY, in Birfay, solemnelie sworne, and demandit, quhen he spak first with *Robert Stewart* after his comeing to Orknay? Deponis, he spak first with him in Kirkwall, bot denyis that *Robert* impaired vnto him ony mater of this REBELLIOUN at that tyme.

Deponis, that the interprise of the taking of the Castle and Steple of Kirkwall wes maid first in Birfay, and that *Patrik Halcro*, *Andro Martyne*, *Thomas Blak*, *Gilbert Gray*, *Alexander Leggatt*, *Thomas Layng*, and the depouner him self, wer all vpoun the conference, counsaill, and plott of the taking of the Castell and Steple of Kirkwall, and the mater wes plotted tuentie dayis afor it wes putt in executioun. And sayis, that *Robert Stewart* maid the depouner and the rest to vnderstand that his fader wes in missing, and oute of *the Castell of Dunbartane*; and that he wes to come to *Orknay*, and sitt down *Erll* agane. The beleif quhairof maid thame to follow *Robert* in his interpryiffis.

Deponis, that *Alexander Leggatt* was with *Robert Stewart* the first time quhen the depouner mett with *Robert*; and that thair wes no speecheis betuix the depouner and *Robert*, bot chopping of handis at that tyme.

Demandit, yf thair wes ony purpois amangis thame in Birfay aganis the Shereff? Grantis, that *Robert Stewart*, *Patrik Halcro*, and *Thomas Blak*, had speecheis and conferance in Birfay anent the taking of the Shereffis lyffe; and when thay come to the Steple, the mater wes commvnicat to the depouner: And then *Thomas Blak* past frome it. And deponis, thay had shoit the Shereff in the Kirk at that tyme, yf he had not beene gangand with *the Commissair*.

Deponis, that quhen the Steple wes tane, the Keeparis held thame quiet quhill *Robert* come to *the Bow-Croce*; and then *Robert* soundit his trumpett, and they within the Steple blew ane horne; and the depouner stayed bot ane nicht in the steple. And sayis, that *Patrik Halcro* was commandair of the Steple quhen *Robert Chalmers* wes hurte: And efter that, *Thomas Blak* commandit within the Steple; and that *Thomas* assistit *Robert* in all suche thingis as he commandit. And deponis, that the Steple wes fauld<sup>2</sup> be *Johnne Guild*, twa dayis befor it wes randerit be *Thomas Blak*.

Deponis, that after he left the Steple, he adressit him self to *Robert Stewart*, and stayed with him all the tyme, till within aucht dayis afor *the Erll of Caithnes* comeing thair.

Deponis, that he wes with *Robert* at the perfute and taking of *the Castell*. And that the Shereff wes kept prifounair fyve dayes after he wes tane.

Grantis, that he was commandit be *Robert* to go to *Birfay* and to keepe *the House*, whilk he did;

<sup>1</sup> Remuneration; *salvage*.

<sup>2</sup> Sold; betrayed.

and kept the same till *the Erll of Caithnes* come and caufit charge the Houfe; quhilk charge the depouner obeyit, and come to *the Erll*.

: Deponis, that *Williame Guddell* come furthe of the Castell, and randerit him self to *the Erll of Caithnes* the day befor the depouner wes fend from Orknay; and that it is commounlie reportit that the said *Williame* affermis, that *Patrik Halcro* hes *the Erll of Orknayis* Warrant for taking *the Castell* of Kirkwall.

: ALEXANDER LEGGATT, feruand to *Patrik* sometyme *Erll of Orknay*, sworne, and demandit, how soone he spak with *Robert Steuart* after his coming to Orknay? Deponis, he spak not with him quhill tuentie dayis after he come to Orknay.

: Grantis, that he wes in this cuntrey at Beltane last, and that he mett twyfe with *the Erll of Orknay*, and spak with him and his sone *Robert* in the Castell of Edinburgh. He denyis that *the Erll* or his sone *Robert* had ony conference with the depouner anent THE REBELLIOUN IN ORKNEY.

Denyis, that he was in *Birfay* with *Robert* quhen the Houfe wes chargeit.

: Grantis, that he wes with *Robert* tuentie dayis afoir *Robert* tooke *the Castell*; and that he wes with *Robert* quhen he musterit at the *Bow-Croce*.

: Deponis, how soone the Castell wes tane, the depouner stayit with *Robert Steuart* in *the Place of the Yairdis*, quhill he hard of *the Erle of Caithnes* comeing.

Grantis, that he wes with *Robert* quhen *Robert* musterit at the Caiones, afoir *the Erll of Caithnes* landit; and that he wes in *the Yairdis* quhen *Robert* musterit at the Bal-ffeild aganis *the Erll of Caithnes*; and that the depouner had the charge of the keeping of *the Place of the Yairdis* fouretene dayis.

: Deponis, that he come furthe afoir the cannoun shoite, being defirit be *the Erll of Caithnes* to come furthe afoir the shoiting of the cannoun. And the depouner randerit *the Place of the Yairdis* to *the Erll*.

: Deponis, that *Robert Steuart*, sone to *Alexander Steuart of Flatt*, had the principall charge of the keeping of the said Houfe, and that thay wer aboute the number of fourty men, appointit be *Robert Steuart*, bafe son to *the Erll*, to keep the Houfe to his behoofe.

: ALEXANDER LEGGATT re-examinat, and deeplie sworne, and demandit, vpoun quhat occasioun he went to *the Erll*, quhen he mett with him in the Castell of Edinburgh, about Beltane last? Deponis, that he being in warde, and haueing ane pensiou of victuall and siluer of *the Erll*, he past to *the Erll*, and desyrit of him ane precept and warrant to the Chalmerlanis or Takkismen to mak him payment of the biganes<sup>1</sup> of his pensiou. And that *the Erll* refuist to gif ane precept, and said, he sould 'gif directioun to his sone *Robert* to ansuer him.' And *Robert* tauld to the depouner, that he had ane directioun frome his fader in the depouneris favour.

: Deponis, that *Thomas Blak*, *Archie Murray*, *Robert Sclaitter*, *Gilbert Gray*, and *Robert Mowatt of Gersfettair*, were most familiar with *Robert Steuart*, and farrest vpoune his secreitis.

: Deponis, that *Duncane Mitchell*, the poist, caryed Letteris from *Robert Steuart*, efter the taking of *Birfay*, to *the Erll* his fader.

: Demandit, quhat Gentilmen of the cuntrey come voluntarilie in to *Robert*, after the taking of *the Castell*? Deponis, that numberis of people of all rankis come in to him, as namelie, *the Laird of Halcro*, *Frances Mudie*, *the Laird of Grymsfayis* sone; and deponis, that *Frances Mudie* said to *Robert*, that xxiiij Rebellis wald mak five hundreth men. The depouner knawis nocht yf thir men come in to *Robert* to assift him in his REBELLIOUN; bot thay eate and drank with him. Deponis, that *George Traill* furneist sheep to *Robert*.

: THOMAS BLAK, re-examinat, and deiply sworne, deponis, that efter *the Shereff* had been at *Birfay*, and gevin charge to *Robert Steuart* to delyuer the Houfe, the depouner being in companie with *the Shereff*, that the depouner resortit findrie tymes to *Birfay* to *Robert*, and past and come at his pleasour.

Deponis, that he knawis no thing of *Thomas Layng* or *Alexander Leggatt*, concerning thair coun-

<sup>1</sup> Bygones; arrears.



faill gevin to *Robert Stewart*; bot the depouner suspectis that *Archibald Murray* wes familiar and prenie<sup>1</sup> with him.

THOMAS LAYNG, re-examinat, and sworne, deponis, that the tyme that he wes in *the Steple*, he wes kept aganis his will be *Thomas Blak* and his companye; and deponis, that all these who joynd *Robert*, outh<sup>2</sup> subscryvit, or, yf thay could not subscryve, swoir to die and leive with *Robert*. And *Thomas Blak* wes one of these who subscryvit; and the depouner hard the Roll red, wherin the subscryvaris wer contenit, whose names wer *Thomas Blak, Gilbert Gray, Johnne Reid, Andro Martine*, and some vtheris whome he remembers not.

Deponis, that after the first taking of *the Steple*, *Patrik Halcro* wes Capitane; and when *the Castell* wes tane, *Thomas Blak* wes Capitane; and that the haill company, that come from *Birfay* to tak *the Steple*, come frelie and willinglie for that earand; and that thair wes no violence or force vsit aganis ony of thame to compell thame to go to that earand; and the depouner come all the way fra *Birfay* to *the Steple*, and saw no man forceit be the way.

Deponis, that he hard that *Pettie<sup>3</sup> Murray*, who went in the Ship with *the Shereff* and the depouner to *Orknay*, caryed ane Letter frome the Erll to his sone, *Robert*, being in *Birfay*.

*Thomas Blak*, re-examinat, and demandit, yf he knawis that *Robert Stewart* tooke ane Band or Oathe of these who joynd with him, that thay sould die and live with him? Deponis, that he knawis no suche thing.

Thairefter, the said *Thomas* grantis, that he subscryvit the Band to die and live with *Robert*, and that these who could not subscryve did sweir vpoun thair swardis; and that the effect of their Band and Oathe wes, that thay sould efauldlie<sup>4</sup> tak pairt with *Robert*, and die and live in the caus. And that *Patrik Halcro, Gilbert Gray, Johnne* and *Patrik Gordoun, Johnne Guild*, and the depouner, with *Andro Martine*, subscryvit the Band. And rememberis not yf *Alexander Leggat* subscryvit the Band.

The depouner knawis not quhat Gentilmen of the cuntrey affisit *Robert* with poulder, bullett, victuallis, or counfaillis.

Deponis, that *Johnne Guild* and *Patrik Traill* wer the takaris of *the Kingis Herauld*, being accompanyt with a number of thair associatis; and the depouner come furthe of *the Steple* with his company to *the Place of the Yairdis*, and did freindship to *the Herauld*.

ARCHIBALD MURRAY, re-examinat, and demandit, yf he wes sworne be *Robert* to affist him? Deponis, that *Robert* vrgeit no suche Oathe of the depouner, becaus he wes his faderis auld seruand, and knew that he neidit not to tak ony suche Oathe of him. And grantis, that he tooke the subscriptionis and oathis of vtheris, who wer not his faderis auld seruandis.

Denyis, that thair wes ony violence or force vsit aganis *Thomas Blak*, in his going to *the Steple*; bot that *Thomas* wes als fordwart, and past als willinglie thair, as ony of the companie.

THOMAS LAYNG, re-examinat, grantis that *Robert Stewart*, being informit be some who saw *the Herauld* going to the Croce, that he wes to mak some Proclamatioun or chargeis, the depouner hard *Robert Stewart* gif directioun to some of the souldiouris in *the Castell* and *Steple*, as namelie, *Johnne Guild*, to go and tak *the Herauld*, and not suffer him vse his Letteris and charges; and that conforme thairto, *Johnne Guild* tooke him, and brought him in to the Place of the Yairdis; and the depouner hard that *Johnne Guild* tooke him be the Coate of Armes, and preast to haif tane it af him; bot he knawis not yf the Coat wes revin.<sup>5</sup>

ALEXANDER LEGGATT, re-examinat, deponis, that *Thomas Blak* and his souldiouris wer the takaris of *the Herauld*; and the depouner hard *Robert Stewart* gif directioun to the souldiouris, to go and stay *the Herauld* fra vseing of his Letteris and chargeis, and to bring him in to *the Place*; whilk directioun wes performit be *Thomas Blak* and *Johnne Guild*.

<sup>1</sup> Privy; in his confidence.    <sup>2</sup> Either.    <sup>3</sup> *Patie*; Patrick.    <sup>4</sup> Sincerely; heartily. *Efauld*, or *ae-fald*, literally one-fold; upright, without duplicity. A double and deceitful character was then termed *twa-fauld*.    <sup>5</sup> Torn

Denyis, that he subfcryuit or saw the Band; bot knawis that thair wes ane Band subfcryuit, and Oathis gevin to die and live with *Robert* in the caus; and fuche as could not subfcryve the Band, patt thair markis to it.

(23.) ANDRO MAIRTENIS *Confessioun*.

AT KIRKWALL, the xiiij day of September, 1614, I, ANDRO MAIRTINE, being examined be my *Lord Lieutenent*,<sup>1</sup> and my *Lord Bischop of Orknay*,<sup>2</sup> anent my intelligence of the causis quhy *Robert Stewart*, sone naturall to *Patrik Erle of Orknay*, come to Orknay in this last somer?—Be quhais directioun he came heir?—And for quhat purpose?—Hes anfuered as followis :

FIRST, that quhen I spak with him in Birlay, he schew to me ane Commiffioun, subfcryuit be his father, to mak compt with all the Tak-men of the cuntrie, and ressaue payments of all restis,<sup>3</sup> and debtis justlie awand to his father be thame, of the crope sex hundreth and ten (1610), and all yeiris preceding the comeing of my Lord Bischope to Orknay; with powar also to medle and intromett with all his father's bestiall and moveables, and to dispone thairon. I speirit gif he had ony vther thing ado?—and he said, 'Yis'—bot he wald not tell me. ITEM, I saw ane Letter that came frae his father to him, be *Patrik Murray*, beirar, haueand this clause in it—' That gif he sped not weill heir, that he sould addres himself to Murkle, to remane quhill tyme seruit better; ' bot I remember not of the rest of the contentes. ITEM, anent any conditione betuixt him and *Patrik Halcro*, throw his fatheris directioun, I am na way vpoune that secreit; bot it appeiris thair be sum wrettin conditione amangs thame; becaus I saw gritt anger, with a fear betuixt thame, for wanting of ane Letter that was a missing among hands, and *Patrik* fend out ane boy to the Toune to mak inquisitione for it; bot quhither thay gat it or not, I knaw not. And I saw thame ryue<sup>4</sup> my Lords subscriptione from ane Letter, and thay caift the body of it in the fyre, and kept the subscriptione. ITEM, about the . . . day of September efter, as the Cannone was twyse schott in the night at the yrne yett, it patt ane greit feir in thair hartes. Then *Robert* speirit at me on the morne, quhat I thocht of it? And I said, that ' all was lyk to go wrong.'—' This is a fair matter,' said he, (speikand of his father,) ' thair was neurir thing lukkit weill yit quhilk he devyfit—God gif I had neurir kend his turnis !' ITEM, quhan the commounaris wer trauelland for peax, I advyfit *Robert* to offer cautiuone for his perfonal comperance befor the *Lords of Counsell*, gif the *Lieutenant* wald geife him libertie to go to Edinburgh. He anfuert to me, and said, that ' he wald not do so—for the Counsell wold vse him with Tortouris, quhill he reveillit his fatheris interessé in this mater—and that wold he neurir doe !' Heirvpoun, I collectit, that all quhilk this yung man hes done, wes be the counsell of his father; quhilk is a great pitie, except it pleas God and his Ma<sup>te</sup> to be mercifull to him. And as for my being with him, I wold neurir haue bene a nycht in his companie, giue I could haue had meit and drink any vther way, as all the cuntrie knawis quhat necessitie and miserie I was reductit vnto, be pouertie. ITEM, I remember that a great number of this cuntrie men bundit him till folies, and maid ANE BAND of Concurrence and Assistance to him, quhilk he caufit me to wryte; and a gritt number subfcryuit the same, quhen I was not with him; bot the contentes of the Band and subscriptiones ar in his awin keeping, and my memorie cannot ferue me to remember on the particulars; bot the writt will declare.

A. MARTINE.

(24.) DEPOSITIONS of *JOHNE BURNE*, laying seik and like to die; taikin vp by *JAMES, BISCHOP OF ORKNAY*, in the said *Johne* his chalmer, vpon the thrid of October, 1614.

IMPRIMIS, the said *JOHNE* deponit and confest, that the *EARLE OF ORKNAY* sent him over with

<sup>1</sup> George, Earl of Caithness. <sup>2</sup> James Law, formerly Minister of Kirkllston, was promoted to the See of Orkney, in anno 1606; where he remained till he was translated to Glasgow, 1616. <sup>3</sup> Arrears. <sup>4</sup> Tear.

his sone *Robert*, to assist him to collect and receive some debts resting unpaid by diverse Takismen of the crop 1609 and 1610 yeares; and promised to allow him one Thousand markis thereof, for his fees. **SECONDLIE**, when he asked of the said *Earle*, 'Why he would send the said *Robert* to **ORKNAY**, seeing he was ane young man who appeirandlie wald trouble the countrie?' Deponit, that *the Earle* answered, that 'it was not ane matter to him to know'—and that he wold 'heare other newes or it was long!' **THIRDLIE**, being asked, yf he knew any direction given by the said *Earle* to *Robert* for taking of the Houses and introumeting with the Rentis? Deponit, that he saw ane Letter was brocht from *the Earle* be *Patrik Murray* in Kirkwall, in the quhilk the said *Earle* wrote to *Robert*, that 'yf he and *Patrik Halcro* could not at that tyme find opportunity to take the Houses, that they should go over quietlie to *Murkell*, and remayne ther vntill they fand fit tyme and occasion, and all thingis wer made readye for talking of the saidis Houffis. **FERDLIE**, being asked, why *Robert*, at his first coming to *Kirkwall*, did not take the Castle, seeing, by his own confession, he might have had it delivered vnto him be the souldiers? Answerit, that it was because he thocht not the tyme fit; and thingis wer not prepared.

JOHNE BURNE. JA. B. OF ORCADS.

RO. COLTART, Notar publict, witness.

(25.) DEPOSITION of ANDRO MARTINE, *servitor to the Earl of Orkney*.

AT EDINBURGHE, the tenth day of October, 1614. In presence of my Lordis Secretair, *Previe Seale*, *Thefaurair depute*, and *Aduocat*.

ANDRO MARTINE, seruitour to *Patrik*, sometyme *Erll of Orkney*, demandit, who wryte that copie of ane Band, whilk was presentit and showne vnto him? Deponis, that he acknowlegeis the Band to be his awin hand-wryte.

Demandit, quhair and quhen the Band was subscribed? Deponis, that he knowis no thing of the subscribing thair of.

The said *Andro*, being examinat vpon his grite and solemne oathe, and demandit, who wryte the principall Band? Deponis, that, in his opinioun, he thinkis that he write the principall Band, quhair of the copie was producet.

Demandit, yf he subscribed the Band? Denyis the subscribing thair of, or that he was present quhen ony manne subscribed it.

Demandit, yf he saw ony mannis subscription at the Band? Denyis, that evir he saw the Band unfaultit, at ony tyme, sen he wryte it; and he saw no mannis subscription at it.

Grantis, that *Robert Stewart*, base sone to *the Erll*, tauld to the depouner, that *Gilbert Gray* and *Robert Mowatt* subscribed the Band, and that *Robert Sclatter*, *Baillie of Birsay*, markit the Band.

Denyis, that he hard or saw ony man sweir that they should keepe the conditionis of the Band.

Demandit, quhair he saw the Letteris that *Patrik Murray* brocht from *the Erll* to his sone *Robert*? Grantis, that he saw it in *Birsay*, in the hinder-end of July last.

Demandit, quhat conference he had with *Robert* anent that Letter? Deponis, he hard *Robert* say in ane anger, that he wald not go to *the Laird of Muirkhill*, as he was desirrit be the Letteris, bot that he wald remane in the countrey.

Demandit, yf he saw *Robert Stewart* and *Patrik Halcro* ryve the subscription from ane Letter of *the Erll of Orkney*? Deponis, that he saw thame ryve it in *the Castell of Kirkwall*, the day after *the Erll of Caithnes* had tane *the Place of the Yairdis*. And grantis, that thay wer in a grite anger, for ane other Letter of *the Erlis* that wes in missing; and that thay send ane boy oute of the Castell to *Margaret Buquhannanis* house to seeke the Letter; bot the depounair knowis not yf thay gatt the Letter. And the depouner knowis not quhat wes the contentis of the Letter quhairfra the subscriptione wes revin.

Deponis, that the boy, who wes send for the Letter, wes towed<sup>1</sup> over *the Castell wall* be the deponer, and that he come back agane; bot the deponer knawis not yf he gatt the Letter.

Demandit, vpoun quhat hoipis *Robert* held *the Castell*; and by quhat meanis he thocht to worke his releiff? Deponis, that the deponer being weyreit in *the Castell*, and desyrous to be oute of it, becaus he mislykit the purpois, he write ane Letter, with<sup>2</sup> one *Paterfon*, to *William Bellenden*, craving his advyse and counsell quhat he fould do; to whome *William Bellendene* send ansuer, desyring the deponer to come oute, by what meanis he could best. And the deponer having imported this to *Robert Stewart*, and craving libertie of him to go oute, becaus he could serve him, for no purpois, within the House; at the first, *Robert* dissuadit him to go oute, for feir of *the Erll of Caithnes* crueltie: And the deponer haiving said to *Robert*, that 'this interprise wes not lyke to frame weele';—*Robert* ansuerit, that 'they wald be able aneughe to halde oute, ffor mony alterationis wald occur, quhairby they might keepe *the Castell*, as namelie, *the coming of THE SPANZEIRDIS, the practises of PAPISTS,* and the truble whairin *THE COUNT PALLATYNE* wes:' Quhilkis alterationis wald procure thame releif, as *Robert* said to the deponer.

Demandit, who of the cuntrey people steirit vp *Robert* and assitit him in this *Rebellion*? Depones, that *Gilbert Gray, Robert Mowatt, Robert Sclaitter, Baillie of Birsay, Williame Sinclare of Lye, Gilbert Grayis* sone, and his goode-sone *Gerfetter*,<sup>3</sup> wer the principallis who steirit him vp.

Demandit, quhat conference he had with *Alexander Leggatt* concerning ony directioun he brocht frome *the Erll* to his sone *Robert*? Deponis, that he rememberis not quhat conference wes betuix thame thairanent.

Demandit, yf he wes in *Birsay* when *Robert Stewart* fend Letteris to his fader with *Duncane Mitchell*, the poist? Grantis, that he wes in *Birsay* at that tyme; and that the deponer, be *Robertis* directioun and informatioun, write ane Letter, in his name, to *the Erll* his fader; quhilk Letter *Robert* rave;<sup>4</sup> and wryte over ane Letter him self. Deponis, that the contentis of the Letter written be the deponer wes, to tell *the Erll*, that *Robert* wes come to *Orknay* to tak vp his debtis; and that he wes troublit be *the Shereff*, and forseit to leave the *Toun of Kirkwall*—and that he had tane him self to *Birsay*—and that *the Shereff* had conuenit the cuntrey, and come to *Birsay* and persewit him; and had hurte ane man, and slayn ane doig in at the windois; bot he wes myndit to hald oute aganis *the Shereff*.

The deponer denyis that he knew the contentis of the Letter written be *Robert* him self to *the Erll*.

(26.) ANDRO MARTINIS *Letter to the Secretar.*

MY LORD,

SINCE your lo. examined me so sickerlie vpoune my intelligence concerning the grund of *THE REBELLIONE* begun in *ORKNAY* be *Robert Stewart* and *Putrik Halcro*, and gart me swear to be plaine, your lo. will excuse me that forzet this: Quhen *Robert* and I was in conference, on a tyme, he said, that 'Gif his father had bene willing, and vfit the counsell of vtheris, quhen he was in *Edinburghe Castle*, he might haue cumd away; for thair was men anew offerit to haue cumd or sente men with him to *Orknay*; bot he wold not cum away, becaus he durste not brek waerd.' I speirit 'How many he might haue gottin to haue cumd with him?' He ansuerit, 'Four or fyue Thowsand, giue<sup>5</sup> he had pleafit.' Bot he tauld me not quhat men thay war. Of this I thocht good to mak your lo. aduertifment, for saistie of my aithe; and hopes that your lo. will interceid for me, pat, be his Ma<sup>ties</sup> clemencie, I may be remittit for being with *Robert* in companie, at this vnhappy tyme of miserie; I beand aged and depauperat, able<sup>6</sup> to die of hungar, giue I had not gottin helpe be him in meit and drink. Bot I nevir buire airmes, maid musteris, nor watched against *HIS MA<sup>ties</sup> Lieutenant*, efter I hard of his purpose. This I referre to your lo. gud discretioun; and gif ony vther thingis fall cum to my memorie,

<sup>1</sup> Let down by a tow, or rope.  
<sup>6</sup> Lat. *habilis*.

<sup>2</sup> By.

<sup>3</sup> Robert Mowatt. See p. 299, &c.

<sup>4</sup> Tore. <sup>5</sup> If.

quhilkis ar omittit at the present, I fall aqent your lo. thairwith. He said also, that quhen they spak with *Sir James Conneill*,<sup>1</sup> that *Sir James* wiffit him selfe to be at bame, and *the Erle of Orknay* to haue bein in Orknay, to do for thame felues; the ane in the West, and the vther in the North. So, confeding in HIS MA<sup>TIES</sup> clemencie, and your lo. affectioun toward me, I rest, &c.

EDINBURGHE, in waird, the tent of October, 1614.

(27.) THE DEPOSITIONS of MARGARITE BUCHANAN, taken vp the first day of November, 1614, before *Johne Sincler of Ratter, James, Bishop of Orknay, and Johne Buchanan.*

FIRST, the said *Margarite* depones and confessis, that *Patrik Halcro* had ane coffer standing in his motheris chalmer, in Kirkwall. SECONDLIE, deponis and confessis, that, vpon the Sunday efter that *the Erle of Cathenes* come to the Yairdis in Kirkwall, the said *Patrik* sent downe to hir the key of the said coffer, and desired hir to bring vnto him the writtis and Letters whilk wer lockit vp in the same, of whilk writtis shee had ane Warrant of *the Erle of Orknay*, whereof none did knaw but him self. THIRDLIE, shee deponit and confest, that when shee had receaved the key of the said coffer, shee went and openned the same, and fand two writtis only in the same, whilk shee red presentlie, and baith of them were subscrived by the Earle of Orknay. FOURTLIE, deponit and confest, that the ane of them wes ane BAND and WARRANT for the said *Patrik*, for to take and keipe THE CASTLE OF KIRKWALL, wherfoever he might most convenientlie; allowing vnto him therefore, the double of the allowance quhilke the Constables and Keipar of the Castle had ordinarlie of before. FIFTLIE, deponit and confest, that the other writt contened the names of sic as should be associatis and assisteris vnto him in the said interprise; as namelie, *Thomas Laing, Alexander Legatt, Helias Kneland*, and vthers whose names shee can not remember. SIXTLIE, deponit, and confest, that presentlie after shee had red and considered these two Writtis, shee broght them, hir self, to the Castell, and delivered them to *Patrik Halcro* out of hir owne hand. SEVINTLIE, deponit, that when *Patrik* had red the said BAND, he gave it in like manner to *Robert Stewart* to reid; who, after that he had red it, rave<sup>2</sup> it with his handis in small peices, and trampitt it vnder his feitt. AUGHTLIE, deponit, that *Patrik Halcro* wes not content with the ryving<sup>3</sup> of it, as she perceaved by his countenance and gestur; and when shee sayed vnto Robert, 'Fye vpon yow, Sir! Why hawe yee done that? It had bene better to have keipte it!' Deponit, that baith *Robert* and *Patrik* said, 'that that BAND should not do hurte in tyme coming'—and that '*The Earle of Orknay* should not want his head for it!' NYNTLIE, Deponet, that *Patrik Halcro* was reiding the other writt, wherein the names wer contened, when *Robert* rave the Band—and that shee knawes not certanlie what became of that writt; but that, in hir iudgement, it wes riven<sup>4</sup> also.

JA. B. of Orcads, J. SINCLER of Ratter, JOHNE BUCANANE.

THEIR former Depositions were writtin be me, *Robert Stewart*, Minister at Hoy, at direction of *James B. of Orknay.* ROBERT STEWART, Minister, with my hand.

(28.) DEPOSITION of JOHN SHARPE, *servant to the Earle of Orknay.*

AT EDINBURGH, the first of November, 1614, in presence of my Lordes Chancellor, Secretar, Prefident, *Previe Seall, Theasaurar depute, Clerk of Register, and Aduocat.*

JOHNE SHARPE, *servant to the Earle of Orknay*, sworne, and demanded when he entered in seruice with the said Earle? Depones, that he entered in seruice with him in the moneth of Junij, or Julij, 1613.

Demanded, what he knowes concerning THE REBELLION in ORKNAY? Depones, that he remembers that within sex weeks after he come to *the Earle, the Earle* caused the deponer write a Me-

<sup>1</sup> *Sir James Mahoneill.* See his Trial, III. 1, &c.

<sup>2</sup> Tore.

<sup>3</sup> Tearing.

<sup>4</sup> Torn.

moriall in thir tearmes, ' Yow shall go to Orkney ; yow shall sett Takkes, and reule the countrey, as yow did before. Yow shall fend shippes to Norraway, for such thinges as yow misfer,<sup>1</sup> especiallie, for poulder.' And this Memoriall wes wrotten in *the Castle of Dunbartane*. Depones, that *Robert Stewart*, the Earles base sone, wes not in Dunbartane when this Memoriall wes wrotten, but came there within xiiij<sup>th</sup> dayes thereafter. Depones, that *the Earle* patt this Memoriall in his pocquett ; and the deponer neuer saw it thereafter. And knows not what come of it. And sayes, that this Memoriall wes wrotten by my Lordes own dyteing.<sup>2</sup>

Depones, that thereafter, when my lord wes in *the Castle of Edinburgh*, the deponer, by my lordes dyteing, wrote a new Memorandum, agreeable in substance to the former ; with this addition, ' Yow shall put furth of the countrey of Orknay, suche as hes no thing to do in it.'

Demanded, yf he hard ony conference betuix *the Earle* and *Robert* anent THE REBELLIOUN IN ORKNAY ? Depones, that he hes hard *the Earle* findrye tymes invey againes *Roberte*, for geveing over the Houfe of Kirkwall to *the Bischope of Orknay*, calling him ' a feeble beast !' And he hard *Robert* say, ' Yf he had the Houfe againe, he wald keep it better !' And *the Earle* answered, that ' he trowed he wald do no better.' And he hes findrie tymes hard *the Earle* desyre *Robert* to ' prove a prettie<sup>3</sup> manne yf the Houfe come againe in his handis ; ffor it wald stand him to his lyff !'

Depones, that after *Robert* went to Orknay, the deponer wrotte a new Memorandum, by *the Earles* dytment, to *Robert*, bidding him choose new Takmen,<sup>4</sup> and tak vp his restes.<sup>5</sup> And the remanent of this Memorandum, in substance, wes agreeable to the former Memorandums. And this Memorandum wes wrotten in *the Castle of Edinburgh*.

Thereafter, when *Robert* wes gone to Orknay, the deponer, by *the Earles* dyteing, wrote a Missive from *the Earle* to his sone *Robert*, oute of *the Castle of Edinburgh*, willing him to follow his Memoriall, in all thinges. And depones, that *the Earle* wold not subscryue this Letter, for fear of interception by the way ; and the direction, on the bak of the Letter, wes in thir wordes—' *For Robert*.'

Depones, there wes a vther Letter written by the deponer for *the Earle*, in the tyme of his beeing in *Edinburgh Castle*, bearing, ' Yow shall speak the countrey menne, and try yf thay will tak your pairte ; and yf the countrey men will tak your pairte, yow shall reiteir your self to Caithnes, and stay there, and proceede no thing whill I fend yow worde.' And depones, that *Duncane Mitchell*, the Poast, caryed the one of thir Letteres, and *Patrik Murray* caryed the other Letter : And that this last Letter wes not subscryued, wanted date, and had direction one the bak, ' *For Robert*.' And all thir Letters and Memorandums were dyted by my Lord him selue.

Denyes that euer he hade conference or speatche with *Robert* anent the REBELLIOUN. Depones, that *the Earle* had copies of all the Memorandums and Letters wrotten be him, and keepd thame in his pocquett.

Depones, that *Duncane Mitchell*, the Poast, broght a Letter from *Robert* oute of Orknay to *the Earle*, beareing, ' It will please your lo. to tell *the Counsell* in my name, that I am come to Orknay, and am going thorough the countrey to tak vp your lo. debtes ; and that I wes perfewed by *the Shiref*, and wes constrained, for saulfetye of my lyff, to tak *the Place of Birsay* for my refudge.' The deponer is of oppinion, that this Letter wes wrotten for an excuse of *Robertes* proceedings.

Depones, that *the Earle* caused wrote a Letter to *Robert*, in the deponeres owne name, showeing *Robert*, that ' yf he come in this countrey, he wold be hanged.'

Denyes that he hard ony speatche betuix *the Earle* and *Mitchell*, the Poast, when he broght *Robertis* Letteres to him.

Demanded, who wer present, at the wroiteing of *the Earles* last Letteres fend with *Mitchell*, the

<sup>1</sup> Want ; stand in need of.      <sup>2</sup> Enditing ; dictation.      <sup>3</sup> Gallant ; brave.      <sup>4</sup> That is, to recall the whole of the Leases granted by the Bishop or other administrators under the new regime ; and to give the Lands to new tenants, who would be subservient to the Earl.      <sup>5</sup> Arrears of rent.

Poast? Depones, that none were present but *the Earle* and the deponer. And that *Mitchell*, the Poast, stooed by but hard nothing.

Depones, that *Mitchell*, the Poast, tauld the deponar, that *Robert* had taken BIRSAV; and that one *Mudye* come from Kirkwall to Birsav with *Robert*; and that one *Gray* assisted *Robert* in keeping of the House; and that *the Shiref* come and perfewed the Howse; and that there was shooteing in and shooteing oute; and that one *Downy Lyell* wes hurt, and one *Doig* slayne.

Depones fordar, that after *the Guard* come to feek the deponer, *the Earle* derected the deponer to Orknay; and bad him awaite vpon his sone, and do as he wold command him. And the deponer, asking of *the Earle*, yf he wold wrote a Letter with him, *the Earle* answered, that 'he wold not wrotte, for he feared the deponer wold be taken by the way;' and he saide forder to the deponer, that *Robert* wold not let him want.

JOHN SHARPE.

(29.) DEPOSITION of ROBERT STEWART, 'base sone' to the Earl of Orkney.

AT EDINBURGH, the xiiij day of November, 1614. In presence of my Lord Chancellour, the Erll of Caithnes, the Lordis Secretair, Preue Seale, Thesaurair depute, and Aduocat.

ROBERT STEWART, base sone to Patrik Erll of Orknay, humblit on his knees, and deiplie sworne; and demandit, vpoun quhat occasioun, and by whose instigatioun he maid THE REBELLION IN ORKNAY? Deponis, that he being in grite neede and necessitie, and vnable to keepe this Toun for dett, he past to Orknay to tak vp some of his faderis auld restis, quhairwith he thocht to mak his furniffing oute of this cuntrey. Depones, that his fader haueing consauet ane grite offence aganis him, becaus that he, at the first taking of *the Castell of Kirkwall*, renderit the same bak agane to *the Bischop*; his fader, for that caus, wald skairlie kenne<sup>1</sup> him, or gif him ony maintenance. And deponis, that his fader directit him to Orknay, with Commiffioun to mell<sup>2</sup> with his restis, and to intromett with his goodis in the cuntrey; and that his fader aduifit and counfallit him to repair the ourfight and wrang he had committit by deliuering of the Castell to *the Bischop*; and if by ony meanes he could come be this Castell, to tak it agane. And deponis, that his fader gaif him some Memoriallis, in wryte, quilkis wer writtin be the depouner him self, to his faderis direction; and the Memoriallis boore, that yf *the Castell* come in his handis, he sould fend a Schip to *Noroway*, for poulder, bullett, and fuche other necessar prouisioun as wer fitte for keeping of the House.

Grantis, that in this tyme of his being in Orknay, he ressaunt tua or three Letteris from his fader; whair of one wes delyuerit to the depouner be *Patrik Murray*, the contentis whair of wes, that he wes informit *the House of Birsav* wes tane; and he aduifit the depouner, yf he wes not able to keepe the House, that he sould reteir him self with *Patrik Halcro* to Caithnes.

Grantis, that he ressaunt ane other Letter from his fader, fend with *Duncane Mitchell*, the Poist, and that the substiance of that Letter wes, for taking and keeping of the Houffes, yf the depouner could come be thame.

Grantis, that his fader, findrie tymes, said to him, that he wald eschapp oute of warde, and come to Orknay.

Deponis, that he acquaintit not *Patrik Halcro* with his intention to tak *the Castell*, quhill *the Shereff* perfewit the depouner at *Birsav*. And grantis, that at that tyme he commvnicat to *Patrik Halcro* the contentis of his faderis Letter fend to him with *Duncane Mitchell*, the Poist; and that *Patrik* willinglie yeildit to joyne with him in this REBELLION.

Denyis, that *Patrik Halcro* ressaunt any Letteris fra the depouneris fader.

Deponis, that his fader vsed all the meenis he could to haif gottin money, to haif fend with the depouner to Orknay, to haif furneifit him in thingis necessar for this interprise; bot he could gett nane.

Grantis, that he write to his fader with *Duncane Mitchell*, the Poist, schaweing how the Schereff

<sup>1</sup> Recognise; countenance.

<sup>2</sup> Literally, meddle; uplift the arrears of rent, &c.

had procedit aganis him in perfute of him at *Birfay*, and quhat had fallen oute amang thame in that actioun.

Demandit, what hoipis he had of affistane frome ony cuntrey people heir? Deponis, he had no hoipis of affistane from this cuntrey people.

Deponis, that his fader verie oft, in publict audience, wald invey aganis the depouner, and quarrell him for randeriug of *the Castell to the Bischop*.  
R. STEWART.

(30.) DEPOSITION of PATRICK HALCRO.

PATRIK HALCRO solemnelie sworne and demandit, quhat he knawis concerning the beginning of THE REBELLIOUN IN ORKNAY? Deponis, that in Somer, bigane a year, the depouner past to *Dunbartane* to visite *the Erle of Orknay*; and that *the Erle*, in a priuat conference betuix thame twa, askit of the depouner, 'Yff, be ony meanes, he could come be his Houffis agane in Orknay?' To whome the depouner anfuert, 'Your lo. hes been over lang in starting. Your lo. had done weele, yf yow had causit keepe thame better, quhen your lo. had thame!' And the Erll replyit, 'That can not now be mendit. Is it not yitt possible to gett the Houffis agane?' And the depouner anfuert, 'It wilbe hard for your lo. to gett that done, vnles your lo. haif affuirance of the cuntrey people to stand be yow and affist yow.' And then the Erll said, 'Thay ar a companie of fals people, I can not lippin<sup>1</sup> in one of thame; bot I mynd to fend my sone thair, quha wilbe your pairt. Will yow affist and tak pairt with my sone?' And the depouner at the first planelie refusit to follow his sone in that earand, saying, 'he wes over feble a Capitane to follow, in fuche a purpos!' Bot the Erle haveing delt forder with him, to follow his sone at his comeing to Orknay, the depouner, in end, promeist to follow him, and to tak parte with him at his comeing to Orknay.

Deponis, that after *Robert* come to Orknay, he shew to the depouner, in *Birfay*, the Letter writtin be *the Erll* his fader to him; willing him, yf he wes not able to keepe the Houfe of *Birfay*, to retein him with the depouner to *Caithnes*. And grantis, that at that same tyme he promeist his affistane to *Robert*, and to tak pairt with him.

Grantis, that according to ane other Memoriall, directit be *the Erll* to *Robert*, for sending to *Noroway* for poulder, they send ane ship to *Noroway* for poulder, bot the Castell was randerit or the poulder come home: And the depounair heiris that threescoir barrellis of this poulder come in *the Erll of Cathnis* handis.

Deponis, that at the first playing of the cannoun, *Robert* being in his bed, the depouner come to him, and askit of him 'quhy he wes lyand in his bed, feing the cannoun had dischargit sax schoit?' And he demandit of *Robert*, 'How he thocht this mater wald left?' And tauld him, 'he wald not be able to hald oute. It wer gude for him to tak him to the Sea!' To whome *Robert* anfuert, 'I will not tak me to the Sea; my fader will then say, I haif feblie gevin ouer his Houfe! I will rather hald oute quhill the Houfe be dung downe abone my heade, or<sup>2</sup> I rander my self to *the Erll of Caithnes*, or yitt to *the Counsell*, to be tortourit, quhill<sup>3</sup> I confes aganis my fader, the thing that may be his wrack and myne!'

Deponis, that *Robert* said to the depouner, that 'his fader wald come to the cuntrey, and thay wer an expectation that *the Erll* wald brek warde.'  
P. HALCRO.

[*Mr Alexander Coluile, Justice-Depute.*]

Resetting of Egyptians—'Johnnie Faw.'

Jan. 25.—WILLIAME AUCHTERLONY of Cairny.

Dilaitit for contraveniug the Actis of Parliament in resetting of Egiptianis;

<sup>1</sup> Rely; trust.

<sup>2</sup> Before; ere.

<sup>3</sup> Until.



speciallie of Johnne Fall,<sup>1</sup> ane notorious Egiptian and Chiftane of that vnhappy foirt<sup>2</sup> of people.

Mr James Oliphant, Aduocat, substitute to Sir Williame Oliphant, his father, Aduocat to our souerane lord, product the Letteris deulie execute, &c.—Compeirit Daid Lyndsay of Balgaweis, *excusatorio nomine* for the said Williame, and declairit that the said Williame was lyand bedfast and deidlie feik, nocht habil to travell to keip this dyet, and offerit him selff cautioun for the said Williame his compeirance, befor my Lord Justice, the thrid day of the nixt Justice-air of the Sheref dome quhairin he duellis, or sone, vpon fyftene dayis wairning.—Quhilk excuse the Justice, with consent of the perfewar, admittit, &c.

### Rebellion in Orkney—Tyranny and Oppression—High Treason, &c.

[PATRICK EARL OF ORKNEY, the infatuated and ambitious individual, whose guilty life at length terminated ignominiously upon the scaffold, was nearly related to King James VI., and at one period stood high in favour with his prince. As the particulars of the crimes for which his life was forfeited to the offended Laws of his country are rehearsed in his former Trial,<sup>3</sup> and in that of his natural son, ROBERT STEWART,<sup>4</sup> reference is made to these Cases, and to the illustrative Papers appended to them. The various Histories of Scotland may also be consulted, in which the fact of THE REBELLION IN ORKNEY is very briefly noticed, owing to the want of proper materials.

Although his crimes were of a very remarkable description, and indicative of a cruel and blood-thirsty disposition, it must not be supposed that this Nobleman was a rude and unpolished barbarian, wholly unskilled in the modes of civilized life. On the contrary, much of his earlier life had been spent at Court; and his daring crimes and overweening ambition alone prevented him from rising to the highest eminence, as a Courtier. Like many other unlucky Courtiers of that age, he seems to have been obscured by the prevailing star of that corrupt and worthless favourite, Kerr or Carr, Earl of Somerset, who secretly undermined him, and embraced every opportunity of blasting his character and fame, in the King's estimation. Having thus fallen into disgrace at Court, the Earl of Orkney appears to have commenced a reckless warfare against all civilized society, and to have formed the mad project of establishing himself as an independent and despotic Prince, in his Island Kingdoms of Orkney and Shetland; and in due time he had also resolved upon entirely shaking off the yoke of allegiance to the Crown of Scotland.

Having retired to Orkney, he committed such excesses, that, within a very few years after the accession of King James VI. to the English throne, the oppressed people of Orkney presented numerous supplications for redress, and loudly complained of their intolerable grievances. These complaints were directed to the Privy Council, (who appear to have been unable to afford any formidable check to his despotic cruelty,) as well as to the King himself. Sharp remonstrances were at first used, but with little effect; and at length the Earl's oppressions became so formidable in their character and degree, that the Lord Advocate found it necessary, in order to quiet the clamours of the people, to bring him to public Trial. Still, however, it appears to have been thought possible that he might be reclaimed; and the King used every means to delay matters coming to fatal extremities. Contrary to general expectation, the effects of long imprisonment seemed only to aggravate the rancour of his cruel disposition. He employed all his time in meditating projects for his escape from confinement, so that he might wrest

<sup>1</sup> The celebrated Johnnie 'Faw.'    <sup>2</sup> Class; society.    <sup>3</sup> Aug. 2, 1610, II. 81.    <sup>4</sup> Jan. 5, 1615, III. 273.

his Castles out of the hands of the constituted authorities; and then boldly to defy the King and the Privy Council of Scotland, after having declared his independence of the kingdom of Great Britain.

The most effectual check which was given to these mad projects, was the sequestration of his revenues, and the withholding from the Earl all supplies, excepting such as were necessary for his bare maintenance, as a state prisoner. This rigorous step, however, appears to have been carried too far, and to have suggested to the Earl the idea of sending his 'base son,' Robert Stewart, to Orkney; where, after he had uplifted his 'bygone rents,' &c., he might secretly convey a considerable portion of them to him, to enable him to bribe his guards. When thus provided, he directed his son to use every endeavour to obtain possession of the Castle of Kirkwall, and of the other strengths formerly belonging to the Earl; leaving it to himself to effect his escape from Dumbarton Castle, to which he had been conveyed for greater security. So jealous were the Privy Council of the machinations of this restless and ambitious Nobleman, that after long petitioning, and causing him to endure great privations, it was not until Jan. 28, 1614, that they allowed him, out of his large revenues, the paltry aliment of '4 lib. Scotts per diem!'<sup>1</sup>

Robert Stewart did, no doubt, succeed in his rash attempt; but in that he was mainly favoured by the accidental circumstance of the high unpopularity of the Sheriff; who, on account of his oppressive conduct and cruel exactions, was detested by the inhabitants so deeply, that, in order to get rid of his thralldom, they even consented to join 'the Bastard' in his treasonable schemes, judging, perhaps, that so long an imprisonment, and such severe discipline in the school of adversity, must necessarily have changed the temper and habits of their natural and rightful lord, whose return they were led by Robert confidently to expect. This feeling was very strongly marked in the 'Band of Association, subscribed by the Rebellis in Orknay,' which is given in the Appendix. In that interesting document, 'the frequent entrantis of extraniers,'<sup>2</sup> 'the corruption of the Lawes, partialitie of Judges, the greid of officeris, and oppreffion of Magiftratis,' are dwelt upon as intolerable grievances.

The expedition of GEORGE, *fifth* EARL OF CAITHNESS, the King's Lieutenant, eventually succeeded; and the ringleaders in the Rebellion, as has already been seen, were executed by that person, who, it will be remembered, had formerly rendered himself infamous by his treacherously delivering up his kinsman, *John Lord Maxwell*, to government, after having lured him to Castle-Sinclair, under the mask of friendship and protection.<sup>3</sup> The reader will find, from Documents preserved in the Appendix, that the Earl of Caithness intruded himself into this Commission, by eagerly volunteering his services to the Privy Council, so as, if possible, to ingratiate himself with his Sovereign, by quelling a Rebellion which had excited the observation and alarm even of the Court of England.<sup>4</sup> It is not a little interesting, among all his specious pretexts, to detect and expose the secret springs which appear to have actuated that selfish and cold-blooded Nobleman in undertaking so repulsive an expedition as that against the Rebels in Orkney. Under the mask of patriotism, zeal for his Majesty's honour, and his pretended desire for restoring the peace of the country, it is not difficult to discover the basest motives of hereditary and personal revenge and deadly feud against the fallen Earl of Orkney; as well as a secret design to procure the whole, or at least, a considerable portion, of his extensive territories, as a reward for his patriotic services. But a little research enables us to perceive, that a rooted hatred had long existed between the Earls of Caithness and Orkney, which had frequently broken out into open strife. As an extraordinary instance of the spirit of wanton cruelty and mischief in which these hostilities were

<sup>1</sup> *Balfour's Annals*, II. 50.      <sup>2</sup> The natives of Orkney, having long been accustomed to be judged by the laws of Denmark, were peculiarly offended at the introduction of *foreign laws*, judges, and settlers in their country, which was the policy too suddenly adopted by the Sheriff and other officers to *civilize* the people. So strongly did they resent these and the other aggressions of the *foreigners*, that they gladly forwarded the Bastard's views for the expulsion of their hated taskmasters.      <sup>3</sup> See this Collection, Vol. III., 33, &c. *Gordon's Hist. of Sutherland*, p. 301.

<sup>4</sup> THE EARL OF CAITHNESS got a pension of a thousand crowns for his services, and was, shortly after his return, made one of the Lords of the Privy Council of Scotland, and was in a fair way to realize all the objects of his ambition, had not his overreaching spirit led him into a train of iniquities which terminated in the ruin of himself and his family, which for many generations did not recover this shock.

carried on by the former, a quaint, but striking passage may be cited, from the graphic pen of Sir Robert Gordon;<sup>1</sup> who states, that in the year 1608, some of the Earl of Orkney's servants had been forced to land in the country of Caithness, 'by a contrarie wind and vehement storme of weather. Firft, *the Earle of Catteynes* maid them drunk; then, in a mocking iest, he caused sheave the one fyd of their beards and one fyd of their heads; last of all, he conftrayned them to tak their weshell, and to goe to sea in that stormie tempest! The poor men, feareing his farther crueltie, did choyle rather to committ themselves to the mercie of the fenfeles elements and rageing waves of the sea, then abyd his furie. So they entered the stormie Seas of *Pentlay-Firth* (a fearfull and dangerous arme of Sea between *Catteynes* and *Orknay*), whence they escaped the furie thereof, by the providence and affistance of God, who had compassion on them, in this lamentable and desperat case, and directed ther course; so that they landed faiflie in *Orknay*. This affront and indignitie was highlie taken (not without just reason) by *the Earle of Orknay*, who complained therof to THE KING and his *Counsell*. His MAIESTIE did write to *the Councell of Scotland* to puniſh *the Earle of Catteynes* severlie, after dew tryall, as having committed a fact against his autoritie. But when both *the Earles of Catteynes* and *Orknay* came to Edinburghe, readie to informe one against another, they aggred all their privatt quarrells, by the mediation of freinds, *leaft they should reveile too much of either's doings!* So this controverſie was past over with silence; and some acknowledgement was maid by *the Earle of Catteynes* to *the Earle of Orknay*, as a satisfaction for abusing his ſervants, &c.

The intriguing Earl of Caithness at length brought ruin upon himself and his family, by endeavouring 'to mak the Lord Forbes wearie of his landis in Catteynes.' This benevolent purpose he tried to effect by constant oppression of his tenants and servants, in virtue of his office of Sheriffship, which he had obtained from the Earl of Huntly, on his marriage with Lady Jean Gordon, his sister. He secretly caused incendiaries burn all the corns standing in the corn yards of Sansett, in November 1615; and, to remove suspicion from himself, industriously rumoured abroad, that the Fire-raising had been done by Mackay's tenants, with whom the Forbeses were then at feud. The matter, however, having soon been disclosed by the actual perpetrators, the Earl was closely prosecuted; and he only obtained his Remission<sup>2</sup> after a long interval, 1st, By engaging to satisfy his numerous creditors; 2dly, by resigning into the King's hands the Sheriffship and Justiciary of Caithness; 3dly, by engaging to present to justice the malefactors whom he had employed to burn the corns; and, lastly, to resign to the Bishop of Caithness the House of Strabister, with certain Feu-lands of that Bishopric, amounting to the yearly value of 2000 merkis Scots, in augmentation of the Bishop's scanty revenues. His son, *Lord Berriedale*, was imprisoned for these debts for above five years; but the Earl himself obtained a '*superse-dere*,' or protection from legal 'diligence,' from the Privy Council. The creditors, however, 'apprized,' or sequestrated, all his lands. He was denounced Rebel in 1621, and his own son, Lord Berriedale, applied for and obtained a Commission to pursue his father! After five years' imprisonment, he was released for that purpose, on finding due caution to return to ward after having executed his Commission. In September 1623, Lord Berriedale and Sir Robert Gordon, the King's Commissioners, having taken the field against the Earl of Caithness, he precipitately fled to Orkney, intending to go thence to Norway and Denmark. Castle Sinclair, and his other Castles of Aerigell and Keasse, were immediately taken possession of in the King's name; and the Commissioners succeeded in pacifying the country of Caithness.

George, *fifth* Earl of Caithness, after having passed a miserable life, died, a victim of disappointed ambition, and in comparative obscurity, in Caithness, in the month of February, 1643, at the advanced age of 78.

<sup>1</sup> *Hist. of the Family of Sutherland*, p. 258.    <sup>2</sup> The author of the *History of King James the Sixth*, p. 391, says he became in the King's will, who decreed thus: to pay to the party offended 2000 merks; to renounce his pension of 1000 crowns; to renounce his Sheriffship; and that he 'ould caus the Bishop be answerit of his spirituall dewtie ther; and could redres all quarrels and faultis to peax.'

But to return from this digression, the only person among the Rebels, whose life was saved, was PATRICK HALCRO. He had been instrumental in bringing about a surrender of the Castle of Kirkwall, and had proved the means of preventing much bloodshed, which otherwise must have been occasioned, had the Rebels persisted in their Treason.<sup>1</sup> The advisers of the Crown, therefore, recommended him as a fit object of mercy; and more especially on account of the terms which he had proposed to the King's Lieutenant, at the time of the surrender.

It has formerly been observed, in reference to THE EARL OF ORKNEY, that he had originally been in high favour with the King; and that, in point of exterior, he was a person of courtly manners and polished address. So anxious was the King for his release, that certain Lords of the Secret Council were empowered to offer him the keepership and profits of either of the Royal Palaces of Holyroodhouse, Linlithgow, Stirling, or Falkland, with Ten Thousand pounds of rent, on condition that he should renounce all right to the Earldom of Orkney, and resign the same in the King's hands. But so infatuated and blindly perverse was the Earl, and so intent was he on accomplishing the objects of his visionary ambition, that he absolutely refused these conditions; having, previously to that time, instructed his son to hazard the mad attempt for which they both forfeited their lives. An anonymous author,<sup>2</sup> already quoted, has given a most faithful and remarkable portrait of the princely habits and lavish expenditure of *Patrick Earl of Orkney*, when he resided in his own territories, surrounded by his vassals and dependents. His sketch cannot fail to be generally interesting. "He had a princelie and royall renew; and indeid behavit himself ther with sik foueraintie, and geve<sup>3</sup> I durst say the playne veritie, rather tyranicallie, be the shaddow of Dence Lawis,<sup>4</sup> differēt and more rigorous nor<sup>5</sup> the Municipall or Criminall Lawis of the rest of Scotland; wherby, no man of rent or purse mycht enjoy his propertie in Orknay, without his speciall favour; and the same deir boght. Wherby it followit, that fitchit and forgeit faultis was so devyfit aganis manie of them, that they wer compellit, be emprefonment and small rewaird, to resigne ther heritable tytlis unto him; and geve he had a steve<sup>6</sup> purse and no rent, then was fum cryme devyfit aganis him, wherby he was compellit to lose ather half or haill therof, geve not lyff and all befyd! And his pomp was so great ther, as he went never from his Castell to the Kirk, nor abrod utherwayis, without the convoy of fiftie muscaters and uthir gentlemen of convoy and gaird. And siclyk, before denner and supper, ther wer thrie trumpeters that foundit still till the meat of the furst service was fet at table; and siclyk, at the second service; and consequentlie, efter the grace. He had also his ships directit to the Sea, to intercep Pirats, and collect tribut of uncouth fishers,<sup>7</sup> that came yearlie to these Seyis. Wherby he maid sik collectionn of gret gunnis and uther weapons for weare, as no Hous, Palice, or Castell, yea all in Scotland wer not furneift with the lyk; and yit all this provisioun was spulzeit, in his awen tyme, be the violent hand of the Erle of Caithnes."

It only remains to the Editor to state, that this haughty Earl, according to *Archbishop Spotswood*,<sup>8</sup> 'took his Sentence impatiently;' on which account, 'some Preachers were desired to confer with him, and to dispose his minde towards death. But they, finding him irresolute, intreated for a delay of the Execution; which was granted to the sixth day of February. At which time, he was brought unto the Scaffold, guarded by the Magistrates of the City, and in the sight of many people beheaded.' *Calderwood*<sup>9</sup> gives a fuller account of his death, in these terms. (Feb. 1, 1615.) 'PATRIK EARLE OF ORKNEY was arraigned in the Tolbooth of Edinburgh; and be ane Inqueit of the Nobles and Barrones, was convict of Treafone, for the late REBELLION IN ORKNAY. It was thought, that if he had not,

<sup>1</sup> *Sir Robert Gordon* says, 'This Patrik Hacro was afterward in great favour with Earle George (Caithnes), and well interteyned by him for this service.—*Hist. of Sutherland*, p. 301.      <sup>2</sup> 'THE HISTORIE AND LIFE OF KING JAMES THE SEXT,' printed for the *Bannatyne Club*, 1825, Quarto, p. 386.      <sup>3</sup> If.      <sup>4</sup> Orkney was then governed by Danish Law, which was most iniquitously applied by the Earl and his deputies.      <sup>5</sup> Than.

<sup>6</sup> Stiff; well fed.      <sup>7</sup> Fishers who came from Holland and other foreign countries.      <sup>8</sup> *Spotswood's Hist.* Fol. Lond. 1668, p. 520.      <sup>9</sup> *Cald. MS. Church Hist.* Advocate's Library.

20 dayes before, confessed, that he was the author of the said Rebellion, and come in the King's Will for the same, that hardly he could have been convicted, be any Law. The wifer and elder fort of the Nobilitie with-drew themselves from his Affise. He had sent to the Court to obtaine favour; but no appearance of returning ane answere. The Ministers, finding him soe ignorant, that he could skarfe rehearse the Lord's prayer, intreated the Counsell to delay his Executione some few dayes, till he were better informed, and received the Lord's Supper. Their Petitione was affistid with the requiest of some Noblemen, and granted. Soe he communicate upon the Lord's day, the 5th of February; and was beheaded, at the Market-crosse of Edinburgh, upon Monday the 6 of Februar; when Sir Robert Ker, Earle of Rochester, was decourted. The King laid the blame of his death on him; but late, as his custome was, when matters was past remedie! It was observed that this moneth is fatall to the King's blood.'

The reader is once more referred, for details, to the Appendix of ILLUSTRATIVE DOCUMENTS annexed to the Trial of ROBERT STEWART and others, Jan. 5, 1615; and to the Papers annexed to the present Trial.]

[*Dominus Willielmus Heart de Prestoun, miles Jusficiarius.*]

ASSESSOURIS TO THE JUSTICE.

ALEX <sup>a</sup> ERLE OF DUNFERMELING, Chancellor,	SIR JOHNNE COKBURNE of Ormeftoun,
THOMAS LORD OF BYNNING, Secretar,	SIR ALEXANDER HAY of Quhitburgh,
MR JOHNNE PRESTOUN of Pennycuik, President,	SIR WILLIAME LEVINGSTOUN of Kilfithe,
SIR GEDIONE MURRAY of Elibank, Thefaurer-depute,	SIR ALEXANDER DRUMMOND of Meidhope;
SIR RICHARD COKBURNE of Clerkingtoun,	all SENATOURIS OF THE COLLEGE OF JUSTICE.

Feb. 1.—PATRIK ERLE of Orknay, &c.

Dilaitit, accuset, and perfewit be Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our souerane lord for his hienes intereis, of the feuerall crymes of Treafone and Lefe-Maieftie, at lenth specifit and set down in the Dittay following.

DITTAY *against the Earl of Orkney.*

PATRIK ERLE OF ORKNAY, &c. 3e ar Indytit and accuset, fforfamekill as, certane and sure informatioun being gevin to our souerane lord, the Kingis most excellent Maieftie, and to pe Lordis of his hienes Previe Counfall of this Kingdome, of the manyfold Iniureis, Tyranneis, and haynous Oppressiones, practizet be 3ow vpon dyuerse his Maiesteis peceable and guid subiectis, duelland within the boundis of Orknay and 3eitland: Lyk as, for the better stay of the quhilkis, 3our former Tirranie and Oppressioun fra haifing forder course, and for the mair exact and substentious tryell of 3our giltines pairof, 3e, be his Maiesteis speciall directioun, being committit to waird, within the Castell of Dumbarten, to haif remanit pairin, quhill ordour had bene tane with 3ow, as appertenit: IT is of verritie, that 3e, vpone occasioun of the restrante of 3our former libertie, freitting in 3our awin mynd pairat, nocht only during the tyme of 3our wairding, devyset all indirect and vnlawful meanis and moyane for 3our brek and escaipe furth of pe said waird, albeit skarrit and hindreit, throw the fidelitie of 3our keiperis fra doing pairof; bot lykwayis, maist tressoneabillie and vndewtfullie schaikand af 3our allegiance and dew obedience to our said souerane lord,

to quhais bountiefull clemencie ze war fa gritlie bund, ze maift treffonabilie plottit, devyfet, and concludit the lait treffonabil Rebellioun, Vproir, and Infur-rectioun, profecute and followit furth be zour devyfe and directioun within the said cuntrie of Orknay; in fuafar as vmq<sup>le</sup> Robert Stewart, zour bafe sone, eftir mony thraitningis and minatorie speiches vtterit be zow aganis him, for his simplicitie in randerig and overgeving of his Maieftis Castell of Kirkwall to James Bischope of Orknay, quha than had Commiffioun of his Maieftie to command all Castellis, Houffis, and strenthis within the boundis of Orknay and Zeitland, and quha, be vertew of the fame Commiffioun, acqyret poffeffioun of the said Castell of Kirkwall and remanent Houffis and Palices within the bounds aboue writtin: AS ALSO, eftir þe said Robert his reconfiliatioun with zow agane, vpone condition that he fould vndertak quhatfoeur desperat courfe ze fould command him to follow, off zour speciall caufeing, fending, hounding out, command, counfell, devyfe, and only directioun, quhome ze alfo furneift with perticuler iniunctiones, fet doun be zow in writ, how he fould carie and behave him selff in that zour treffonabil intendit interpryfe, he, in the moneth of Maij, or þairby, laft-bypaft, pafte furth of þir pairtis to þe cuntrie of Orknay, and þair, haifing forgad-derit with Patrik Halcro, quha alfo was speciallie imployit and directit be zow, to aid and affift him in that vnhappie buffines, and to quhome ze gaif ane securitie, in writ, of certane landis, rowmes, and fteidingis, vpone condition that he fould tak pairt with the said Robert, zour sone, þairintill: FIRST, accoirding to zour directioun with the affiftance of vmq<sup>le</sup> Thomas Blak, Archibald Murray, Andro Mairtene, Thomas Layng, Alexander Legget, and dyuerfe vtheris þair rebellious affociatis, the Houfe and Place of Birsay was treffonabilie furpryfet and tane in be thame, &c.<sup>1</sup> THE making of the quhilk treffonabil Vproir and Rebellioun within the said cuntrie of Orknay; the Treffonabil Surpryfeing and taking in of the said Place of Birsay, Place of the Zairdis, Castell of Kirkwall, Kirk and Steiple pairof, and remanent his Maieftis Houffis within þe said cuntrie of Orknay, keiping and halding of the famyn, in maner foirlaid, and haill treffonable practizes following þairupoune, war haillilie plottit, devyfet, forget, and concludit be zow, and the famyn war maift treffonabilie put in executioun be the said vmq<sup>le</sup> Robert, zour bafe sone, and his rebellious companie; off zour speciall caufeing, fending, hounding out, airt, pairt-taking, counfall, devyfe, and only directioun: LYK AS, dyuerfe Letteris and meffages pafte betuix zow and þe said Robert, zour sone, eftir zour treffonabil taking of þe said Place of Birsay, incurrageing him þairby to keip the saidis Houffis, and to follow furth þe rest of your iniunctiones gevin to him in that zour treffonable interpryfe: LYK AS, þe said vmq<sup>le</sup> Robert,

<sup>1</sup> Here the whole particulars of the treasonable transactions detailed in Robert Stewart's Trial are rehearsed, which it is unnecessary to repeat in this place. *Vid.* Jan. 5, 1615.

your sone, and dyuerse vtheris his associatis, being examinat vpoun þe verritie of þe premisses, in presens of the Lordis of his Maiesteis Previe Counfall, be þair Depositiones, hes grantit and confessit, that þe said Rebellioun was first intendit<sup>1</sup> be you, and prosecute and followit furth be your speciall directioun and command, gevin to the said Robert, your sone, and Patrik Halcro, to aid and assist him þairintill: AND siclyk, be the Depositiones of James Lyoun, Johnne Scherp, Duncane Mitchell, the said Patrik Halcro, and dyuerse vtheris persones examinat in that matter, your giltines of the said Rebellioun is cleirly verifeit and provin: LYK AS, the said vmq<sup>le</sup> Robert, your sone, the day that he was accuset and persewit for the tressonabill crymes aboue writtin, befor he was presentit vponne pannell, being re-examinat, of new, in presens of dyuerse Lordis of his Maiesteis Previe Counfall, nocht only maist constantlie abaid at all his former Depositiones maid be him, concerning that Rebellioun, bot also eikit<sup>2</sup> þairto, that ze gaif to him selff ane perticuler Warrant, in writt, to pas to the said interpryse, and to recover the said Castell agane vnder his power; as also, that ze delyuerit to the said Patrik Halcro ane securitie, in writt, of certane landis and rowmes, vponne conditioun that he sould interpryse the recoverie of the said Castell, and assist Robert þairintill: Quhilkis Confessiones and Declarationes was also ratifeit and renewit be the said Robert, vponne pannell, in presens of the Justice and Assysouris afoir his Convictioun, and vponne the scaffold, in presens of the hail people, immediatlie befor his executioun. LYK AS, the said Robert, your sone, and his associatis, was convict and execut to the daith, for the hail tressonable crymes aboue specifit, as done and committit of your speciall causeing, counsell, and directioun; as the proces of þair convictioun, heirwith producet, beiris. AND FINALLIE, your lordschipis selff being presentit, vponne the tuelff day of Januar last, in presens of dyuerse Lordis of his Maiesteis maist honourabill Previe Counfall of this kingdome, ze þair, be your Deposition, subscryuit with your hand, acknowlegit and confessit the geving of the directioun be you to your vmq<sup>le</sup> sone Robert, and vtheris his associatis, for þe surpryseing, taking, and detening of the said Castell of Kirkwall, craveing God and his Maiesties pardoun for that your offence, and in all humilitie and submissioun offerit your selff in his Maiesteis Will for þe samyn: As your Deposition, heirwith producet, mair cleirly testifeis: QUHAIRIN, ze, as the principall devyser, fortifiear, and steirar vp of þe said vmq<sup>le</sup> Robert, your sone, to the practizeing of the former Rebellioun, hes committit oppin and manifest Tressone aganis our souerane lord, the Kingis most sacred Maiestie, and his royall authoritie: AND ze ar airt, part, red, and counsalour of the hail tressonabill practizes aboue writtin: ffor the quhilk, ze aucht

<sup>1</sup> Contrived; purposed; set on foot.

<sup>2</sup> Added.

and fould be demanit<sup>1</sup> and puneift as ane *Tratour*; to the terrour and example of vtheris to abstene fra the lyk heireftir.

*PERSEWAR*, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord, for his hienes intereis.

*PRELOCUTOURIS* in defence,

Mr Alexander King, Mr Thomas Nicolfoun, Mr Alexander Peiblis, James King, Aduocattis.

Mr Alexander King, Aduocat, productet ane *WARRANT* of the Lordis of *Secret Counsell*, for himself and the remanent prelocutouris, to compeir this day, in defence of the Erle of Orknay, for the crymes contenit in his *Dittay*.—The foirlaidis *ASSESSOURIS*, nominat to concur with the Justice in this proces, war fuorne: Aganis quhome na oppositioun was maid be the pannell: Quhairupoun my Lord Aduocat askit instrumentis.

My Lord Aduocat productet the *DITTAY*, and defyret proces aganis the pannell for the tressonable crymes thairin contenit.

The *Dittay*, be command of my Lord Justice and his *Affessouris*, being red, and the pannell accuset, be vertew thairof, of the feuerall poyntis of *Tressone* and *Lese-Maiestie* thairintill, it is allegit, be my Lord of Orknay and his prelocutouris, that feing thair ar mony grit and haynous poyntis contenit in the *Dittay*, and that the samyn war nocht knawin quhill<sup>2</sup> now to the pannell, and na coppie thairof was gevin to him, quhairvpoune the pannell and his prelocutouris mycht haif consultit, quhilk aucht to haif bene done; defyret, thairfoir, ane tyme to be grantit to the saidis Prelocutouris, that thay mycht advyse with my Lord of Orknay thairupoun.—It is anfuerit, be my Lord Aduocat, that the pannell is brocht fra the Kingis *Waird* to the bar, and accuset of crymes committit aganis his *Maiesteis* autoritie, quhairof he is nawayis ignorant: Na coppie of his *Dittay* fould haif bene gevin to him, nor na delay fould be grantit, in *Tryell* thairof; bot, conforme to the daylie practik of this Judgement, quhair ane persone challenget and committit to waird for *Tressone*, and brocht to his *Tryell*, the *Dittay* quhairupoun he is accuset is fummerlie discuffit, without delay or continuatioune.—It is allegit be the pannell, that he was nocht wairdit for this cryme, specifeit in his *Dittay*, bot for vther crymes; and this *Tressone*, quhairupoun he is now dilast and accuset, is committit during the tyme of his imprifsonement: And feing, the only caus quhy his prelocutouris craves this delay to be grantit, is allanerlie<sup>3</sup> to confer with his lordschip, anent the verritie of the factis lybellit, quhidder he may plead giltie or innocent thairof: Desyres, as of befoir, ane convenient tyme to be grantit to thame to confer with the Erle thairupoune.

My Lord Aduocat takis instrumentis of the pannellis declaratioune, that he was wairdit for vther crymes; and that the crymes lybellit was committit fen his wairding: And as to the continuatioun cravet be his prelocutouris for ane

<sup>1</sup> Treated.

<sup>2</sup> Until.

<sup>3</sup> Alone; only.



convenient space, na delay fould be grantit, in respect his lordschip can pretend na ignorance of the crymes contenit in his Dittay, feing he hes bene dyuerse tymes examinat thairupoun be the Lordis of Secreit Counfall, vpon the verritie thair of.

**THE JUSTICE**, with advyse of the Assessoris, Repellis the pannellis allegeance ; bot, *ex gratia*, Grantis ane half hour to the pannel and his prelocutouris to be advyfit thairupoun.—Quhairupoun my Lord Aduocat askit instrumentis.

The pannell, with his prelocutouris, haifing reffaut vp the Dittay, and removet thame selfis apairt to the Counfall-hous to be advyfet thairupoun, returnet within the space grantit to thame for that effect ; and Declairit, that thai wald nawayis impunge or dispute aganis the relevancie of the Dittay : And as to the verritie of the crymes contenit thairintill, speciallie the directiones allegit gevin to hes vmq<sup>le</sup> sone, Robert, to practize the Rebellioun lybellit, denyis any sic directioun : And gif any command may be inferrit gevin to his sone, it was nawayis to comit any fact or deid to the offence of his Maiestie, or his heines autoritie ; bot to pas over to Orknay, and to tak introniffioun with his Houffis, guidis, and geir being thairintill, vpon mere ignorance and simplicitie ; nawayes thinking that ony sic command fould infer Treffone, or ony vther cryme or offence aganis his gracious Souerane. And, thairfoir, feing fra all forder defence of his awin innocencie, hes his refudge to his Maieftie's grace and mercie : And, as of befoir, craves God and his Maieftie pardoun for his oversight and negligence on this poynt ; and in all humilitie and submissioun cumis in (his) hienes Will for the samyn : And ratifeis his former Deposition, in everie point.

**THE JUSTICE** referrit the said Dittay to the tryell of the honourabill perfones of Assyse vnder writtin, quha war lauchfullie summond to that effect.

## ASSISA.

JAMES, EARLE OF GLENCAIRNE,	DAVID, LORD SCONE,	WILLIAME, LORD KILMAWREIS,
GEORGE, EARLE OF WENTOUN,	WILLIAME, LORD SINCLAIR,	JOHNE GRANT of Freuchie,
JOHNE, EARLE OF PERTHE,	JOHNE, LORD HERIS,	SIR PATRIK HEPBURN of Wauchtoun,
ROBERT, EARLE OF LOUTHIANE,	JAMES, LORD TORPHICHENE,	ROBERT ARNOTE of Fairny,
WILLIAME, EARLE OF TILLIARDIN,	HEW, LORD SEMPILL,	SIR HARIE LYNDSEY, elder of Kynfawnes.

My Lord Aduocat takis instrumentis of the fueiring of the Assyse : And for verificatioun of the Dittay, vses the hail Depositiones of the Witneses producet ; pairtlye subscryuit be the pairteis, and pairtlye be the Lordis Examinatouris ; speciallie, the Depositiones of the Witneses mentionat in the Dittay : Produces the Letter of Tak<sup>1</sup> grantit be his Maieftie to Sir James Stewart, contening the Commiffioun of Schereffchip : Repeitis the notorietie of Mr Johnne Fynlafones office of Schereff deputrie : Repeitis the Commiffioun producet, grantit to my Lord Bischope of Orknay ; and lykwayis, my Lord of Caithnes Commiffioun ;

<sup>1</sup> Lease.

with the thre feuerall Letteris direct to Robert Wynrahame, Yla Herauld, and executiones thairof : Repeitis the Criminall proces led and deducet aganis vmq<sup>le</sup> Robert Stewart, and remanent perſones his complices ; with the Sentence and dome pronouncet aganis thame, beirand that the haill crymes thairin contenit war done and committit be thame and thair complices, of my Lord Orknayis ſpeciall directioun and command : Repeittis the tua Miſſiues, writtin be Johnne Scherp, at my lordis command, as he affirmes, quhilkes war gottin vponne Duncane Mitchell : Repeittis the Warrant direct be my lord, to eſtabliſche the keiping of the Caſtell of Kirkwall in the perſone of Patrik Halcro : Repeitis the Depoſitioun of Patrik Halcro and the ſaid vmq<sup>le</sup> Robert thairanent : Produces the Band ſubſcryuit be the cuntrie people, for taking eafald pairt with Robert, in the former Rebellioun practizet be him in Orknay : Produces ane Charter, grantit be my lord (Earl of Orknay) in faoures of Patrik Halcro, ſubſcryuit at the Caſtell of Dumbarten, of certane landis in Orknay, for taking pairt with the ſaid Robert Stewart in the ſaid Rebellioun, albeit that cauſe be nocht expreſſit in the ſaid Charter : Repeitis the Judiciall Confeſſioun maid be my lord, vponne the tuelf day of Januar laſt, quhairin he hes Confeſſit, that the Caſtell was ſurpryfit be Robert, his ſone, be his directioun : And the ſaid Erles cuming in (his Majeſty's) will for the ſamyn : Repeittis the haill Depoſitiones maid be Robert, befoir he was pannellit ; his Depoſitioun maid the ſamyn day that he was pannellit ; his Judiciall Declaratioun vponne pannell ; and his Declaratioun vponne the Scaffold : With the Depoſitiones of Patrik Halcro, James Lyoun, Johnne Scherp, Duncane Mitchell, Duncane M'claren, Barnard Stewart, Mr Michell Mair : And in ſpeciall, thair Depoſitiones maid to the Lordis of Secret Counſell, being confrontit with the Erle : Repeitis his lordſchipis cuming in Will, this day ; and ſpeciallie, his ratificatioun of his former cuming in Will, vponne the tuelf of Januar. And thairupoun aſkit instrumentis : And Proteſtis for Wilfull Errour aganis the perſones of Affyſe ; and that thai ſall incur the lyk cryme and puneiſchment of Treafone quhairvpoun the pannell is accuſet, gif thai acquit him thairof.

**VERDICT.** The Affyſe, all in ane voce, be the mouth of James, Erle of Glencairne, chancellor, ffand, pronouncet, and declairit the ſaid PATRIK, ERLE OF ORKNAY to be GILTIE, culpable, and convict of the treſſonable Rebellioun committit be vmq<sup>le</sup> Robert Stewart, his baſe ſone, and his rebellious affociattis, within the cuntrie of Orknay : Quhilk was done and committit be the ſaid Robert and his complices, of the ſpeciall cauſing, command, devyſe, and directioun of the ſaid Patrik, Erle of Orknay, his ffather ; in forme and maner ſpecificeit in the Dittay and Depoſitiones producet be our ſaid ſouerane lordis Aduocat, for verifi-  
cacioun thairof ; ſpeciallie, conforme to the ſaid Erle of Orknay his awin Depo-

fitioun producet and subfcryuit with his awin hand, and this day ratifeit and renewit be him in judgement; ffor the quhilk he is cum in his Maiefteis will.

SENTENCE. The Justice, be the mouth of Johnne Dow, dempfter of Court, Ordanit the said Patrik, Erle of Orknay, to be tane to the Mercat-croce of the burgh of Ed<sup>r</sup>, and thair, vpon Fryday nixt, the thrid of this infant, betuix tua and thre houris eftir none, his heid to be ftrukkin from his body: And all his landis, lordfchipis, leving, heritages, takis, fteidingis, rowmes, poffeffiones, offices, digniteis, rentis, guidis, and geir, to be fforfalt and efcheit to our fouerane lordis vfe, as culpable and convict of the faidis treffonabill crymes.

[It has been thought proper to preserve the following entries. The absence of so many ASSISORS, on such an important occasion, must doubtless have been occasioned by the "grit ftorme and feafone of the zeir." It is proper, however, to remind the reader, that Calderwood asserts that they '*withdrew themselves from his Affyse.*'<sup>1</sup>]

COMPEIRIT Hew Dunbar, wryter, *excufatorio nomine* for HEW LORD LOWDOWN, and declairit to pe Justice, that pe said Lord of Lowdown was past pe age of thre scoir zeiris, viffeit with dyuerse bodielie infirmiteis, speciallie ane grit dolour,<sup>2</sup> and fairnes in his richt leg; quhairthrow, in pis grit ftorme and feafone of the zeir, he is nocht hable to travell to the keiping of this Justice Court, to haif past vpon pe Erle of Orknayis Affyse, conforme to charge gevin to him for pat effect, without the grit haizaird of his lyfe: And producet ane Testimoniall pairupoun, subfcryuet be James Greg, Minister at Lowdown, Mr George Walker, Minister at the Kirk of Auchinlek, and Mr Alexander Wallace, Minister at Galftoun. Quhilk Testimoniall, and excufe mentionat pairintill, the Justice admittit. Quhairupoun the said Hew Dunbar askit instrumentis; and proteffit that pe said Lord of Lowdown fould be fred and releivit of his vnlaw.

Compeirit lykwayis Mr James Oliphant, Aduocat, *excufatorio nomine* for THOMAS ABERCROMBY OF THAT ILK, and declairit, that he was hevelie diseasit of ane fall; and pairthrow vnable to travell to this dyet, to pas vpon the Erle of Orknayis Affyse, without grit hazard; and producet, for cleiring pe veritie pairof, ane Testimoniall subfcryuit be Mr Williame Glas, Minister at Dunkeld, and be dyuerse of the Elderis of that parochin. Quhilk Testimoniall and excufe pe Justice admittit, &c.

Compeirit pe said day, Thomas Fallafdail, Proveift of Dumbarten, *excufatorio nomine* for ALEXANDER COLQUHOUN OF LUSE, and declairit that he was viffeit with ane grit feiknes, and nocht hable to travell to the keiping of this dyet, being fummond to pas vpon the said Erle of Orknayis Affyse; and pairupoun producet ane Testimoniall, subfcryvit be Mr Walter Stewart, Minister at Kilpatrik. Quhilk the Justice admittit, &c.

The quhilk day JAMES MARQUEIS OF HAMMILTOUN, WILLIAME ERLE OF ANGUS, JOHNNE ERLE OF MONTROIS, JAMES ERLE OF MURRAY, PATRIK ERLE OF KINGHORNE, ALEXANDER ERLE OF HOME, ALEXANDER GORDOUN *of Clunie*, SIR ALEXANDER FALCONER *of Halkertoun*, SIR ROBERT BRUCE *of Clackmannane*, JAMES HADDENE *of Glennageis*, SIR WILLIAME STEWART *of Gairnetullie*, JOHNNE BUCHANNANE *of that Ilk*, SIR ROBERT GORDOUN *of Lochinvar*, and WILLIAME DOUGLAS *appeirand of Drumlanrig*, being oft tymes callit, &c. and nocht compeirand, thay, and ilk ane of thame, for pair non-compeirance, war unlawit, and amerciat in the panes contenit in the Actis of Parliament.

<sup>1</sup> See this Coll. III. 312, &c.

<sup>2</sup> Pain; trouble; disease.

APPENDIX OF ORIGINAL DOCUMENTS,  
ILLUSTRATIVE OF THE TRIAL OF PATRICK, EARL OF ORKNAY.<sup>1</sup>

(1.) LETTER, THE KING *to the Privy Council of Scotland*, 'anent the oppressed  
*People of Orknay*.'<sup>2</sup>

RICHT trustie and weilbeloveitt cofines and counfallouris, We greitt 3ow weell. HAVEING red that 3our Lettre, sent with pe COMMISSIOUNE desyreit by those oppreffit peopill, complenantis vpoune THE ERL OF ORKNAY; houfoevir, the same is groundit only vpon civil Horningis, and that the Commiffiounne conteanes leveying of menne, befeiging of houffis, reassing of fyre, and dispensatiounne for Slaughter in the vseing of it, togidder with a WARRANT of concurrence for the cuntry peopill of CAITHNES, which is thocht man<sup>3</sup> breid a farther wnquyetnes; and that the lyk Commiffiounne hes not bene grantit, except quhair the REBELLIOUN wes for a criminall caus: 3IT, haveing dewlie confidderit the miserie of the poore distreffit peopill, whose hard fameishing estait is worfe than death; the nomberis of thame, whiche is a great presumptiounne that fume of thame hes over iust caus; thair continowall outcryis and exclamatiounnes heir, to the gritt scandell of our kingdome and COUNSELL thair, as if Oppressioun wer tollerated thairin, and that the Counfall wer cairles to remedy it: And then, THE ERL OF ORKNAYIS awin contempteous Rebelliounne, nevir preaffing aither to satisfie the partie, or relax him self fra the horne: The contenance of whiche disobediace, albeit for a civeill caus, can have na better constructiounne of ws, than that it is becum of the natur of a criminall. WE, vpone the respectis foirfaidis, being loath that the distreffid sould not have the benefeit of our releiff, and the proud and rebellious not feill the weight of our iust wreath and indignatioun, have concludit to grant the said Commiffioun, in forme as it is desyrit, and hes signed and sent heirwith wnto 3ow: Bot, as We have evir bene unwilling to condem ony partie wnhard, and pairwith loth to cut aff a member quhair pair is any hope of recoverie pairof, We heve thocht meit to will 3ow, by oppin Proclamatioun, chairge THE ERL OF ORKNAY to compeir befoir 3ow the secund day of Marche nixtocum, for to give all dew and reffonable satisfacioun that may be iustlie demandit of him be ony who presently ar complenantis one him, so as We be no farder troubleid and importuned with thair Petitiounes;<sup>4</sup> with certificatioun to him and<sup>5</sup> he fail of his appeirance that day, that not only the foirfaid Commiffiounne salbe grantit to those quho presentlie desyres the same, in siche forme as it is socht, bot thay, in the executiounne pairof, salbe assifted with our power and authoritie, boith be sea and land, for the punishing of his Rebelliounne. AND if he do cum pair, at the day foirfaid, 3ow fall tak sum good ordour that he may be furthcummand,<sup>6</sup> wntil sutch tyme that he have aither cleirit or satisfeit all compleanaris aganes him. AND in cais of his not compeirance, 3ow fall thane expaid this present Commiffiounne, and delyver it to the pairteis futareis;<sup>7</sup> and 3ow fall give wntill thame siche Warrands for concurrence of the cuntry, or quhatevir ellis may furder the prosequutting of the Commiffiounne. For doeing quhairrof, thir presentis salbe 3our sufficient Warrant. And willing 3ow to be cairfull in the spedie directiounne of this Proclamatiounne, as 3ow wald eschew our reprooff, ffor ony neglect of tyme pairin, WE bid 3ow fairwell. FROME our Court AT CHETFOORDE, the 6 of December, 1608.

[JAMES R.]

To our rycht trustie and weilbeloveit cofines and counfallouris, the Erl of Dumfermling, our Chancellor, and remanent lordis and wtheris of our PRIVIE COUNSALL OF SCOTLAND.

<sup>1</sup> Reference is particularly made to the large COLLECTION OF PAPERS appended to the Trial of *Robert Stewart* and others, for their Rebellion in Orkney, which all relate to this present Case. See this Collection, Vol. III. p. 283, &c.  
<sup>2</sup> From a Copy preserved by *Lord Haddington* in his MS. Collection of State Papers.   <sup>3</sup> Must.   <sup>4</sup> The number of Supplications and complaints from THE PEOPLE OF ORKNEY to THE KING himself was very great: but he delayed taking any step until importuned to grant this Commission; which, though at length he subscribed, was clogged with the additional delay of ordering the *Privy Council* to charge the *Earl of Orkney*, of new, to appear before them; so as, if possible, to divert the *Earl* from his criminal courses. But he had long contemned the Proclamations and charges of the *Council*; and this new charge would merely appear to him as a fresh proof of their imbecility; and as he could 'call the King his cousin,' so he hoped that the *Council* would not dare to molest him in his Island Kingdom.   <sup>5</sup> If.   <sup>6</sup> Forthcoming.   <sup>7</sup> Suitors; petitioners.

(2.) NOTE OF THE CONFERENCE *had be the Secretare and Aduocat<sup>1</sup> with the Erle of Orknay.<sup>2</sup>*

MY Lord Aduocat and I repaired to the Castell of Ed<sup>r</sup> to THE ERLE OF ORKNAY, and declared to him that We had commandement from HIS MA<sup>TIES</sup> to examine him, vpon the causes of THE REBELLION OF ORKNAY. He declared, that he wes innocent and ignorant thair of. That *Sir James Stewart<sup>3</sup>* came to the Castell of Ed<sup>r</sup> to him, and schew that his sone *Robert* wes gone to Orknay, whoes actiones thair might breid offence to HIS MA<sup>TIES</sup> and danger to *the Erle*; who answered, that want of meanes had forced *Robert* to gang thair, to vplift sum reftis<sup>4</sup> of the Tennantis dewties auchtand to *the Erle*, to help to supplie *the Erles* wantis and his owne. That since it wes evill tane, he wald wryte to *Robert*, that he might retire furth of Orknay, desyryng that *Sir James* wald cause convoy his Letter to his sone, and command his doaris to giue ouerflight to *Robert* to transport him self to *Caithness*. That he neuer wrait any vther Letter to *Robert* since he went to Orknay.

It being replied be ws, that effer *Robert* had tane *BIRSA*, and disobeyed the charge vsed be *the Sheref-depute* to rander that Houfe, vnder the payne of Treason, he had writtin to *the Erle*, who, ha-ving reassued his Letter from *Duncane Mitchell*, Poift, he had writtin bak to him with the said Poift. He denied the wryting of any such Letter to his sone; and when he saw his seruand, *John Schairp*, of mynd to wryte to *Robert* with that Poift, he had dischairged him to wryte; and that *Schairp* had desyred him not to find fault, that he might send his owne privat Letter, ansuering to that which he had reassued from *Robert*; bot that nather *Schairp* nor *Mitchell*, being broght to his prefence, wald say any thing to the contrarie of this his declaration: Which is the substance of all that he wald say to ws in that poynt; adding, that no thing proceeding from him had occasioned THE REBELLION; bot that the extreame rigour vsed be *Mr John Finlason* to the cuntrie people, and the wrong intended be *Mr John* to the cuntriemen, who, with great haifard of thair lyves, had forced THE PIRATES,<sup>5</sup> and tane thame and thair schip, had disposed thame to REBELLION. And that they had persuaded *Robert* to assift thame aganis *Mr John Finlason*, and to be head to thame in thair interpryfes.

Being demanded, what condicion he had made to *Patrick Halcro*, for his joyning in this Rebellion? Denied that he knew him familiarlie, or even had to do with him; and that no thing had moved *Halcro* to mell in these turnes bot his great affection borne to *Robert*, his sone. Farder, we could not induce him to grant, in ony circumstance, of the proceedingis of his sone in his Rebellioun. We declared to him, that what he concealed of the cairiage of this interpryfe wald be detected be his sone *Robert*, *John Schairp*, and *Mitchell*, who wer all in handis. He answered, that he wes confident that they could say no farder nor he had declared to ws.

(3.) EXAMINATION of *Patrick Earl of Orkney*, and Re-Examination of *John Schairp* and *Duncan Mitchell*.

AT EDINBURGH, the secund day of Nouember, 1614. In prefence of my Lord Chancellor, ecre-tair, President, Preuie Seale, The<sup>saurair</sup>-depute, Clerk of Register, Aduocat, and Medope.

PATRIK, ERLE OF ORKNAY, sworne and demandit, yf he knawis *Thomas Layng*? Deponis that he knawis him, and that he wes some tyme his seruand; and rememberis not yf *Thomas Layng* broght ony Letteris to him oute of England.

Demandit, yf euer he had ony purposis or intentioun to haif brokin warde? Deponis that he had nevir ony suche purposis or intentioun to haif brokin warde.

Demandit, yf he gaif ony directioun or warrand to his base sone *Robert*, anent this REBELLIOUN IN

<sup>1</sup> Sir William Oliphant of Newton.

<sup>2</sup> From the Original, in the *Denmylne Coll. of MSS.* Adv. Library, holograph of Lord Binning, afterwards Earl of Haddington, &c.

<sup>3</sup> Arrear of rent and duties, &c.

<sup>4</sup> See this Collection, Vol. III. &c.

<sup>5</sup> Of Killeith, afterwards Lord Ochiltree.

ORKNAY, and for taking of *the Houffis of Birsay and Kirkwall*? Deponis, he never gaif ony fuche directioun to his sone.

Demandit, yf he write ane Letter to his sone with *Patrik Murray*? Grantis, that he write fuche ane Letter, and that the contentis thair of wes onlie to defire his sone to leave the cuntrey of Orknay, and to reiteir him self to Caithnes to *the Laird of Murkill*.

Demandit, yf he write ane Letter to his sone *Robert*, with *Duncane Mitchell*, poist, and what wes the contentis of the Letter? Deponis, that he rememberis that he caufit wryte ane Letter to *Robert* with the said *Duncane Mitchell*, when the Depouner wes caryed fra *the Castell of Edinburgh to Dumbartane*, bot he rememberis not of the contentis of the Letter; nather knawis he yf he subfcryuit the Letter, or how it wes directit on the bak.

Demandit, quhat verball directioun he gaif to *Duncane Mitchell*, the poist, to cary to his sone *Robert* at that tyme? Denyis that he gaif him ony verball directioun, bot onlie to defyre his sone to gett him money.

Grantis, that *Duncane Mitchell* broght him ane anfuere fra *Robert*, bearing, that he had tane *the Houfe of Birsay*, becaus *the Schereff* persewit him. And that he had no other place of refudge to keepe him in; and that his man *Downy Lyell* wes hurt.

Denyis, that he send ony directioun to his sone with *Duncane Mitchell* anent the taking of *Birsay*, or that he had ony conference with *Mitchell* at his bak-comeing fra Orknay, anent *Robertis* taking of *Birsay*, or anent the perfute of *the Schereff*.

Demandit, yf he wryte to *Patrik Halcro* to tak *Barnard Steuartis*<sup>1</sup> lyffe? Denyis the same.

Grantis, that *Patrik Halcro* come to *Dumbartane*, and the Depounair mett with him thair. And denyis, that thair wes ony speeche or conference with thame, bot generall woirdis; and sayis, that he nevir spak fax wordis to *Patrik Halcro*.

Demandit, yf he had ony conference with *Barnard Steuarde*, anent his sone *Robertis* going to Orknay? Deponis, he nevir conferrit with him vpoun that subiect.

Demandit, yf he caufit his man *Johnne Schairp* wryte ony Memoriallis to his sone *Robert*? or yf the Memoriallis contenit a directioun to his sone to send to *Noroway* for poulder? Denyis, that ony fuch Memoriallis wer writtin be him, or at his directioun; and the depouner rememberis not of ony Memoriallis writtin be him to *Robert*.

Demandit, yf he had ony conference with his sone *Robert*, at ony tyme, for geving ouer of *the Castell of Kirkwall* to *the Bischope*? Deponis, that he fand fault with his sone that he had gevin ouer the Houfe, without taking Inventair, vnder *the Bischopis* hand, of the goodis within the Houfe. And he had no other caus of offence aganis his sone, for that earand.

Denyis, that euir he had ony conference with his sone, after the geving ouer of this Houfe to *the Bischope*, anent the taking of the Houfe agane; or that he bad his sone prove any prettye man, yf the Houfe come in his handis agane.

Demandit, yf he gaif ony directioun to *Johnne Schairp* to wryte ane Letter to his sone *Robert*, willing him to follow his Memoriallis? The depouner rememberis not of ony fuche Letter.

Demandit, yf he wryte ane Letter to his sone *Robert*, willing him to trye the cuntrey people, yf thay wald tak his parte? Denyis the writting of ony fuche Letter.

Demandit, quhat directioun he gaif to *Johnne Schairp* to carye to Orknay? Deponis, that he directit him not to Orknay, bot send and directit him heir to *his Maiesteis Counsell*, with Letteris to *the Erll of Glencairne*, to do<sup>2</sup> for him at *the Counsellis* handis. And sayis, planelie, that the said *Johnne Schairp* had no directioun from the depounair to go to *Orknay*; and that the said *Johnne* being comeing to this burgh, and getting informatioun at *the Coude-bridge* that *Duncane Mitchell* wes

<sup>1</sup> Keeper of the Castle of Birsay, who had been appointed by Sir James Stewart of Killeith, the new Chamberlain and Sheriff-principal of Orknay, under the King.

<sup>2</sup> To act or procure for him.

tane, and that the said *Johnne* wald be tortourit yf he come to *the Counsell*, the said *Johnne* thairvpoun tooke occasioun to eschew.<sup>1</sup>

Demandit, yf he causit mak ane bed for his sone *Robert*, in his awne chalmer, within *the Castell of Edinburgh*, tua nightis afoir his going to Orknay? Deponis, that he causit to mak his bed in his chalmer, becaus the wyfe of the House qubair he lay, in the Castell, wes grite with childe and at the poynte of hir delyuerye.

Denyis, that he gaif directioun to *Johnne Schairp* to write ane Letter in his awin name to *Robert Stewart*, to shaw him, yf he come heir that he wald be hangit.

Demandit, qubhat he meant be that pairt of his Letter writtin to his sone *Robert*, quhilk Letter wes gottin vpoun *Duncane Mitchell*, quhairby he allowit the forme and tennour of *Robertis* Letter writtin to him? Deponis, that he meant no thing, bot allowit that *Robert* had writtin the simple treuthe.

Demandit, qubhat wes his maneing in the other poynte of the Letter, bearing, 'thair is other materis heir to think vpoun nor fuche thinges as thay. I beleve HIS MAIESTIE thinkis litle of these materis?' Deponis, that the deathe of the Prince,<sup>2</sup> and the trouble quhairin the Counte Palatyne<sup>3</sup> wes lyke to be, through the invasioun of the Spaniard, maid the depouner to beleve that his Maieftie had other thingis to think vpoun nor<sup>4</sup> Orknay. And tuitcheing that poynte of the Letter, beareing, that 'yf his sone come heir, the Tolbuthe wald be his best,' the depouner meant no thing, bot that he wald be wardit, bothe for his debt and taking of the House. And grantis, that the Letter bearing thir headis wes all writtin be the depounaris directioun.

Denyis, that euer he had conference with *Patrik Halcro*, or send ony worde or message to him contening a promeis of rewarde, yf he wald assist *Robert*, his bafe sone, in his REBELLIOUN.

JOHNNE SCHAIRP, re-examinat, deponis, that afoir he come oute of *Dunbartane*, he knew that *the Gaird* wes seikand him; and *the Erll of Orknay* tauld to the depouner, that *the Gaird* wes seikand him. And deponis, that *the Erll*, in plane termes, directit him to go to Orknay; and sayis, that *the Erll* gaif to the depouner ane Letter, directit to *the Erll of Glencairne*, purpoillie to haif showne the same to the souldiouris of *the Castell of Dunbartane*, yf he had bene stayit be thame, and to mak thame to vnderstand that *the Erll of Orknay* had directit him heir to the Counsell. And sayis, that *the Erll of Orknay* forbad the depouner, in ony cause, to gang to *Edinburghe*; bot to gang to *Dundee*, and swa to Orknay.

THE ERLL OF ORKNAY, being confrontit with *Johnne Schairp*, vpoun that poynte of his Deposition, tuitcheing the directioun gevin to *Schairp* to go to Orknay, and tuitcheing the occasioun of the Letter writtin to *the Erll of Glencairne*, *the Erll* is direct contrair to *Schairp*, in that poynte; and *Schairp* abydis constantlie be his Deposition.

The said JOHNNE SCHAIRP his formair Deposition, maid in prefence of *the Counsell* yisterday, the first of this instant, being red in the audience of the said *Erll of Orknay*, the said *Johnne Schairp* abydis constantlie be it, as a trew Deposition; and the said *Erll* denyis the same, except in so far as he hes confest be his awne Deposition.

DUNCANE MITCHELL, poist, his Deposition, maid in prefence of *the Counsell* vpoun the fyft day of Julij 1614, being red, in the audience of *the Erll of Orknay*, the said *Duncane Mitchell* stooode to it, as ane trew Deposition; and the said *Erll* denyit the same.

(4.) EXAMINATION of the *Earl of Orkney*, *Patrik Halcro*, and *Robert Stewart*.

AT EDINBURGHE, the xv day of Ncuember, 1614. In prefence of my Lord Chancellour, the *Erllis of Cassillis and Caithnes*, the *Lordis Secretair*, *President*, *Preuie Seale*, *Thesourair-depute*, *Justice Clerk*, *Clerk of Register*, *Aduocat*, *Sir Andro Ker*, and *Sir Alexander Drummond*.

PATRIK ERLE OF ORKNAY examinat and demandit, yf he gaif ony directioun to his sone *Robert*

<sup>1</sup> Escape.    <sup>2</sup> Henry, Prince of Wales, who died in November, 1612, at Saint James's.    <sup>3</sup> The *Palgrave*, or *Count Palatine*, whose marriage with *Princess Elizabeth* had been delayed, on account of Prince Henry's death, till the month of February following, 1613.    <sup>4</sup> Than.

anent THE REBELLIOUN IN ORKNAY, or for taking of *the Houffis of Kirkwall and Birfay*? Deponis, that he nevir gaif ony fuch directioun to his fone.

Demandit, yf he had ony conference with *Patrik Halcro*, at his being in *Dunbartane*, anent the taking of *the Houffis of Kirkwall and Birfay*? Deponis, he had no fuche conference with *Patrik*; and that he nevir delt with *Patrik* to affist his fone, yf he come to Orknay. Denyis alsua, that he fend ony directioun to his fone *Robert* or to *Patrik Halcro* for sending to *Norroway* for poulder.

(5.) PATRIK HALCRO, re-examinat, humblit on his knees, and deiplic sworne; and his Depofitioun, maid yfternight, being red vnto him, and he demandit vpoun the veritie thairof, he, vpoun his grite and folemne oathe declairit, that his Depofitioun wes trew; and he ratifeit the fame, and wald ftand to it.

(6.) PATRIK ERLI OF ORKNAY, deiplic sworne, and confrontit with *Patrik Halcro*, vpoun the contentis of his Depofitioun, maid yfternight, in prefence of *the Counfall*; the faid *Erll* denyit the haill contentis of that Depofitioun. And the faid *Patrik Halcro* constantlie affermed and avowit, in the *Erllis* prefence, that the *Erll* directit him to tak *the Castell of Kirkwall*, and to affist his fone *Robert* in that earand; and that his haill Depofitioun wes trew. Qubilk being red, in the *Erllis* audience, wes denyit be him, faying, he rememberit not that evir he had ony fuche conference with *Patrik Halcro*, vpoun that fubiect.

(7.) ROBERT STEUART being of new presentit befor the Counfall, and his Depofitioun, made yfternight, being red vnto him, and he demandit of new vpoun the treuthe and veritie thairof, he deponit and declairit, vpoun his grite oathe, that the fame wes of veritie.

(8.) PATRIK ERLI OF ORKNAY, confrontit with his fone *Robert*, vpoun the contentis of *Robertis* Depofitioun, maid yfternight, as faid is, the faid *Erll* denyit the fame: And the faid *Robert*, in the *Erllis* audience and prefence, affermed and avowit the fame to be of trewth and veritie, as it wes writtin and red in the *Erllis* audience.

(9.) DEPOSITIONS of *James Lyoun*, bafe fone to the Master of *Glammiss*, *Mr Michael Mair*, and *Duncan M<sup>c</sup>Clellane*.

AT EDINBURGH, the nyntene day of Nouember, 1614. In prefence of my Lordis Chancellour, Secretair, Clerk of Register, and Aduocat.

JAMES LYOUN, bafe fone to the late Mr of *Glammiss*,<sup>1</sup> folemnelie sworne and demandit, Yf at ony tyme he paff to *Dunbartane* to vifite the *Erll of Orknay*? Deponis, that in fommer bigane two yeir, the *Erll of Orknay* fend *Mr Michaell Mair*, then his Secretarie, to the depouner, he being in the heade of the Cannogait for the tyme, with a commiffioun, defyryng the depouner to come to him to *Dunbartane*. Wherupoun the depouner raid with him to *Dunbartane*. And at his comeing thair, the *Erll* layed to his charge, yf he wald affist him to brek warde oute of *the Castell of Dunbartane*? And at the firft, the depouner refuifit to haif ony dealing in that mater. Bot being earniftlie delt with be the *Erll*, and mony fair promiffes maid by the *Erll* to him, in end the depouner yeildit to do his best endevoiris to help the *Erll* to efchaip, and to convoy him to *Orknay*. And deponis, that the faid *Mr Michael Mair* wes vpoun the *Erllis* counfaill, in this mater; and proponit the fame to the depouner, in the way, as they wer ryding to *Dunbartane*. And after the depouner had imbraceit this conditioun, he and the faid *Mr Michaell* had diuers conferences and fpeecheis, anent the meanes and poffibilityis to effectuat thair interprife. And deponis, that the faid *Mr Michaell* was imployit be the *Erll* to deale with the *Laird of Cluny*, to imbarck him in this interprife. And the faid *Mr Michaell*, with the depouner, had fpeeches with *Cluny* vpoun that fubiect, at the *Toun of Leithe*, on the Linkis; and the

<sup>1</sup> This person was probably son of the Hon. Sir Thomas Lyon of Auldbar, second son of John, seventh Lord *Glammiss*. He was styled the *Master of Glammiss*, and enjoyed the important office of Lord High Treasurer about the period of ten years, from 1586 to 1595.



Laird promeift to gif his affiftance and furtherance in that mater. And for this effect, they appointit a tryift and meeting to be at Striuling, vpoun the Satterday thairefter, and the depouner and *Mr Michaell* mett vpoun Satterday, at night, at *Striuling*; and *Cluny* came not quhill Sunday, in the moirning, bot fend his man *David Gairdin* thair, vpoun the Satterday, to excufe his abfence. And when thay mett altogidder vpoun the Sunday, thay reaſonned vpoun the meanes how to gett *the Earll* out of the Caſtell; and reſolued to tak him ouer the wall by a cord, and ane inſtrument of irne,<sup>1</sup> whiche the depouner cauſit mak. And *Mr Michaell* promeift to prepar the tow.<sup>2</sup> And it wes aggreit that when all thingis wer in reddynes for *the Erllis* efchaip, he ſould proceid as yf he had ſome earand adoin the Houſe, and fend his three Keeperis, one efter another, for diſpatche of his earandis; and then he ſould come away. And thay aggreit to bring ſome horſſis to *Dunbuk-Hill*, to haif convoyit *the Erll* and his companie away; and ane horſe ſould haif bene broght to the Caſtell-wall, for *the Erll* him ſelf; and *Cluny* ſould haif broght thir horſſis to *Glaſgow*, bot *Cluny* broght not the horſſes with him. And the depouner raid to *Dunbartane*, and the ſaid *Mr Michaell* tauld *the Erll* that the depouner was come, and all thingis wer preparit and in reddynes for his efchaiping. And then *the Erll* began to fant; and maid choiſe, rather to ſuborne *the Portair* nor<sup>3</sup> to haifard to come ouer the wall; and ſo delt with *the Portair* vpoun that ſubiect; who reveillit the ſame to *the Laird of Buchannane*, who had the charge of the Houſe for the tyme.

Deponis, that at Martymes, in the yeir foirſaid, the ſaid *Mr Michaell Mair* come of new to the depouner, he being in the heade of *the Cannogait* for the tyme, with a commiffioun from *the Erll* to come Weſt to him agane to *Dunbartane*. And the depouner refuift to go Weſt, ſaying, that ‘ he wald mell no forder with the Erll, nor in nane of his courſes.’ To whome *Maifter Michaell* anſuerit, ‘ I ſee this man (meaneing he *the Earle*) hes not the grace of God in him; I will lykewayis haif no forder dealling with him!’

Deponis, that after *Robert Steuart*, baſe ſone to *the Erll of Orknay*, wes come out of *Orknay*, and fred of warde for keeping of *the Caſtell of Kirkwall* aganis *the Biſchop of Orknay*, the depouner, in deling with *Robert* in this Toun, delt with him that he wald mak his addreſſe to Courte; and thair vſe his credite to gett his Maieſteis fauour: And ſayis, that *Robert* wes willing to haif gone to Courte, bot maid his excufe vpoun the want of money, and his faderis offence aganis him for geving ouer of the Houſe of Kirkwall; and *Robert* intreated the depouner to ryde with him to *Dunbartane*, and to interceid for him with his fader, bothe for his fauour and ſome money: And the depouner yeildit to ryde with him, and thay raid togidder to *Dunbartane*, and ſtayed thair bot ane night. And the depouner knawis not yf the Erll ſpak with *Robert* that night. And vpoun the morne, the Erll directit the depouner with a Letter to *the Erll of Caſſillis*,<sup>4</sup> being in *Carrick* for the tyme, for ſome money. And *Robert Steuart* raid with the depouner to *Carrick*. And when thay come bak agane to *Dunbartane*, *the Erll*<sup>5</sup> wald not looke vpoun *Robert*, calling him ‘ Feble vnworthie beaſt!’ vſeing mony impreca-tionis and curſſes aganis him for geving ouer of the Houſe, ſaying, he ‘ wes the wraick of him and his eſtate!’ And the depouner being reddy to come away frome *Dunbartane*, the ſaid *Robert* come to him to *the Toun of Dunbartane*, deſiring him to go againe and ſpeeke his fader in his fauouris, and to tell him that he wald tak ſome diſperat courſe, and go oute of the cuntrey, yf he could not procure his fauour. Wherupoun, the depouner went bak agane to *the Caſtell*, and eirniſtly delt with the Erll in *Robertis* fauour; bot the Erll could not with patience heir of him, bot gaif oute mony invec-tiue and diſpytefull ſpeecheis aganis him, calling him ‘ Fals, feble beaſt,’ for geving ouer of his Houſe. And in

<sup>1</sup> Probably a pulley, having a ſtrong iron to faſten or hook upon the battlements of the Caſtle, ſo as to ſave the neceſſity of driving in a ſtaple, which would neceſſarily occaſion noiſe. <sup>2</sup> Rope. <sup>3</sup> Than. <sup>4</sup> John, fifth Earl of Caſſillis, who married Jean, only daughter of James, fourth Lord Fleming, and relict of John Lord Maitland of Thirleſtane, Chancellor of Scotland. Through her intrigues, he procured the office of Lord High Treasu- rer, in 1599, for which he was utterly incapable; and retired from it in diſgrace, with the loſs of 40,000 merke, &c. See *Hiſtory of the Kennedies*, Quarto, Edin. 1830. <sup>5</sup> Of Orkney.

end, the depouner haueing promeist in Robertis name, that Robert wald do ony thing the Erll wald command him, the Erll thairvpoune become to be more calme, and to gif eare to the depouneris speeches in Robertis fauour. Wherupoun, the depouner broghte Robert to the Erle, and tauld to the Erll, that Robert wald do ony thing that the Erll wald bid him; to whome the Erll anfuert, that Robert had not a spirite nor courage to follow ony interprise; and Robert haueing craved of the Erll his fader, that he might haif a ryght of the landis of Westraue or Steanehouse, the Earll wald yeild to gif him no thing, quhill first he had repairit the wrang he had done, in giving ouer of his Houfe; and by recouering of the same agane, to play the pairt of a man. And the Erll haueing desirrit the depouner that he wold gif him his worde and promeis, in Robertis name, that Robert sould go to Orknay and recouer the Houffis agane, the depouner refusit to gif his promeis or word, saying, 'Robert wald speke and promeis for him self!' Whairupoun Robert, in the depouneris audience, promeist to the Erll to go to Orknay, and to tak in the Houffis agane. And then the Erll acceptit of him, saying, he 'sould want no thing, and that he wald aduance him so far as he might. And so, the depouner haueing aggreit *the Erll with Robert*, the depouner left thame. And as he wes comeing away, *Duncane M<sup>c</sup>Clellane*, the Erllis poist, followit the Depouner to the Toun of Dunbartane, willing him to go bak agane to my Lord; and the depouner refusit to go bak, becaufe he vnderstoode that the purpois of his bak-calling wes to haif delt with him to haif gone with Robert to Orknay. And the depouner meeting at that tyme with *James Annand*, sometyme the Erllis seruand, in Dunbartane Towne, the said James askit of the depouner, 'yf he had aggreit the fader and the sone?' And the depouner anfuert, 'thay wer aggreit,' and that '*Robert* must neidis go to Orknay, or thair wilbe no lyffe for him!' To whom *James* replyt, '*The Erll* is ane vnhappie man! He knawis *Robert* can do no goode in Orknay. His purpois is to bring him to the scaffolde, and to bring the sclander of his bloode vpoun the King!' And vpoun the morne, the depounair raid fra Dunbartane towards Edinburghe; and *M<sup>c</sup>Clellane*, the poist, come to Edinburghe with him. And within tuentie dayis thairefter, *Robert Steuart* come to Edinburghe, and lichtit at *Henry Raes* house, and askit of him whair the depouner wes? And *Henry Rae* broght *Robert* to the depouner in *George Lajonis* house in the heade of *Peblis-wynd*, quhair the depouner ludgeit; and *Robert* tauld to the depouner that he had vndirtane the interprise of Orknay, and wes resolut to go thair. And the depouner asking of him, how he wald be prouydit and furneist with money? *Robert* tauld him, that he had a Letter frome his fader to one *Johnne Smithe*, his fader's mercheant in S<sup>t</sup> Androis, to aduance him iij<sup>c</sup> merkis of siluer. Whairupoun *Robert* and the depouner past to S<sup>t</sup> Androis to haif gevin the money, and haueing staid thair aucht dayis, *Johnne Smith* refusit to gif the money, vnles he had a Band vnder *the Erllis* hand, for the haill moneyis he was awand him afoir, including thairin the siluer now to be gevin, with the annuell<sup>1</sup> of the haill. And deponis, that thay onlie ressaunt at that tyme fra *Johnne Smithe* xx lib. to defray thair chargeis. Deponis forder, that at thair comeing oute of S<sup>t</sup> Androis, *M<sup>c</sup>clellane*, the poist, come to *Robert* with Letteris fra *the Erll* his fader; and the depouner saw and red ane of the Letteris, whilk wes a lang Memorandum, full of iniunccionnes how *Robert* sould carye him self in Orknay, bothe anent the taking of the Houffis, the introniffioun with the Erllis rentis, and what men he sould putt oute of the cuntrey. And the depouner rememberis weele of ane speciall poynte of the Memorandum, to witt, that *Robert* sould send the Erllis creare,<sup>2</sup> laidnit with beare and salt goodis, to Brein, in *Noroway*, and thair sell the same, and by poulder<sup>3</sup> and bullett with the money that sould be gottin thairfoir. And that, aboue all thingis, *Robert* sould see that the Houffis wer weele furneist. And *M<sup>c</sup>clellane* come bak with thame to Leithe. And deponis, that then thay raid to Dunbartane, and *Robert* staid at the smithis house outwith the Toun, and the depouner raid fordward towardis *the Castell*. And *the Erll*, being aduerteist that thay wer come to the smithis house, he send *Johnne Burne*, his seruand, to haif stayit thame at the smithis house. And the depouner forgaddering with *Johnne Burne*, in the way betuix the smithis house and *the Castell*,

<sup>1</sup> Annualrent; interest.<sup>2</sup> A sort of vessel.<sup>3</sup> Purchase gunpowder.

*Johnne Burne* delt with the depouner to go bak, faying thay had done evill to come, ffor *the Counsell* wald be in fufpicioun that thay had some purpois for thair going to Orknay. And he tauld the depouner, that they wald not gett accels to the Erll, yitt the depouner wald not be stayed, bot come fordwart to *the Castell-yett*, and craveing entrie, he wes anfuerit ouer the wall be one *Robert Knox*, who had the charge of the Houfe, that he wald not gett entree. Whairupoun, the depouner come bak, and being in ane grite anger, becaufe he could not gett entrie, he fald to *Johnne Burne*, that he fould reveill all thair practizeis to *the Counsell*, feeing he could not get payment of the moneyis addebtit be *the Erll* to him. Deponis, that *Johnne Burne* askit of the depouner, yf he had prouidit ony men, in Angus, to tak with him to Orknay? And the depouner maid him to beleve, that he had prouidit some men in *Angus*, who wer goode fellowis, to haif gone thair. And the depouner named some of their names: And he did this purpoiflie, to haif gottin payment of his moneyis.

Deponit, that *Johnne Burne* haueing showne to *the Erll* the depouneris difcontentment for the want of his moneyis, and that he had avowit to reveill thair interprife, the Erll, fearing the reveilling and difcouerie thairof, fend to the depouner with the fald *Johnne Burne* xx f. Sterling; quhilk being refuifit be the depouner, *the Erll* fend vther xx f. to him.

Deponis, that when he come bak to the smithis houfe, he fald to *Robert*, ' he perfavit that the Erll had no vther courfe bot to bring him to the fcaffold! ' And *Robert*, waging his head, with a grite fighe, anfuerit, ' I feare it falbe fwa! '

(10.) MAISTER MICHAELL MAIR, feruand to *Mr Johnne Scott*, Directour of the Chancellarie, fworne, and demandit, ' yf he knawis of ony purpois that *the Erll of Orknay* had to brek warde? Deponis, he knawis that thair wes some fpeecheis betuix *the Erll*, *the Laird of Cluny*, and *James Lyoun*, vpoun that fubiect.

THE DEPOSITION maid be *James Lyoun*, in that pairt thairof concerning *the Erll of Orknay* his purpois to brek warde, and the conferenceis, meetingis, and refolutionis tane thairanent, betuix *the Laird of Clunye*, *James Lyoun*, and the depouner, being red to the fald *Mr Michael*; and he being demandit, yf the fame wes trew? Deponis, that he acknowledgeit the Deposition to be trew, as it wes writtin, except in that parte thairof concerning the fuborning of *the Portair*, whairof the depouner knawis no thing. *In ceteris conformis.*

(11.) DUNCANE M<sup>c</sup>CLELLANE, poift to *the Erll of Orknay*, fworne, and demandit yf he knawis ony thing of *the Erll of Orknay* his purpoiflis anent THE REBELLION IN ORKNAY? Deponis, he knawis na thing thairof, and denyis that euir he hard ony conference or fpeeche betuix *the Erll*, *Johnne Burne*, *James Lyoun*, and *Robert Steuart*, or ony of thame, anent *the Erll* his purpois to brek warde, or anent the fending of *Robert* to Orknay.

Grantis, that the Erll of Orknay fend the depouner with tua Letteris to *Robert Steuart* and *James Lyoun*, and the depouner come to this toun to haif gottin thame heir; and miffing thame heir, he pait to S<sup>t</sup> Androis, and forgadderit with thame comeing oute of the Toun, and delyuerit the Letteris to thame. And fayis, that *Robert Steuart* and *James Lyoun* tauld to the depouner, ' yf thay had gottin filuer in S<sup>t</sup> Androis, that thay wald haif gone to Orknay; bot feeing thay gatt not filuer, thay could not go.' And the depouner, haueing gone bak to *Dunbartane* with this anfuer, the Erll fell oute in bitter fpeecheis aganis *Robert*, calling him ' Fals, feble knaife! ' ' Villaine! ' and ' Pultrone! ' And ' he fould hang him with his awne hand! '

Deponis, that he hard the conference betuix *Robert Steuart* and *James Lyoun* be the way, as thay come frome S<sup>t</sup> Androis, to witt, yf thay had gottin filuer in S<sup>t</sup> Androis, that thay wald haif gone to Orknay and tane the Erlls Houffis. And the depouner tauld thir fpeecheis to the Erll, when he come bak to *Dunbartane*; wherent the Erll wes heichlie commovit, faying, ' *Robert* was ane feble beaft,'—and ' Or<sup>1</sup> he wer not hangit, he fould hang him with his awne hand; becaus vnworthelie he had left his Houffis, and had not grace to win thame agane! '

<sup>1</sup> Ere; rather than.

Deponis, that at this same tyme, *James Lyoun* said to the deponer, 'Yff we go to Orknay, no man fall haif the credite<sup>1</sup> of carying our Letteris to and fra, bot yow.'

(12.) DEPOSITIOUN, *Robert Stewart, the Earl of Orkney, James Lyoun, and Mr Michael Mair.*

AT EDINBURGHE, the xxij of Nouember, 1614. In presence of my lordis Chancellair, the Erll of Caihnes, the Secretair, Thefaurair-depute, Clerk of Register, and Aduocat.

ROBERT STEUART, bafe sone to the Erll of Orknay, sworne, and demandit yf he knawis *James Lyoun*, sone to the lait Mr of Glamis? Depones, he knawes him very weele.

The DEPOSITIOUN maid be *James Lyoun*, vpoun the xix day of Nouember instant, in that poynte thair of tuitcheing the said *James* his interceiding with the Erll of Orknay, in fauouris of his sone *Robert*, the Erllis refusall to accept of him quhill he yeildit and promeist to go to Orknay; and tuitcheing all the speecheis past betuix thame in that mater, being red to the said *Robert Stewart*, and being demandit, yf the same wes trew? The said *Robert* acknowledged the Depositioun to be trew, as it is writtin and sett down.

The haill Depositioun foirsaid, maid be the said JAMES LYOUN, being red to the said ERLL OF ORKNAY, and he being demandit, yf the same wes trew? The said Erll deponit, that the same wes moft vntrew. And deponit, that the said *James Lyoun* delt with him findrie tymes to haif brokin wairde, becaus his lyffe wes in danger; and that he ever refusit to harken to *James*, in that mater. And deponis, that he wes ever in ane anger with his sone *Robert*, becaus he hantit *James Lyonis* company. And sayis, confidently, that he had neur conference nor speeche with *James Lyoun*, anent *Robertis* going to Orknay.

(13.) The ERLL OF ORKNAY, JAMES LYOUN, and MR MICHAELL MAIR, being confrontit, vpoun that point tuitcheing the said Erll his purpois of breking of warde, and the conferenceis, speecheis, and messageis past in that mater, conforme to the Depositiounis maid thairanent, the said Erll, vpoun his oathe, denyit the same: And the saidis Maister Michael Mair and *James Lyoun*, vpoun thair grite oathe, avowit and affermed the same to be trew.

(14.) The said ERLL OF ORKNAY, ROBERT STEUART, and JAMES LYOUN, being confrontit, vpoun the vther poynte of the said *James Lyonis* Depositioun, tuitcheing the Speecheis and Conferenceis betuix thame anent THE REBELLIOUN IN ORKNAY, and how *Robert* wes imployit and directit in that earand? The said Erll, vpoun his oathe, denyit the same: And the said *James Lyoun* and *Robert Stewart*, vpoun thair oathe, avowit the same to be trew.

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### Slaughter.

Feb. 14.—JOHNNE MAXWALL, callit *Achilles Johnne*, in Dumfreis.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Johnne Makculloche, mercheand burges of Kirkculdbrycht; committit be the said Johnne Maxwell and be vmq<sup>le</sup> Johnne Maxwell, sone natural to vmq<sup>le</sup> Williame Maxwell of Auchinlarie, vpone the landis of the Kirkhous, within ane quarter of a myle to the said burgh of Kirkculdbrycht, in the moneth of Nouember, the zeir of God I<sup>m</sup>. sex hundreth and threttene zeiris, be geving to him of tua deidlie straikis in

<sup>1</sup> Trust. We shall confide in no one but you, to carry our Letters to and fro.

the heid, togidder with fyftene bludie woundis in his breift and bellie, and vther fyftene bludie and deidlie ftraikis vpon the bak and fydis ; quhairof he immediatlie deceiffit.

PERSEWARIS, Thomas McCulloche of Barholme, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr Thomas Wilfone, Aduocat.

Eftir reiding of the DITTAY, it was allegit be my lord Aduocat, that na prelocutour can compeir for defence of the pannell, for the cryme aboue writtin, fpecificeit in the Dittay ; becaus, immediatlie eftir the committing thairof, Letteris war direct, at the instance of the kyn and freindis of the defunct, aganis the pannell, be the quhilk he was charget to find caution for his compeirance befor the Justice or his deputis, at the day thairin contenit, of lang tyme bygane, to haif vnderlyne the law for the faid cryme ; quhilk charge, nocht only he difobeyit and maift contemptioulie paf to the horne, bot alfo hes remanit fugitiue fra his hienes lawis continuallie fenfyne, for the faid fact : And producet the Hoirning, deulie regiftrat, for verifeing thairof.—To the quhilk it is anfuerit, be the pannell and his prelocutour, that, nochtwithftanding of the faid allegeance, he aucht to haif prelocutouris to defend, becaus he is relaxt fra the faid proces of horne ; and producet his Relaxatioun for verificatioun thairof : Quhilk the Justice admittit ; and ordanit his prelocutouris to be admittit to defend : Quhairupoun the pannell askit instrumentis.

It is allegit be the pannell and his prelocutour, that the DITTAY producet aganis him come nevir to his knowlege ; and thairfoir, befor ony forder proces be grantit in that matter, he aucht to haif a fyftene dayis grantit to him, to be advyfet thairupoun.—It is anfuerit, that the allegeance aucht to be repellit, in respect he haifing committit the fact, vpon the notorietie quhairof, and for tryell of the pannellis giltines, Letteris war direct, be the quhilk he was charget, vpon a fyftene dayis wairning, to find caution for his compeirance, as faid is, befor my lord Justice, at a day contenit in the faidis Letteris ; and for his difobedience was denunciit and put to the horne : And for cleiring thairof, repetitis the faidis Letteris of Hoirning producet.

THE Justice Repellit the allegeance, and Ordanis the matter to pafs to the tryell of ane Affyfe, vnles the pannell fay forder.

ASSISA.

Robert Vans of Campfurd,	Airthour Kennydie, fervand to	Johnne Turnour, Schereff-Clerk
Patrik Vans of Lybrek,	my Lord of Caffillis,	of Wigtoun,
Peter McDowell of Machirmoir,	Patrik Murdoch of that Ilk,	James Hair, indueller in Ed <sup>r</sup> ,
Patrik Edzer, burges of Wigtoun,	Hew Gordoun of Grange,	Gilbert Agnew of Mureifhaith,
Pat. Hammiltoun, burges of Ed <sup>r</sup> ,	Alexander Gordoun of Littill	Alexander Agnew of Trong,
Archibald Stewart of Fintillache,	Mondurk,	R <sup>t</sup> Makknab, burges, Quithorne.

My lord Aduocat takis instrumentis of the sweiring of the Affyfe ; and for

cleiring to thame of the pannellis giltines of the crymes contenit in the Dittay; repeittis the Hoirning product, beiring him to be fugitiue for the cryme: As also, defyret Mr Robert Glendonyng, Minister at Kirkculdbrycht, and Eduard Forrefter, Commiffar, thair, thair aithes and declaratioun to be tane, quhat thay knaw anent the pannellis giltines or innocencie, in the faid matter, for the Affyfe forder informatioun.

It was affirmet be the pannell and his prelocutour, that the matter now being put in thair handis, thay fould nocht respect the perfewaris informatioun and affertioun in this perfute; bot altogidder denyit the fact lybellit to be committit be him; in respect he, at the allegit tyme of the committing thairof, was *alibi*, viz. in the Place of Teilling in Angus, lying deidlie feik, quhilk is ane hundreth myles distant fra Kirkculdbrycht, quhair the Slauchter was committit; quhilk he wald verifie, be fufficient and famous Witneffes, gif tyme war grantit to him to produce thame.

MR ROBERT GLENDONING, being fuorne, Declairit, he could nocht remember that he knew Johnne Maxwell vpon pannell of befor; bot as to the veritie of the fact lybellit, it is of treuth, that vpon ane Fryday, at evin, in the moneth of November and zeir lybellit, thair come tua litill men to the Toun of Kirkculdbrycht, with Letteris of Captioun, of purpois, as the deponer was informit, to truble vmq<sup>le</sup> Johnne M<sup>c</sup>culloche, quhair of he was maid foirsene be ane of the honest nyctbouris of the Toun: And the deponer, vnderstanding quhair Johnne M<sup>c</sup>culloche was, adverteit him thairof, and defyret him to hald him self out of the way; quhairvpon M<sup>c</sup>culloche eschewit that nyct: And vpon the morn<sup>g</sup> thaireftir, being Setterday, the day of his studie,<sup>1</sup> he, heiring of the Slauchter of Johnne M<sup>c</sup>culloche, come to the boundis quhair it was committit, quhair he saw tua deid men, Johnne M<sup>c</sup>culloche being maist crewallie strukin with ane quhinger, baith on his breift and bellie, and vpon his bak. And forder knawis nocht.

EDUARD FORRESTER, Commiffar, fuorne, and demandit, quhat he knawis anent the verritie of the premisses? Declairit, that he saw Johnne Maxwell, presentlie vpon pannell, within the toun of Kirkculdbrycht, the day of the Slauchter, immediatlie befor the committing thairof; quha, togidder with vmq<sup>le</sup> Johnne Maxwell, his associat, come vp to the deponeris chalmer, and offerit to agrie with him anent the Confirmation of ane Testament; and within ane schorte space thaireftir, hard of the committing of the faid slauchter. And forder knawis nocht.

My lord Aduocat repeittis the Minister and Commiffaris Declaratioun; and Protestis, in respect thairof, for Wilfull Errour aganis the perfones of Affyfe, gif thay acquit.

VERDICT. The Affyfe, all in ane voce, be the mouthe of the faid Peter M<sup>c</sup>dowell of Machirmoir, chancellor, fband, pronuncet, and declairit the faid Johnne Maxwell to be Giltie, culpable, and convict of airt and pairt of the faid slauchter, &c.—SENTENCE. To be tane to the ordiner place of executioun, within the burgh of Ed', and thair his heid to be strukin frome his body: And all his moveabill guidis to be escheit, &c.

<sup>1</sup> Viz. the day he studied or prepared his sermons for the following Sabbath.

**Treason—Declining the King's Authority—Alleging the Supremacy of the Pope—Hearing and Saying Mass, &c.**

Feb. 28.—TRIAL OF JOHN OGILVIE, JESUITE.

[THE proceedings adopted against the ROMAN CATHOLICS and JESUITS, at different periods, after the time of the Reformation of Religion in Scotland, form a prominent part of the Ecclesiastical and Political History of the Country. Owing to the obscure and repulsive appearance of the Criminal Records, much valuable information has necessarily escaped the observation of the historian; but although the subject is one long since forgotten, it appears to the Editor to belong to the duty he imposed upon himself when he undertook the present Collection, to rescue from oblivion all those Trials which have preserved entire the memory of such events.

Among the most remarkable of those persecutions may be reckoned the Case of JOHN OGILVIE, a *Jesuit*, of Scottish extraction, who was a son of Walter Ogilvie of Drum. After an absence of twenty-two years in foreign countries, he returned to Scotland, in the month of May 1615, for the purpose of promoting the growth of the Roman Catholic Religion. There is little doubt that he was one of those enthusiastic individuals, who, at the imminent risk of fortune, and of life itself, scrupled not to lend himself a willing instrument for the accomplishment of some daring, dangerous, and destructive plot, which at that time characterised the whole of the ever-restless and ambitious proceedings of the followers of the Church of Rome, from the date of the formidable, but presumptuous, attempt of the Spanish Armada, and of the Gunpowder Plot, downwards. During the reign of KING JAMES, both before and after his accession to the English throne, seldom did a year pass over without some rumours of fresh attempts of the Jesuits against his life, or against the Religion, as by Law established, in England. There can be no doubt, from a perusal of the State Papers and Histories of this period, that some new attempt on the part of *Spain* and her auxiliaries was about to ripen into action, when the early detection and execution of numerous emissaries of *the Society of Jesus* frustrated its execution.

Without occupying more space, the Editor has merely to mention, that a Special Commission having been granted to THE PROVOST AND BAILIES OF GLASGOW, within whose jurisdiction Ogilvie was taken, his Trial is not recorded in the Books of Adjournal, but was reported by the Commissioners and their Assessors to the Privy Council, from whom their powers directly emanated. There cannot be a doubt that the Report of this Case was drawn up for publication, with the view of being extensively circulated in England. The phraseology is carefully revised, so as to be perfectly intelligible to an English reader; and though imprinted at Edinburgh by Andro Hart, immediately after the Trial took place, it must have been revised by some person skilled in the English Law, and familiar with its technicalities and practice.

The present reprint has been taken from a copy of the valuable Original Edition, in the Library of the Faculty of Advocates, Edinburgh.

*Calderwood*, a determined enemy to Episcopacy, has preserved the following curious memorials of these events, in his *MS. History of the Church of Scotland*,<sup>1</sup> which the Editor has thought worthy of being inserted in this place:—

Oct. 1614. ' ABOUT the beginning of October, MR JOHN OGILVIE, *the Jesuit*, was apprehended in Glasgow. He had seduced fundry young men, and of the better sort of the people; and said Masse, in fundry places, within Toun. When the (ARCH) BISHOP (OF GLASGOW)<sup>2</sup> challenged him for his hardnesse,<sup>3</sup> he answered, that " he hoped to have more freedome, ere it were long." Whereupon, *the Bishop* buffeted him!

' About the beginning of November, THE (ARCH) BISHOP OF ST ANDREWS<sup>4</sup> sone, *Mr Alexander*

<sup>1</sup> From the Adv. Library MS.      <sup>2</sup> John Spotswood, the well-known writer of the Church History. He was translated to the See of St Andrews on the demise of *Archbishop Gladstones*.      <sup>3</sup> Hardihood; effrontery.      <sup>4</sup> ' MR GEORGE GLAPSTAIN, BISHOP OF ST ANDREWS, departed this life, in the Castle of St Andrews, on the 2d day of

*Gledstanes*, apprehended *Moffett*, a Messe-Preift, at St Andrewes; who was presented before the *Lords of Secret Counsell* upon the 10 of December, and was wairded in the *Castle of Edinburgh*. Some things the *Bishops* behoved to doe against PAPISTS, for honesties sake, least they should seeme to be advanced to persecute Ministers professing purity of Discipline and God's worship.

‘ Upon the 6 of December, 13 or 14 of the Inhabitants of Glasgow were convicted for hearing of Masse, and Resetting a Masse-Preift, in Court holden be the *Bishope* and thrie of the (Council), who hed gotten Commissione, at the King's directione, to try. The brute<sup>1</sup> went, that they were to be headed, drawin, and quartered; but they were in no danger. OGILBIE, the *Jesuit*, was brought in to *Edinburg*, and examined be the *Bishop* and some of the *Lords of Secret Counsell*, to move to confesse where he had been resett, where he had said Messe, &c. He was not suffered to take sleep some nights and dayes together! His braines being lightsome, secrets were drawn out of him, but came not to the knowledge of the people. *Moffett*, the Preift, was examined be the *Bishop of St Andrewes* and his affociats.

‘ About the middt of Januare (1615), a Warrant was sent from THE KING to fine some of the receipters of OGILBIE the *Jesuit*, and hearers of Messes, in *Glasgow*; and to banishe some others of them out of the King's dominiones. About the end of Januar, THE KING sent down a course to be vsed in trying of JESUITS, their resetters, and hearers of Messe. This seemed rather a hindrance to the execution of justice upon the perfones presently guiltie, then to mean in earnest the repreffing of Papists.

‘ Upon the last of February, OGILBIE the *Jesuit*, one of the *Ogilbies of the House of Drummure*, was arraigned and pannalled before the *Proveist and Bailiffes of Glasgow*, the King's Judges in that part. At his Examination, before some of the *Counsell* and the *Bishop*, he being asked, whither THE KING, being excommunicat be THE POPE, the Pope might depose him, and loose his subjects from the Oathe of allegiance? Answered, and subscribed his answers with his hand, that he thought THE KING and his *Counsell* no competent Judges to him, in that matter; and therfor, would not directly answere them tuiching it, but before THE POPE, his ordinar Judge, and his substitutes! For this his declinator, he was convicted, in presence of findry Noblemen, appointed be THE KING to be present. He avouched, boldly, that he regarded not the Acts of Parliament nor THE KING's authority, soe farre as they were repugnant to THE POPES authority! Yett had he small courage when he come to the Scaffold—died heartlesse and comfortlesse—could not commend himselfe to God, at the Minister's desire—but did it after the desire of the hangman.

‘ Some interpreted this Executione to have proceeded rather of a care to bless THE KING's Governement, then of any sincere hatred of the Popish Religione. Some denied that it was done to be a terrour to the sincerer sort of the Ministrie, not to decline THE KING's authority, in ony cause whatsoever.<sup>2</sup> He was the first *Preift* or *Jesuit* that was executed, since the *Bastard Bishop of St Andrewes* was hanged.<sup>3</sup>

May. Many times before, because his face was disfigured, he had his night-bonnet drawn down to his nose, when the ministers of St Andrews enquired, “ If they should pray for him publickly?” he answered, “ It was not yet time!” Soe he was never prayed for publickly, but the same day that he departed; and that was done without his knowledge. Unwilling was he to die, or to suffer any honest man of the Ministrie near him, either to waken his conscience, or comfort him. At the desire of his wife and children, he subscribed some few lines, wherein he approved the present course, to procure the King's favour to them. His flesh fell off him in lumps. Notwithstanding of the great rent of his Bishoprick, he died in the debt of tuentie thousand pounds. This man was both ambitious and covetous. Papists and hainous offenders were winked at, for bribes given to his servants and dependers. In his first diocesian Synod of Fife he sat in pomp with his velvet cushion before him, and his Clerk, Mr John Mitchellsonne, beside him.—*Mr George Gladstains*, BISHOP OF ST ANDREWES, was buried, upon the seventh of June, in St Andrewes. A cannabie (canopy) of blacke velvet was caried above the coffine, be foure men, and yett the corpes was not in the coffin, but buried soone after his death. *Mr William Cowper* (BISHOP OF GALLOWAY) made his funerall-sermone, full of vile flattery and lyes, and knowne to be sae be the people, and therfor was he derided. It was reported that THE KING bestowed ten thousand merkes upon his buriell.—*Calderwood's Church Hist. MS. Adv. Lib.*

<sup>1</sup> Report; Fr. bruit.

<sup>2</sup> This had frequently taken place, as may be seen by referring to the former portions of this work.

<sup>3</sup> Referring to the celebrated ARCHBISHOP JOHN HAMILTON, natural son of James, first Earl of



The anonymous author of 'THE HISTORIE OF KING JAMES THE SIXT'<sup>1</sup> shortly, but forcibly, nar- rates these transactions, in the following terms:—'DURING this same time and year, in *the citie of Glasgow*, ther hapnit a man, callit MR JOHNNE OGILBIE, *Jesuit*, to be apprehendit ther, be *the Arche- bishop* and his men, becaus he was tryit<sup>2</sup> sufficientlie to have sayed Messe ther, to sum inhabitants and eitizens of that toun; and samonie as wer tryit, wer all empreasonit in *the Castell of Dumbartane*, ther to remayne upoun ther awin expensis; and thereftir relaxit, and confynit for a pecunial soume, for contravening the Act of Parliament; and fand caution, under great sowmes of money, ather<sup>3</sup> of them, not to commit the lyk fault or cryme agayne. *The Jesuit*, in the meyne tyme, was convoyit to *Edinburgh*, and ther keapit in strait waird, and a gaird of men, be the space of eight dayis, with small sustentatioun; and *compellit and withhaldin, perforce, from sleep*, to the great perturbatioun of his brayne, and to compell him *ad delirium*!<sup>4</sup> And being convoyit therfra to *Glasgow* agane, certen temporall questions wer objected unto him, as naymlie, geve<sup>5</sup> THE KING was heid of THE KIRK, within his awin dominions, or nocht? To the whilk he answered, "No," &c., and so, consequently, to uther thrie. For the whilks, he was put to the cognitioun of a juré, and be them fund gilty of Treasoun and Leze-Majestie; and so was condemnit to be hangit to the death; whilk was also accomplisht.'

The enquiring reader is referred, for farther particulars, illustrative of this singular subject, to the various Collections of State Papers, and to the Histories of Scotland, especially *Spotswood's History*, where the matter is fully discussed by the Archbishop, who, it may be kept in mind, was one of the Assessors, and the leading examiner, in *Ogilvie's Trial*. The Editor appends to this remarkable TRACT the Examinations of all the persons suspected of having joined *Ogilvie*, in the celebration of Mass, &c., including the declinator of *the Jesuit* himself, which he has taken from an attested copy, preserved in the *Denmylne Collection of MSS.*, Advocates' Library.]

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A TRVE RELATION OF THE PROCEEDINGS AGAINST  
JOHN OGILVIE, A JESUIT,  
EXECUTED AT GLASGOW, THE LAST OF FEBRUARIE, ANNO 1615.  
Containing fundrie SPEECHES vttered by him at his Arraignment,  
and others, that affistid the Commissioners deputed for his  
Triall: with all that passed at his Execution.

<sup>2</sup> *Pet.* 2. 10. "Audaces, et sibi placentes, dominatum despiciunt, et non horrent dignitates convitiis incesfere."—*Tertul. adversus Hermo.* "Hermogenes hæreticus loquacitatem, facundiam existimat, et impudentiam constantiam deputat, et maledicere singulis officium bonæ conscientiæ indicat."—*Cyprian de duplici martyrio.* "Non statim martyr est qui occiditur, occiduntur piratæ, et ficarii, supplicium non fæcit martyrem, sed causa."

EDINBURGH, printed by Andro Hart, anno 1615.

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TO THE READER.

IT hath beene thought needfull, that a true and perfect Relation of the whole proceedings against John Ogilvie, a Jesuit, lately executed at Glasgow, should bee published; as well for satisfaction of

Arran, who was hanged in Stirling, Apr. 1, 1570. See *Reliquia Divæ Andrea*; *Keith's Catalogue of the Bishops*; the works of *the Rev Dr M' Crie*, &c.

<sup>1</sup> Printed for THE BANNATTYNE CLUB, Edinburgh, 1825.   <sup>2</sup> Proved.   <sup>3</sup> Either; each.   <sup>4</sup> This barbarous mode of extorting Confession had been prevalent in cases of *Witchcraft*, where the criminals were supposed to be under the direct dominion of Satan. Human nature could not long stand so exquisite a torture. The suspected parties were often driven into a state of *delirium*; and in many instances, they must have been glad to confess any thing which may have been proposed by their examiners, to escape from a life held by such a miserable tenure.   <sup>5</sup> If.

those, who desire to be informed of his behaviour, during the time of his imprisonment, and at his arraignment and execution, as to obviate the misreportes of the enemies of true Religion, who wrest and draw all things, without respect of truth, to their owne aduantage. It is knowne within these few yeeres, Henry Garnet and Edward Oldcorne, English Jesuites, being called in question, for that prodigious and damnable Powder-treason; although it was proved by cleare evidences and their own confessions, vnder their owne handes, that they were speciall authors and actors in it, and for the same were executed by publicke justice, not in a corner, but in the open cities of London and Worcester; yet (such is the shamelesse impudencie of that sect) by printed apologies they haue bene iustified; and, which is more, inserted in a Catalogue of their Martyrs, set fourth at Rome, anno 1608, by the licence and permission of their superiours. By which maner of doing, what may be expected, in this particular, at their handes, any man may easilie perceiue. Euery thing they are about to doe, (bee it neuer so great a mischiefe,) they cloake with the mantle of Religion: and if the statutes of the kingdome ouer-take any of them, either for practises against the King, or sowing the seed of rebellion amongst the subiectes, it must bee supposed (forfoothe) they suffer all for religion. Now were it so, and that, according to the law, for Masse saying they were punished to the death, they could not glorie in it, nor rightly challenge the crowne of martyrdom, their Masse beeing a vile and idolatrous seruice, flatly disagreeing with the faith of Christ, and truth of the Gospell. But it is not so; albeit wee haue such statutes, for the restraint of Masse abomination within this kingdome, they are not able to instance any one, who, for the transgressing thereof, to this houre hath suffered. His Majesties proceedings with them haue bene more gentle: where death might haue bene inflicted, milder courtes haue bene taken: imprisonment for some short time, and banishment fourth of the realme, haue bene the sharpest punishments; so vnwilling was his Highnesse to force, or once to seeme to force, the consciences of any men whatsoeuer. And to say that which truth is, if this vnhappy miscreant, who nowe hath his reward, had not discovered his traiterous minde, openly disauowing his Majesties authoritie, and stood to the maintaining of the Popes power, for dethroning kings, and freeing subjects from their oathes of allegiance, hee had felt no harder measure then others, although the circumstances of his fault were much greater; but his peruerse speeches, and insolent carriage beyond all credits, his sowing of doctrines tending to open rebellion, the hande of Iustice could not forbear. What was it, in the hearing of multitudes of people to affirme, 'that he would returne or abide in the kingdome, contrary to the lawes, and his Maiesties commandements? to value his Highnesse authoritie with his old hatte, and the Acts of our Parliament with a rotten figge? to say, it was treason to sweare with the oath of allegiance to the King, and that his Maiestie, by vsurping the Popes power, had lost the right of the kingdome?' Yet these, and diuers other more treasonable speeches, he vttered at his arraignment; which are set down in the proesse, so far as could be remembred; for all could not be kept in mind, I am perswaded, the honest minded of those of his own profession will in their hearts condemne, and judge him justly to haue suffered; for, praised be God, the Jesuits arte hath not so farre preuailed, in planting such opinions in the hearts of people, but euen amongst the aduersaries themselues, they are many that doe no wise approue their seditious and proditorie doctrines. And here, to all our Catholickes (they will be so called) in this kingdome, if nothing further may be obtained, and that still they will lye in that superstition, wherein they haue bene nuzled, I wish at least so much wisdom, as to beware of Jesuites policies, and not to thinke their practises the cause of the Catholicke Churche. It is not religion, as one hath well obserued, they striue for, but souerainitie. It will not content them to haue the Romish faith and ceremonies embraced; the crownes of kings, their scepters and subjects, must all be at the Popes deuotion. This is their speciall worke, and the effect of their blinde obedience, that speciall vowe, I meane, which they, besides the three vowes common to other orders, vow and sweare at their receptions. To this point runs all their seruice, to make the Pope the lord of all the earth; emperours, kings, and princes his dependants; to be remoued, altered, changed, deposed,

and killed, when it please his holines to giue commiffion. Mariana, a Jefuit, counteth it a wholefome meditation for Kings, to think they may be killed, not only lawfully, but with glory and commendation to the doers. And Cæſar Baronivs, in his *Annales*,<sup>1</sup> recites a brieue of Pope Vrban the Second, ſent to Godfrede, Biſhop of Luca, wherein hee declares, that they are not to be eſteemed murderers, who, burning with the zeale of their Catholicke mother, kills excommunicates. The words of the Reſcript are theſe: *Non illos homicidas arbitramur, qui aduerſus excommunicatos, zelo catholice matris ardentes, eorum quoſlibet trucidaffe contigerit.* Bellarmine, that great Doctor, in his controuerſie, *De Romano Pontifice*,<sup>2</sup> hath theſe expreſſe words, *Papa poteſt mutare regna, et uni auferre atq. alteri conferre, tanquam ſummus princeps ſpiritualis ſi id neceſſarium fuerit ad animarum ſalutem.* That is, the Pope, as chiefe ſpiritual prince, may change kingdomes, and take them away from one, and giue them to another, if it be neceſſarie for the ſauing of ſoules. But Franciſcus Suarius, in his late booke intituled, *Deſenſio Fidei Catholice*, goes beyond all this, ſaying, that any, to whom the Pope permits the doing, may kill or expell the King, who is by ſentence depriued, or, which is all one, if he be declared to haue committed the crime, which by law deſerues that penaltie; and if the Pope neglect to giue power, the lawfull ſucceſſour may take the execution to himſelfe; and if he faile, the communitie of the kingdome ſucceedes in that right; to wit, to kill and expell him. His wordes are theſe: *Poſt ſententiam condemnatoriam regis, de regni privatione, latam per legitimam poteſtatem, vel quod perinde eſt, poſt ſententiam declaratoriam criminis habentis talem pœnam ipſo iure impoſitam, poteſt ille qui ſententiam tulit, vel cui ipſe commiſerit, regem privare regno, etiam illum interficiendo, ſi aliter non potuerit.* In the ſame place:<sup>3</sup> *Si Papa regem deponat, ab illis tantum poterit expelli, vel interfici quibus ipſe id commiſerit. Quod ſi nulli executionem imperet, pertinebit ad legitimum in regno ſucceſſorem, vel ſi nullus inventus fuerit, ad regnum ipſum ſpectabit.* And that no man ſhould thinke this his priuate opinion, amongſt the approbations prefixed to the worke, yee haue, in *cenſura Academia Complutenſis*, this ſaide: *Nihil eſt in toto hoc opere à noſtro omnium ſenſu diſcordans, quum de hac re ſit omnium noſtrum eadem vox, idem animus, eademque ſententia.* That is, there is nothing in all this worke, which is not agreeable with our mind, ſeeing herein we haue all one voice, one opinion, and one iudgement. Nowe if this bee the minde of all, it is high time they were all met with, and that *celeri pœna*, by a preſent diſpatch. The knightes templars, erected, as is thought, by the princes of France, to preferue their conqueſt in the Holy Land, when, by keeping the rules of their inſtitution in the firſt yeeres, they had purchaſed a great reputation of holynesse, and thereby drawne to themſelues an infinite wealth, became at laſt intolerable to kinges, and by one uniforme conſent, in the Councell of Vienna, were condemned, and the order abolifhed. The order was of a longer ſtanding by much then our Jefuites, but to kinges nothing ſo dangerous. The writers that mention them, do not agree vpon the cauſes of their generall hatred, and leaue the reader in ſuſpenſe, whether iuſtly they merited extermination or not: But poſteritie ſhall haue an aduantage in vnderſtanding the doctrine of Jefuites by their printed bookes, and their ſeditious practiſes, by the attempts they haue made againſt the eſtates and liues of princes. *Secta hæc rebellis eſt, et nocens regibus.* A rebellious ſect they are, and hurtfull enemies to kinges, cruel aſſaſins, teaching diſloyaltie, and plotting the deaths of princes, which all Evrope, and thou, France, by the reſt, can teſtifie. O kinges, when ſhall ye awake, and take it in your harts to fulfil Gods decree? When ſhall yee vindicate your crownes from the vniuſt uſurpations of the prieſt of Rome? Shal the diſgrace and violence done to ſome of your ſacred perſons for euer thus lye vnauenged? We know it ſhall not: But God hath his day, who will patiently attend. In the meane time, I ſhall with the Catholikes of this kingdome to conſider and looke more deeply in their profeſſion, then they yet haue done. The myſteries of the Romiſh Religion are not ſeene at the firſt. Surely, ſome of our Papiſtes doe not know them, eſpecially that principle, which bindeſ

<sup>1</sup> Tomo 11. page 802.<sup>2</sup> De Pont. lib. 5. cap. 6.<sup>3</sup> Lib. 6. cap. 4. num. 18.

them to obey the Pope against al the world. Suarius<sup>1</sup> hath taught them, that it is to be held as an article of faith, that the Pope hath power to depose kings; and that hee who denyes this power to the Pope, denyes the Catholicke faith. By this is there no meane left to bee a Catholike, and remaine the Kings loyall subiect. To beleene the Popes power is such, is vndenyable treason: To refuse it, is to renounce Catholick religion; which last, I perswade myfelfe all true and naturall Scots will choofe, and of the choife shall it neuer repent them. I beseech God to open their eyes that are closed, and giue vs all to be contented with the Scriptures of God, which, by themfelues, are able to perfect vs vnto euery good worke. Farewell.

A TRVE RELATION of the Proceedings against IOHN OGILVIE, a Iesuit, especially at his Arraignement and Execution, which was at Glasgow, the last of Februarie, beeing on Tuesday, 1615.

IOHN OGILVIE, alias WATSON, (for, according to the maners of his sect, he was *multinominis*, a man of diuers names,) came into Scotland at Martimes 1613, and making his residence for the most part of that winter in the north parts of Scotland, tooke his journey to England a litle before Easter. Where, giuing out to some of his countrey-men, that he had a supplication for some wrongs to present to his Majestie, hee attended the Court some two moneths; and falling in acquaintance with a gentleman of the West countrey, after his pretended buisnesse was done, or the occasion disappointed, he returned into Scotland with the saide gentleman, in the beginning of Iune thereafter. Vpon this familiaritie, and other intelligences giuen him, he came to Glasgow in August following; and finding a kinder receipt by certaine persons in that citie, (who for that crime haue since bene justly condemned,) then either he expected, or became them to haue granted, he made some haunt and resort thither at fundry times, till at last he was detected, and, by the direction of the Archbishop of Glasgow, who at that time kept his residence within the citie, apprehended and committed to prison. It was the fourth of October, a litle after foure of the clocke in the afternoone, when perceaued to bee ouertaken somewhat in company, his examination was differred to the morrow after. There was found with him two or three litle bookes, containing directions for confessioun; his budget being in the house where he kept at night, was conuoyed out of the way by one of his familiars, and presented the next day after, searck beeing made by the magistrates of the citie, therein was found his Masse garments, chalice, altar, and the rest of that stuffe, with letters not fit at this time to bee divulgate. Amongst others, a warrant to dispense with those who possesse church-liuings, after this tenor, *quo ad dispensationem de bonis ecclesiasticis poteris dispensare ut retineant quæ possident, dummodo in pios usus aliquid impendant pro iudicio Confessarii dispensan-*

<sup>1</sup> *Propositio hæc, Papa potestatem habet ad deponendos reges hereticos et pertinaces, inter dogmata fidei tenenda et credenda est. Infra: Si abjuratur hæc potestas, abjuratur catholica fides. Lib. 6, cap. 8, num. 8.*

*tis.* Hee had in the famin maile diuerse Reliques, peeces of wood, bones, and a tuft of Ignatius hair, the founder of the Iesuites order, which I thinke was his chiefest iewell.

In his examination, which was the next morning, before the Archbishop of Glasgow, the Bishop of Argyle, the Lords Fleming, Boyde, and Kilsyth, the Prouest of the citie of Glasgow, S. Walter Stewart and S. George Elphinston, knights, he confessed his true name to be Iohn Ogilvie; that he was borne in the North of Scotland, and had bene fourth of the countrey 21 yeeres; that hee liued at Grats, in a colledge of the Iesuites, and was receiued in their order; that he returned into Scotland by the command of his superiour, and was to stay there vntill hee were recalled, if no other impediment should offer. Being required to giue his oath, that he should declare nothing but trueth, in such things as should be demanded; he answered, 'that he would take oath, but with some exceptions, namely, if hee were demanded in any thing that touched his estate and life, or that might endanger these or any of them, he would not answere, likewise if the same tended to the preiudice of others.' And when it was replied, that, his exceptions being admitted, his oath was as good as no oath, seeing any questions that could be proposed, would concerne some of these, he was induced at last to giue a simple oath, which he did vpon his knees; and rising vp from the ground, said, 'I will neither lie nor æquiocate, but what I say shalbe truth; and what I am asked, if I find it impertinent for me to answere, I will say nothing, or declare plainly I will not tel.'

Then being inquired of his comming in Scotland, the time and busines he came to do, answered, 'his busines was to saue foules.' Touching the time when he came into Scotland, answered, 'In the Iune before:' where hee was deprehended to æquiocate, notwithstanding of his protestation; for he meant of his last comming, and was asked concerning the first. But the time at that examination was not vnderstood. Being inquired of the places where he had bene receiued, denied to tel; and if he had said Masse in any place, he answered, 'hee would not say any thing that might worke preiudice to himselfe or others:' and because he had professed that hee would not lie, the reply he commonly made to such questions, was, 'I will not tell you.'

The Lordes, finding him thus obstinate, returned him to a chamber in the Castle, which was prepared for him, nothing lacking that was requisite for one of his qualitie; and there hee was kept to the 8 of December. Now and then conference was giuen him by diuers of the Ministers, in all which, heate and choler was espyed much to ouer-rule him. The schole distinctions he had in readinesse, and thereby, when hee could not shift the argument, made semblance to euade. But of Holy Scripture (as he seemed not to be well acquainted there-

with), he made little reckoning, denying it still, after the Iesuites maner, to bee the onely rule of faith.

The 12 of December, he was presented at Edinburgh, before the Lords Commissioners, appointed by his Maiesties Miffiue for his examination and tryall; namely, the Lord of Binning, Secretary, the Lord of Kilfyth, Sir Gidion Murray, Thesaurer-deputie, and Sir William Oliphant, his Maiesteis Attorney-Generall; to whom he answered in al that was proponed, as of before at Glasgow. There, the letters intercepted with him were presented, which he acknowledged to be his; yet being demanded, touching certain particulars contained in them, he denied to giue ther lordships any satisfaction: And howbeit there was no perswasion omitted, that might haue induced any good nature to a better resolution, it auailed not. So as their lordships, perceiuing nothing but a pertinacious refusing in him to answere to points most reasonable, and withall apprehending his stay at Court, in the last summer, to haue bene for some worse seruice then he could speede in, determined, according to the power giuen them, to extort by torments another confession: which being intimated to him, and he replying that he was ready to suffer what they pleased, it was thought fit to proue him with the most easiest forme of tryall that could be used. And here, it being remembered, that in the tryal of some criminal persons, it was found that nothing helped more to find out the trueth of the faults wherewith they were charged, than the with-holding of their naturall rest; it was aduised, that he should be kept without sleepe for some nights, which was accordingly done: and during which time it was perceiued, that hee remitted much of his former obstinacie, and falling to discouer certaine of his receauers in Edinburgh, gaue hope, that, by gentle usage; hee would bee drawne to giue their lordships contentment.

In the meane time, Chriftmasse approaching, at which time there is an ordinarie cessation from the affaires of Counsell and Sessioun, the Archbishop of Glasgow, being to repaire homewards, and vnwilling to discharge himselfe of that prisoner, till hee might at leasure worke him to a better minde, obtained the fauour of their L. to retaine him, in his companie, for a fourth-night after, or till hee shoulde returne himselfe to Edinburgh.

It pleased his Ma. in this time, whilest he was remaining at Glasgow, to fend a Commission to the Archbishop of Glasgow, the Lord Bishop of Argyle, the Lord Fleming, S<sup>r</sup> George Elphinston, and Iames Hammilton, Prouest of the citie of Glasgow, for trying the said Iesuit his opinion, touching his Highnesse royal power, and the Popes claimed iurisdiction, maintained by Bellarmine, Suarius, and others of that sort. The questions were these:

1. Whether the Pope be iudge, and haue power, *in spiritualibus*, ouer his Ma-

iestie, and whether that power will reach ouer his Maieftie, euen *in temporalibus*, if it be *in ordine ad spiritualia*, as Bellarmine affirmeth ?

2. Whether the Pope haue power to excommunicate Kings, (especially such as are not of his church,) as his Maieftie ?

3. Whether the Pope haue power to depofe Kings, by him excommunicated ; and in particular, Whether he haue power to depofe the King his Maiefty ?

4. Whether it be no murther to flay his Maiefty, being fo excommunicated and depofed by the Pope ?

5. Whether the Pope haue power to affoyle fubiects from the oath of their borne and naturall allegiance to his Maieftie ?

Vpon the 18 day of Ianuarie, the foresaid questions being red diftinctly vnto him, and he required to declare his opinion thereanent, answered as followeth :

To the first, ' That hee thought the Pope of Rome Iudge to his Maieftie, and to haue power ouer him, *in spiritualibus*, if the King be a Christian : ' and where it is asked, if that power will reach ouer his Maieftie, *in temporalibus* ? hee sayes, ' hee is not obliged to declare his opinion therein, except to him that is Iudge in controverfies of religion, which hee acknowledges to be the Pope, or some one hauing authoritie of him.'

To the second hee answereth, ' that the Pope hath power to excommunicate his Maieftie : ' and where it is faid, that the King is not of the Pope his church, hee saith, ' that all who are baptized, are vnder the Popes power.'

To the third, where it is asked, if the Pope haue power to depofe his Maieftie, beeing excommunicated ? Answereth, ' that hee will not declare his mind, except to him that is Iudge, in controuerfies of religion.'

To the fourth, whether it bee lawfull to flay his Maieftie, being excommunicated and depofed by the Pope ? Answereth, *ut supra*.

To the fifth, whether the Pope hath power to affoyle fubiects from their borne and naturall allegiance to his Maieftie ? Answereth, *ut supra*.

In all these Articles, he was particularly refoned with by the Archbishop of Glasgow, Mr Robert Boyd, Principal of the College, a man of rare erudition, and Mr Robert Scot, one of the Ministers of the citie ; where it was also signified vnto him, that it concerned him in no lesse then his life, what answer he should make ; if he should stand obstinate in these he had giuen, he might know what fauour was to be expected for his other crimes. Not the lesse, ratifying all that formerly was said, hee added this further, ' that he condemned the oathes of supremacie and allegiance proponed to be sworne in England,' and would needes haue the writer to insert those wordes ; to all which hee put his hand, subscribing thus,

IOHANNES OGILVEUS, *Societatis Iesu*.

These answeres beeing sent to his Majesty, vnder the testification of the fore-

saide Commiffioners, his highneffe gaue order to the Lordes of the Priuie Counsell, for his triall; which was appointed to be at Glasgow, the laft of Februarie. Immediately after, the Archbishop of Glasgow directed the Prouest and Baylies of the citie vnto him, to fignifie that Tuesday following was appointed for his arraignment; and that hee would not bee accused for Masse faying, or any thing else that concerned his profession, but for the answers that hee had made to the demands proposed to him by his Maiesties Commiffioners. They declared also, that if hee should, vpon better resolution, recall those answeres, and apply himselfe to giue his Maiestie satisfaction, in other points, which of deutie hee was obliged vnto, the said Archbishop would vse his credite with his highneffe and the Lordes of the Priuie Counsell, for his safetie. His answer was, ' that he thanked his lordship, for the good will and kindneffe offered; but he was so little minded to recall any thing hee had said, as when hee came to the place, hee would make a commentarie vpon his answeres.'

The Ministers of Glasgow, accompanied with Maister Williame Struthers, one of the Ministers of Edinburgh, did also visite him, some two dayes before, aduising him to the same purpose, and offering him their best counsell and comfort. His answer was, ' That he had resolved what to doe; and if hee stoode in neede of their comfort, hee shoulde advertise.'

The Earle of Lowthiane, trusting by conference to bring him to a better minde, went vnto him at diuers tymes, using many persuasions to draw him from his obstinate course: but nothing could preuaile with him, as in the proceedings ye shall perceiue.

**THE ARAIGNMENT of JOHN OGILVIE, on Tuesday the last of Februarie, in the town-houfe of GLASGOW, before James Hammilton, Prouest of Glasgow, James Bell, Coline Campbell, and James Bradwood, Baylies of the citie, Iustices appointed by speciall commiffion for that busines, by the Lordes of Priuie Counsell. The foresaid IUDGES being assisted by the honourable LORDS there present:—John Archbishop of Glasgow, James Marques of Hammilton, Robert Earle of Lowthiane, William Lord Sanquhar, John Lord Fleming, Robert Lord Boyde, and Sir Walter Stewart, Baylie deputie of the regalitie of Glasgow.**

ON Tuesday, the last of Februarie, a litle after 11 of the clocke, in the forenoone, the Court beeing fet, Mr William Hay of Baro, Commiffar of Glasgow, deputed by speciall commiffion from Sir William Oliphant of Newtoun, his Majesties Atturney Generall, produced the Inditement following: together with the citation vsed against those who were to passe vpon the jurie, and the roll of their particular names, subscribed with his hand, according to the custome obserued in those cases.



THE INDITEMENT of IOHN OGILVIE, IESUIT, after the forme of the law of Scotland.—IOHN OGILVIE, by your subscription, a Priest of the late execrable order of IESUITS, you are indited and accused, That, forasmuch as God, the author of all righteous gouvernement, hauing established Kings and Magistrats his lieutenants vpon earth, for repressing of violence, oppression, and vice, and the promoting of pietie and iustice, hath, in his particular grace and fauor, blessed this countrey with a more ancient, iust, and permanent descent of lawfull Kings, than any other nation of the world; and extended our felicitie beyond the happines of our antecessors, by the iustice, wisdome, and clemencie of his Maiesteis prosperous reigne; and hath not onely rewarded his Maiesteis zeale and righteoufnes with wealth and peace, but also honoured and strengthened him with the accession of the most mightie and flourishing kingdomes of England, France, and Ireland. Which visible fauours, proceeding directly from Gods most bountifull hand, moued the whole Estates of this kingdome, assembled in the Parliament holden at Perth, the 9 of Iulie, 1606, To acknowledge his Maiesties soveraigne authoritie, princely power, royall prerogatiue, and priuilege of his crowne, ouer all estates, persons, and causes whatsoever, within the kingdome: And all in one voice, faithfully promise to maintaine, defend, obey, and aduance the life, safetie, honour, dignitie, soueraigne authoritie, and prerogatiue royall of his sacred Maiestie, and priuiledges of his crowne: And to withstand all persons, powers, and estates, who should presume, preasse, or intend any wayes to impugne, hurt, or impair, the same: As also, his Maiestie, with aduise of the whole estates of this kingdome, in the Parliament holden at Edinburgh, the 22 day of May, anno 1584, ratified, approued, and perpetually confirmed, his Majesties royall power and authoritie ouer all estates, as well spiritual as temporall, within this realme: And statuted and ordained, that his Highnesse, his heyres and successouris, by themselues and their Counselles, were, and in all times comming should bee, Iudges, competent to all persons, his Highnesse subjectes, of whatsoever estate, degree, function, or condition that euer they be of, spiritual or temporall, in all matters wherein they or any of them should be apprehended, summoned, or charged to answere vnto such things as should be inquired of them, by our said soueraign Lord and his Counsell: And that none of them, who should be apprehended, called, or summoned, to the effect foresaid, should presume or take in hand to decline the iudgement of his Highnesse, his hayres and successours, or their Counsell, in the premisses, vnder the paine of treason: And likewise, by the 48 Act of King James the First his Parliament, and diuers other Parliaments thereafter, it is ordained, that all the King his lieges liue and be gouerned vnder the Kings lawes and statutes, and vnder no lawes of other countries and realmes, vnder the paines of treason, and others; (as is) particularly expressed in the Acts before mentioned,

and other lawes of this kingdome. Notwithstanding whereof, it is of trueth and veritie, that you, hauing renounced your naturall allegeance and deutie to your natiue and righteous King, and cast off all reuerence, respect, and obedience to his foueraigne authoritie and lawes, and dedicated your mind and actions to the vnlawfull obedience of forraine powers, aduerfaries to his Majestie; and resolving, so farre as in you lieth, to seduce his Majesties subjectes from the faith and allegeance due to his Majestie, repaired to his countrey, in the moneth of Iune last past, or thereabout, and by your conferences, intifements, auricular confessions, Masse-saying, and other fubtle and craftie meanes, indeuoured your selfe, not onely to corrupt many of his Maiesties lieges, in religion, but also to peruert them from their duetifull obedience due to his Majestie, till you were discouered and apprehended by the Archbifhop of Glasgow; who, with diuers his Maiesties Counsellors, and others his good subjectes, used all Christian and charitable meanes to bring you to the sense of your hainous offences, and desire of amendment thereof: But they, losing all their well-intended labours, were (in respect of your peruerse obstinacie) commanded by his Majestie, to enter to your examination, and the tryall of your hainous crimes and transgressions. And especially, the faide Archbifhop of Glasgow, and many others of good ranke and qualitie adjoined to him, by his Majestie, for your examination, hauing, vpon the 18 day of Ianuarie last, called you before them, to examine you vpon some particular interrogatories, prescriued by his Majestie to be demanded of you, as directly concerning his Majesties moſte sacred person, life, crowne, and estate. And chiefly, you beeing demanded by them, whether the Pope hath power to depose Kinges, beeing excommunicated? And in particular, if he haue power to depose the Kings Majestie, our foueraigne, being excommunicated by him? You answered, treasonably, that you woulde not declare your mind, except to him that is iudge in the controuerſies of religion, whom (by your answere made to the latter part of the first interrogatorie, demanded of you that day) you declared to be the Pope, or any hauing authoritie from him: Albeit, by the Acts of Parliament, and lawes of this Realme, made in the yeeres of God 1560 and 1567, it is statuted and ordained, that the Bishop of Rome (called the Pope) shall haue no iurisdiction nor authoritie within this Realme, in any time comming: And thereby, not onely declined treasonably his Maiesties iurisdiction, allowing of the Popes iurisdiction, which is discharged by Acts of Parliament, as said is; but hath committed most damnable and high treason, in not acknowledging that the Pope hath no power to depose his Maiestie, who, holding his crowne and authoritie absolutely, fouerainly, and immediatly of God, may not be deposed by any earthly person, power, or authoritie. And thereafter, being demanded, If it be lawfull to slay his Majesty, being excommunicated and deposed by the Pope?

you answered, *ut supra*; which was, that you woulde not declare your mind till you were before the Pope, or others hauing authoritie from him: Thereby, not onely declining, treasonably, his Maiesties iurisdiction and authoritie royall; but by your not answering clearely, that it is altogether vnlawfull, damnable, and diabolicall, once to thinke that it is lawfull to slay his most sacred Majestie, you haue committed most hainous, pernicious, and vnpardonable treason. And lastly, being demanded, If the Pope had power to affoile his Majesties borne subiectes from their naturall allegeance? you answered, *ut supra*: and thereby, both declined, treasonably, his Highnes iurisdiction and authoritie royall, in refusing to answere before his Maiesties Counsellors and Commiffioners foresaid, in one matter, meerey concerning his royal power ouer his people, and their subiection to his Maiestie: and also committed wilfull and detestable treason, in not acknowledging, professedly and presently, that none on earth had power to affoile his Maiesties subiects from their naturall subiection and allegeance to him. But that it may bee knowne that your treason proceeded of forethought felonie and obstinate resolution, you freely and vnrequiredly did adde to your foresaid answeres, this damnable conclusion, that you condemned the oathes of supremacie and allegeance giuen to his Maiestie, by his subiects, in his Dominions; wherby it is apparent, that your errand to this Countrie hath beene, to infect his Highnesse subiects with the poison of your pestilent and treasonable opinion foresaid, to the subuersion of Religion, ouerthrow of his Maiesties authoritie and crown, and destruction of his most sacred person. And albeit, the course of all his Maiesties life and reigne, hath manifested how vnwilling hee hath euer beene to use the feueritie of his Lawes against those who hath said and heard Masse, and otherwise controuened the Acts of Parliament made against idolatrous papistrie, and practisers thereof, within this Kingdome; desiring rather to reclaime them, by instruction, from their errorrs, to the knowledge and profession of the trueth: And when he found them obdurat, and of desperate resolution, relieuing the countrie of the dangerous progresse of their courses, by their imprisonment and banishment, whereof you had such experience, in the persones of your owne complices, condemned for their manifest crymes, as might verie probablie haue made you to haue expected the like; if anie memorie of your natie duetie and borne allegeance had possessed your mind: But you, beeing altogether destitute thereof, by the three last articles of your Depositions aboue written, you haue so plainly discovered, that you professedly approue the meanes, and with the effect, of the ouer-throwe of his Maiesties estate, the destruction of his Highnesse person, and seduction of his natie subiectes from their subiection and duetifull obedience; that thereby, and by euery one of your foresaid answeres, you haue committed moste hainous, detestable, and vnpardonable treason, and deseruedly

incurred the most rigorous paines therof to be executed vpon your body, lands, and goods, with all extremities, to the terrour of others.

THE Inditement being read, Maister William Hay, substitute for his Maiesties Attorney, opened the same, to the effect following.—Albeit the Inditement of it selfe be cleare enough, and representeth sufficiently to my Lordes Iustices, their honourable Lordships heere assisting, and to your selfe, Iohn Ogilvie, who standes there accused, the weight and gravitie of the crime by you committed, yet I shall resume it to you in few words, that your answeres may be the more distinct, and without mistaking.

You are not accused of saying Masse, nor of seducing his Maiesteis subjectes to a contrarie religion, nor of any point touching you in conscience, properly; but for declining his Maiesties authoritie, against the lawes and statutes of the land, and for maintaining treasonable opinions; such as we, of this Realme, haue not heard by any auowed. The statutes, mentioned in your Inditement, make it treason not to answer the Kings Maiestie, or his Counsell, in any matter which shall be demanded: You being examined by my Lord Archbishop of Glasgow, and other honourable persons adioyned to him, by his Maiesties special Commision, refused to answer vnto diuers interrogatories proponed to you by their Lordships; and, at the same time, professedly auouched the Pope of Rome his iurisdiction, which, by the Lawes of the countrie, is many yeeres since plainly discharged: Therefore, haue you incurred the penaltie contained in the statutes, and the same ought and should be executed vpon you.

It is further laid vnto your charge, that you, being demanded in the particulars, namely, Whether the Pope hath power to depose the Kings Maiestie, our soueraigne? Secondly, Whether it be lawfull to slay his Maiestie, being deposed by the Pope? Thirdly, Whether the Pope hath power to assoile his Maiesties subjects from their naturall allegiance, or not? You denied to giue any answer, touching any of these points, except yee were inquired thereof by the Pope, or others hauing authoritie from him; and so not acknowledging that his Maiesties crowne and authoritie is held immediately and souerainely of God, the author of all gouernement; that it is detestable, once to thinke, that his sacred Maiestie may bee lawfully killed; and that no man hath power to assoile his Maiesties subjectes from their naturall allegiance to his Highnesse: You haue, in these points, and euery one of them, committed most hainous treason; for the which, what you say in your own defense, I see not. And yet further, that it may be seene, how desperate your resolution is, in al these points, although you were not required concerning the oaths of supremacy and allegiance giuen to his Maiestie by his subjectes, ye freely, and out of your owne motiues, condemned these oathes,

as impious and vnlawfull. Thereby hath it appeared, what a wicked and treasonable mind you foster against his Maiestie, our soueraigne. If you should deny it, heere are your answeres, subscribed with your owne hand, which ye cannot but acknowledge; them I desire to bee read, as likewise the feuerall statutes of Parliament, which you are alledged to haue transgressed; and thereafter, since his Maiestie is pleased that the ordinarie course of tryall be kept vnto you, you shall haue libertie to say for your selfe, either against the relevancie of the Inditement, or verification produced, what you thinke best.

Then were read the statutes of Parliament, mentioned in the Inditement, and the said Iohn Ogilvies answeres to the demands proponed vnto him; which he acknowledged for his owne, and the subscription thereto subioyned: after which, hauing licence of the Court to say what he coulde for himselfe, he spake to this effect:—‘ First, vnder protestation that I doe no way acknowledge this iudgement, nor receiue you, that haue that Commission there produced, for my iudges, I deny any point laid against me to be treason: for if it were treason, it would bee treason in all places, and in all kingdomes; but that,’ saith he, ‘ is knowne not to be so. As for your Actes of Parliament, they are made by a number of partiall men, the best of the land not agreeing with them, and of matters not subiect to their forum, or iudicatorie, for which I will not giue a rotten figge!’

‘ Where I am thought anemie to the Kings Maiesties authoritie, I knowe none other authoritie he hath, but that which he received from his predecessors, who acknowledged the Pope of Rome his iurisdiction. If the King,’ saith he, ‘ will be to me as his predecessors were to mine, I will obey and acknowledge him for my King; but if he doe otherwise and play the runneagate from God, as he and you all doe, I will not acknowledge him, more than this old hatte!’

Heere the Archbishop of Glasgou interrupted his speech, desiring him to deliuer his mind in a greater calme, and with more reuerent speeches of his Maiestie (for he vttered those things in a vehement passion, and as one transported with fury); hee remembered him, that hee was accused vpon his life, before iudges that were authorized by his Maiesties Commission: to decline the iudgement, or raile against his Maiesties authoritie, was bootlesse, and in a man of his profession, being an Ecclesiasticke, very scandalous. He should rather take another course to amend what he had offended in, and recall his former answeres, if they had not proceeded from a deliberate purpose; or if hee were resolute to maintaine them, to doe it with reason, and in a moderate sort; that this were his best, either for iustifying himselfe, and the opinions he held, or for mouing the Iudges, and their Lordships that were assisting, to commiserat his case: he aduertised him withall, to be more temperate in his speeches concerning his Maiestie, otherwise he would not be licenced thus to offend.

To this, Ogilvie made some litle anfwere, ' That hee would take the aduertifement, and speake more coldly : ' howbeit, hee would neuer acknowledge the iudgement, nor thinke they had power to fit on his life, but said, ' And for the reuerence I doe you, to stand bare-headed before you, I let you know it is, *ad redemptionem vexationis, et non ad agnitionem Iudicii.*

The Aduocate here insisted, that seeing all his answeres tended to decline the iudgement, and that hee brought no reason why the Inditement should not goe to a tryall, that the Iurie should be chosen and sworne at the Barre, according to the custome.

THE NAMES OF THE IURIE.

Sir Geo. Elphinston of Blythwood,	Hew Crawford of Iordane-hill,	John Dunlop of Powmilne,
Sir Thomas Boyd of Boneshaw,	John Carschore of that Ilk,	John Stewart, burges of Aire,
Sir J <sup>r</sup> Edmeston of Duntraith, elder,	Hew Kennedy, prouest of Aire,	John Dumbar, burges there,
James Murehead of Lachope,	William Makarrel of Hill-house,	James Johnston, burges there,
James Robertson of Ernock,	James Blaire, baylie of Aire,	John Cunningham of Rawes.

It was allowed the prifoner to challenge any of the fore-named persons, and to oppose vnto their admiffion : who said, ' He had but one exception for them all : they were either enemies to his cause, or friendes ; if enemies, they could not bee admitted vpon his triall, and if they were his friends, they should stand prifoners at the Barre with him.'

The Iurie, being knowne to be all discrete and substantiall persons, were instantly sworne and admitted.

Then was the Inditement read againe, in the hearing of the Iurie, and the evidences shewed them for verification thereof, which ofbefore were produced. And the prifoner, beeing of new remembered to say what hee would for himselfe, for the better information of the Iurie, spake these things following :

' I wish these Gentlemen to confider well what they doe. I cannot bee tried nor iudged by them ; and whatsoever I suffer here, it is by way of iniurie, and not of iudgment. *Iniuria est, non iudicium.* I am accused of treason, bot haue done none offence, neither will I begge mercy.'

' This is strange,' sayeth the Archbishop, ' you haue done none offence, and yet you are come in his Maiesties kingdome, and hath laboured to peruert his Highnesse subjects ; both of these are against the law : In this haue ye not offended ?'

' Not,' he answereth ; ' I came by commandement, and if I were even now fourth of the kingdome, I should returne : neither doe I repent any thing, but that I haue not been so busie as I should, in that which yee call peruerting. I hope to come to Glasgow againe, and to doe more good in it. If all the haire of mine head were priestes, they should all come into the kingdome.'

' And doe you not,' sayeth the Archbishop, ' esteeme it a fault to goe against the King his commandement, especially in this point of discharging you his king-

dom. If a King haue any power within his kingdome, it seemes hee may rid himselfe and his countrey of those with whom he is offended; and it faouours of great rebellion to say otherwise.'

To this Ogilvie replied, 'I am a subiect as free, as the King is a King: he cannot discharge me, if I be not an offender, which I am not.' And being asked, for what offences he might be discharged by the King? Answered, 'in the cases of theft and murther.'

'All this while,' said the Archbishop, 'you come not to answere any thing to the points of your Inditement. Why did you decline his Maiesties authoritie, and refused to shew your opinion anent the Pope his power in deposing Kings, and loosing subiects from their oath of allegiance? And when it was asked you, if it were lawfull to slay the King, being deposed and excommunicated by the Pope, which any loyall hearted subiect will abhorre to think of, why did you not simply condemne it as vnlawfull? For in that you doe not condemne it, you shewe your selfe of the opinion of the rest of your sect, who in their bookes maintaine, that it is both lawfull and commendable to slay Kings, if the Popes commiffion goe forth once for it.'

'For the declining of the Kings authoritie,' sayeth he, 'I will doe it still in matters of religion, for with such matters hee hath nothing to doe; neither haue I done any other thing, but that which the Ministers did at Dundie; they would not acknowledge his Maiesties authoritie, in spirituall matters, more than I; and the best Ministers of the land are still of that minde, and if they be wise, will continue so.'

The Archbishop replied, 'that he was mistaken, both in the place and matter; for it was not at Dundie, but Aberdein, where eight Ministers, meeting to a General Assemblie, contended not against the Kinges authoritie, but that the Assemblie called to that place and time, could not be discharged by his Maiesties Commiffioner: Neither should the fact of a few, taken at the worst, be esteemed the deed of the whole. These haue bene punished for their offences, and some of them haue confessed their errour, and bene graciously pardoned by his Maiestie: All good Ministers professè otherwise, and our religion teacheth us to acknowledge his Maiestie, our onely supream iudge, in all causes. The King is keeper of both Tables, and his place beares him not onely to the ruling of his subiects in iustice, and preferuing equitie amongst them; but euen to maintaine religion and Gods pure worship, of which he should haue principal care. Your lord, the Pope, hath not onely denied this authoritie to Kings, which God giueth them, but usurpeth to himselfe a power of deposing and killing, when he is displeased; and it were the lesse to be regarded, if this his usurpation had gone no further then your pennes; but you haue entred, by this pretended right, the throats of the

greatest Kings, as your practise vpon the two last Henries of France beares witness. You are not able to lay such imputation vpon vs, nor our profession, which teaches, that, next vnto God Almighty, all men are bound to feare, serue, and honour their Kinges. But what answere you, touching these demandes? Hath the Pope power to depose the King? Or is it not murther to kill him, being deposed by the Pope?

'I refused of before,' said hee, 'to answere such questions, because in answering, I should acknowledge you iudges in controuersies of religion, which I doe not. I will not cast holy things to dogges.'

'And is it,' said the Archbishop, 'a point of faith, that the Pope may depose his Maiestie? Or do you think it a controuersie in religion, Whether his Maiestie (whom God saue) may be lawfully killed or not?'

To this Ogilvie replied, 'It is a question amongst the Doctors of the Church, and many hold the affirmatiue, not improbably: A Councill hath not yet determined the point; and if it shall be concluded by the Church, that the Pope hath such power, I will giue my life in defence of it, and if I had a thousand liues, I would bestowe them that way, if they will make an article of faith of it.' Being vrged to declare his owne opinion, especially in that point, whether it were murther to kill his Maiestie, being deposed by the Pope, he answered, 'that he would not say it were vnlawfull, though he should saue his life by it.' Then going on with a long speech of the Pope his power, affirmed the King to be subject to him, by the vertue of Christes saying to Peter, *Pasce oves meas.* 'That if the King offended against the Catholicke Church, the Pope might punish him aswell as a shepheard or the poorest fellow in the countrey. That in abrogating the Popes authoritie, the estates of Parliament had gone beyond thair limites, and that the King, in vsurping the Popes right, had lost his owne. *Nam qui rapit jus alienum,*' sayeth hee, '*perdit jus ad suum.*'

Being asked touching the oath of alleageance, why he did condemne it, and the same being read vnto him, he said, 'It was a damnable oath, against God and his trueth, and that it was treason to sweare it; because it brought the Kings person and state in danger; since this kingdome,' sayeth he, 'was Christian, the Popes supreme power was alwayes acknowledged; this being cast off, (as we see in the Act of your Parliament,) against all reason and conscience, and subiectes forced to swear to a matter so vnlawfull, what maruell that attemptes and dangerous courses be taken against him? *Iustissima lex est, ut quæ agit aliquis, talia patiatur.* But would the King leaue off his vsurping vpon the Pope, hee might liue without feare, aswell as the King of Spaine, or any other Christian prince: And with this hee intermixed some speeches, of his owne seruice, and the seruice of other Iesuits done to his Maiestie, whereof hee saide, 'Neither Bishop, nor



Minifter, nor all the Bifhops and Minifters in his Maiefties kingdomes, had done or could doe the like.'

The further hee proceeded in fpeaking, his fpeeches ftill grew to bee the more intollerable; therefore the Archbishop of Glasgow, willing him to make an end, did clofe all with fome wordes to the Iurie, to this effect. Gentlemen, and others, who are named vpon this Affife, though I minded to haue faide nothing, but fitten heere a witneffe of the proceeding, I haue beene forced, by his proud and impudent fpeeches, fomewhat to replie; and muft, with your patience, fay a little more. It is this fame day, two and twentie weekes paff, that this prifoner fell into mine handes; fince that time hee hath had leifure to thinke enough what courfe was fitteft for himfelf to take, for fatisfying his Maieftie, whome he had offended: neither hath he lacked counfel and aduife, the beft that we could giue him. Befides, hee hath found on our parte nothing but courteous dealing, and better intertainement then (I muft now fay it) hee hath deferued. Mine owne hopes were, that hee would haue followed another courfe then I fee hee hath taken, and not ftande to the anfweres which hee made to thofe demandes, which were moued vnto him by his Maiefties Commiffioners, and you haue feene: But if his anfweres at the firft were treasonable, they are nowe fo little bettered, as in all your hearinges, hee hath vttered fpeeches moft deteftable, made a commentarie worfe then the text was, and fhewed himfelfe to carrie the minde of an arrant and desperate tratour. You perceiue, he obfcures not his affection towards the Kinges Majeftie, our foueraigne, in all his fpeeches; preferring the Pope to his Majeftie: And, which is more intollerable, affirmeth the Kinges Maieftie to haue loft the right of his kingdome, by vfurping vpon the Pope. Hee will not fay it is vnlawfull to kill his Maieftie; hee fayeth, it is treason for fubiectes to fweare the oath of allegiance; and meaneth fo much, in his laft wordes, as the Kinges Maiefties life and eftate cannot bee affured, except hee render himfelfe the Popes vaffall.

Thus hath hee left you little to doe: except that his Majefties pleafure is, the ordinarie forme bee kept with him, you fhoulde neuer neede once to remoue: all his fpeeches haue beene fo ftuffed with treason, that I am fure the patience of the Noble-men, and others heere prefent, hath beene much prouoked.

In al that he hath faid, I can marke but two things alledged by him, for the Popes authoritie ouer Kinges: the wordes of our Sauour to Saint Peter, *Pafce oues meas*, Feede my fheepe; and the fubjection of Kinges, efppecially of our Kinges, fince the kingdome became Christian, to the Pope. For the wordes of our Sauour, howe little they ferue his purpofe, I haue no neede to tell you. To feed the fheepe of Chrift, is not, I hope, to depofe Kinges from their eftates, nor to inflame the heartes of fubiectes againft princes: much leffe to kill and difpatch

them : Wee are better taught then to bee deceiued with fuch glosses. Saint Peter made neuer that sense of those wordes, and teacheth vs a farre other doctrine, in his first Epistle, fift chapter, and second and third verse.

I will not spende time with such purpose, onely this I muste saye, that whatsoever was Saint Peters prerogatiue, the Pope of Rome hath nothing to doe with it : for hee cannot bee Saint Peters successour, that hath forsaken his doctrine, and gone against his practise directly, both in that and other points of Christian faith. And for the antiquitie of his usurped power, I may justly say, that Master Ogilvie is not well seene in antiquitie, or then speaketh against his knowledge, when he saith, that this power of the Pope was euer acknowledged by Christian Kinges : The Bishops of Rome, for many yeeres, made no such claime, neither did Emperours or Kinges euer dreame of such subjection : Long it was ere the Pope of Rome came to the height of commanding Kinges, and not till hee had oppressed the church, vnder the pretext of Saint Peters keyes, bearing downe all the Bishops within Christendome : which hauing done, then hee made his inuasion vpon princes, and that by degrees. The histories of all ages make this plaine, and the resisting hee found by Kinges in their kingdomes, testifieth that they neuer acknowledged his superioritie. Of our owne, howbeit, as wee lye farre from his feat, so had wee lesse businesse, and fewer occasions of contradiction ; yet can I make it seene, in diuers particulars, when any question fell out anent the prouision of Bishops and Archbishops to their places, the Bulles of Rome were so little respected, as the Kinges predecessors haue always preferred and borne out their owne choice, and the interdictions made upon the realme, by these occasions, not without some imputation of weaknesse to the Sea Apostolicke, haue bene recalled. The superstitions of Rome were amongst vs last embraced, and with the first, by the mercies of God, shaken off : Whatsoever you bragge of your antiquitie, it is false, both in this and all the pointes of your profession else, which I could cleare, if this time or place were fitting. But to you of this Iurie, I haue this only more to say, you are to inquire vpon the veritie of the Inditement, whether such and such things as are alledged to be committed by him, haue bene so or not ? You haue his subscription, which hee acknowledgeth ; you heare him selfe, and how hee hath moste treasonably disauowed his Majesties authoritie : It concernes you onely to pronounce, as you shall find verified by the speeches that you haue heard, and the testimonies produced. For the rest, the Iustices knowe sufficiently what to doe, and will serue God and his Majestie, according to the Commission giuen them.

Maister William Hay, Aduocate for his Majestie, asked instrumentes vpon the prisoners treasonable speeches vttered in the hearing of the Iurie, and his ratification of the former answeres made to his Majesties Commissioners : Likewise, for

the further clearing of the Inditement, repeated the Actes of Parliament mentioned in the said Inditement, with the Act of Priuie Counsell, made anent his Maiesties supremacie, and the oath of allegiance: And desired the Iurie deeply to weigh and consider the peruerse and diuelish disposition of the partie accused, to the effect they might, without scruple, proceede in his conuiction. And according to his place, protested for Wilfull Errour, if they should acquite him of any point contained in the saide Inditement.

[VERDICT.] The persons named vpon the Iurie remoued to the higher house, which was prepared for them; and hauing elected Sir George Elphinstone chancellor, all in one voice, found the prisoner GUILTY of the whole Treasonable crimes contained in the Inditement.—[SENTENCE.] Which being reported by the saide Sir George Elphinston, and confirmed by the whole Iurie, then returned into the Court, Judgement was giuen, by direction of the Iustices, That the saide John Ogilvie, for the Treasons by him committed, should be HANGED and QUARTERED.

THE Archbishop of Glasgow demanded, if Ogilvie would say any thing else?

Ogilvie answered, 'No, my lord, but I giue your lordship thanks for your kindnesse, and will desire your hand.'

The Archbishop said, 'If you shall acknowledge your faulte done to his Maiestie, and craue God and his Highnesse pardon, I will giue you both hand and heart, for I wish you to die a good Christian.'

Then Ogilvie asked, 'If he should be licensed to speake vnto the people?'

The Archbishop answered, 'If you will declare, that you suffer according to the Law, justly for your offence, and craue his Maiestie pardon for your treasonable speeches, you shall be licensed to say what you please; otherwise you ought not to be permitted.'

Then saide hee, 'God haue mercie vpon mee!' And cryed aloud, 'If there be heere anie hidden Catholickes, let them pray for me; but the prayers of hereticks I will not haue.' And so the Court arose.

[OGILVIE'S *conduct at the time of his EXECUTION.*]

AFTER iudgement was giuen, by the space of some three houres, he remained in the place where he was conuicted, hauing leasure graunted him to prepare himselfe for death. Hee continued a while vpon his knees at prayer, with a colde devotion; and when the houre of execution approached, his handes being tied by the executioner, his spirits were perceiued much to faile him. In going towards the scaffold, the throng of people was great, and he seemed much amazed; and when he was vp, Master Robert Scot and Master William Struthers, Ministers, very grauely and christianly exhorted him to a humble acknowledge-

ment of his offence, and if any thing troubled his mind, to disburthen his conscience. In matters of religion, they saide, they would not then enter, but prayed him to resolue and fettle his minde, and seeke mercie and grace from God, through Iesvs Christ, in whom onely saluation is to bee found. Ogilvie answered, ' That he was prepared and resolued.' Once he said, ' That he died for religion ;' but vttered this so weakly, as scarce he was heard by them that stood by vpon the scaffold. Then addresssing himselfe to execution, he kneeled at the ladder foot, and prayed. Master Robert Scot, in that while, declaring to the people, that his suffering was not for any matter of religion, but for haynous treason against his Maiestie, which hee prayed God to forgiue him. Ogilvie, hearing this, saide, ' He doeth me wrong.' One called Iohn Abircrumbie, a man of little wit, replied, ' No matter, Iohn, the moe wrongs the better.' This man was seene to attend him carefully, and was euer heard asking of Ogilvie some token before his death ; for which, and other bufinesse he made with him, he was put off the scaffold.

Ogilvie ending his prayer, arose to goe vp the ladder, but strength and courage, to the admiration of those who had seene him before, did quite forsake him ; he trembled and shaked, sayng, he would fall, and could hardly bee helped vp on the top of the ladder : He kissed the hang-man, and said, *Maria, Mater gratiæ, ora pro me ; Omnes Angeli, orate pro me ; Omnes Sancti, Sanctæque, orate pro me* : but with so low a voice, that they which stood at the ladder foote, had some difficultie to heare him.

The executioner willed him to commende his soule to God, pronouncing these wordes vnto him, ' Say, Iohn, Lord haue mercy on mee! Lord receiue my soule!' which he did, with such feebleness of voice, that scarcely hee could be heard : Then was hee turned off, (his left foot for a space taking holde of the ladder, as a man vnwilling to die,) and hung till hee was dead. His quartering, according to the iudgement giuen, was for some respectes not used, and his body buried in a place that is kept for male-factors.

THIS was the ende of that unhappie man, in whose death, any man that had eyes might see what a gracelesse and comfortlesse religion Poperie is : The power of religion manifesteth it selfe chiefly in the houre of death : The sight of a reconciled God, the assurance and perswasion of fauour through Christ, furnissheth spirite and boldnesse, and maketh a man willing to depart and quite this life : But Popish religion teacheth vncertainetie of saluation, and leadeth a man to other fauours, who can neither helpe nor comfort, in the houre of death. What maruaile, that men, who leane to such rotten and vnprofitable helpes, lacking and disappointed of the assistance they hoped for, shewe a faint and cowardly minde at their last !

This onely I haue further to aduertise, that since his execution, wee haue vnderstood, by some persons who visited him, at times, during his imprisonment, that, amongst other his speeches with them, hee said this, ' That if hee had escaped his apprehension at this time, and liued till Whitsonday next, hee should haue done that which all the Bishops and Ministers, both in England and Scotland, shoulde neuer haue helped ! And, if hee might haue liued at libertie vnto that time, hee woulde willingly haue beene drawne in peeces with horses, and haue giuen his bodie to haue beene tormented !' Whereof, what shall any man collect, but that this villane was about some desperate enterprife ?

God, that in mercie hitherto detected and disapointed the malicious devices of the wicked against his Church, continue with vs his fauour, and giue vs to depend stedfastly on his prouidence. And to all the enemies of God and the King, let it befall, which wee haue seene vpon this wicked and accursed person. Amen.

FINIS.

DEPOSITIONS of the JESUITE and Papists examined at Glasgo, 5 Oct. 1614.<sup>1</sup>

APUD GLASGOW, the fift day of October, 1614. THIR personis, wnderwrytten, wer examineit, in presens of my Lordis of Glasgou and Argyle ; my Lord Flemyng, my Lord Kilsythe, my Lord Boyde ; the Laird of Mynto, Sir George Elphinstoune ; James Hammiltoune, Provest ; James Bell, James Braidwood, Colin Campbell, Baillies.

ROBERT HEYGAIT, being inquyrit, how lang he hes bene acquent with this *Preist* ? Answerit, that he neuer saw him nor spak with him bot within pir twa monethis syne, or pairby ; and pat he come down to him to his awin buithe, and gat sum paper fra him ; and pairefter zeid with him to *Mr William Stewartis* hous, to get ane chopein of wine, quha callit him self ane hors-cowper, and wes going to *Kyntyre* to by hors ;<sup>2</sup> and employit him to by ane hors. And pairefter, callit him self ane *Preist*. Bot of his name he is ignorant ; and neuer speirit for it. And being inquyrit, gif he enterit withe him in RELIGIOUN ? So confest ; and pat he brocht him to *Marcoun Walkeris* hous ; and saw his buikis : And beleivit that he spak to him ; and pat he contentit him of pe Sacrament of pe body of Christ ; and pat he is ane Catholik. And being inquyrit, gif he desyrit him to geive him ane Mefs ? Confest he desyrit pe samyn ; and hard pe samyn at pe said tyme : And pat pair (wes) with him *Marcoun Walker, William Mentithe, Mathow Adam, Thomas Forret, James Forret*. And being speirit, gif pis *Preist* wes gone to *Sir James Clelandis* hous or not ? Hard *Williame Mentithe* say, pat he wes gone pair. And being inquyrit, gif pe *Lady Maxwell* wes at ony Mefs heir, within pis schor space, or at ony Mefs ? Denyit pat he euer saw hir. Bot he knawis pat pis *Preist* spak with hir, pe last tyme scho wes heir, and pat pe said *Preist* said to him, pat he wes ane of THE SOCIETIE OF JESUS. And being inquyrit, how pat pe freindschip and acquaintance of pe said *Preist* wes maid with *James Stewart* ?<sup>3</sup> Confest, pat he wes pe bringer of pame togidder to confer ; and pat pe said *James* standis still in his former Religioun ; and pat pe said *James* wes desyrus to speik with pe said *Preist*, and he wes ernist to haif pe said *James* of his Religioun, bot he wald not giue his name pairto. And also confest, pat pair wes ane wper Mefs said in pe said *Marcoun Walkeris* hous, be pe said *Preist*, within tua dayis pairefter ; and

<sup>1</sup> From the Original attested copy, in the *Denmylne Coll. of MSS.*, Adv. Library.

<sup>2</sup> To purchase horses.

<sup>3</sup> Styled *James of Jerusalem*, who figures in this Collection, Vol. III. &c.

pat pair wes present þe said *William Menteith*, *Mareoun Walker*, *David Maxwell*, brother to *New-Wark*; and pat pair wes ane wþer *Preiſt* in þis Toun, quha ſtayit ane day heir, and went Eift-throw.<sup>1</sup> And knew not his name; bot he callit him ſelf *Ogilbie*. And being inquiryt, gif pair wes ane wþer Meſs ſaid be þis *Preiſt*, in his awin hous, or nocht? Confeſt pat pair wes ane ſaid pair; and pat he wes Clerk to þe maift of þir Meſſis him ſelf; and pat his wyf knew not pairof, bot ſuſpectit þe ſamyn. And at þat tyme, quhen he ſould haue gone to haue bocht þe hors, he raid to *Sir James Clelandis* hous. And þis he declairit be his great ayth.

ROBERT HEIGAIT.

ANDRO SYMMER, declarit, pat he drank with þis *Preiſt* in *James Stewartis* companie, quha intyfit him to his Religioun; bot he wald not grant to him: And pat pai reſſonit wþone Religioun togidder.

ANDRO SYMMER.

THE PREIST being inquiryt, quhat his name wes, he nameit him ſelf *JOHNE OGILBIE*, ſone to *Waltir Ogilbie of Drum*: and pat he hes bein out of þis cuntraye þir twentye twa 3earis: And pat he ſtudet in þe *Colledgis of Olmis and Gratis*; and remanit in *Olmis* twa 3eir, and in *Gratis* fyve 3eir; and pat he hes reſſaut þe *Ordour of Preiſthuid* in *Paris*; and come hame in *Scotland* befoir now, and remanit ſex oukis, or pairby: And pat he now come hame about May laſt, or pairby: And confeſt pat þe budget,<sup>2</sup> producit on þe buird befoir him, wes his awin. And pat he wes ane of þe ordinar *Jefuittis*: And being aſkit, quhidder THE POPIS Jurifdiction extendit ouir THE KINGIS dominiounis, in ſpreitwall matteris? Affermit conſtantlie þe ſamyn; and wald dye for it.

JOHANNES OGILBEUS, Societatis Jeſu.

JAMES FORRET, confeſſis, be his great ayth, pat he knew not þis *Preiſt* all þe tyme pat þe *Erle of Eglington* wes heir. And wes ſend for be him, be . . . . ., ſervitrix to *Mareoun Walker*, quho delt with him to come and heir þe Meſs: And for þat effect appointit wþer morue; at quhat tyme he keipit: And þe Meſs wes ſaid be þe ſaid *Preiſt*; being preſent, *Robert Heygait*, *Mathow Adam*, *William Menteithe*, *Mareoun Walker*, *Thomas Forret*, his brother. And declairit, pat he wes neuer at ony Meſs befoir or eftir. And pat pair wes ane wþer man, quha callit him ſelf *Dawnie*, ſeducit him to þat Religioun, quhairinto he pan in ane manir agreit: And ſupponis, pat þe ſaid *Dawnie* had directit þis *Preiſt* to him, to draw him forder on: quha perſwadit him to leive THE KIRK—quhilk he did ſen ſyne; quhair of he cravit God forgewnes. And confeſſit, pat, befoir he reſſaut þe Meſſe, þat morning, he maid a Confeſſioun to þe ſaid *Preiſt*, quha gaue him ane abſolutioun, and tuik þe Sacrament.

J. FORRET.

JAMES STEWART, being inquiryt, quhen he knew þis *Preiſt*? Be his great ayth, declarit, pat he knew him tuentie dayis ſyne, or pairby; and pat *Robert Heygait* maid his acquaintance with þe ſaid *Preiſt*. And eftir þe drinking of ane choppine of wyne, he went with þe ſaid *Preiſt* to þe 3aird of *Mareoun Walker*, quhair he conferrit with him anent his Religioun, and wald nawayis 3eild to him. Bot he had ane guid exſpectatioun of him, and maid him acquent pat he had ane Meſs to ſay; bot he wald not go to it. As to his name, he knawis not þe ſam.

J. STEWART.

WILLIAME MENTEITH, being inquiryt, gif he knew þis *Preiſt* or not? Anſwerit, pat he ſaw him in þis Toun ane monethe ſyne, or pairby; and pat he wes in his companie, in the hous of *Mareoun Walkeris*; and pair hard þis *Preiſt* ſay ae Meſs; and denyit ony mae. And paireftir, being confrontit with *Robert Heygait*, confeſt þan he hard thrie Meſſis, twa pairof in *Mareoun Walkeris*, and ane wþer in *Robert Heygaitis*; and pat he tuik þe Sacrament. And being inquiryt, quhair he gat his beginning of þat Religioun? He anſwerit, pat he firſt wes instructit thairin, being ſervand to þe *Laird Kers*, 3ounger, be þe *Lady Angus*, and *Archibald Douglas*, in þe *Place of Moungtoun*, beſyde *Air*, ten or twelf 3eir ſyne, or pairby. And declairit, pat *Thomas Forret* tauld him of þis *Preiſt*; and pat *Robert Heygait* informit him pat þe ſaid *Thomas* was of þat Religioun. As als, declairit, pat he ſaw *Johnne Wallace of Corſflat* at þe Meſs, in *Robert Heygaitis* hous, ſaid be þe foirſaid *Preiſt*.

WM MENTEITHE, w<sup>t</sup> my hand.

<sup>1</sup> Probably to Edinburgh; he went through the town to the eastward.

<sup>2</sup> Portmanteau, or small trunk.

THOMAS FORRET, being inquyrit, quhair he had first acquaintance with his *Preist*? Declairit, he saw him first in *Mareoun Walkeris* hous, being fetchit in to him be *Robert Heygat*, and efter lytill conference with him anent þe Religioun, he desyrit him to cum to Mefs, quhilk he did; and befoir þe reffauing pairof, he maid his Confessioun, and reffauit abfolutioun; and pairefter tuik þe Sacrament. And þat pair wes present at þe said Mefs, *Mr Johnne Mayne, Mareoun Walker, Mathow Adam, Robert Heygat, James Forret, William Menteith*; and wes at na Mefs sene syne, seing be þe sycht pairof he despyfit þat Religioun. And þat þe remanent lykwayis reffauit þe Sacrament.

THOMAS FORRET.

MATHOW ADAM, being inquyrit, how long he had embracit þe Popisch Religioun? Declairit, þat, about fyve zeiris syne, or pairby, he had his entrie pairto in *Dunskin*; and hes fence reffauit þe Communioun. And þat he had acquaintance with his *Preist* four oukis syne, or pairby, be þe moyen of *Robert Heygat*. And siclyk, in somer last, wes acquent with ane *Dawnie*, ane *Preist*, in *Mareoun Walkeris* hous; and þat he wes at thrie Messis; þat his *Preist* said ane in *Robert Heygaitis*, and twa in *Mareoun Walkeris* hous. And being askit, quhat his professioun is presentlie? Answerit, þat he wes of þe Religioun, be þe lawis of þis realme.

MATHOW ADAM.

MR JOHNNE MAYNE, being inquyret, gif he knew his *Preist* or not? Declairit, be his ayth, he knew him in *Mareoun Walkeris* hous, to þe quhilk he wes brocht be *Robert Heygat*; quhair he confessit him self to þe *Preist*, reffauit obfolutioun, befoir he hard þe Mefs and reffauit þe Sacrament. And þat pair wes present *Mareoun Walker, James Forret, Thomas Forret, Robert Heygat, Mathow Adam, William Menteithe*. And þat, as zit, he awowis þat Religioun, and professis þe samyn, quhill he be better resolut.

MR J. MAYNE.

JOHNNE WALLACE of *Corsflat*, being inquyrit, gif he wes at a Mefs said be his *Preist*, or not, in *Robert Heygaitis* hous? Confessit, þat he wes present pairat, and brocht pairto be þe said *Robert Heygat*.

JOHNNE WALLACE.

THIS is the true copie of þair CONFESSIOUNIS.

GLASGOW.

### Suborning of Witnesses—Perjury—Slaughter, &c.

Mar. 8.—ROBERT GRAHAM, callit of Langboddome; Robert Dunlope and George Wat, wobsteris<sup>1</sup> in Edin<sup>r</sup>; Adame Blaiklok, duell-and at the West-poir of Ed<sup>r</sup>; James Boyle, wobster in Edin<sup>r</sup>; Johnne Hammiltoun, tailzeour thair; Adame Moffet, chopman;<sup>2</sup> Williame Tok, beltmaker at the Wast-poir; James Or, flescheour in Crawmound.

Dilaitit, accuset, and persewit, be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intreis, off the feuerall crymes vnder-writtin, contenit in thair Dittayis, eftir specifeit, viz.

#### DITTAY against Robert Grahame for Suborning of Witnesses and Perjury.

THE said ROBERT GRAHAME: Forfamekill as it is expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, speciallie, be the 80 Act of the sext Parliament of our souerane lordis darrest guidschir, King James the Fyft, of famous memorie; and be the 22 Act of the fyft Parliament, and 48 Act of the saxt Parliament of our souerane lordis darrest mother, Quene Marie, of worthie memorie, that all sic perfonas as induces ony man to beir ffals Witnes, or ar seducearis or corrupteris of Witneffis, induceing þame pairby to depone ffallie, that all sic perfonas fall be pwneifchet in thair perfonas and guidis, with all rigour, according to the dispositioun of the Cowmone Law, baithe Canone,

<sup>1</sup> Weavers. <sup>2</sup> It does not seem clear whether this denotes shopman, or chapman (*pedlar*), a dealer in small wares. The latter, however, is thought most likely.

Ciuile, and Statutes of this realme, that is to say, ather be peirfing and boiring of pair tungis, confiscatioun of pair moveable guidis, and sic vther pwneifchment to be inflictit vpon thame, accoirding to the discretioun of the Lordis: Nochtwithstanding quhairof, it is of verritie, that pe said Robert Grahame, being ane fraudulent and fals man, studeing and imploying his witis thir mony zeiris bygane, how, be craft and dissait, to suborne and seduce dyuerse perones to be Witnesses in findrie actiones, alsweill depending befor the Lordis of Sessioun as vther Judicatories of this realme: And making vp to him self a plane tred and professioun pairof, He, for pe manifestatioun of his forder skill and knowlege in the said professioun, vpon hoip and esperance of his expectit gayne, vnderstanding laitie, that pair was ane Actioun of Spuilzie intentit and perfewit befor the Lordis of Sessioun, at the instance of Mark Gledstanes, indueller in Edr, aganis James Guidlet and vtheris, his complices: the said Robert Grahame, as ane oppin and manifest coofiener and dissaver, with wonderfull peartnes and double deilling, first adressit him self to the said Mark Gledstanes, and discoverit to him the haill secreittis of his actioun; declairing to pe said Mark, how he had bene in Muffilburgh, and had conferrit with sum folkis pair, quha had resset sum of pe said Markis guidis and geir, that was spuilzeit frome him be pe said James Guidlet; and that pai war in grit feir leift pe said Markie sould prevaill in his said actioun: At quhilk tyme, lykwayis, the said Robert Grahame, maist fallie and craftillie, declairit to the said Mark, that he wald find out dyuerse men to be Witnesses, quha vnderstuid of the spoliatioun of his guidis; and offerit frelie to him, for gayne and commoditie, to bring thame to him, and to cause thame be Witnesses for preving of his actioun: Lyk as, accoirding pairto, the said Robert Grahame, vpon hope of gayne and commoditie, in the letter end of Januar lastbypast, or pairby, convenit to himselff Adame Moffet, chopman in Edr, Robert Dunlop, wobster pair, George Wat, wobster pair, and Williame Tok, beltmaker pair; quhilkis foure perones he maist fraudulentlie persuadit and inducet to vndertak to be Witnessis, to depone in the said cause, in fauouris of the said Markie Gledstanes, aganis the said James Guidlet, albeit pai knew nathing of the verritie pairof. LYK AS, pe said Robert, immediatlie estir his induceing and suborning of the saidis Witnessis, to pe effect foirsaidis, for acquyreing of his forder gayne, past and reveillit pe haill premisses to the said James Guidlet, and put him vpon the counsell pairof: The verritie of the quhilk knaverie and dissaitfull deilling of the said Robert Graham being detectit to the Lordis of Counsell and Sessioun, and pai, vpon diligent examinatioun of pe said Robert, and pe Witnesses foirsaidis, haifing ryppit vp the haill secreit of all pair proceedingis; and in end, finding pe said Robert Grahame to be bot ane false and leying lymmer, the saidis Lordis brocht him to this poynt; and, of his awin consent, maid him to bind him self and to be content, that in caice it sould be fund be the saidis Lordis, that he ony wayis vareit in his Depositiones paireftir, *that he sould be content to be HANGIT but fauour!* Lyk as, pe said Robert, being dyuerse tymes paireftir solemnlie suorne, in presens of the haill Lordis, to declair pe verritie, vpon ane only poynt, viz. quhidder or nocht pe said Robert first proponit pe purpois to the said Mark Gledstanes him self, anent the bringing to him of pe saidis Witnesses, for preving to him of his caus, or gif pe said Markie socht him first to that effect; the said Robert, estir dyuerse examinationes and solemne aithes maid be him, haifing constantlie declairit pat the said Mark first come to him and proponit pat matter; in end, pe said Robert, as ane manifest periuret and lieing lymmer, be his posteriour Deposition, acknowlegit and confessit, that he first adressit him self to Mark, and maid the first motioun of pe said matter to him: In the cairfull and exact tryell of the quhilk matter, be the saidis Lordis of Sessioun, thair lordschipis, be pair sentence and decreit, nocht only hes ffund and declairit the said Robert Grahame to be ane fraudulent and fals suborner of the saidis Witnessis, seduceing, be craft and dissait, vpon hoip of gayne, thame to depone in the said caus betuix Gledstanes and Guidlet, quha vnderstuid nathing pairintill: Bot lykwayis, be the same sentence, he is fund and declairit to be ane fraudulent and fals suborner of Witnesses, be craft and dissait, in dyuerse vtheris actiones and causses; speciallie, in the fraudulent suborning and seduceing of Witnesses in the caus of spuilzie perfewit be Quintene Braidfute aganis Conpland; and lykwayis, in the caus of Divorcement perfewit be the Lady Torthorrell aganis my lord hir husband, and in dyuerse vperis



actiōnes and cauffis, moveing the saidis Witneffes, be his intyſeing and fals Subornatioun, to vndertak vpon thame to beir teſtimonie, and to preve and affirme for treuthe, that, quhairof thay of thame ſelfis war altogidder ignorant. And be the ſaid Sentence, he is ffund be pe ſaidis Lordis to haif frequentlie hantit that damnable tred of lyfe, with wonderfull peartnes and double deilling, betuix pairteis, ſo fynelie proveing pe diſſaver, chopping, changeing, and triking at his humour, fra hand to hand, that quhairas pe ſaid Robert was evin now, be his inventiones and forgeris of his brane, about pe on-drawing of ſum one partie to his deſignes, quhilk he wald promeis and avow to mak guid, ſo incontinent pairtefir he wald diſcover and detect all to the vther partie, quhome lykwayis, be his falſe ſurmifes, he wald induce to ſum contrarie motioun; in baith, intending nathing bot double and falſe deilling, to the preiudice of either<sup>1</sup> partie. And in end, in the ſaid Robert his tryell and examinatioun, in prefens of the ſaidis Lordis, he is ffund, be pair ſaid Decreit, to be dyuerſed,<sup>2</sup> and many tymes menſuorne, and periuret; as the ſaid Decreit beiris. AND pairfoir, the ſaid Robert, as ane maniſt ſeducer and Corrupter of Witneffes, induceing and intyſeing thame, for his awin lucre and gayne, falſie, aganis pair knowlege and conſcience, to depone in dyuerſe cauffis, ſpeciallie in the cauffis aboue writtin; quhairof he is declairit giltie, be the ſaidis lordis Decreit, and alſo conforme to his volunter offer aboue ſpecificeit, quhairby he, of his awin conſent, was content to be hangit, in caice he war fund to varie in his Depoſitiones, and pairthrow menſuorne; and as a falſe and periuret diſſaver, aucht and ſould vnderly the pwneifchment of death, in maift exemplarie maner, to pe terrour of vtheris.

*DITTAY againſt Robert Dunlop, &c. for Perjury and False-witneſſing.*

THE ſaidis ROBERT DUNLOPE, GEORGE WAT, and ADAME BLAIKLOK; fforfamekill as, by dyuerſe Actis of Parliament, it is expreſſie provydit, ſtatute, and ordanit, that all ſic perſones as beiris fals Teſtimonie and Witneſſing, in ony caus quhatſoeuir, falſe pwneifched to the death, according to pe Diſpoſition of pe Cowmone Law, baith Canon, Ciuile, and Statutes of this realme: And trew it is, that the foirnamet perſones, nochtwithſtanding of the ſaidis Actis, haifing moift wilfullie plunget and fetterit thame ſelfis in matteris of damnable ffalſetis, and iniuſt beiring of Witneſſing, with ſic evidence of precogitat Periurie, that albeit thay war conſcious of pair awin malicious and falſe intentiones, zit wald thay rwne heidlongis, and combine and vniformelie agrie togidder to mak merchandice of pair conſciences, reſolveing with thame ſelfis, to beir teſtimonie, and effrontedlie for veritie to avow, that (howſoeuir in it ſelf) zit to thame vnknawin, thay being inducet pairto, nocht ſamekill vpon the hoipis and promeiſſis of expected gayne, as out of thair continual hant and conſuetude of leying, quhilk, throw cuſtome in thame, did turne to nature; quhairin be degrees, thay haifing attynit to ſic fynes,<sup>3</sup> that gif pair courſe pairin had nocht happelie bene interruptit, the eſtair of ony quhatſoeuir, without exceptioun, mycht haif bene generallie endangerit: And namelie, the foirſaidis perſones, and everie ane of thame, be the convoy and craftie dealing of pe ſaid *Robert Grahame*, callit of *Langboddome*, pair pylet<sup>4</sup> and leader in pis pair vnconſcionable tred of lyfe, haifing fauld thame ſelfis to all maner of miſchief, and making ſchipwrack of all ffaith and honeſtie, nocht only vpon reſſauit commoditie and gayne be thame and everie ane of thame, laitlie fra Mark Gledſtanes, indueller in Edr, offerit thame ſelfis to depone, as Witneffis, in ane caus perſewit be him aganis James Guidlet, befoir the Lordis of Seſſion, quhairof thay war altogidder ignorant; and quhairin the ſaidis *Robert Dunlope* and *George Watt* war maift deiplie ſworne to geve trew Teſtimonie; albeit, in pair examinatioun, pair falſe and damnable proceeding, by pe vigilant panes tane be the ſaidis Lordis, was maift happilie brocht to licht: Bot lykwayis, the ſaidis Robert Dunlope and George Watt, nocht as rafche and rekles liearis be officious teſtimoneis, bot as Witneffis deliberately ffals, haifing quyte banifched the feir of God, quha is pe witnes of conſcience, ze<sup>5</sup> aganis<sup>6</sup> pair knowledge and conſcience, being corruptit and ſeducet be

<sup>1</sup> Each.      <sup>2</sup> Contradictory; varying in his evidence.      It is probable, however, that this infers that he was a *dyvour* or bankrupt, which was considered moſt infamous.      <sup>3</sup> Refinement. Fr. *finesse*.      <sup>4</sup> Pilot.      <sup>5</sup> Yea.      <sup>6</sup> Against, or contradictory to.

greid of gayne and guid deid, hes gevin fals and vntrew Testimonie, in ane actione and caus persewit be Williame Cant aganis Thomas Gray, in the quhilk Marioun Crufurd, spous to the said Williame Cant, in absence of hir husband, was speciall doar: And the said *Adame Blaklok* gaif the lyk ffalfe and vntrew Testimonie, in the actione and caus persewit be pe said Quintene Braidfute aganis Coupland. As everie ane of pair Depositiones, tane in presens of the haill lordis, testifeing pair acknowledgement of the foirfaidis ffalsetis, in pe selff beiris. AND pairfoir, the saidis persones, and ilk ane of thame, as fals and periuret Witnesses, of certane knowlege, and aganis the licht of pair awin consciences, deponeing in the saidis cauffis, as said is, cleirlye tryit by the saidis Lordis, aucht and sould ressaue pair dew and deseruit pwneifchment, to the terrour and example of vtheris.

*DITTAY against Johnne Hammiltone, &c. for Perjury and False-witnessing.*

AS ALSO, the saidis JOHNNE HAMMILTOUN, ADAME MOFFET, and WILLIAME TOK: fforfamekill as, albeit, be the foirfaidis Actis of Parliament, it be exprellie provydit, statute, and ordanit, that all ffals Witnesses, and faules<sup>1</sup> persones, offering thame selffis, for greid and perticuler gayne, to beir ffals Witnessing in ony matter; and all sic as conduces with ony persone, to that end and effect, ar Ordanit to be pwneifchet be Banifchment, peirfing of pair tungis, difmembring of pair hand, and be vther panes and pwneifchmentis provydit be dispositioun of the Cowmone Law; and forder pwneifchment to be inflicted vpon thame, accoirding to the discretioun of the Lordis of Sessioun: Nochtwithstanding quhairof, it is of verritie, that the saidis *Johnne Hammiltoun, Adame Moffet, and Williame Tok*, being corruptit with promeiffes of rewaird, and be ressait of guid deid and vtherwayis, war seducet and intyfet to be ffals Witnessis, willinglie and wittinglie offering thame selffis, vpon hoip of rewaird, to geve ffals Testimonie, in preving of certain actiones, altogidder vnknawin to thame; namelie, the said *Adame Moffet* and *Williame Tok*, conforme to pair Depositiones maid be thame in presens of the haill Lordis of Sessioun, sauld and conducet thame selffis for rewaird, to be ffals Witnessis in the Actioun of Divorcement, persewit be THE LADY TORTHORRELL aganis THE LORD OF TORTHORRELL, hir husband; as also, in ane actione of Spuilzie, persewit befor the saidis Lordis, at the instance of *Mark Gledfanes* aganis *Guidlet*: And siclyk, the said *Johnne Hammiltoun*, conforme to his Deposition, maid in presens of the saidis Lordis, sauld and conducet him selff, as ane ffals Witnes, to haif deponit in the said actione of Devorcement, persewit be the said Lady Torthorrell aganis hir husband: And albeit the saidis actiones war altogidder vnknawin to thame, zit the foirnameit persones, and ilk ane of thame, aganis thair knowlege and conscience, maist forwardlie and malapairtlie, vnderuik to verifie and prove the samyn; quhilk wikket intentioun thay had nocht failzet, wittinglie and wilfullie, to haif put in practize, gif thay had nocht bene lattin,<sup>2</sup> be the intervening tryell tane be the saidis Lordis of Sessioun, alweill be pair Confessiones, as vther cleir and evident probatioun tane pairintill: And pairfoir, thay, and ilk ane of thame, as persones seducet and intyfet to beir ffals Testimonie, anent the probatioun of the foirfaidis cauffes, quhairof thay war altogidder ignorant, aucht to ressaue pair dew and deserued pwneifchment, to the terrour and example of vtheris.

*DITTAY against James Boyle, &c. for Suborning of Witnesses.*

IN lyk maner, the said JAMES BOYLE, &c. in the lait tryell and examinatioun, taine of him in presens of the Lordis of Sessioun, he, conforme to his awin Confessioun and Deposition, and vther probatioun had aganis him, is fund to haif delt with dyuerse Witnesses, suborning and induceing thame to Depone in dyuerse actiones, quhairof the saidis Witnesses war altogidder ignorant; speciallie, in the said actione and caus persewit be pe said *Williame Cant* aganis the said *Thomas Gray*, quhairin, be pe saidis Lordis Sentence and Decreit, he is ffund to haif past the boundis of deutie, and nocht a littil to haif oversene him selff, haifing sa heichlie transgrefsit pairintill, that his offence, in that behalfe, requyres

<sup>1</sup> *Saulless*, void of soul and conscience.

<sup>2</sup> *Let*, hindered, prevented.

heichlie to be pwneift : And pairfoir, as ane manifest Suborner and seducer of Witneffis, aucht and fould reffauē his dew and deserued pwneifchment, to pe terrour and example of vperis to abstene fra the yk heirefter.

*DITTAY against James Or, for Slaughter.*

AND last, the said JAMES OR : fforfamekill as, vponē the saxt day of Marche instant, the said James, in his passing furth of pe burgh of Ed<sup>r</sup> to Crawmond, haifing forgadderit with *Johnne Chirritie* in Crawmond, vponē the Grene pairof, thay haifing past in to the duelling hous of Thomas Mathiesone pair, quhair thay drank togidder ane hour or pairby : And the said James and Johnne haifing paireftir come furth of pe said hous, certane speiches haifing fallin out betnix thame, and be occasioun of a lie gevin be pe said Johnne Chirritie to the said James Or ; he, in his beiftlie rage and furie, drew ane knyfe or braig, with the quhilk he strak pe said vmq<sup>o</sup> Johnne Chirritie ane crewall and deidlie straik aboue his left pape ;<sup>1</sup> off the quhilk straik, he immediatlie, within ane hour paireftir, depairtit pis lyfe ; and sa, was crewallie and vnmerciefullie slane, vnder nycht, be pe said Jame Or : ffor the quhilk, he was tane *in flagrante crimine*, and being examinat pairupoun, hes confeffit the premisses to be of verritie.

My lord Aduocat productet the DITTAY ; and eftir reiding thairof, in respect the perfones on pannell could allege nathing aganis the relevancie thairof, to stay proces, desyret the samyn to pas to the knowlege of ane Assyse ; and productet ane roll of the perfones lauchfullie summond to that effect. Quhilkis perfones of Assyse being chofin, suorne, and admittit, eftir accusatioun of the saidis perfones, be Dittay, of the crymes *respectiue* aboue writtin, quhilkis war verifeit be production of the saidis Lordis Decreit, and thair awin Depositiones, maid in presens of the haill Lordis of Seffioun : As also, the said Slauchter was verifeit be the said James Or his awin Confessioun, maid in Judgement, in presens of the Justice and Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of James Raulstoun, mercheand burges of Edinburgh, stand, pronuncet, and declairit, conforme to the Depositiones and Decreit productet, and the said Judicial Confessioun maid be the said James Or, the foirnameit haill nyne perfones vponē pannell to be fylet, culpable, and convict of the feuerall crymes and pointis of Dittay aboue mentionet.

SENTENCE. The said *James Or* to be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin fra his body ; and all his guidis and gear to be escheit, &c. : AND siclyk, the saidis *Robert Grahame, Robert Dunlop, George Wat, and Adame Blaiklok*, to be tane to the said Mercat-croce of Edinburgh, and thair to be Hangit, quhill thay be deid ; and all thair moveable guidis to be escheit to his Maiesteis vse : THE saidis *James Boyle, Johnne Hammiltoun, and Adame Moffet*, to be first Scourget throw the burgh of Edinburgh, fra the Castell-hill to the Nether-boll thairof, and Brunt with ane hett irne vponē the cheik, and thaireftir Banischet this realme of Scotland ; and nevir to be fund agane within the samyn, without his Maiesteis Licence, vnder the pane of deid ;

<sup>1</sup> Breast.

AND laft, that the faid *Williame Tok* be lykwayis Scourget throw the faid burgh, and thairefter Banifchet this realme; and nevir ffund agane within the famyn, without his Maiefteis Licence, as faid is, vnder the pane foirfaid.

**Uttering “ Treffonable, Blafphemous, and Damnable Speiches”  
against the King.**

[THE Trial of JOHN FLEMING, elder, in Cockburnspath, which follows, is so remarkable in its nature, and the Sentence of death pronounced upon the unfortunate pannel, is so frightfully disproportioned to the pretended *crime* for which he stood charged, that, did it not occur in the authentic Records of a Supreme Tribunal, and were it otherwise unvouched, no honourable mind could for an instant admit the probability of its truth. Had mention been made of this fact in any private correspondence of the period, or in contemporary Memoirs or Annals, it would have been at once discredited by all, as an unprincipled libel on the character of our *British Solomon!* Unhappily, however, for the character of King James VI, the event here recorded is too true, and there can be no doubt that it did actually occur. The names of other victims to the same insane ideas of justice, are inscribed, in characters of blood, on the pages of our Criminal Records. It is unnecessary to recapitulate such instances, at any length, in this place. It is enough merely to refer the reader to the Cases of *Dik-soun*, Aug. 3, 1596;<sup>1</sup> *Tennent*, Oct. 10, 1600;<sup>2</sup> *Cornuall*, Apr. 25, 1601;<sup>3</sup> and *Ross*, executed Sep. 10, 1618.<sup>4</sup>]

May 17.—JOHNNE FLEMYNG, elder, in Cokburnespeth.

Dilaitit of dyuerse treffonable, blasphemous, and damnable speiches vtterit be him to Johnne Lawder, Minister, aganis our fouerane lordis most sacred perfone, &c. viz. FORSAMEKILL as, Johnne Lauder, Minister at Cokburnespeth, haifing laitlie reprehendit and fund falt with the faid Johnne Flemyng, becaus his sone repairit nocht to the Communioun; faying to the faid Johnne, that ‘albeit he contemnit be ordour and discipline of the Kirk, zit the Kingis most gracious Maieftie, quho is a most religious and godlie Prince, and vnder whois blisset government the trew Religioun and discipline of the Kirk is establifchet and advancet, wald nocht suffer fuche contempt and diffobedience pas over vnpwneifched:’ the faid Johnne Flemyng, vpone delyuerie of the faidis speiches, fchaiking af all feir of God, and that reverent respect, quhilk in conscience, befor God, and in his deutie and allegeance, he aucht<sup>5</sup> to HIS MAIESTIE, most treffonabillie, blasphemoullie, and mischantlie<sup>6</sup> replyit to be faid Minister, in thir woirdis: ‘ffeind nor THE KING schoote to deid or be morne—and that he die of pe falling feiknes!’ And it being demandit of the faid Johnne, quhat movet him to vtter fuche blasphemous and horrible speiches aganis his Maieftie?—maid this fcornefull and difdainfull anfuer: ‘War nocht<sup>7</sup> THE KING and his lawis, he had nocht wantit his landis—and pairfoir, he cairret nocht for pe King—for hanging wald be pe worst of it!’ Be the vttering of the quhilkis damnable and blasphemous

<sup>1</sup> See this Collection, I. 385.    <sup>2</sup> *Ibid.* II. 332.    <sup>3</sup> *Ibid.* II. 349.    <sup>4</sup> *Ibid.* III. under the above date.    <sup>5</sup> Owed.    <sup>6</sup> Wickedly. O. Fr. *meschantment*.    <sup>7</sup> Had it not been for the King, &c.

speiches aganis his Maiestie, he had committit most haynous and vnpardoneable Treffone. Lyk as, he being convenit and presentit befor the Lordis of his Maiesteis PREVIE COUNSELL for the saidis speiches, the saidis Lordis of Secret Counsell hes tryit the samyn to be of verritie; and thairfoir, Ordanit him to be pwneift *exemplarie*, to the terrour of vtheris.

The Dittay being red to the pannell, (he) maift humblie offerit him self in his Maiesteis Will, for the said crymes: Quhairupoun my lord Aduocat askit instrumentis. Quhilk Dittay was verifeit, be production of the Counsellis Decreit.

VERDICT. The Assyse, all in ane voce, be the mouth of Cuthbert Mure, furriour in Edinburgh, chancellor, ffand, pronuncet, and declairit the said Johnne Flemyng to be Giltie and convict of the saidis Treffonable Speiches vtterit be him, in maner specifit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be hangit quhill he be deid: And all his moveable guidis to be escheit, &c.

### Slaughter.

May 30.—JOHNNE BRAND, Student in the Colledge of Philofophie of Ed', sone to vmq<sup>le</sup> Johnne Brand, Minister at Halyrudhous.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq<sup>le</sup> Williame King, sone naturall to James King, Aduocat; committit vpon the xxvij day of Majj instant, vpon St Leonardis Craigis, neir to the said burgh, befyde the Park-dyke of Halyrudhous, be streking of him with ane drawin knyfe, vnder the left pape; quhair of he immediatlie deceiffit.

PERSEWARIS, James King, Aduocat, as fader; Mr Alexander King, Aduocat; Mr Adame King, ane of the Commiffaris of Edinburgh, as fader-brether.

The pannell acknowledges the Dittay to be of verritie, and craves God, and our Souerane lord, and the pairtie, maift humblie, pardoun for the fact: And gif any meanis of satisfioun (reservand his lyfe) may be acceptit, accoirding to his habilitie, is maift willing to fulfill the samyn, accoirding to the persewaris iniunctioun: Bot gif na vther thing bot his bluid will mitigat the persewaris wraith, offeris the samyn to be pwneift accoirding to the Law; desyreing the Lord, throw the mereitis of the precious bluid of his Sauour Chryft Jesus, to be mercifull vnto his faull!

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Masoun, mercheand in Ed', chancellor, ffand, pronuncet, and declairit the said Johnne Brand, accoirding to his awin Confessioun, to be ffylet, culpable, and convict of the Slauchter of the said vmq<sup>le</sup> Williame King.—SENTENCE. To be tane to the mercat croce of Ed', and thair his heid to be strukin frome his body: And all his moveabill guidis to be escheit, &c.

**Treasonable Fire-raising in Coal-pits.**

Jun. 10.—JOHNNE HENRIE in Littill Faufide.

Dilaitit, accuset, and persewet, be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intereis, of the crymes vnder-writtin, viz.

FORSAMEKILL AS, albeit be the 146 Act of our Souerane lordis tuelf Parliament, haldin at Ed' vpon the fyft day of Junij, 1592 zeiris, makand mentioun that his Maiestie and estaittis, for þe better pwneifchment of the wiked cryme of fetting ffyre in coil-heuches<sup>1</sup> be sum vngodlie perfonen, vpon privat revenge and dispyte, haif þairfoir Statute and Ordanit, be vertew of the said Act of Parliament, that þe committing of the said cryme, in ony tyme þaireftir, fall be Tresfone; and that the committeris of þe said haynous and detestable cryme, being ordourlie convict þairof, fall suffer and vnderly sic pwneifchment in þair bodeyis, landis, and guidis, as is dew be the law in caufes of Tresfone: As in the said Act of Parliament at lenth is contenit. Nochtwithstanding quhairof, it is of verritie, that þe said John Henrie, being a serwand and workman within the Coil-heuch of Littill Faufyde, and þairthrow best acquentit with the haill secreit passages and partis of the said heuche, haifing confauet ane deidlie rancour and evill will aganis Mungo M'call, now of Littill Faufyde, becaus þe said Johnne had nocht that libertie and commandiment vnder him quhilk he had vnder Johnne Levingstoun, his prediceffour; in a devillifch dispyte, and to þe wrak and distructioun, nocht only of the said Mungois coil-heuch, bot to þe grit preiudice of þe cuntrie and Cowmounwelthe, in the monethis of ffebruar, March, and Apryle, in the zeir of God I<sup>m</sup>.Vj<sup>c</sup>. and fourtene zeiris, at the leift, in ane or vther of the saidis monethis, immediatlie eftir þe said Mungo M'call acqyret the rycht and possessioun of the said coilheuch, come, vnder silence and clud of nycht, to þe said Coilheuch of Littil Faufyde, and enterit þairintill be ane previe hoill and passadge of his awin, and maist tressonable pat ffyre within the said heuche, of purpos and intentioun to burne and distroy þe samyn and haill coillis being þairintill: Lyk as, for the gritter secrecie and doun-halding of the said ffyre, he nychtlie, be þe space of tuentie dayis togidder, resoirtit to the said heuche in secreit maner, ffeid, and nureifchet þe said ffyre, stoppit þe haill air and vent hoillis with stray,<sup>2</sup> quhairthrow þe said ffyre sould nocht be discoverit: Be reasone of the quhilk ffyre, and stopping of the haill air and vent hoillis, thair arraife sic ane pestiferous and foule air within the heuche, that nane of þe workmen war able to work þairintill; quhairvpon, and be þe pulling furth of ane bottell of stray furth of ane hoill in the said heuche, quhilk hoill was callit þe said Johnne Henreis vue,<sup>3</sup>

<sup>1</sup> Coal-pits.

<sup>2</sup> Straw.

<sup>3</sup> Perhaps for view, prospect.

the vehemencie of þe said ffyre was discoverit. Be þe committing of þe quhilk detestable fact, he hes committed maist haynous and vnpardoneable Treffone.

The pannell denyis the Dittay; and takis instrumentis that na pairtie infistis in his persute bot my lord Aduocat; and that thair is nocht ane fuorne Dittay. My lord Aduocat producet Thomas Cochrane, his lordschipis informer, quhais aithe he defyret to be tane, anent the treuth of the Dittay.

*Thomas Cocherane*, greif<sup>1</sup> at Littill Faufyde, being fuorne vpone the verritie of the Dittay producet be my lord Aduocat, declairit that Johnne Henrie was giltie of þe cryme contenit þairintill, bot he wald nawayis follow nor perfew him for the samyn, in respect he had na intereis; quhairvpoun my lord Aduocat askit instrumentis.

The Assyse being fuorne, my lord Aduocat takis instrumentis of thair sueiring; and proteftis for Errour gif thay acquit.

VERDICT. The Assyse, being ryplie and at lenth advyfet thairwith, togidder with the taikynis<sup>2</sup> and Depositiones producet for instructing thairof, be pluralitie of voitis, ffand, pronuncet, and declairit, be the mouthe of Alexander Penman in Lyttill Faufyde, chancellor, the said pannell, to be ffylet, culpable, and convict of the treffonable cryme specifeit in the said Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed<sup>r</sup>, and thair to be hangit vpone ane gibbet, quhill he be deid; and his heid thaireftir to be strukin frome his body, and put vpone ane prik, fixt and fet vp vpone the landis of Littill Faufyde, besyde the said Coilheuche: And all his moveable guidis, gif he ony hes, to be escheit, &c.

### Wamesucken—Slaughter.

JUN. 22.—ALEXANDER DAUIDSOUN, in Wester Kerse.

Dilaitit of the crewall and vnnaturall Slauchter of vmquhile George Suord, his sone in law, be streking of him with ane lance-stalff in the bellie, and gorryng his puddingis, within the said George awin duelling hous in Wester Kerse, vpone the xxix day of Maij last: Off the quhilk straik he deceiffit, vpone the tuelf day of Junij instant; committit vpone set purpois, prouiffoun, and foirthocht ffellonie, in hie and manifest contempt of his hienes authoritie and lawis.

PERSEWARIS, Patrik Suoird and Johnne Suoird, as brether.

VERDICT. The Assyse, being ryplie and at lenth advyfet thairwith, togidder with the said Alex<sup>r</sup> his Judiciall Confessioun and acknowledgement of the said haynous cryme to be of verritie, and his penitencie for the samyn, be pluralitie of voitiss, ffand, pronuncet, and declairit the said Alexander Dauidfoun to be ffylet, culpable, and convict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Ed<sup>r</sup>, and thair to be heidit; and his hail moveabill guidis to be escheit, &c.

<sup>1</sup> Grieve; overseer.

<sup>2</sup> Proofs; tokens; evidence.

### Mutilation and Demembration.

Jun. 30.—JOHNNE PITSCOTTIE of Loncardie, Colene Pitfcottie, his eldest sone.

Dilaitit of airt and pairt of the Mutilatioun of Margaret Stewart, spous to Thomas M<sup>c</sup>duff of Glenelwart, of hir richt airme ; committit vpon the xxix day of August, 1613.

PERSEWARIS, Margaret Stewart, Thomas Duff of Glenelwart, hir spous.

The perfewaris passis fra the perfute of the pannell, for the crymes contenit in the Letteris, *pro loco et tempore*. Quhairupone the pannell askit instrumentis.

THE Justice continued this case ' to the thrid day of the Air (of Perth) or soner, vpon xv dayis wairning.' Robert Creichtoun, brother to the Laird of Innertye, became cautioner for their appearance, &c.

### High Treason—Taking and Detaining the Castle of Dynniesbaig —Resisting King's Lieutenant, &c.

[As the Editor has already entered so fully into the subject of THE REBELLION IN ILAY by *Sir James Maconell*, &c., it is unnecessary to occupy further space here ; more especially as *Mr Gregory's* Historical Researches, already far advanced, are exclusively devoted to the elucidation of such points.<sup>1</sup>

The following interesting memorials have been preserved by *Calderwood*, in his MS. Church History,<sup>2</sup> which the Editor believes will prove an acceptable illustration of this subject. They have been discovered since the former sheets were sent to press. 'SIR JAMES M<sup>c</sup>KONNELL escaped out of the Castle of Edinburgh, where he had been wairdit the space of eighteen years, upon the 24 of Majj, the day after *Angus Ooge*, his brother, and eight or nine of his complices, were brought to Edinburgh. It was thought that he escaped not without the privity of these who had credit. In the beginning of July, he entered in *Ila*, with a number of men of THE ISLES, and, within three or four dayes after his landing, took the Castle, slew the Captain and other three or four. His forces increasing, he went out of and spoiled the lands belonging to the Earl of Argyle, compelled the tenants to pay him their maills and duties, and kepted about him five or six hundreth men. Upon the eight of July, *Angus Oge*, brother to *Sir James M<sup>c</sup>Konnell*, and his complices, were hanged at the Market Crofs of Edinb<sup>r</sup>. They affirmed that *George Grahame* assured them, in the Chancellours and Counsells name, that they would procure the Kings favour and safety, both of their lives and lands, if they would render the pledges ; and desired them to keep the House till the King's favour were obtained, or elis they had not made resistance to the King's Lievtennant. Because the said *George* was not troubled by the Counsell or any other, the people thought hard of it.—Aug. 16. The Earl of Argile came to Edinburgh, sent from Court be THE KING to pass upon *Sir James M<sup>c</sup>Konnell*. He had Commissiōne to warne and raise the Sherifdomes nixt adjacent, and to wage shouldiers, upon the King's charges. One of THE KING's Ships, and four pinnages, were sent by Sea, with cannon, musket, powder, bullet, picke, and corlet. The Counsell gave their directione, upon the thrid of August. About the middest of September, their forces drawing near to others,<sup>3</sup> *Coline Campbell of Kilberrie*, and some with him, were surprised and taken be *Coll Mackgilespicke* and his followers. *Mr Donald Campbell*, that Gentleman of the House of Caddell, accompanied with six or seven hundreth men, went out of Argiles Campe, and surprised, in a suddane, *Col Mackgilepick* and his companye ; killed some, tooke others, and hanged some. Col him self and the most part hardlie escaped. *Sir James*, and so many as might flie with him,

<sup>1</sup> See Vol. III. p. 1.

<sup>2</sup> Advocates' Library.

<sup>3</sup> Each other.



fled out of *Kintire* to I.L.A. All his followers could not flee, because *Mr Donald Campbell* had ceased (*seized*) upon many of the boats. *Argile*, finding it dangerous to remain long in the fields, winter drawing one, for it now was mid-October, and his company dissolving, practised with *Mackgilespicke*. *Col* rendered THE CASTLE OF DUNNIVEGE, *Coline Campbell of Kilberrie*, and himself to the Earle.'

A number of ORIGINAL PAPERS are appended to this Trial, which, in addition to those already furnished, afford ample and suitable illustrations of this remarkable passage of History. But for *Mr Gregory's* work, the Editor would have deemed it his duty to have made still further researches. To that gentleman's History, reference is made for the minuter particulars attending that subject, and, in general, for all other topics connected with the Feuds and Insurrections which took place in the Isles and West-Highlands.]

Jul. 3.—ANGUS OIG M'DONALD,<sup>1</sup> Allafter M'allafter, Angus M'allafter, Allafter M'arliche, Johnne M'condochie, Johnne Gair M'moylane.

Dilaitit of the tressonable taking, keiping, and detening of his Maiesteis Castell of Donyvage, in Yla, and resisting of the Laird of Caddell, his hienes Leutennent and Commiffioner, &c. ; as in THE DITTAY following :—FORSAMEKILI. AS, thay, accompaneit with *Coill M'gillespick* and vperis, pair complices, all rebellis and brokin men,<sup>2</sup> to the number of ffyftie perfonas or pairby, in the moneth of November last, maist tressonabillie convocat thame selfis in airmes, come fordwardis in oppin and arrayit battell to his Maiesteis Castell and strenth of Dynnievaig, in Yla ; and pair, be craft and policie, tuik in the said Castell, whilk thay stuffit<sup>3</sup> and furneiffit with muscattis, hagbuttis, poulder, leid, and vper weirlyk furnitour,<sup>4</sup> for halding pairof : Quhilkis tressonable practizes, sa interpryfet be thame and thair complices, being maid knawin to the Lordis of his Maiesteis Secreit Counsell ; and thay, for redres of the saidis rebellis enormiteis, haifing directit the Laird of Caddell,<sup>5</sup> with companeis of wageit men of weir, as Leutennent to his Maiestie, with ane Herauld,<sup>6</sup> and trumpettar, to charge thame, in his hienes name and authoritie, to rander the said Castell, and to recover the samyn fyrth of pair handis. LYK AS, the said Leutennent with his forces, togidder with the said Herauld and trumpeter, haifing cum to the said cuntrie of Ilay, to the effect foirsaid, the foirnamet perfonas, with pair rebellious affociattis, vnderstanding pairof, directit furth ane grit number of pair rebellious cumpany aganis the said Herauld and trumpeter, and maist tressonabillie stayit and interruptit thame fra cuming fordwardis to be said Castell, for geving of the said charge ; quhairthrow, for feir of pair lyfes, thay durft nocht cum fordwardis to the said hous : Lyk as, eftir his Maiesteis Leutennent had plantit him self with his forces round about the said Castell, and had salutet the saidis rebellis,

<sup>1</sup> See May 13, 1609, &c., and Note to the Introduction to *Sir James Makcneill's* Trial, Vol. III. p. 1, &c.—and Vol. I. p. 224, where the Trial of *Angus Makcneill*, his father, occurs. <sup>2</sup> Outlaws, and men attached to no particular Clan, who, for pay and the hope of plunder, would join in any enterprise. <sup>3</sup> Provisioned. <sup>4</sup> Furnishing ; provision. <sup>5</sup> Campbell of Calder, or Caddell.

<sup>6</sup> Robert Wynrahame, Albany (Ylay) Herauld.

being pairin, with nyne scoir schottis of ordinance, schote be thame pairat, the faidis perfonas on pannell, nochtwithstanding of þe faid Assault maid be þe faid Lieutennent to þe faid Castell, maist tressonablie held out, keipit and detenit þe samyn aganis him, he being cled with his Maiesteis authoritie, as Leutennent and Commiffioner, for releifing pairof; and tressonabillie schote furth agane, out of þe faid Castell, at þe faid Leutennent and his companie dyuerse schottis of muscattis, and pairwith flew *Capitane Craufurd*, with foure vther of his Maiesteis faithfull fervandis and subiectis, quha war in seruice with the faid Leutennent, in the executioun of his Commiffioun. AND the faidis perfonas on pannell, and ilk ane of thame, ar airt and pairt of the faidis tressonable crymes.

My Lord Aduocat producet the Dittay, with the roll of the Affyse; and desyret proces.

## ASSISA.

Mr Rannald Bayne, burges of Edr, Hacheoun Frafer of Kilboig, James Sprewle of Cowden, Andro Meldrum of Dumbrek, Williame Cunningheam of Dolphingtoun.<sup>1</sup>

The Aduocat, for verificatioune of the Dittay, producet the pannellis Depositiones, and takis instrumentis vpon the productioun thairof, &c. And protestis for Wilfull Errour, gif thay acquit.

VERDICT. The Affyse, all in ane voce, be the mouthe of the faid James Sprewle, chancellor, ffand, pronuncet, and declairit the faidis perfonas on pannell, and ilk ane of thame, conforme to thair awin Depositionis, and approbatioun thairof in judgement, to be ffylet, culpable, and convict of airt and pairt of the hail tressonable crymes contenit in the Dittay.—SENTENCE. To be tane to the Mercat croce of Edr, and thair to be hangit vpon ane gibbet, quhill thay be deid: And all thair moveable guidis to be efcheit and inbrocht: And all thair landis, heritages, and annuelrentis pertening to thame, to be fforfaltit to his Maiesteis vse, &c.

## APPENDIX OF DOCUMENTS,

## ILLUSTRATIVE OF THE TRIAL OF ANGUS OIG M'DONALD, &amp;c.

I. OFFERIS *to be presentit to our maist gracious souerane and his hienes honorabill Counsell, in the name of Angus M'Donald of Dwnavaig, his freindis and followeris.*

*FIRST*, with all humelite, I adheir to my former OFFERIS, maid and subscryuit with my hand, in presens of THE COUNSALL, at *Glasco*, in the yeir of God 1<sup>m</sup>.Vj<sup>c</sup>. and fyf yeir, and delyuerit to *my Lord of Shone* to haif bene schawin to HIS MAIESTIE; promesing to performe euery heid of the samin.

*Secondlie*, I offer my self to abyid the tryell of the lawis of this HIS MA<sup>TES</sup> realme, twiching my obediens to his hienes and *Consallis* derectiounes, in all poyntis; and keiping of all dewateis appertenyng to a loyall subiect, ewir sen HIS M<sup>TES</sup> past to mak residens within his hienes kingdom of ENGLAND.

<sup>1</sup> The remainder 'burgesses of Edr.'

*Thridlie*, feing I haif compleitlie payit all bygane males<sup>1</sup> of his hienes proper landis, within IYLA and KYNTYIR, pofeffit be me, heirtofoir, and hes obtenit HIS MA<sup>TIES</sup> *Comtrollerris* difcharge thairof, I offir, in lyk manir, in all tym cuming, during my lystym, to mak thankfull payment of the full Rentall of the faidis landis, wnto the quhilkis I and my foirbeiris hes bene kyndlie tenentis;<sup>2</sup> and that termelé and yerlé,<sup>3</sup> wnder the pane of tynfall<sup>4</sup> of all kyndis of rycht, tytill, or poffeffiounne that I can cleame to ony landis within ony pairt of HIS MA<sup>TIES</sup> dominionis; his hienes respecting for the present *the Wast landis of IYLA*, quhill thai be pleneifchit and manwrit.<sup>5</sup>

*Ferdlé*, I offir fufficient cautionne, within *the Law-landis*, that I falbe obedient to the lawes of this HIS MA<sup>TIES</sup> cuntre of SCOTLAND; and to that effect, fall compeir befoir *the Counfall* of the faid realme, vppone lauchfull premonitione, quhairfoewir the famin fall fit.

*Fyftlé*, I offir to concur with thais quhomvnto it fall seme guid to (his) hines to gif Commiffiounne, with my haill freindis and followaris, and to fet fordwart and aift sic reformatiounne of the barbarité of thir cuntreis of THE WAST and NORTH IYLES of this HIS MA<sup>TIES</sup> kingdome of SCOTLAND, as it fall pleas his hienes best to dewyfe, be thir presentis, fufcryvith with my hand, AT KILNACHTANE, IN IYLA, the aucht of September, 1606. ANGUS M<sup>C</sup>DONALL of Dwnewaig.

## II. LETTER, *Angus M<sup>c</sup>donall of Dwnwaig* to THE KING. Sep. 10, 1606.

PLEIS 3OUR EXCELLENT MA<sup>TIES</sup>,

IT is knawin to 3OUR MA<sup>TIES</sup> honorabill *Counfaie*, within 3OUR hienes realme of *North Britane*, quhat hes bene my behaviour evir fen 3OUR hienes past out of thir the North pairtis of 3OUR MA<sup>TIES</sup> dominioun; how many futtis, and how mony offeris of all dewiteis that it become a loyall fubiect to his dred fouerane, I haif maid to pair Lo.; and how that, efter I haid fullilie fatisfeit and compleitlie payit all byrun maillis addebtit be me to 3OUR MA<sup>TIES</sup> *Comptroller*, I obtenit his difcharge pairupoun. I fend with his lo. to haif bene presentit to 3OUR MA<sup>TIES</sup> certane fpeciall OFFERIS, fufcryvuit with my hand, befoir 3OUR hienes COUNSALE in *Glegwo*, in the moneth of Junij, 1605, of the quhilk I haif as 3it receavit na anfuer nor<sup>6</sup> quhat 3OUR MA<sup>TIES</sup> refoluis and derectis me to do; and being refufit of Licence to haif cum and presentit my felf perfonalie befoir 3OUR hienes, to haif maid my awin fupplicatioun out of my awin mowth, I am enforceit to mak the famyn be a mediat perfone, *my Lord Bifchop of the Iyles*,<sup>7</sup> quhome-by I haif gewin credeit to offer, in my name, to 3OUR MA<sup>TIES</sup> my lyfe and all pat I may command, to be vfit as it fall pleife 3OUR hienes direct; befeiking 3OUR MA<sup>TIES</sup>, for the caufe of God, to respect my aige and pair eſtair, and to lat me knaw 3OUR hienes awin mynd, fignet with 3OUR MA<sup>TIES</sup> awin hand; and gif it mycht pleife 3OUR MA<sup>TIES</sup> to continew me the poffeffioun of thais kyndlie rowmes,<sup>8</sup> quhilkis my forbearis<sup>9</sup> and I hes haid of 3OUR MA<sup>TIES</sup> and 3OUR hienes royall progenitouris, I fall nocht onlie paye the dewiteis and maillis vfit and wount pairfoir, bot alfo fall find fufficient fouertie for obedience to 3OUR MA<sup>TIES</sup> lawis, in all poyntis, and in all tyme cuming; or vpirwayis, that it mycht feim guid to 3OUR MA<sup>TIES</sup> to let me kend,<sup>10</sup> how and quhairupoun I fall leive; for it falbe knawin, I fall feik na vther refuge bot onlie 3OUR MA<sup>TIES</sup> clemencie, nor na vther leiving bot that quhilk of 3OUR MA<sup>TIES</sup> princelie liberalitie it fall pleis 3OUR hines beftow vpoun me; as at mair lenth the beirar will informe 3OUR MA<sup>TIES</sup>. And fua, I befeik God to blifs 3OUR hienes with a long and prosperous ring.

IYLA YE, the tent of September, 1606.

3OUR MA<sup>TIES</sup> maift humbill and obedient fubiect,

ANGUS M<sup>C</sup>DONALL of Dwnwaig.

<sup>1</sup> *Maills*, rents, feu-duties, &c.    <sup>2</sup> Feudal Tenants, termed *kindly*, from the circumstance of their being *natives*, born on those lands which had been possessed by their ancestors for many generations. Such persons were seldom ejected, so long as they paid the almost nominal rents of those lands, which they were thus permitted to occupy by a sort of hereditary title, after the decease of the former tenant. They were styled *Nativi* in old Charters.    <sup>3</sup> Termly and yearly.    <sup>4</sup> Loss; forfeiture.    <sup>5</sup> Stocked and manured.    <sup>6</sup> Than.    <sup>7</sup> ANDREW KNOX, of the family of Ramfurly, who had been Minister of Lochwinnoch and Paisley, was appointed Bishop of the Isles, Apr. 2, 1606, having been the first Protestant Bishop of that See. Reference may be made to the Trial of Sir James Mackoneill, *Appendix*.    <sup>8</sup> Possessions held by him as '*kyndlie Tenant*.'    <sup>9</sup> Ancestors.    <sup>10</sup> Know; understand.

III. LETTER, *the Privy Council to THE KING.* May 27, 1608.

MOST SACRED SOUERANE,

THIS beirar, *the Bischope of the Ilis*, haueing the occasioun to repair to your Maiestie for some materis concerning the seruice in THE ILIS, We haif committit vnto him the relation vnto your sacred MAIESTIE how far we haue procedit in that busynes, and what course is tane for the furtherance and profequation of that seruice, vnto whose sufficiencie remitting all thingis, We pray God to grant vnto your Maiestie, ester a long and happy reigne, eternall felicitie. FROM your Maiesteis burgh of EDINBURGHE, the 27 of May, 1608.

Your Maiesteis most humble and obedient subiectis and seruitouris,

AL. CANCELL<sup>r</sup>. ABERCORNE. J. BALMERINO<sup>r</sup>. D. SCONE.

BEWLY. HALYRUDHOUS, JO. PRESTOUN.

TO THE KINGIS most excellent MA<sup>ties</sup>.IV. LETTER, *Lord Wchiltrie to THE KING.* May 27, 1608.

MOST SACRED AND GRATIOUS SOUERAN,

I RESSAVID your MA<sup>ties</sup> Lettir, with *Alister Ogis* Remiffiounne, and falbe cairfull to gif vnto your MA<sup>ties</sup> full contentment and satisfiounne in everie particular of the Letter. I haif reteinit the Remiffiounne in my handis, quhill I haif ane certaintie of *Alisteris* conformitie; quhairin I expect to find him anfuerable, in some meafour, to that great favour quhilk it hes plefit your MA<sup>ties</sup> to bestow wpon him. In all wtheris your MA<sup>ties</sup> directionis, quhairin it fall pleis your sacred MA<sup>ties</sup> to burdene me, I fall haif ane speciall cair and regard to approve my self worthie of that trust quhilk your hienes reposis in me; having na wthir thing zit to acquyt your heines inestimable favouris, bot ane hart disposit, in all sinceritie, to discharge that dewtie quhilk your MA<sup>ties</sup> expectis, and quhilk to my awin credit appertenis, and to sacrifice my lyffe and all that I haif, in the executiounne of all your MA<sup>ties</sup> royall directionis. And sua, recommending your sacred MA<sup>ties</sup>, with your royall progenie, to the protectionn of God, I rest

30<sup>r</sup> Ma<sup>ties</sup> most humbill and obedient seruitour,

EDINBURGH, the xxvij of Majj, 1608.

AL. WCHELTRIE,

TO THE KYNGIS most excellent MA<sup>ties</sup>.

## V. 'COPY of THE LIEUTENNENTIS LETTER to the Counsell, to be send to Courte with Sir Alexander Hayis Letter, &amp;c.' Aug. 18, 1608.

PLEIS your LORDSCHIPIS,

I CAUSIT wey oure ankeris and depairtit from YLA the 14 of this instant, at ester none, and arryved at *Dowart*, in MULE, the 15 of the same monethe; and that with gryte difficultie, in respect of the greatest tempest of wedder and contrarie tyddis, quhairby we wer put in great dangeir all pat nycht; quhairthrow I failit downe ane of the mastis of my awne schippe. Att oure out-coming from YLA, we mett *the Inglish gally*, with ane vther shipp, that caryis the munitioun and ordinance, the quhilk gally, yf it haid not pleasit God to haif givin hir that luke<sup>1</sup> to anker in *the Sound of YLA*, sho could not haif eschaitit saiff, in respect of the gryte tyddis heir, and hid gait to pas throw, the quhilk sho appeiris to be verie vnmeit: And finding hir nawife sufficienlie furneist with victuall, to remane heir to avait on this service, yf it war bot for the space of aucht dayis; and not being certane of ony victuallis to come heir to furneish hir, bot onlie, at my speciall requeist, *Sir Williame St Johnne*, HIS MAIESTEIS *Admirall* heir, hes tane vpoun him, out of his awne furnitour,<sup>2</sup> to supplie hir with viveris, quhill bak adverteifment come from your ll.; and feing we have no service in thir *Ylandis* that sho is meit for, and knowing hir to be gryte expensis to HIS M<sup>ties</sup>, vpoun the avisement with *the Admirall*

<sup>1</sup> Luck; good fortune.<sup>2</sup> Provision.

and remanent *Capitanees of THE ENGLISH FLEETT*, and especialie with him wha is presfent *Governour* of hir, wha be painfull experience knawis, and hes declairit to ws, how difficle it is to keepe hir faiff, vncassin away, lett bee to do ony good office with hir, I haif thocht good to crave your ll. aduife, quhidder sho falbe direct bak agane to ENGLAND, with all expedition, as we think all expedient—or yf sho fall be continewit heir—and to what vse, and how sho falbe furneist—for we know not. As to the ship caryare of the batterie and instrumentis appertening thairto, albeit we think not meit to keepe the ship heir, bot remit hir bak with the gallay, for hir better preservation, yit, for fundrie cauffis tending to the forder and finall ending of this service, we think it expedient to keep the munition with the instrumentis, the quhilk I fall sie to be put in sic suritie, as I falbe answerable to HIS MA<sup>TIES</sup> and your ll.

Thir thingis I haif thocht good to commvnicat vnto your ll., imparting vnto your ll. oure opinioun heir, and craving your ll. forder resolutioun in the premiffes, quhilk I think, God willing, to follow furth. Vpoun the 16 of this instant, I directit Commissionaris to *the House of Dowart*, quhairin McCLAYNE haueing his residence for the tyme, promesit to delyuer the House; the quhilk he did vpoun the 17 of this instant. I ressaueing the fame, hes furneist with men and viveris that House to be keipit during HIS MA<sup>TIES</sup> and your ll. pleafour. I haif proclamit Courte to be haldin, the xxij of this instant, in *Arrofe of MULL*, when I think, be Godis grace, to tak ordour with pat Yland, in executioun of pat pairt of my Commission, in distroying of lumfaddis,<sup>1</sup> birlingis,<sup>2</sup> and Hieland gallayis.

I find this ane gryte difficultye, that in respect of the great number of theis vashellis, quhilkis ar intertenyt vpoun the mayne-schoir, quhilkis ar so offensive to *the Yllismen*, that onles thay keepe the lyk counter with pame, thay can not eschaip thair oppreffion, nather can I iustlie spoilzie pame pairt, vnles the lyk ordour be tane with these that ar vpoun the mayne-schoir, opposith to THE NORTH and WEST YLLIS; and thairfoir, yf it wald pleis your ll. to gif me lyk pouer and Commission, for the abolishing of sic vashellis vpoun the mayne-schoir, as I haue with in THE YLLIS, I fall do accordinglie with both. The quhilk Commission I expect, with diligence; into the quhilk Commission, I wald desyre your ll. to include the intaking and affedging and dimoleisheing of all sic Houffis vpoun the mayne-schoir, apperteneing to ony Yllisman, or that may be ayd or ressett to ony fugitiue rebell out of THE YLLES.

I will not trouble your ll. with farder Letteris quhill mair occasioun be offerit; bot, requeisting your ll. to haift bak ansuer, becaus I can not depart out of this Yll, withoute ressett of the fame, I rest,

Be your ll. alwife to be commandit,

DOWART, in Mull, 18 August, 1608.

A. VCHILTRIE.

## VI. LETTER, *the Privy Council* to THE KING. Oct. 6, 1608.

MOST SACRED SOUERAYNE,

THIS Nobleman, the Lord Vchiltrie, whome it pleasit your heyne to prefer to the charge of Leutenandrie of THE YLLIS of this your Maiesteis kingdome, hes, with verie greate cair, pane, and travellis, and with greate hafaird of his persone, broght that service to ane goode perfectioun, by the entrie and exhibitoun befoir ws of a noumer of the principallis and Chiftanes of THE YLLES; and by his awne promeis and Band, to mak some otheris of thame, whome he hes not presentit, ansuerable and obedyent; as mair particularlie he will informe your sacred MA<sup>TIES</sup>. And sua, recommending him to your Maiesteis gracious regaird and consideratioun, We pray God to blisse your sacred Maiestie with all happynes, and restis for evir,

Your Maiesteis most humble and obedyent subiectis and seruitouris,

AL. CANCELL<sup>R</sup>. ARGYLL. CRAFORD. BUKCLUGHE. ABERCORNE. BLANTYRE.

EDINBURGH, 6 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

<sup>1</sup> Lymphads.

<sup>2</sup> A *birkin* is a small sort of vessel, peculiar to the Western Islands of Scotland.

VII. LETTER, *the Privy Council to THE KING.* Oct. 13, 1608.

MOST SACRED SOUERANE,

THE beirar, *the Bifchop of the Yllis*, having the occaſioun to repair towardis your ſacred MAIESTIE, we haif thought meit to accompany him with this our teſtimonie and approbatioun of his dewtiful cariage and behaviour in your MAIESTEIS ſeruice, in THE YLLIS, wherin he hes caryed him ſelff with verie goode credite and reputatioun; and is able, be his counſall and advyſe, (in reſpect of his awne credite and freindſhippe among the Yllifmen,) to do vnto your MAIESTIE goode ſeruice thair. And ſua, recommending him vnto your ſacred MAIESTIE, and moſt humelie befeiking your heynes to heir him, in ſuche thingis as he will propone, anent the proſequitioun of this ſeruice, We pray God to bliſſe your ſacred Maieſtie with all happynes and felicitie, and reſtis for ever,

Your Maieſteis moſt humble and obedyent ſubiectis and ſeruitouris,

AL. CANCELL<sup>s</sup>. ROSS. TORPHECHIN. BUKCLUGHE. HALYRUDHOUS.CL<sup>s</sup>. REG<sup>nt</sup>. A. ELPHINSTON. S. T. HAMILTON. JO. PRESTOUN.

EDINBURGH, 13 October, 1608.

TO THE KINGIS moſt excellent MAIESTIE.

VIII. THE COPIE ANGUS OGE's *fiſt* LETTER to *Sir Oliver Lambert.* (No date.)

MY HONORABILL GOOD LORD,

I HAVE receavet your Letter, and hes vnderſtand be your meaning, that ye wuld hawe me to rander this Houſe to yow into THE KYNGS name. My Lord, as to that, if I had not receavit ane better Warrant frome *my Lord Chancler and Counſell of Scotland* to rander thame this HOUS OF DUNYWEGE, I wald obey your lo. or any wper ſubiect, hawing his MAIESTEIS Warrant. My lord, if ye doubt of this, ſend me your awin Secretar, or anie wper pat can reid, and I ſhall let him ſie my Warrant frome *the Counſell*, deſyring me to keip this *Caſtell*, wnto the tyme that his MA<sup>ties</sup> wilbe<sup>1</sup> declairit to me. The quhilk my Warrant fall teſtefie. And if yow will trouble me, efter I hawe obeyit his highnes will, be yow affurit that I fall complayne to his MA<sup>ties</sup> *Counſell*. Not troubling your lo. any forder, comitts yow to God. FROME DUNYWEGE, the 14 of this inſtant month. And if ye will ſend any of your awin men, ye ſhall hawe frie paſſage to pas and repas to and fro.

Your friend, to your deſerwing,

ANGUS OG MA<sup>c</sup>DONALL.IX. EXTRACT from MINUTES of *Privy Council Proceedings.* Apr. 1614.

THE HOUSE OF DVNYVEG, in YLA, being poſſeſſed and kepted be THE BISCHOP OF THE YLES his brother, and two or three ſervandes, the ſame Houſe hes bene of late ſurpryſed and tane be one *Ronnald Oig*, alegeand to be Baſtard ſone to vmq<sup>le</sup> *Angus M<sup>c</sup>conceill of Dvnyveg*, whom the ſaid *Angus* did neuer, in his tyme, acknowlege to be his ſone. This *Ronnald*, being a vagabound fellow, without any certane refidence, come ltelie to YLA, and finding the Houſe to be but ſlenderlie kepted, reſolued to ſurpryſe and tak the ſame: And for this effect, he and his complices, being four or fyve in number, retered thame ſelues to ane wood, neare by the Houſe, whair thay made ſome laderes, and with thame, one day, airtie in the morning, thay clam the vtter wall, kepted thame ſelues obſcure whill the yettes were opined; and then they took the Houſe, and put *the Biſhopes* folkes oute thereof. The reporte whereof coming to young *Angus M<sup>c</sup>conceill*, laufull brother to *Sir James*, who wes within ſex myles of the Houſe for the tyme, he immediatlie, according to the cuntrie faſſioun, ſend the Fyrecroſe<sup>2</sup> athorte the countrey, warning all the countrey people, who wer affected to HIS MAIESTEIS obedience, to ryſe, and concur with him in the recouerie of the Houſe. And ſo he, with ſuch aſſiſtance as come to him, incloſed the Houſe. Thay within held good for ſex dayes, being weel prouyded

<sup>1</sup> Probably this ſhould be read, "wnto the tyme that his MA<sup>ties</sup> will ſalbe." <sup>2</sup> The Fiery Croſs. See *the Lady of the Lake*, and other works of Sir Walter Scott, for illuſtrations of this remarkable cuſtom.

with pulder, lunt,<sup>1</sup> and bullett, whereof thay fand good flore in the Houfe; and thay wer prodigall enough in bestowing the fame vpon the befeagares; bot in end, perceauing that thay war not able to keepe the Houfe, thay in the night eshued<sup>2</sup> at a bak yett, in a litle boat with sex oares, which lay at the Castell; and took with them such goodes as thay fand in the Houfe.

*Angus* followed thame, bot what farder has fallen oute, is not as yitt come to *the Counselles* knowledge. *Sir James M'conneill* is *the Counselles* informar of all this busynes; and as he sayes his brother hes offered to delyuer the Houfe bak againe to *the Bishopes* seruanes, who refused to ressaue the fame. *The Counsell* haveing hard at lenth *Sir James* discourse, made in this earand, and looking shortlie to heere from *the Erle of Ergyle*, or els frome *the Bishope*, the constant and certane truthe of all this mater, thay haue referued all deliberation hearin, till thay heere from *the Bishope* or *Erle*.

#### X. SIR JAMES M'DONALD HIS OFFERIS.

FIRST, I offer, if it might please HIS MA<sup>TIES</sup> of his clemencie to give me ILAY, I would pay eight thousand merkis yearlie thairfoir; and find sufficient caution of Lordis and Barrounes for good payment and obedience, be my selfe, and all THE CLANNIS that shall dwell there: And craves but a fevin yeare Tak, to try me.

*Secondlie*, I offer, if HIS MA<sup>TIES</sup> please to hold ILAY in his awin hand, to mak it worth Ten Thousand merkis yearlie to HIS MA<sup>TIES</sup>; and to transport my selfe, my brethir, and my kin to IRELAND, or to whatsumewir other place HIS MA<sup>TIES</sup> will appoynt ws; and his highnes to give ws one yearis duetie or rent of ILAY, to by land with; and in the mein tyme, I shall go with *the Bishop* of THE ILES, and shall, God willing, ather get the Houfe and his pledgis, without any chairgis to HIS MA<sup>TIES</sup>, or than returne heir to mynd my owne waird, within fourtie dayis. Provyding, if I get this done, I haue assurance of HIS MA<sup>TIES</sup> and COUNSALL, that my self and my brothir shall get leave to go, presentlie thereafter, with my lord *Bishop* to Courte, and get a kifs of HIS MA<sup>TIES</sup> hand; and my cautionaris shall remaine bound for me, that I and my brother shall returne bak heir to HIS MA<sup>TIES</sup> COUNSALL, to abyid such order as it shall pleas his highnes to injoyne to ws. And I shall leive my sone heir, as pledge for my performance in all, and for satisfioun to HIS MA<sup>TIES</sup> and COUNSALL. I shall bring *Rannald M'allaster*, who first took the Houfe, and *Ronnald M'donald Vallich*, to suffer for their fault; and *Coll M'gillaspie* to be kept in Innes, during HIS MA<sup>TIES</sup> pleasour. My cautioneris salbe *the Erle of Tullibairne*, *Lord Burlie*, *Sir Ronnald M'Sorle*, *Johnne Campbell of Cadell*, *Malcum Toshe*,<sup>3</sup> and *the Laird of Grant*; every one for Fyve Thousand merkis—and my sone to die if I faille. And last, I offer, without ony condition of land or money, that if it please HIS MA<sup>TIES</sup> to give me libertie, vpon such suretie by cautioneris as I am able to performe, or pledgis, I shall transport my self and my brothir and kin out of all HIS MA<sup>TIES</sup> dominiounes, having HIS MA<sup>TIES</sup> Letter of Recommendation to THE ESTAITTIS OF HOLLAND; and libertie to tak vp men, if we be employit; with HIS MA<sup>TIES</sup> frie pardoun for all byganis.

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#### Fire-raising—Theft—Reset of Theft.

Jul. 14.—JOHNNE M'ALLASTER M'JAMES, in Daill of Rothiemurchus;  
Andro M'allaster M'James, in Kynveachie; Johnne Dow  
M'kay, in Duchill.

Dilaitit of airt and pairt of the tressonable Raifeing of fyre, Burneing and destructioun of the Houffis and bigingis pertening to vmq<sup>1e</sup> George Dunbar in

<sup>1</sup> Match.

<sup>2</sup> Escaped; *eschewed*.

<sup>3</sup> Probably meaning *the Laird of MacIntosh*.

Clwne; and thiftious Steilling and away-taking of the haill infycht and pleneiffing, guidis and geir, being within the saidis Houffis, to the avall of ane thowfeand merkis; at the leift, of the thiftious Refsetting of the saidis guidis and vtheris contenit in the Letteris direct thairupone, eftir the thiftious steilling thairof be Dauid M<sup>c</sup>William and his complices; committit in October, 1598 zeiris.

PERSEWAR, Mr Robert Dumbar, sone to the said v<sup>m</sup>q<sup>le</sup> George Dumbar.

The Justice, with advyse of my lord Aduocat, continewis this matter to the thrid day of the next Justice-air of the schereffdome of Innernes, quhairin thay duell, or soner, vpon xv dayis wairning, to vnderly the law for the crymes aboue specifeit: And ordanis caution to be ffund for the defenderis compeirance to that effect; vnder the panes contenit in the Actis of Parliament.

Johnne Roife of Glenbeg, as cautioner for the entrie of the perfonen on pannell, tuik instrumentis of thair entrie; and protestis he may be fred of his cautionrie. Gregour Grant of Gartmoir become fouirtie, that thai and ilk ane of thame fall compeir, &c.

[*Sir Williame Heart, Justice-Depute.*

ASSESSOURIS to the Justice, in this cause.—MY LORD ARCHBISHOP OF ST ANDROIS; SIR GEDIONE MURRAY, Theasaurar-depute; MY LORD CLERK OF REGISTER, (Sir Alexander Hay of Whitburgh); MY LORD OF KILSYTHE.]

### **Treasonable Resetting of Jesuits and Trafficking Papists, &c.**

[AFTER the details which have already been given in the Case of OGILVIE,<sup>1</sup> it seems unnecessary to occupy farther space in attempting to elucidate the present Trial. It must, however, be interesting to the reader that there should be preserved, in this place, some remarks made by *Calderwood*, in his larger MS. History,<sup>2</sup> which strongly depict the popular feeling, in relation to these State prosecutions against the Jesuits.

'William Sinclair, Robert Wilkie, (and) . . . . Cruikshanks were convicted, upon the fourteen of August, for Resetting the *Jesuits* above named, and bearing of Maffe. The day following, betwix four and five afternoone, they were brought furth, with their hands bound, to the Scaffold, sett up beside the Crosse, and a gallows in it, according to the custome of Executione. While a great multitude of the people was gazing to see the Executione, there was a Warrant presented to the Magistrates of Edinburgh, to stay the Execution; soe they were carried back again to their wards. The people thought this forme of dealing rather mockery then punishment!']

Jul. 14.—WILLIAME SINCLAIR, agent in Edinburgh; Robert Wilkie, browdinst<sup>3</sup> in the Cannogait; and Robert Cruikshank, stabler in Ed<sup>l</sup>.

Dilaitit of the tressonable Resetting of Mr James Moffett, Mr Johnne Ogilvie, and Mr Johnne Campbell, Jesuites and Traffiqueing Papistis, within thair duelling houffis, dyuerse dayis and nychtis, in the monethis of August, September, and October lastbypast, &c. viz.

*DITTAY against the Pannel.*

FORSAMEKILL AS our most gracious and sacred Souerane lord, furth of pat godlie zeill ever borne

<sup>1</sup> See his Trial, Vol. III., p. 330, &c.    <sup>2</sup> Church Hist. MS., Adv. Library.    <sup>3</sup> Embroiderer, a lucrative employment in those times; not *browster*, or brewer.



be his Maieftie to þe maintenance of the trew RELIGIOUN, presentlie (to the honour and praise of Almychtie God) professit and establischet within this Kingdome, and for the ruteing out of all Papistcall and Idolatrus Religioun, with the blinded professouris pairof, furth of the samyn; be mony godlie lawis and Actis of Parliament, deulie maid and publeift, alsweill in his hienes minoritie, as since his acceptatioun of the government in his awin persone, hes nocht onlie expresse statute and ordanit, that na professit JESUITE, SEMINARIE PREISTIS, nor TRAFFIQUEING PAPISTIS (being all suorne ennemeis to his sacred Maiefties croun and estait) be fund within this his hienes realme, or ony part of the samyn, vnder dyuerse capitall panes mentionat pairintill; bot lykways, be dyuerse vtheris guid and godlie Lawis, Actis, and constitutions of Parliament, speciallie, be the 120 Act of his hienes tuelf Parliament, haldin at Ed<sup>r</sup> vpon the fyft day of Junij, 1592 zeiris, his Maieftie and Estaitis than convent, hes, be vertew of the said Act, decernit and declairit, that in tyme paireftir following, the RESSETTING of the saidis JESUITIS, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, aganis the Kingis Maieftie and Religioun, presentlie professit within this realme, is and fall be ane just caus to infer the cryme and payne of TRESSONE aganis the said receptoris:<sup>1</sup> As the said Act of Parliament, ratifeit and approvin in dyuerse his Maiefties Parliamentis, haldin senfyne, in the selff proportis. AND albeit it be of verritie, that vmq<sup>o</sup> *Mr Johnne Ogilvie*, alias *Watfone*, *Mr James Moffett*, alias *Halyburtoun*, and *Mr Johnne Campbell*, alias *Sinclair*, all professit JESUITES and MESS-PREISTIS, with dyuerse vtheris of that vnhappie and curfet sect, war directit frome ROME, this last zeir, 1614, be THE POPE and his CARDINALLIS, to cum to this cuntrie and vtheris partis of his Maiefties dominiones, to put in executioun, na dout, sum feirfull and tressonabill conclusioun, as perfonis maift meit for sic ane dangerous employment; and haifing, accoirding to pair commissioun, cum to this cuntrie, in the monethis of Junij or Julij, the zeir of God foirfaid; quhair, estir pair cumming pairto, in all partis and companeis quhair thay refoirit, speciallie, the said *Mr Johnne Ogilvie*, ane vyld and abhominable Tratour, quha iustlie ressaunt his deseruet pwneschment, be pair perverse speiches and insolent cariages, maift tressonabillie and oppinlie condampned and disavowit his Maiefties souerane authoritie, setting vp and mantaining, in place pairof, THE POPE OF ROME his vsurpet power for excommunicatting, deposeing, and dethroneing KINGIS, and absolueing subiectis from the othe<sup>2</sup> of pair naturall allegiance; intending na les, be thais pair tressonabill speiches and informationes, nor<sup>3</sup> to haif waknit and steirit vp ane oppin and feirfull REBELLIOUN. THIR pernicious and vnhappie miscreantis, schakin loufe be þe authoritie of pair Generallis, to put in executioun sic tressonabill attemptis, nochtwithstanding of his Maiefties Lawis and Actis of Parliament maid aganis the recepting of thame and vtheris of pair devillische sect, war, in the monethis of Julij, August, September, and October lastbypast, at the leift, in ane or vther of the saidis monethis, maift tressonabillie resset, harbourit, and interteneit be zow, and everie ane of zow, viz. the saidis *Williame Sinclair*, *Robert Wilkie*, and *Robert Cruikshank*, within pair (zour) duelling houfes, in maner as followis; that is to say: THE said *Mr James Moffett*, alias *Halyburtoun*, ane professit JESUITE, a PREIST, and TRAFFIQUEING PAPIST, haifing cum to this burgh of Ed<sup>r</sup>, to pervert, be his erroneus doctrine, our souerane lordis subiectis fra þe trew RELIGIOUN presentlie professit, was, for that effect, maift tressonabillie resset, harbourit, and interteneit be the said *Williame Sinclair*, in ane or vther of the saidis monethis of Julij, August, September, and October lastbypast, dyuerse dayis and nichtis, within his duelling hous in Ed<sup>r</sup>; and all necessar comferte, releif, and intertenement ministrat to him, at all occasions, as gif he had bene (ane of) his Maiefties faithfull and loyall subiectis and professouris of þe trew RELIGIOUN; estir he was knawin to þe said *Williame Sinclair* and his wyfe to be of the contrair<sup>4</sup> RELIGIOUN, be þe informatioun of ane James Colt, he keipit daylie socieatie and companie with þe said JESUITE, vpon the stretis, keipit tryftis and meittingis with him and with the said vmq<sup>o</sup> *Johnne Ogilvie*, ane notorious Tratour, within the duelling house of *Robert Wilkie*, in the Cannogait, and duelling hous and stable of *Robert Cruikshank*, and within the Abbey

<sup>1</sup> Receivers; ressetters.<sup>2</sup> Oath.<sup>3</sup> Than.<sup>4</sup> Opposite; adverse.

3airdis, and in dyuerse vtheris pairtis of this burgh of Ed<sup>r</sup> and suburbis pairf; committing pairthrow, maist oppin and vnpardonable Tressone, and according to the said Act of Parliament, incurring pairthrow the panes and puneischment expressit pairintill. LYK AS, the saidis *Mr James Moffet*, *Mr Johnne Campbell*, and *Mr Johnne Ogilvie*, all professit and avowed JESUITES, war, in ane vther of the saidis monethis, tressonabillie ressett, hurdit,<sup>1</sup> keipit clofe, with thair horffis and provisioun, be the said *Robert Cruikshank*, staibler, within his duelling hous and stable in Ed<sup>r</sup>, be the space of dyuerse dayis and nychtis, war interteneit be him pairintill, and furneist with all maner of conforte, help, and releiff, according to his habilitie, committing pairthrow, oppin and manifest TRESSONE, conforme to the said Act of Parliament. AND siclyk, the saidis *Mr James Moffet* and vmq<sup>le</sup> *Mr Johnne Ogilvie* war maist tressonabillie resset, harbouret, and interteneit, in ane or vther of the saidis monethis, be the said *Robert Wilkie*, within his duelling hous in the Cannogait, of certane knowlege that thay war JESUITES, infasar as three feuerall MESSIS<sup>2</sup> war said be the said *Johnne Ogilvie*, within your chalmer, of your speciall knowlege; to the quhilkis MESSIS, dyuerse perfonas maid pair refoirt, and the said Robert keipit the dur, and was quyhles within and quyhles without. BE the wilfull and tressonable Ressetting of the quhilkis JESUITES, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, professit and avowed enemeis to his Maiesteis perfone, Croun, and estait, and trew RELIGIOUN presentlie professit, and that within thair duelling houffis, and vtherwayis, as is aboue declairit, the foirsaidis perfonas, and ilk ane of thame, accoirding to the tennour of the said Act of Parliament, hes incurret the pane and pwneischment of TRESSONE, viz. to be pwneist and demanit<sup>3</sup> as Tratouris, and pair haill landis and guidis fforfalt and escheit to his Maiesteis vs<sup>e</sup>; to the terrour of vtheris to abstene fra the lyk heireftir.

WILLIAME SINCLAIR, eftir reiding of the Dittay, declairit, that it is of treuth that he hes offendit God and the Kingis Maieftie, by Ressetting of *Mr James Moffet*, Jesuite, in the moneth of October last; quhilk he did only vpone simplicitie:<sup>4</sup> And denyis the Resset of *Mr Johnne Ogilvie*, or *Mr Johnne Campbell*, Jesuites, at any tyme: As also, denyis the Ressetting of the said *Mr James Moffet*, in the monethis of July, August, and September, fet down in the Dittay. My lord Aduocat acceptis his Confessioun, in that he acknowleges his Ressetting of Moffet, in the moneth of October; and adheris only thairto, aganis Williame Sinclair.

It is allegit be Williame Sinclair, for him selff and remanent perfonas vpone pannell with him, that the Dittay is nocht relevant, nather can the samyn be put to the knowlege of ane Assyse, except it war speciallie condiscendit thairin, that *Mr James Moffet* said Mefs, and was a traffiker aganis the Kingis Maieftie and the Religioun.—It is ansuerit be my lord Aduocat, the allegeance aucht to be repellit, in respect of the Dittay and Act of Parliament, beirand distinctlie, that nocht only the Ressetteris of the Sayeris of Mefs committis Tressone, bot also the Ressetteris of Jesuites, Seminarie Preistis, and Traffiking Papistes aganis the Kingis Maieftie and Religioun, committis Tressone. And trew it is, that the said *Mr James Moffet* is ane notorious Jesuite, and ane traffiker aganis the Religioun professit within this realme, as is confessit be the said Williame Sinclair

<sup>1</sup> Literally, *hoarded*; concealed with extreme caution, as one would a hoard of money. <sup>2</sup> Masses.  
<sup>3</sup> Used; treated. <sup>4</sup> Goodnature; without any treasonable intent.

him self, in his awin Deposition, beirand, that Moffet declairit to him, that he was cum to this cuntrie to venter his lyfe for the saiftie of faules that war in danger; and sa, was sufficientlie knawin to the said Williame, that he was ane Jesuite and traffikeing Papist aganis his Maiestie and Religioun: Be receping of the quhilk Jesuite thaireftir, he has fallin vnder the danger of the said Act of Parliament.

It is forder allegit be the pannell, that he can nocht pas to ane Assyse for the Recepting of Jesuites, except, conforme to the Act of Parliament, made in anno 1593, cap. 164, he had reffet thame, *scienter et prudenter*, be the space of thre nychtis togidder, or thre nychtis at seuerall tymes; be the quhilk Act, it is provydit, that gif it be sa tryit,<sup>1</sup> that the persone convict for the *first* falt, his escheit fall fall; ffor the *secund* falt, fall amit<sup>2</sup> his Lyfrent; and (ffor) the *thrid* falt, fall incur the crymes of Treffone. And thairfore, except the said Recept be sa tryit, the Dittay is nocht relevant.—It is anfuerit, that the allegeance aucht to be repellit, in respec the said Act of Parliament nawayis derogattis the Act of Parliament quhairupoun the Dittay is foundit: And thairfoir, nochtwithstanding of the said allegeance, fould pas to ane Assyse.

It is forder allegit be the pannell, that be the Act of Parliament maid in anno 1600 zeiris, cap. 18, thair can be na forder exactit of the Recepteris of Jesuites, bot ane pecuniall payne; quhilk he is content to pay, accoirding to the Lordis modificatioune: And thairfoir, the Dittay for Treffone can nocht pas to an Assyse.—It is anfuerit, that the allegeance aucht to be repellit, nochtwithstanding of the said Act quhairupoun the samyn is foundit, in respect the samyn nawayis derogatis the Act of Parliament maid be his Maiestie and Estaittis, in anno 1592, bot ratifies the said Act in everie poynt.

It is allegit be the pannell, that he can nawayis pas to ane Assyse for Resfetting of the saidis Jesuites, nather is the Dittay relevant aganis him, in respect, be ane Act of Parliament maid at Edinburgh, in anno 1609, cap. *quinto*, it is thair planelie explanet and declairit, that all Actis maid ofbefoir aganis the Resfetteris of Jesuites, &c. haif full force, and be put to dew executioun aganis the said Resfetteris, sa sone as intimatioun and denunciatioun beis maid of the saidis Jesuites, Seminarie Priestis, and vtheris contenit thairin, at the Mercat-croce of the heid burgh of the schyre quhair thay duell, and Mercat-croce of Edinburgh;<sup>3</sup> bot sa it is, that thair was na intimatioun nor denunciatioun maid at ony Mercat-croce of the said *Mr James Moffet* his name, befoir his Resfetting within the pannellis hous, to be ather a Jesuite, Seminarie Preift, or of ony vther ordour: And thairfoir, the said Dittay for his Recept can nocht pas to ane Assyse.—It is anfuerit be my lord Aduocat, that the explanatioun repeatit be the pan-

<sup>1</sup> If it so turns out upon Trial.

<sup>2</sup> Lose.

<sup>3</sup> As the *commune forum*.

nell, fet down in the said laft Act of Parliament, nawayis derogatis or takis away the former Act of Parliament maid aganis the Reffetteris, quhairupoun the Dittay is confaueit; bot be the contrair, the said Act is Ratifeit, and ordanit to haif frie ftrenth, effect, and executioun, accoirding to the tennour thairof; and the explanatioun of the said Act, in anno 1609, is only in faouris of sic as Reffettis Papiftis ignorantlie, nocht knowing thame to be Papiftes, or of ane contrair Religioun: Bot it was fufficientlie vnderftuid to the pannell, befoir *Moffettis* Reffet, that he was ane Catholik ffather, and was cum to venter his body for the Catholik Faith, as is confeffit be his Depofitioun: And thairfoir, the said allegiance aucht to be repellit, and the pannell pas to ane Affyfe.

INTERLOCUTOR *of Relevancy.*

THE JUSTICE, with advyfe of the Affeffouris prefent, Repellis the hail allegiances proponit be the pannell; and ffindis the Dittay relevant: And Ordanis the famyn to be put to the knowlege of ane Affyfe.

ASSISA.

Thomas Fischer, mercheand bur- ges of Edinburgh,	Robert Halybruntoun, merchand thair,	Dauid Williamefone, elder, mer- cheand thair,
Eduard Johnestoun of Ryhill,	Johnne Inglis, skynner thair,	Capitane James Hunter, burges thair,
Williame Cocherane, mercheand burges of Edinburgh,	Nicoll Vduard, mercheand thair,	Alexander Broun, elder, mer- cheand thair,
Dauid Mitchell, merchand thair,	Thomas Weir, peuderer thair,	
Alexander Speir, mercheand thair,	James Weill, mercheand thair,	Jo. Fairlie, younger, burges thair.

My lord Aduocat takis instrumentis of the fuering of the Affyfe: And for VERIFICATIOUN of the Dittay, producet the pannellis Depofitiones, viz. the said William Sinclairis Depofitioun, all writtin and fubfcriuit with his hand; and the vther tua Depofitiones maid in prefens of dyuerfe Lordis of his Maiefteis Secreit Counfell, confeffing thair particular Reffetting of the Jefuites, in maner fpecifeit in thair Dittay, and thairupoun askit instrumentis; and proteftis for Wilfull Errour, gif thay Acquit.

VERDICT. The Affyfe, all in ane voce, be the mouth of Dauid Williamefone elder, chancellor, ffand, pronuncet, and declairit the saidis *Williame Sinclair*, *Robert Wilkie*, and *Robert Cruikfchank* to be ffylet, culpable, and convict of the treflonable Reffetting of the saidis Jefuites, in maner fpecifeit in thair Dittay; accoirding to thair awin Depofitiones, producet for verificatioun thairof.

SENTENCE. To be tane to the places of thair Executioun, and thair to be execute to the daith, and vtherwayis demanit as Tratouris: And all thair landis, guidis, and geir to be fforfalt and efcheit to his Maiefteis vfe.

Aug. 15.—THE quhilk day, THE JUSTICE being fitand in Judgement, ane WARRANT was producet be him, and ordanit to be red, quhilk was direct to him fra his Maieftie, &c. viz.

JAMES R.

To our trustie and weilbelouit SIR WILLIAME HEART, kny<sup>t</sup>, deputy Justice general, in our kingdome of Scotland. QUHAIR AS, Williame Sinclair, Aduocat, Robert Wilkie, imbroderar, and on Cruikschank, a staibler, ar convicted and condemned of Treassone, for the Wilfull Receipt and supplying of Moffet the Jesuite: IT is our plesour, that 3e proceed to the finall pronunceatioun of the Sentence and Executioun of the pwneifchment provydit by our Lawis in the lyk caices against thame, with all convenient expeditioun: For doing quhairof, these presentis fall be 3our sufficient Warrant. GEVIN at Sarisburrie, the 26th of Julie, 1615.

For obedience of the quhilk WARRANT, the Justice ordanit the saidis Williame Sinclair, Robert Wilkie, and Robert Cruikschank, to be broght furth of Waird to the Mercat-croce of Edinburghe; and thair to be Hangit vpon ane gibbet, quhill thay be deid: And all thair landis, heritageis, guidis, geir, and vtheris pertening to thame, to be fforfalt and escheit to our souerane lordis vs, &c.

Eftir the pronunceatioun of the quhilk Sentence, the samyn was intimat to thame be Johnne M<sup>c</sup>Nacht, bailzie of Edinburgh, to quhome directioun was gevin be the said Justice, for caufeing put the samyn to executioun, conforme to the Warrant aboue specifit.

Aug. 30.—BEING of new agane brocht furth of Waird, and presentit vpon pannell, be the Bailleis of Edinburghe, as thay quhais dome and executioun thair of, &c. was of our souerane lordis meir mercie and grace delayit and superceidit, THE JUSTICE, for obedience of his Maiesteis posterioir WARRANT, direct to my lord Archebischope of St Androis, My Lord of Bynning his hienes Secretar, and Sir Gedione Murray his hienes Thesaurer depute, quhair of the tennour followis, pronounced Sentence accoirdingly.

JAMES R.

WHEARAS, We ar credible informet, that Williame Sinclair, ane Aduocat before pe Sessioun, Robert Wilkie, browdinstar, and on Cruikschank, ane staibler, is convict of Treassone, for Resetting of Moffet and Ogilvie the Jesuite: IT is our plesour, that Williame Sinclair and Robert Wilkie, be Banischet our dominiones during our plesour: And that pe said Cruikschank be Banischet the toun of Edinburghe during our plesour. GEVIN at Sallsberrie, the xxvij day of Julij, 1615.

Quhilk DOME and SENTENCE, the saidis persones, in all humilitie, imbracet and acceptit vpoun thame, &c.

[CURIA Jusficiarie, f. d. n. regis tenta in Pretorio ciuitatis Glasgwen. per D. Will. Heeart.]

**Treasonable Resetting of Jesuits—Hearing of Mass, &c.**

Sept. 5.—SIR JAMES CLEILLAND (KNEILLAND) of Monkland, kny<sup>t</sup>, Williame Maxwell of Cowglene,<sup>1</sup> Robert Vrie, wryter, burges of Paislay.

Dilaittit of the tressonable Resetting of Mr Johnne Ogilvie, Jesuite, within thair duelling houffis: And heiring of dyuerse Messis said be him thairintill;

<sup>1</sup> See their Examinations appended to the Trial of *John Ogilvy*, Vol. III., 330.

contrair the Actis of Parliament ; committet in the monethis of July, August, and September, 1614 yeiris ; at the leift, in ane or vther of the faidis monethis.

PERSEWAR, Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our fouerane lord.

PRELOCUTORIS in defence, The Laird of Keir, the Laird of Mufchett, the Laird of Pollok, Johnne Cranftoun, Mr Johnne Halyday, Aduocat, Mr Thomas Pollok, Aduocat.

THE Justice, with advyse of my Lord of St Androis, my lordis Kilsythe, Clerk of Register, and his Maiefteis Aduocat, continewis this matter to the faxt day of December nixt, to be tryit at Edinburghe : And Ordanis the pannell to find Cautioun for thair entrie that day and place, in the hour of caus, vnder the panes following, viz : The faid Sir James Kneilland, vnder the pane of Ten Thowfeand merkis ; the faid Williame Maxwell, vnder the pane of Fyve Thowfeand merkis ; and the faid Robert Vrie, vnder the pane of Fyve Hundreth merkis money.

The perfones on pannell offeris thame selffis to the Tryell of the Law for the faid cryme, diffassenting to the faid continewatioun ; and thairupoun askit instrumentis : And for obedience of the faid Justice Ordinance, the faid Sir James Kneilland ffand Sir Johnne Home of Huttonehall cautioner for him ; the faid Williame Maxwell ffand Sir Johnne Maxwell of Pollok, kny<sup>t</sup>, cautioner for him ; and the faid Robert Vrie ffand Alexander Cocherane of that Ilk, cautioner for him, that thai fall compeir befor the Justice and his Deputis, in the Tolbuth of Edinburghe, the faid faxt day of December nixt, in the hour of caus, and vnderly the Law for the faidis crymes, vnder the severall panes aboue writtin.

COMPEIRIT Harbert Maxwell, burges of Edinburghe, and producet ane Warrant of the Lordis of Secreit Counsell, anent the deferting of the dyet appointit for tryell this day.

JUSTICE, Justice-clerk, and your deputis : Ze fall, vpon the ficht heirof, defert the dyet appointit for Tryell of Sir James Kneilland of Monkland, Williame Maxwell of Cowglen, and Robert Vrie, burges of Pailay, the faxt day of December nixtocum, ffor the Ressetting of v<sup>m</sup>q<sup>le</sup> Mr Johnne Ogilvie, Jefuite : Anent the quhilk, thir presentis falbe your Warrant. Subscryuit AT ED<sup>n</sup>, pe xxij day of November, 1615. SANCTANDROIS. S<sup>r</sup> J. MURRAY. ALEX<sup>r</sup> HAY. S<sup>r</sup> J. OLIPHANT. KILSYTH.

The pannell difassentis to all forder continuatioun ; and protestit, in respect that this is the secund dayet keipit be thame in this matter, first at Glasgou, and now at Edinburgh, that their cautioneris be fred, viz., Sir Johnne Home of Huttonehall for the faid Sir James, and Alex<sup>r</sup> Cocherane of that Ilk, for the faid Robert Vrie.

### Hearing of Mass, &c.

Sep. 13.—MR JAMES MOFFET, alias HALYBURTOUN, ane Jefuite Preift.

Dilaitit of the Treffonable Hearing of Mafs within this cuntrie, speciallie within the place of Auchindoun, a tuentie yeir fyne or thairby : And for con-

travening the Actis of Parliament in refoirting within this cuntrie, he being ane Jesuite and Seminarie Preift, directit from Rome, to peruert his Maiefteis subiectis from the trew Religioun ; and vtheris crymes contenit in his DITTAY.

*DITTAY against Mr James Moffet.*

[The preamble is similar to those which precede, and founds upon the Act 29th July, 1587. It then states,]

“ THAT 3e, being tranet vp at scoles and Colledges within this Kingdom, and haifing accomplifchet your courfe in the Colledge of St Androis, quhair 3e was laureat ; and haifing paireftir applyit your mynd to the studie of Theologie, and dyuerfe tymes maid your privat exerceiffis within pe New Colledge pairof, 3e, in your awin fulfche opinioun, playing the rwnigait<sup>1</sup> frome the trew Religioun, firft studeit and professit be you within this Kingdome, adreffit your self to the place of Auchindoun, quhair 3e, aganis the saidis Actis of Parliament, hard ane Mefs, and was present at pe Celebratioun pairof, the Auld Laird of Auchindoun and Mr James Gordoun being present withe you, at the heiring of pe saymn : LYK AS, 3e, haifing schortlie paireftir past furth of this cuntrie to ROME, in Italie, and haifing pair ressaunt the ordour of a Jesuite Preift, and haifing remanit furth of pis cuntrie be the space of tuentie yeiris togidder, studieing to pe said Roman Religioun, 3e being ane professit Jesuite, expres contrair the tennour of the foirlaid Act of Parliament, and in manifest contempt pairof, and of his Maiefteis royall autoritie, in the moneth of Julij, 1614, returnet to this realme, be directioun of CLAUDIUS AQUAVIVA, your Generall, off plane purpois and intentioun to pervert and seduce his Maiefteis subiectis frome the trew Religioun presentlie professit ; refoirtit in dyuerse pairtis of this cuntrie, speciallie, within the burgh of Edinburghe, Cannongate, and Citie of St Androis, quhair 3e was tane, apprehendit, and brocht to this burgh of Edinburghe, and Tolbuth pairof, quhairin 3e haif bene detenit priffoner, as ane Jesuite Preift, and a perverter of pe Kingis Maiefteis subiectis frome the trew Religioun, presentlie professit,” &c.

The pannell, efter reiding of the DITTAY and his accusatioun of the crymes mentionet thairintill, offerit him selff in his Maiefteis Will for the samyn : Quhairupoun my lord Aduocat askit instrumentis.—Thairefter my lord Aduocat producet the WARRAND following :—

JUSTICE, Justice-clerk, and your deputis : you fall appoint a Justice Court to be haldin in the Tolbuth of Ed<sup>r</sup> at suche convenient day as you think goode ; and pairin you fall put Mr James Moffet, Preift, to the knowlege of ane Assyse for suche crymes as fall be gevin in Dittay againes him, be his Maiefteis Aduocat, and proceid and minister Justice vpon him, conforme to pe lawis of this realme ; Bot yf the said Mr James fall happin to cum in his Maiefteis will, you fall pronounce his Maiefteis will as followis, to wit : That the said Mr James fall be Banifchet his Maiefteis dominiones, and nevir return agane within the samyn, vnder the pane of deid : And that he act him selff, judiciallie, to depairt and pas away betuix and suche a day as you fall appoint, and nocht to returne vnder the said payne : And forder, that he find caution actit in the Buiks of Secret Counfall to this fame effect, vnder the pane of Thre thousand merkis, to be incurrit be his cautioner, besyde the pane of deid to be execute vpon him selff, in caice he failzie in the premisses. And this Dome being pronuncet, and he haveing actit him selff, that you send him bak agane to his waird, quhill the said caution be fund, and quhill a schip be in reddines quhairin he may be transpoirtit. Quhairanent pir presentis fall be your Warrand. AT EDINBUR<sup>r</sup>, the xxij day of August, 1615.

AL. CANCELL<sup>r</sup>. SANCTANDROIS. SCONE. BINNING. J. PRESTOUN. AL. DRUMMOND.

<sup>1</sup> Runagate ; *renegado*.

SENTENCE was pronounced accordingly. He was adjudged to 'depart and pas away furth of his Maiesteis dominiones, betuix and the tuentie day of October nixtocum, wind and wedder fervand.'

### Slaughter.

NOV. 29.—JAMES KING, sumtyme of Barro; Alexander Lummidene of Clova; Mr Gilbert Arnauld, indueller in Aberdene; and David King in Hoy, in Orknay.

Dilaitit, accuset, and perfewit at the instance of Elizabeth Seatoun, only dochter to vmq<sup>le</sup> Alexander Seatoun, than ffiar of Meldrum, Johnne Vrquhart of Craig-Fintrie, hir' spous, for his intereis, Johnne Seatoun now of Meldrum, &c., off airt and pairt of the Slauchter of the said vmq<sup>le</sup> Alexander Seatoun, with schottis of hagbuttis and muscattis; committit vpon the landis of Barro, in the hie-way betuix Meldrum and the Kirkton of Bourtie, vpon the xxviiij day of Auguft, 1590: And ficlyk, for beiring and schuitting of Hagbuttis, muscattis, and pistolettis, &c.

Mr Robert Fairlie, feruitour to Mr Alex. King, Aduocat, produceit ane Warrant of his Maieftie, daitit at Newmarket, the fixtenth of November, 1615, anent deferting this dyet. The Diet was deferted accordingly.

### Letters of Exemption

IN FAVOUR OF THE PROVOST, BAILIES, COUNCIL, AND COMMUNITY OF  
The Burgh of Aberdeen.

Dec. 2.—Compeirit perfonallie Mr Thomas Nicolfone, Aduocat, in name of the Provost, &c. of Abirdene, and producet to my Lord Justice LETTERS OF EXEMPTION, vnder the Previe seill, quhair of the tennour followis.

JAMES, be the grace of God, King of Scottis: To all and findrie our schereffis, stewartis, Justice, Justice Clerkis, Thesaurer, Aduocat, and all vtheris Judges and ministeris of our Lawis, thair deputis and officeris, present and to cum, leigis, and subiectis, quhome it effeiris, to quhais knowlege thir our Letteris fall cum, Grating. Wit 3e ws, vnderstanding that the Provost, bailleis, counfall, and communitie of our burgh of ABERDENE, ar oft tymes atteichet and summondit to pas vpon Inqueistis and Affyis to our burgh of Ed<sup>r</sup> and utheris pairtis outwith pair boundis and Jurisdictiones, in crimes committit far distant fra thame, quhair of thay ar altogidder ignorant; and that thay had ane Exemption to the effect vnderwritin gevin and grantit to thame be ws, with advyis of vmq<sup>le</sup> our rycht trest coung James Erle of Moirtoun, Lord Dalkeith, &c. Regent to ws our realme and legis for the tyme; as the samym Exemption, of the dait at Aberdene, the thrid day of September, the zeir of God I<sup>m</sup>V<sup>c</sup> threscoir fourtene zeiris, deulie and ordourlie past and admittit in the Justice Court haldin at our said burgh of Aberdene, immediatlie pairefter, be vmq<sup>le</sup> Sir Johnne Bellenden, our Justice clerk for the tyme, at mair lenth beirs. AS ALSO, considering, how vpon the occasioun of Commissiones of Leutenendries and Justiciareis, grantit in faouris of the Noblemen of the cuntrie, or to vtheris, for administratioun of Justice passing vpon our Rebellis, and disorderit perfones for revenge of privat



quarrellis and contraverfeis betuix pairtie and pairtie; the saidis Proveift, bailleis, counfall, and communitie ar oft tymes drawin furth of pair awin Toun to vtheris pairtis of the cuntrie, to the grit hazard of pair lyves and wrak of pair guidis; albeit, that according to the libertie of frie Burgh, quhair with thay and pair prediceffouris ar infest and foundit, thay aucht only to attend vpone our selff, being in the ffeildis in proper perfone, or with our Leutenent, in defence of our realme aganis forane nationes. AND haifing confideratioun, that our said Burgh of Aberdene lvis within the North pairtis of our realme, far distant fra ws, and of the guid, trew, and thankfull feruice done to ws and our prediceffouris be the Proveift, bailleis, counfall and communitie of our said Burgh, alfweill in tyme of weir as of peace; and of pair reddie and deutiefull obedience towardis ws, quhair of we haif daylie pruf and experience, and respecting pair guid mind to continew pairin hereftir: THAIRFOIR, we haif gevin and grantit, and be thir our Letteris gevis and grantis to the Proveift, bailzeis, counfall, communitie, burgefis, craftifmen, and induelleris of our said Burgh of Aberdene, prefent and to cum, speciall LICENCE to remane and abyde at hame fra all Raidis, Conventionis, Oiftis, Affemblis, Airmeis, Gatheringis, Wappon-fchawingis or Weiris, to be maid be ony our Juftices, be Commiffioun of Leutenendrie, Jufticiarie, or vther Commiffioun quhatfumeuir, to be grantit be ws, or meiting of thame in ony pairt within our realme in tyme cuming, except pat either our selff be prefent in proper perfone, or that our Leutenent, accompaneit with the remanent of our realme, be vpone the defence of the cuntrie, aganis forane nationes, or that our selff pas for repressing of Rebellis and Traitouris, aganis our perfone within the cuntrie: And fra all compeirance or paffing vpone ony Affyffis or Inqueiftis, in quhatfumeuir crymes or actiones, (except sic crymes as ar committit within our said burgh, friedome thair of, and tua myles about the samyn,) Exemis<sup>1</sup> and discharges thame and ilk ane of thame pairfra, during all the dayis of pair lyftymes. And willis and grantis pat pay in doing pair of fall incur na payne, skayth, cryme, nor danger in pair perfones, landis, or guidis, nor be callet nor accuset pairfoir criminallie nor civille, be ony maner of way, in tyme cuming, nochtwithftanding ony our Actis, statutis, ordinances, Letteris, proclamationes, or charges quhatfumeuir, speciall or generall, maid or to be maid in the contrair; anent the quhilkis, and all panes contenit pairintill, We haif difpenfit, and be thir our Letteris difpenffis with the Proveift, bailleis, counfall, communitie, burgefes, craftifmen, and induelleris of our said burgh, prefent and to cum, for eur. DISCHARGEING heirfoir, zow, all and findrie our Schereffis, Stewartis, Juftices, Juftice clerkis, Thefaurer, Aduocat, and all vtheris Judges and minifteris of our lawis, zour Deputis and officeris, prefent and to cum, off all calling, accufeing, atteiching, arreifting, fummond- ing, wairning, poynding, trubilling, or ony wayis intrometting with the saidis Proveift, bailleis, counfall, communitie, burgefis, craftifmen, and induelleris of our said Burgh, prefent or to cum, pair landis or guidis, in ony wayis, in tyme cuming, for pair said remaning and abyding at hame fra our saidis Raidis, Airmeis, and vtheris foirfaidis, and fra all and findrie Inqueiftis and Affyffis, to be committit, as faid is; and of zour offices in pat pairt, be thir our Letteris. GEVIN vnder our Previe Seill, At Dalkeithe, the faxtene day of Maij, the zeir of God I<sup>m</sup>. ffyve hundreth fourfcoir tuelff zeiris, and of our regne the tuentie ffyve zeir.

PER Signaturam manibus f. d. n. Regis ac Secretarij subscriptam.

[*D. Will. Heart, Justiciarius-deputatus;*

ASSESSORES Justiciario, D. Alex. Drummond de Meidhoip, D. Will. Levingstoun de Kilfythe,  
Senatores Collegij Justicie f. d. n. Regis.]

### **Barbarous Slaughter and Maiming of Sheep—Oppression, &c.**

[THE following Case is altogether unparalleled, even in the annals of Border or Highland revenge. On account of its singularity, it has been considered necessary to make some investigation into the

<sup>1</sup> Exempta.

subject, for the information of the curious enquirer. The story is so forcibly told in the proceedings before the Criminal Court, that the Editor shall not weaken its effect by attempting to rehearse the facts in this place. It is enough for the purposes of this Collection, that the reader is informed, that the property of *Howpaslot*, an esate of one of the most ancient branches of the name of *Scott*, having, by some means, come into the temporary possession<sup>1</sup> of *Sir James Douglas of Drumlanrig*, a powerful Border Baron, who had distinguished himself by the activity with which he aided the suppression of the disturbances on the Marches, *the Lady Howpaslot* appears to have been roused into fury at the very idea of the domains of her ancestors coming into the hands of a Douglas. She therefore instantly held a council of war in the *Town of Hawick*, of which *Drumlanrig* was the Superior, in the month of April, 1615, at which she and her friend, *Jean Scott of Satchells*, presided. The bravos and ruffians who figure in this Trial, and of whom every Clan had a few to do their worst work, at once undertook to execute the orders of these infuriated females, and, as will be seen by the subsequent proceedings, they succeeded in effectually preventing *Drumlanrig* from 'pleniffing,' or stocking, the farms. These villains greedily engaged to maim and destroy the whole of the sheep which had been brought to the grounds; and this cruel and barbarous act they performed in a manner almost too horrible to be related.

*Sir James Douglas* did not long survive the perpetration of this atrocious fact, having died Oct. 16, 1615. He was succeeded by his son *Sir William*, who was afterwards created *Viscount of Drumlanrig*, *Lord Douglas* of Hawick and Tibbers, Apr. 1, 1628; and *Earl of Queensberry*, Jun. 13, 1633. *Sir William* actively pursued these heartless ruffians, and was successful in bringing all of them to deserved punishment. In the Appendix to this Trial, the reader will find a characteristic Letter from this Nobleman to his kinsman, *Murray of Lochmaben*, the Original of which the Editor has fortunately discovered in the Advocates' Library.

In an interesting communication from *SIR WALTER SCOTT*, Bart., on the subject of this Trial, with which the Editor has been favoured, some interesting particulars are detailed, regarding THE SCOTTS of the Border. No apology need be made for enriching these pages with the following extract:—

'OUR Name were very clannish. I have, for the time, in my possession, a BAND or ASSOCIATION between *Sir Walter Scott of Branholm, knight, Laird of Buccleuch*, and about fifty of the most important men of his kin and Clan, [dated 3d June, 1589.] It proceeds upon an Association made to the same purpose by *SIR WALTER SCOTT*, the father of the Chief, and is calculated to secure against any Clansman taking any "room" or possession over the head of another of the Name. Any one who was accused of having done so, bound himself to stand by the award of five men, to be mutually chosen, bearing the Name of Scott. Even if the Chief should encroach upon the possessions of any inferior person of the Name, he declares he will submit the cause, in like manner, to four persons of the Name of Scott; which shows an independence on the part of the Clansmen which I was not prepared for. The BAND is the property of my cousin and relative, *William Scott, Esquire, of Raeburn*. It seems to have been calculated to prevent kinsmen from going to law with each other, and to secure a species of justice within the Clan, to the advancement of the "guid and godlie purposes" of their Chief. The "guid and godlie purpose" of *the Cordiner* and *the Suckler* seems to have been intended for the same reason. *HOWPASLOT* was an old inheritance of *the Scotts*, and, on whatever grounds Douglas possessed it, returned to the Name again. *Douglas*, you are aware, was *Lord of Hawick*, to which *Buccleuch* afterwards succeeded.

'Of the people mentioned in the Trial, I know little. *Satchells* is probably the place of the name, lying on the *Ale* or *Teviot*, now part of *John Corse Scott of Synton's* property. The individual termed

<sup>1</sup> It is by no means unlikely that *Howpaslot* was 'conquest' by means of Wadset, Apprising, or other legal 'Diligence'; for it is certain, that it was but a short period in the occupation of *the Laird of Drumlanrig* or his Tenants. The summary mode by which his 'guidis' were disposed of, may have precipitated his bringing these matters to a close, and his accepting of a pecuniary accommodation.

*William Scott, called in Satchells*, may have been the father of *Walter Scott of Satchells*, the Historian of the Clan, terming himself,

An old Souldier, and no Scholler,  
And one that can write nane,  
But juft the letters of his name.'

The singular work here quoted by SIR WALTER SCOTT, a copy of which is in the Editor's Collection, is titled, 'A TRUE HISTORY of feveral honourable FAMILIES of the right honourable NAME OF SCOT in the Shires of Roxburgh and Selkirk, and others adjacent. Gathered out of Ancient Chronicles, Histories, and Traditions of our Fathers, by *Capt. Walter Scot*. EDINBURGH, printed by the Heir of *Andrew Anderfon*, Printer to his moft sacred *Majesty*, City, and Colledge, 1688.' It was composed by the author at the very advanced age of *Eighty-eight*! He states that he was fifty-seven years in active service, abroad and in Scotland, having entered the army at the age of twenty-nine. Although he boasts of being illiterate, he seems to have had much of the spirit of a staunch Member of the *Roxburghe, Bannatyne, or Maitland Clubs*—for he concludes his extraordinary work with the following '*L'Envoye*.'

'Therefore be gone my Book, stretch forth thy VVings and fly  
Amongst the Nobles and Gentility:  
Thou'rt not to fell to Scavengers and Clowns,  
But given to worthy persons of Renown!  
The Number's few I've printed, in regard  
My Charges have been great, and I hope Reward;  
I canf'd not print many above twelve-score,  
And the Printers are engaged that they shall print no more!'

The Editor, thinking that the Original CONTRACT or BAND OF ASSOCIATION between the heads of the powerful FAMILIES of the NAMES of KER and SCOTT, will prove most acceptable, as preserving the memory of times so powerfully depicted by *Sir Walter Scott* in many of his works, he has, after examining the ancient Records, procured a transcript, which is also appended to the present Trial. So able an abstract of the renewal of this '*Band*' has been given by *Sir Walter Scott*, that it has not been deemed necessary to apply for liberty to present the reader with a copy of it.]

Feb. 20, 1616.—GEORGE SCOTT, cordiner in Hawik, '*the Souter*,' callit *Mariones Geordie*; Walter Scott, fone to *Braidis Andro*; Ingram Scott, and Jok Scott, callit *the Suckler*.

Dilaitit of the crewall and barbarus Slauchter of threfcoir schein, or thairby, pertaining to the Laird of Drumlangrig; committit vpon the Landis of Howpallot, in the moneth of Apryle laft, conform to the Dittay following.

DITTAY *against George, Walter, Ingram, and Jok Scot, alias the Suckler*.

FORSAMEKILL AS, albeit be dyuerse loveabill lawis and Actis of Parliament, it be expreflie provydit, statute, and ordanit, that all Slayers of Horffis, oxin, or vther cattell and guidis,<sup>1</sup> fall be estemit and pwneift as Thevis; as the faidis Lawis and Actis of Parliament in tham selfis proportis: Nochtwithftanding quhairof, it is of verritie, that sic is the perverse difpofitioun of dyuerse perfones, quha, preferring pair awin privat grudge, and revenge arryfyng pairupoun, to

<sup>1</sup> Stock; sheep.

the dew reuerance and obedience of his Maiesteis authoritie and lawis, ceiffis nocht to profecute and follow furthe all godles and indirect meanis to effectuat pair malice, be sic monstrous and vnhard of crewaltie, as the lyk quhair of hes nocht bene hard amangift the *wyld Irish* and savadge people, let be within any reformat and ciuile part of his Maiesteis dominionis : And namelie, the perfonnes perticulerlie aboue writtin, be the instigatioun, na dout, of sum perfonnes of gritter qualitie and condition nor thame selffis, vpone confideratioun, that þe landis and leving of *Howpaslet* war deulie and lawfullie conqueist and acqyret be vinq<sup>le</sup> SIR JAMES DOUGLAS of *Drumlangrig*, *knycht*, and he pairby setlet in possessioun pairof, be pleniffing of the samyn with his bestiall and guidis ; thay and vtheris of pair unhappie socieatie, altogidder disdaneing that þe said *Laird of Drumlangrig* fould inioy or possesse ony landis or possessiones within that part of this kingdome ; and pairfoir, plotting and devyfyng all godles and vnlauchfull meanis how to interupt his peceable possessioun of the saidis Landis, and to lay the samyn waift, and pairby to mak thame vnprofitable to him and his posteritie—in the moneth of Apryle lastbypast, the saidis *George Scott*, *Walter Scott*, *Ingreim Scott*, and *Jok Scott*, callit *the Suchler*, haifing assemblit and convocat to thame selffis *Williame Scott*, callit in *Satchellis*, and vtheris, pair complices, first keipit ane generall meitting within þe *Toun of Hawik*, quhair, in pair devillische counsell, it was concludit and aggreit vnto amangis thame, that, within a fyve or sex dayis pairefter, they fould all meit togidder, vnder nycht, vpone the saidis landis of *Howpaslet*, and pair to flay and distroy the said *Laird of Drumlangrigis* hail bestiall and guidis being pairupoun : LYK AS, accoirding to the foirsaid damnable conclusioun, the said *George Scott*, accompaneit with the said *Williame Scott*, callit of *Satscheillis*, vpone the . . . day of þe said moneth of Apryle lastbypast, come, vnder filence and clud of nycht, fra the said *Toun of Hawik*, to *Eilrig-burne-fute*, and the said *Williame Scott* being than muffellit ;<sup>1</sup> at the quhilk place, the said *Jok Scott*, callit *the Suchler*, met with thame ; and pairfra, thay thre past vp the watter, be the space of thre quarteris of ane myle, to ane Cleuch,<sup>2</sup> callit *Birny-cleuche*, betuix *Eilrig* and *Howpaslet* ; quhair, accoirding to þe former appointment, the saidis *Wattie* and *Ingreim Scottis* met with thame : fra the quhilk place thay foure, accompaneit with the said *Williame Scott*, callit of *Satschellis*, come to the saidis landis of *Howpaslet* ; and pair, being bodin<sup>3</sup> with fuordis, bandit stalffis, and vtheris wappones, provydit be thame for þe purpois, in ane Cleuch-syde, quhair þe said *Laird of Drumlangrig* his schein war lying in pair lairis,<sup>4</sup> maist barbaruslie and inhumanelie, as savadge and crewall beiftis, destitute of naturale

<sup>1</sup> Disguised ; *muffled*. Old Fr. *emmuselé*.  
hollow between precipitous banks, &c.

<sup>2</sup> A rocky ascent, or cliff. It also signifies a cleft or

<sup>3</sup> Furnished.

<sup>4</sup> Beds ; folds.

reasone, with pair drawin fuordis and vtheris wappones foirfaidis, ran throw þe haill flok of schein, flew, lamet, and menzet<sup>1</sup> to the number of threfcoir of the said schein, quhair of fouretie or pairby war flane, be streking of<sup>2</sup> pair heidis, and cutting thame in tua throw pair bakis; and the rest of thame, pair spaldis<sup>3</sup> and legis wer strukin away fra thame in maist barbarous maner, and war sa left spreuleing in pair deid-thrawis<sup>4</sup> vpon the grund of the saidis landis; committing pairthrow maist haynous and vnhard of Crewaltie and Oppressioun: And the saidis perfonas aboue complenit vpon, and ilk ane of thame, ar airt and pairt of the saidis crewall, monstrouous, and vnhard of crymes: ffor the quhilk, thay aucht and sould be pwneift be ane exemplarie pwneischment, to the terrour and example of vtheris to commit the lyk heireftir.

THE VERITIE of pair giltines of the quilkis haynous crymes is cleirlye provin, be the TAIKINIS<sup>5</sup> following, viz. 1. BE the Depositioun maid be þe said *Jok Scott*, callit *the Suckler*, quha was send for be THE LADY HOWPASLET to cum to þe *Toun of Hawik*; and at his cuming, haifing met with þe LADY, and with *Jeane Scott*, callit of *Satschellis*, and with þe said *George Scott*, callit *Mariones Geordie*, at þe *Croce of Hawik*, it was pair concludit amangis thame, that *the Laird of Drumlangrigis* schein sould be all flane: AND for that effect, accoirding to þe appointment than maid, a thre dayis paireftir, *Jok the Suckler* come to *Eilrig-burne-fute*, quhair, in the glomeing,<sup>6</sup> he mett with the said *Mariones Geordie*, and with *Williame Scott*, callit in *Satschellis*, quha was with þame in companie; quhilk *Williame Scott* was than muffellit. Lyk as, at þe said *George Scottis* defyre, the said *Jok the Suckler* past with zow and the said *Willie Scott* vp the watter, the space of thre quarteris of ane myle, to ane cleuch callit *Birnie-cleuche*, betuix *Eilrig* and *Howpaslett*, quhair þe said *Wattie Scott* and *Ingrem Scott* met with thame, the said *Wattie* and *Ingrem* haifing plaidis and blew bonnettis: ffor the quhilk place thay past togidder to *the lands of Howpaslett*, quhair the said *Laird of Drumlangrigis* schein lay, and pair slew þame, in maner specifeit in þe Dittay and þe said *Jok the Suckleris* Depositioun.—2. To the taikin lykwayis, the said *George Scott* persaveing þat *the Suckler* wald nocht pas forwardis to the committing of the fact, he pairfoir drew his fuord, and pairwith thraitnet *the Suckler*, that gif he past nocht with him and thair complices to þe deid, he sould hew *the Suckler* pairwith in peces.—3. LYK AS, in regaird of the former Depositioun sa maid be *the Suckler*, the said *George Scott* being presentit befor my *Lord Justice Clerk*, my *Lord Aduocat*, and my *Lord Justice*, and examinat pairupoun; the said *George* was content to tak the giltines of þe said cryme vpon him, gif *the Suckler* wald affirme the vereitie pairof, in his face:

<sup>1</sup> Maimed.  
death.

<sup>2</sup> Off.  
<sup>5</sup> Tokens; proofs.

<sup>3</sup> Shoulders. O. Fr. *espaule*.  
<sup>6</sup> Twilight; after sunset.

<sup>4</sup> Struggling in the agonies of

Lyk as, the said *George* and *the Suckler*, being confrontit, he ratifeit and renewit his former Deposition and haill circumstances pair of in the said *George* face; and offerit to haif fochin þe Singular Combat with the said *George*, vpon the verritie pair of.—4. To the taikin lyk wayis, þe said *George*, haifing ane dog named *Hyde-the-bastard*, he being convenit at dyuerse tymes with his companjeonis, brak out in thir woirdis, saying, ‘ Sa lang as I and my Bastard brother levis (meaning be his dog), *Howpaslet* fall nocht plenifche.’—5. To the taikin also, eftir þe slauchter of the said schein, the said *George* being suspectit pair of, and vrget be *James Douglas* to geve ane test,<sup>2</sup> quhair he was þat nycht of þe barbarous slaying of thame; becaus he could nocht geve þe said test and cleir him self pair of, he querrellit the said *James Douglas* pairupoun, within the *Towne of Hawik*, and presentit ane bendit<sup>3</sup> pistolet to him, of purpois to haif slane him pairwith; quhilk he wuld half schote, gif he had nocht bene stayit be *James Weymes*, *Johnne Scott* callit *Bony Jony*,<sup>4</sup> and *James Lechen*, quha tuik þe pistolett frome him.—6. To the taikin lyk wayis, the said *George*, being examinat in þe premisses be þe saidis Lordis Examinatouris, vpon the xxviij of December last, and being demandit, quhair he was the tyme of the keiping of the Justice Court of Jedburgh? Declairit, that he come the day of the halding of the said Justice Court to the Toun of Jedburgh, quhilk was vpon ane Thurifday; and vpon the Tyfday and Wedinfday of befoir, was also in Jedburgh, in maner specifeit in his Deposition: Lyk as, the said *George* being removet for a tyme, and of new re-examinat, he was contrair to his former Deposition, declairing, þat vpon the Sunday, Mononday, Tyfday, and Wedinfday befoir the Court, and vpon the Thurifday, the day of halding pair of, he was within the *Town of Hawik*, accompaneit with the persones set down in his posterioir Depositione.—7. To the taikin also, the said *Walter Scott*, at his cuming with *Jok the Suckler* to *Birniecleuche*, the said *Jok the Suckler*, haifing refusit to pas forwardis with him to þe slaying of þe said schein, the said *Walter*, nochtwithstanding his refuseall, earnestlie delt with him to cum fordwardis, saying to him, ‘ JOK, thow art als giltie alreddie as thow canst be, cum fordwardis pairfoir with ws to the deid; and paireftir, thou fall gang with us *Northe*, quhair we will be weill trett and interteneit; for we haif ane place prepairit for our ressett.’—8. To the taikin lyk wayis, the saidis *Walter* and *Ingrem Scottis*, the tyme of pair lait apprehending in þe *Northe*, being inquyret, gif ony of thame knew *Jok the Suckler*? Thay denyit to pair takeris<sup>6</sup> that evir thay knew him: Bot being brocht to waird to þe *Tolbuth of Edr*, quhair þe said *Jok* being presentit to

<sup>1</sup> Shall not be stocked.      <sup>2</sup> Proof or testimonial.      <sup>3</sup> Cocked.      <sup>4</sup> *Bonny*, or handsome, Johnnie.      <sup>5</sup> Reception and concealment.      <sup>6</sup> Examinators.

thame, thay nocht only knew, bot be his name askit him saying, ' Quhat now, *Jok!* How come thow heir—and quhairfoir ar thow wairdit<sup>1</sup> in this hous?' SA that be þe taikinis aboue written, þe saidis perfonis giltines of the said fact is cleirlye provin.

PERSEWARIS, Williame Douglas of Drumlangrig, Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat.  
PRELOCUTORIS in defence of George, Wattie, and Ingrem, allenarie,  
Mr Thomas Nicolfoun, Laurence Scott, Adame Cunninghame, Aduocattis.

Efter reiding of the DITTAY set down in the summondis, at command of my Lord Justice and Assessoris, it is declairit be Mr Thomas Nicolfoun, as prelocutour for George, Walter, and Ingrem Scottis, that he acknowlegis the cryme set down in the Dittay to be haynous and worthie of condigne puneifchment; bot as to the Dittay it selff (nocht granting the cryme thairin mentionet to be of veritie) againis the pannell, alledgis the samyn is nawayis relevant to pas to the knowlege of ane Assyse; nather can the committing of the fact lybellit infer daithe, becaus the grund and fundatioun thairof is vpon tua Actis of Parliament, the first quhairof is the 100 Act of his Maiesteis sevint Parliament, haldin in October 1581, quhilk is only extendit agains the slayeris and hocheris<sup>2</sup> of horssis, oxin, and vther cattell, the tyme of laubouring the grund; and the vther Act is the 82 Act of his hienes ellevint Parliament, haldin vpon the xxix of July 1587, quhilk is only ane Ratificatioun of the first: Bot the Dittay beiris only the Slauchter and Hocheing of schein, quhilk is nawayis expreffit nor prohibeit be the saidis Actis: And, thairfoir, the Dittay and Actis of Parliament being difconforme, the samyn can nawayis pas to ane Assyse; speciallie, in respect na penall Statute may be forder extendit nor<sup>3</sup> the samyn is set down *per expessum*: quhilkis Actis he defyret to be red.

It is anfuerit be my Lord Aduocat, that the mynd and intentioun of the lawis, and making thairof, man<sup>4</sup> be advertit vnto, quhilk is the puneifchment of all haynous and detestable crymes, committit be quhatfumeuir way and be quhatfumeuir perfone: ffor, als it is estemit ane haynous cryme, be the saidis Lawis, to hoche ane ox or ane horse, sa the cryme is far moir haynous to slay and cut af ane haill flock of four or fyve scoir schein, and thairby to displenische and lay waift ane gentilmannis possessioun and rowme; quhilk the haill lawis and Actis of Parliament, vnder the name of ' vther cattell,' exprefflie forbidis, and concludis puneifchment agains the committeris: In respect quhairof, the Dittay is maist relevant to pas to ane Assyse, nochtwithstanding of the allegeance aboue writtin.

THE JUSTICE Repellis the allegeance; and ffindis the Dittay relevant to pas to the knowlege of ane Assyse. Quhairupone the Aduocat askit Instrumentis,

<sup>1</sup> Imprisoned.

<sup>2</sup> Hamstringers.

<sup>3</sup> Than.

<sup>4</sup> Must.

## ASSISA.

Thomas Wauche of Schawis,	Robert Hunter in Halywoid,	Adame Trumble in Lyntlawis,
Johnne Coluile in Preiftoune,	Rodger Padzeane of Newtoun,	Peter Broun in Durifdeir,
Gilbert Greirfoun of Beochane,	Thomas Greirfoun of Barjarge,	Johnne M <sup>c</sup> morrane of Glaspene,
George Lyell in Spachhouffis,	Archibald Menzeis in Enoche,	James Williamesfone in Craufurd-
Malcolme Dalrumpill of Wat-	Patrik Hair in Glenquhirrie,	toune.
terfyde,	Rob. Phillope, burges of Dumfreis,	

OBJECTIONS *against certain Assisors passing upon the Inquest.*

It is allegit aganis *Thomas Wauche*, that he can nocht be ressaunt vpon this Assyse, becaus he duellis nocht within the foure-halvis-about. Anfuersis, aucht to be repellit, in respect he duellis within the Kingdome of Scotland, and he is summond to pas vpon the tryall of ane haynous cryme.—The Justice admittis him vpon the Assyse.

It is allegit aganis *Johnne Coluile*, that he can nocht pas vpon this Assyse, becaus he is tennent to *my Lord of Angus*, quha is cum to Ed<sup>r</sup> at the desyre of *the Laird of Drumlangrig* to assit this perfute. Anfuersis, aucht to be repellit, in respect the Erle of Angus nocht present, nather as persewer or defender.—'Admittis.'

It is allegit aganis *Gilbert Greirfoun*, that he can nocht be admittit, becaus he is tennent to *the Laird of Lag*, quha is present at the bar, assitting the Laird of Drumlangrig in this perfute. Anfuersis, aucht to be repellit, in respect he is ane fewar and na removeable tennent.—The Justice, vpon the geving of Gilbert Greirfones ayth, that he is ane ffewar, and that he gaif na partiall counsell, in preiudice of the pannell, admittis him vpon this Assyse.

It is allegit aganis *Robert Phillope*, that he can nocht pas vpon this Assyse, becaus he is the Laird of Drumlangrigis pensioner.—The Justice, in respect of Robert Phillipis ayth, gevin be him, that he is nocht Drumlangrigis pensioner, and that he hes na guid deid of him, bot as ane vther gentilman of the cuntrie respectis and honouris him, Ressaues him vpon the Assyse.

It was, estir his admissioun and ressaueing, allegit be Laurence Scott, in name of the pannell, that *Robert Phillope* can nocht pas vpon this Assyse, becaus he is Bailzie Clerk to the Laird of Drumlangrigis Regalitie. Anfuersis, he can nocht be declynet nor put of the Assyse, estir his ayth tane, and purgatioun of partiall counfall; speciallie, seing it is vpon tryell of ane cryme, quibilk is *factum obsecrum et clandestinum*.—The Justice ordanis him to remane ane Assyfour.

THAIREFTIR, the Dittay being of new red, in presens and audience of the Assyse, with the Taikynes producet be the persewer for verificatioun thairof, it is allegit be Mr Thomas Nicolfone, in name of *George Scott, Walter and Ingrem Scottis*, that the Taikynnis producet and red for cleiring of the Dittay, fould nawayis be respectit be the perfonnes of Inqueist, nather ar the saidis Taikynnis concluding argumentis to verifie the Dittay. And *ffirst*, the Depositiones maid be *Jok Scott*, callit *the Suckler*, fould nawayis be respectit, becaus he being apprehendit for the samyn fact, and haifing confessit him selff to be *socius eiusdem criminis*, his Deposition can nocht work aganis ony honest man quha is innocent; and thairfoir fould nocht be respectit. *Secundo*, as to the Taikin foundit vpon *George Scottis* dog, albeit the samyn be na grund to infer the Slauchter of the schein lybellit, zit he denyis it. *Tertio*, the Taikin for slaying and querrelling of *James Douglas* inferris nathing; becaus he was nocht bund to confes or schaw him any test quhair he was the nycht of the slaying of the



fcheip ; and as to the Taikin it self, denyis the famyn. *Quarto*, concerning his Depofitioun maid be him, quhair he was the tyme of the Justice Court of Jedburgh ; the famyn inferris nathing for probatioun of the Dittay ; And as to his contrair Depofitioun, that he was in Hawik, it can nawayis infer him to be culpable of the cryme. And allegis, that the haill former Taikynnis previs na thing aganis *Walter* and *Ingrems Scottis*. *Item*, the laft taikin anent *Walter* and *Ingrems*, that thay war tryet the tyme of thair taking, gif thai knew *Jok the Suckler* ; thair granting or nocht granting thairof can nawayis infer thame to be giltie of the fact.

THE *Laird of Drumlanerig*, being fuorne, and his aithe tane thairof, gif<sup>1</sup> he hes juft caufe to perfew the pannell for the crymes contenit in the Dittay, as giltie and culpable thairof? Declairit, that this Dittay is fuorne to him to be of verritie, be honeft and credible men, viz. that *George*, *Walter*, and *Ingrems* war thre of thame that was at the flauter of his fcheip, in maner fpecifeit in the Dittay : And thairfoir, be his ayth, declairit that he hes juft caus to perfew thame, as doaris of sic ane odious fact. And as to *Jok Scott*, callit *the Suckler*, he hes alfo hard of his meitting and keiping tryftis with thame in that matter ; bot, in respect he is nocht certanelie informet that he was at the doing of the deid, he can nocht perfew him as ane principall committer : And finallie, declairit, that gif he war nocht perfuaidit, in his confcience, that the faidis *George*, *Wattie*, and *Ingrems Scottis* war the fpecial flayeris of the fcheip, (be quhais directioun the famyn was done, remittis that to thame felffis,) he wald nocht haif followit thame thairfoir.—Quhairvpone my lord Aduocat askit instrumentis.

My Lord Aduocat, for preving of the Dittay, repeittis *the Laird of Drumlanrigis* ayth and Declaratioun : Producet the Depofitiones of *Jok Scott*, callit *the Suckler* ; and repeittis his ratificatioun thairof in judgement, and constant affirmatioun of the veritie thairof in the vtheris thre faces :<sup>2</sup> And lykwayis, repeitis the Actis of Parliament red, quhairvpone the Dittay is foundit : And defyres the Affyfe to confidder the haynoufnes of the cryme ; and Proteftis for Wilfull Errour aganis thame, gif thay Acquit the pannell thairof.

VERDICT. The Affyfe, all in ane voce, be the mouthe of the faid Thomas Wauche of Schawis, chancellor, ffand, pronuncet, and declairit the faidis *George Scott*, *Walter Scott*, and *Ingrems Scott*, to be ffylet, culpable, and convict of the actual flaying of the faid *Laird of Drumlanrigis* fcheip, in maner fpecifeit in the Dittay : AND ficlyk, ffand, pronuncet, and declairit the faid *Jok Scott*, callit *the Suckler*, to be Culpable, ffylet, and convict of being vpone the counfell and foirknowledge of the fact aboue writtin, and in keiping of dyuerfe tryftis and meatingis with the vther thre, conforme to his awin Depofitioun : And Clengis

<sup>1</sup> If.<sup>2</sup> When confronted with them.

him of the actuall deid, be fleing away fra the doing thairof, befor it was committit.

SENTENCE. The Justice, be the mouth of Johnne Dow, dempfter of Court, Decernit and Ordanit the saidis *George Scott, Walter Scott, and Ingrem Scott*, to be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis and geir to be escheit and inbrocht to his Maiesteis vse, as culpable and convict of the crymes aboue specifedit. AND lykwayis, Ordanit the said *Jok Scott*, callit *the Suckler*, to be tane bak to waird, thair to remane vnto the tyme he (the Justice) be advyset with the Lordis of Secreit Counfall, anent his dome.<sup>1</sup>

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APPENDIX ILLUSTRATIVE OF THE PRECEDING TRIAL.

I. LETTER, *the Laird of Drumlanrig to Murray of Lochmaben.*<sup>2</sup>

RIGHT WORTHIE AND LOWING BROTHER,

ZE remember, in on of my former Letteres, I schew zow, pat I had gotin sum tryall<sup>3</sup> of that uyld and barbarous uillanie quhilk was comitit, in pe slaying of my schein, quhen I was laft at Court; quhairin I did than write pe more spairinglye, being lothe (in respect of zowr griter affaires) to trubill zow with it, till I had brocht it till sum further cleirnes; quhilk now I have done, and hes tuo fallowis presentlie in hand pat war actoris in it; pe on callit *Jok Scott the Sukler*, quho hes confessit pe simpell treuth, in all poyntis, both of his auin pairte, and pe rest pat war with him at pat filthie action; to wit, *Geordie Scott the Soutor*, callit *Mariounes Geordie, Watt Scott*, callit *Braidis Wattie, Willie Scott*, callit of *Satchelis*, and *Ingrum Scott*. This *Succler*, in his Confessioune, he condiscendis cleirlye both vpoun pe tyme, place, and forme of thair meiting and pairting, with all wther takinis and circumstances pat past amongst thame, quhen they war togidder (as his Deposition beiris.) Nochtwithstanding this vther, callit *Geordie Scott the Soutor*, (quhom I have also in handis,) standis zit to his denyall, altho they be many grit presumptiounis of his guiltines; aluayis<sup>4</sup> *the Suckler*, being fundry tymes examinat and confrontit with him befor THE LORDIS OF COUNSALL, he abydis constantly at everye poynt of his first Confessioun; and offeris, nocht only to fecht *the Soutor* on it, bot all pe rest, everie on of thame efter another, quhensoeuer they can be had, gif it will pleis HIS MA<sup>TIE</sup> and THE COUNSALL to suffer him. The vther thrie ar fugitiues for that and vther crymes of Thift and Slauchter; and, as I wnderstand, ar all out of the countray, sum in *Irland*, and sum ellis quhair; vtherwayis, befor this tyme, I think I had fund meanis to haue gotin thame in handis, (zit according till our auld Scottis proverb, 'Ane Zule feist may be quat at Pafe!') Quhen perhapis they may imagin it be forgot.) In the meintyme, let me intreit zow, pat ze will do me that fauowr to motioun this maiter to HIS MA<sup>TIE</sup>, quhairby I may have it, by his Letter, recommended to pe Counfall, nocht only for pe exact tryall and punisment thairof to pe daithe, for pe wrang that is alredie done, bot also to terrifie all other malefactoris from attempting pe lyk heirefter; quhilk, I protest to God, I ponder more in respect of pe preparatiue and consequens pat may follow thairvpoun to pe preiudice of pe comounweill of pe countray, in cais it be lichtlie passit over vnpunischt, than for any particular of my awin. Now, gif ze find it expedient, it war nocht amis, feing the *Shanfler*<sup>5</sup> and *Secretar*<sup>6</sup> (quha knowis pe

<sup>1</sup> It is likely that the Suckler had been promised his life, when he turned informer; but being a most dangerous character to turn loose on society, the public prosecutor appears to have been instructed by the Council to rake up a few of his former misdeeds, and have him cleverly put out of the way. See the following Case, Jun. 21, 1616.

<sup>2</sup> From the Original, preserved among the *Denmylne MSS.* Adv. Library. <sup>3</sup> Proof; evidence. <sup>4</sup> Nevertheless.

<sup>5</sup> The Lord Chancellor, Alexander Earl of Dunfermline.

<sup>6</sup> Thomas Earl of Haddington.

hail estate and progress of this business) as to be with HIS MA<sup>TIES</sup> at Court; that ze should have thame neir-hand by, quhen ze propoun it to HIS MA<sup>TIES</sup> at Court, in cais he hapin to desyre thair opinioun in it. And this, I wald befeik zow to do with all pe conuenient haift zow can, pat I may have zowr anfuer with HIS MA<sup>TIES</sup> Letter befor pe seuinth or aucht of pe nixt month, becaus I do intend, God willing, at pat tyme, to have thir tuo fallowis, at leift on of thame, put to the tryall of ane Affyse; at quhilk tyme (if nocht befor thane) I do affuir my self pat God fall mowe pe hart of him quho standis moft obstinatlie to his denyall, ein to confes the treuth, as pe other hes done: albeit thair be sum buffie-headit men heir, quhom I will nocht name at this tyme, pat wald wis pe contrair; and ar deiling, be all meanis possibill, so far as in thame lysis, to pat effect; bot be pe grace of God, and HIS MA<sup>TIES</sup> fauowr, with zowr help, I howp to disapoynt pame. As for the rest of my particularis, I trust zow will nocht be forgetfull of thame; and when zow find zowr auin tyme, will let me knaw, pat I may luik for in pame. So I hawe no more to say, bot always efter on<sup>1</sup> I rest,

Zowris in quhat I can to serue zow,

EDINBURR, the vi day of  
Januar, 1616.

DRUMLANGRIG.

Zow will do me pe fauowr to present my humbill seruice to zowr lady.

To his muche honoured and worthie proper **JOHNE MURRAY** of Lochmaben, Grume of his Ma. Bed-chamber, Thes.

## II. "CONTRACT BETUOX THE SCOTTIS AND THE KERRIS."

(It has already been noticed, in the Introduction to the present Trial, that the Editor has been fortunate enough to discover the Original BAND or CONTRACT referred to by *Sir Walter Scott*, preserved in Record of Deeds,<sup>1</sup> Mar. 23, 1564. This remarkable and interesting document is preceded by a solemn entry in the Register, in these words. "In presens of the Lordis of Counsale, compeirit (SIR) WALTER SCOTT of Branzholme, with his Curatouris vnderwritin, personalie, except ane nobill and mychté lord, *James Duke of Chatteaulrault*, quha compeirit be *Maister David Borthuik*, his procuratt, one that ane pairt; and SIR WALTER KER of Cesfurde, kny<sup>2</sup>, for him self, and takand the burding vpoune him for his barnis, and the remanent of his kynd freindis, specifeit and contenit in the Contract vnderwritin, personalé, on that vther pairt; and galf in the samyn, subscruiit with thair handis, as followis; and desirit the samyn to be insert in the Bukis of Counsale, and to hawe the strenth of ane Act and Decreit of the Lordis thairof, and thal to interpone thair auctoritie to the samyn," &c.)

It is only necessary, farther, to refer the reader to the valuable annotations of *Sir Walter Scott*, appended to 'The Lay of the Last Minstrel,' for a perfect knowledge of the deadly Feuds which had so long raged between two of the greatest Border Families, the SCOTTIS and KERRIS, to 'staunch' which was the professed object of the present BAND.)

AT EDINBURGHE, pe xxij day of Marche, the zeir of God I<sup>m</sup>.V<sup>c</sup>.lxiiiij zeiris. It is appointit, aggreit, and finalé concordit, betuix rycht honorabill menne, SIR WALTER KER OF CESFURDE, KNYT,<sup>3</sup> for him self, and takand pe burding vpoune him for his barnis,<sup>4</sup> and for his bruder *Mark Commendater of Newbottle*, and his barnis; *Johnne Hume of Coldenknowis*, and his bairnis; *Andro Ker of Faw-downsyde*, his bairnis and breder;<sup>5</sup> *Thomas Ker of Marfingtoun*, his fader-bruder,<sup>6</sup> and pair bairnis; *George Ker of Lyntoune*, his bairnis, his oyis,<sup>7</sup> and bruder-bairnis;<sup>8</sup> *Richard Ker of Gaitshaw*, his bairnis and breder; *Andro, Williame*, and *Johnne Kerris*, brether to *Sir Thomas Ker of Pharny-hirft, kny<sup>2</sup>*; *Mark Ker of Kippeschaw*, and his sone *Robert Ker* of Bothtowr; *Robert Ker* elder, burges of Edinburgh; and all vperis pair barnis, brether, kynne, freindis, menne, tennentis and servendis, except pe freindis vnder specifeit, nocht comprehendit vnder pis appoyntment, one pat ane pairt; AND WALTER SCOTT OF BRANXHOLME AND BUKCLEUCH,<sup>9</sup> with consent and affent of ane rycht nichté

<sup>1</sup> Always after one; steady; unchangeable.      <sup>2</sup> General Register House, Vol. VII. fol. 131.      <sup>3</sup> Ancestor of the Ducal Family of Roxburghe. He married *Isabel*, daughter of *Sir Andrew Kerr of Fernihirst*.      <sup>4</sup> Children.      <sup>5</sup> Brothers.      <sup>6</sup> Uncle.      <sup>7</sup> Grandchildren.      <sup>8</sup> Nephews and Nieces.      <sup>9</sup> He married *Lady Margaret Douglas*, eldest daughter of *David*, seventh *Earl of Angus*, niece of the Regent Morton. This great man died Apr. 17, 1574. It was his son who performed the matchless exploit of relieving *Kinmont Will*, Apr. 13, 1596, from the Castle of Carlisle, being accompanied with a mere handful—only 200 horse!

and noble lord, *James Duike of Chateaularault, Erle of Arane, Lord Hammiltoun, &c.*; *Sir Johnna Maxwell of Terreglis, kny'*; *Sir Johnne Bellendene of Auchnoule, kny*, Justice Clerk; *Maister Johnne Spens of Condé*, Aduocat to our souerane Lady; *Andro Murray of Blak-Barony, Michell Balfour of Burlye, Thomas Scott of Haning, and Robert Scott of Thirlstane*, Curatouris to þe said WALTER, for þair interes, for him self, and takand þe burding vpoune him for HIS HAILL SURNAME, and þe Relict and bairnis of vmq<sup>le</sup> *Sir Walter Scott of Branzholme, kny'*, his gudeschir,<sup>1</sup> and als for *Williame Cranstoune of that ilk*, his bairnis and breder, the brether of vmquhile þe *Laird of Chisholme*, *Johnne Glaidstanis of that ilk*, and his bernis; *James Langlandis of that ilk*, and his bairnis; *Walter Vache of Syntoun*, and his barnis; and for *James Ormistoun of that ilk*, conditionally, as followis; and als, for all vperis his kynne, freindis, seruantis, menne, tennentis, assistaris, and pairtakeris, one pat vper pairt; in maner, forme, and effect, as efter followis. THAT IS TO SAY, þe said LARD OF BUKCLEUCHT, nor na vper for quhome he takis burding, as said is, fall ony way perfew þe said LARD OF CESFURDE, nor na vper comprehendit vnder þis present appointment, criminalé nor civilie, for ony Slauchter or blude committit in tyme bipast, and is content to be perpetuallie secludit þairfra, *per pactum de non petendo*; and fall neuer move actioun, beir hatrent, grudge, or displefour þairfor, bot bury and put þe samyn vnder perpetuale silence and obliuionne; and to leif in perfite amité, lufe, and Cristiane nychtburheid, in all tymes cuming. PROVIDING alwayis, þat heirby þat þe said LARD OF BUKCLEUCHT, and all vperis quhome he takis burding, be na wayis preiugit anent þair actionis quhatlumeuir þat þai haif intentit or may intent aganis *Sir Thomas Ker of Phairneyhirst, kny'*, *Sir Andro Ker of Hirsell, kny'*, *Robert Ker of Woidheid, Johnne Haldane of that ilk, Gilbert Ker of Prymjydoch, James Ker of Torbet, Robert Ker of Gradene, Andro Ker of Hietoune*, þair barnis, brether, and seruandis, and all vperis þat ar nocht comprehendit vnder þis appointment; bot þat þai may perfew and obtene þe samyn as þai think maist expedient, be þe law; and þat becaus þe saidis personis, being requirit be þe said LARD OF CESFURDE to cum with him, and to do þair devore, for þair pairt of þis appointment, hes refusit to do þe samyn; and als, becaus þat in þis present appointment, þair is na proffett nowther gevin nor takin, quhairby þe said LARD OR BUKCLEUCHT, and his freindis and vperis foirsaidis, ar preiugit anent þair saidis actionis; and þat it is þe exprefs mynd of all þe pairteis presentlie contractaris, þat þe samyn be fullelie reservit: AND siclyk, vpone þe vper pairt, þe said LARD OF CESFURDE, nor na vperis quhome-for he takis þe burding, fall in ony wyife perfew þe said LARD OF BUKCLEUCHT, nor na vperis his kynne, freindis, seruanes, menne, tennentes, assistaris, or pairt-takar, criminalé or civilé, for ony slauchter or blude committit in ony time bipast; and is content to be perpetuallie secludet þairfra, *per pactum de non petendo*; and fall nevir move actioun, beir hatrent, grudge, or displefour þairfoir, bot bury and put þe samyn vnder perpetuall silence and obliuionne, and to leif in perfite amité, lufe, and Cristiane nychtbourheid, in all tyme heirefter. ATTOUR, it is heirby expresse and faythfullie contractit, þat for mair suir removeing, ftenching,<sup>2</sup> and away-putting of all inymité, hatrent, and grudge, standand and confavet betuix þe saidis pairteis, throw þe vuhappie slauchter of þe said vmq<sup>le</sup> *Sir Walter Scott of Branzholme, kny'*,<sup>3</sup> and for þe better continuance of amité, favour, and freindschip amangis þame in tyme cuming, the said SIR WALTER KER of *Cesfurde, kny'*, fall, vpoun the xxij day of Marche instant, cum to THE PARROCHE KIRK OF EDINBURCHT, now commonelie callit SANCT GEILLIS KIRK, and þair, befoir none, in fycht of þe pepill present for þe tyme, renerently vpone his kneis ask God mercy of þe slauchter foirsaid; and siclyk, ask forgevenes of þe same fra þe said LARD OF BUKCLEUCHT, and his freindis, quhilkis salhappin be þair present; and þairefter promise, in þe name and feir of God, þat he and his freindis fall trewlé keip þair pairt of þis present Contract, and fall stand trew freindis to þe said LARD OF BUKCLEUCHT and his freindis, according heirvnto, in all tyme cuming. THE quhilk þe said LARD

<sup>1</sup> Grandfather.

<sup>2</sup> Stauching; extinguishing.

<sup>3</sup> This great man was unhappily slain on the streets of Edinburgh, in October, 1552. To pave the way for a lasting reconciliation between the Clans, a Remission was granted to Sir Walter Kerr of Cessford, and to John Kerr of Fernihirst, under the Great Seal.

OF BUKCLEUCHT fall reuerentlé accept and reffaué, and promife, in þe feir of God, to remit his grudge, and neuer remember þe fame; bot fall obferve and fulfill his pairt of þis prefent Contract to þe faid LARD OF CESFURDE, according to þe tennour þairof, ficlyk, in tyme cuming. AND als, *Thomas Ker*, fecund fone to þe faid LARD OF CESFURDE, fall, God willing, folempnizate and compleit þe band of matrimony, in face of Chrifteis Congregatione, with . . . . *Scott*,<sup>1</sup> fifter to þe faid LAIRD OF BUKCLEUCHT, betuix þis and þe laft day of Maij nixttocum, but ony tocher<sup>2</sup> to be payit be hir faid bruder, or ony vper freindis with hir: And þe faid LARD OF CESFURDE fall provide þame ane honeft and reffonable fuftentatione and leving, efferand<sup>3</sup> to þair eftait and conditione; and als, fall caus þe faid . . . . be infeft in her virginité, in coniunct-fee or lifrent, with hir faid future fþous, and þair airis lauchfullie gottin or to be gottin betuix þame, quhilk failzeing, þe faid *Thomas* airis quhatfumeuir, in all and haill landis or annualrent of þe avail of ane hundreth merkis be zeir, to be haldin of þe Superior be Refignatioun or Confirmatioun, at þe plefour of hir faid bruper; and þaireftir, þe faid . . . . to be infeft in coniunct-fee or lyfrent with hir faid future husband, at his and his faid faderis gude will and plefour, in fik landis and leving as þai pleis mak hir; quhilk is referrit in þair will. AND ficlyk, *George Ker*, eldeft fone and apperand air to þe faid *Andro Ker of Fawdounfyd*, fall, God willing, folempnizeat and compleit þe band of matrimony, in face of Chrifteis Congregatione, with *Jonett Scott*, fader-fifter to þe faid LARD OF BUKCLEWCHT, fa fone as þai fall be of perfyte age and habitie for mariage, but payment of ony tocher to be payit be him, or vper hir freindis with hir. AND gif it fall happin þe faid *George* to deceis, befoir þe compleiting of þe faid mariage, þan and in þat cais, his nixt bruper þat falhappin to appeir or fucceid air to his faid fader or him, fall marie the faid *Jonet*, tocher-fré; and ficlyk, failzeing of hir be deceis, befoir þe faid mariage, þan and (in) þat caife þe faid *George*, and failzeing of him be deceis, his nixt bruper foirfaid, fall folempnizeat and end mariage with hir nixt fifter þat falhappin þan be alyve, tocher-fré; and fua, falang as þe faid *Andro* fall haif ane fone, and the faid *Jonet* ane fifter, þe ane to marie þe vper tocher-fré, as faid is; ay and qubill mariage be anis complete amangis þame: AND gif (it) falhappin þe faid mariage to failzie in þe faidis *Georgis* or ony vper his brederis defalt, þan and in þat cais, þe faid LARD OF CESFURDE, be the tennour heiroy, oblißis him and his airis to pay and deliuer the fowme of ane thoufand merkis to þe faid *Jonett*, or to hir vper fifter to quhome þe faid mariage fall failzé, within XL dayis nixt eftir þe faid failzé be knawin. ATTOURE, becaus þe faid LARD OF CESFURD hes ofbefoir requyrit and defyrit, vnder þe forme of intrument, *Sir Thomas Ker of Pharyhirft, kny<sup>t</sup>*, *Sir Andro Ker of Hirfell, kny<sup>t</sup>*, and *Gilbert Ker of Prymfyldoch*, for þame and þair freindis to adheir, concur, and affift to him in þis prefent aggreance, and þat þai haif refufit þe famin, as is aboue writtin, thairfoir þe faid LARD OF BUKCLEWCHT, nor his airis, fall nocht aggré with þame, or ony of þame, by<sup>4</sup> þe awyfe of þe faid LARD OF CESFURD and his airis; and gif it falhappin þe faid LARD OF BUKCLEWCHT, or his airis, to aggré with þe faidis *Sir Thomas*, *Sir Andrew*, and *Gilbert*, or ony of þame, by<sup>4</sup> þe awyfe of þe faid LARD OF CESFURD, befoir þe completing of mariage betuix þe faid *George* or ane of his brethir with the faid *Jonet* or ane of hir fifteris, as faid is, without þe faid LARD OF CESFURDE be previe and consent þairto, than and in þat cais, þe faid *George*, nor nane of his brethir, falbe haldin or astrictit to compleit þe faid mariage, bot falbe fré þairof; nochtwithftanding þis prefent Contract, and ficlyk as gif the famyn had neuir bene maid. AND lik wyife, gif it falhappin þe faid LARD OF BUKCLEWCHT to aggré with þe faidis perfonis, or ony of þame, eftir þe completing of þe faid mariage betuix ony of þe faid *Androis* fonis and þe faid *Jonet*, or ony hir fifteris, by<sup>4</sup> þe avyife of þe faid LARD OF CESFURDE, than and in þat caife, þe faid LARD OF BUKCLEWCHT oblißis him, with auife of his Curatouris foirfaidis, to content

<sup>1</sup> JANET, the eldest fifier of Sir Walter Scott of Buccleuch, was married to Sir Thomas Kerr of Fernhirst, in anno 1569; 2. MARGARET, to Sir John Johnston of that ilk; 3. ELIZABETH, to 'the Captain of Crawford,' Sir John Carmichael of Meadowflat.—Wood's and Crawford's *Perages*. <sup>2</sup> Without any dowery or marriage-portion. <sup>3</sup> *Efffeir-ing*; corresponding. <sup>4</sup> Without; contrary to; independent of.

and pay to þe said LARD OF CESFURDE þe soume of ane thousand merkis, as for þe tocher of þe said *Jonet*, or ony vper her sifter þat hapnis to be nearest, within XL dayis nixt estir þe said aggreance, gif it happynnis to be maid, as said is; but<sup>1</sup> ony exceptione or remeid be vertew of þis present Contract, quhairby þe said mariage suld be tocher-fré, as is aboue specifeit, to be proponit or allegeit in þe contrar. PROVIDING alwayis, þat gef þe said LARD OF BUKCLEUCHT aggré with þe saidis *Sir Thomas*, *Sir Andro*, and *Gilbert*, or ony of þame, with auise of þe said LARD OF CESFURDE, than and (in) þat cais þe said LARD OF CESFURDE fall not laubour nor defyre þat pair offeris, ellis<sup>2</sup> offerit, be diminissit, bot rather þat þai be augmentit. AND zit, mairouer, becaus þair is particularelle deidlie Feid and actionis betuix þe said WALTER KER OF CESFURDE, *knycht*, and þe said *James Ormstoune of that ilk*, thairfoir þai falbe compromittit<sup>3</sup> in *David Spotiswod of that ilk*, and *Thomas Hoppringill of that ilk*, to be chofin for þe pairt of þe said LARD OF CESFURDE; and in *James Langlandis of that ilk*, and *Nicholace Ruyserfurde of Hundley, knycht*, to be chofin for þe pairt of þe said *Lard of Ormstoune*; and in odmanne and ourmanne,<sup>4</sup> in caise of vareance or discord betuix þe saidis Jugis, to be comonelé<sup>5</sup> chofin be bayth þe saidis LARDIS OF CESFURDE and BUKCLEUCHT, anent þe taking, be þe said *Lard of Ormstoune*, of þe landis of *Nether Ancrome* and *Bailleie* pairof, in Tak, our þe said LARD OF CESFURDE heid, it being his kyndlie rowme<sup>6</sup> of befoir, as he allegis; and anent þe slauchter of *vmq<sup>10</sup> . . . Best*, serwand to þe said LARD OF CESFURDE: AND als, anent all vper materis, actiones, querrellis, and debeittis betuix þame; and þai to be bund to abyde at þe decreit and sentence of þe saidis Juges and ouermanne, or maist pairt of þame, deliuerand in þe saidis materis, quhilkis falbe haldin to deliuer þairin, betuix þis and þe first day of August nixtocum; and ane compromit<sup>7</sup> to be maid pairupone, and extendit in ampill forme, as vse is in sic caissis. AND gif it salhappin þe said *Lard of Ormstoune* to reclame fra þe Decreit to be gevin be þe saidis Jugis and ouermanne, or maist pairt of þame, and nocht to abyde þairat, and fulfil his pairt pairof, as he fall be ordanit be þe same, than and in þat caise, þe said LARD OF BUKCLEUCHT fall refuse him, and fall nowther manteine, fortifé, nor assist him pairefter, in ony tyme cuming; bot fall tak pairt and fortifé, in honest and lesum<sup>8</sup> maner, with þe said LARD OF CESFURDE, in his contrar. AND gif þe said LARD OF CESFURDE salhappin to reclame fra þe said Decreit to be gevin as said is, than and in þat caise, þe said LARD OF BUKCLEUCHT fall tak pairt with þe said *Lard of Ormstoune*. AND finalé, þe saidis pairteis, be þe tennour heirop, bindis and obliissis þame and þair airis, þat þai and personis abouewrittine, for quhame þai haue takin burding, respectiué, for þair awin pairtis as said is, fall in all tyme cuming keip and retene amité, freindschip, lufe, favour, and kyndnes, ilkane to vperis,<sup>9</sup> without ony grudge, or occasioun to be mouit in þe contrar, be þame or ony of þame, to vperis,<sup>10</sup> be ony maner of way, in tyme cuming. AND gif it salhappin ony contraverfé or pley to fall betuix ony of þe freindis abouewrittin, comprehendit vnder þis present Contract, for taking of vperis steding or rowme,<sup>11</sup> owther in tyme bigane or tocum, thanne and in þat caise, þe mater falbe first schawin to þe saidis LAIRDIS OF CESFURDE and BUKCLEUCHT, be quhais avise þe saidis pairteis sal cheis<sup>12</sup> soure frendis, with ane ouermanne as þai can aggré one, for ending and deciding of þe said contraverfé; and gif þe pairteis can nocht aggré one þe said ouerman, þan and (in) þat cais þe saidis LARDIS OF CESFURDE and BUKCLEUCHT fall cheis ane ouermanne quhame þai can aggré one; quhilk ouermanne being chofin be þame, it fall nocht (be) lesum to þe pairteis to refuse him, bot to approve and chuse him: and gef þe saidis LARDIS can nocht aggré one þe said ouerman, than and in þat cais, þai fall huimlé swte<sup>13</sup> and defyer þe QUENIS MAIESTIE and COUNSALE to cheis ane ouermanne; quha being chofin, þe pairteis falbe haldin and bund to stand content with him, and to abyd at his and þe Arbitratouris delyuerance, or maist pairt of þame delyuerand; vpon þe contra-

<sup>1</sup> Without, &c.    <sup>2</sup> Already.    <sup>3</sup> Compromised; referred to the arbitrament of.    <sup>4</sup> Umpire and Oversman.    <sup>5</sup> Mutually.    <sup>6</sup> Certain property held by him and his ancestors as *kyndlie tenants*.    <sup>7</sup> Award; Decreet Arbitral.    <sup>8</sup> Lawful.    <sup>9</sup> To each other; each party to the other.    <sup>10</sup> Each other.    <sup>11</sup> For taking each other's farm-steding or possession.    <sup>12</sup> Elect; choose.    <sup>13</sup> Make suit; petition.

verfé pat falhappin to be debatabill for pe tyme, but<sup>1</sup> ony declaratioune to be maid in pe contrar. AND for obseruing, keping, and fulfilling of all and findré pe premisses, aper of pe saidis pairteis bindis and oblißis þame faithfullie to vperis,<sup>2</sup> in pe maist strait forme and sicker stile of obligatioune can be dewisit, but<sup>3</sup> fraud or gyle, na remeid nor exceptiounes of law quhatfumeuir to be proponit or allegeit in pe contrar; renunceand pe samin, for þame, pair airis, executouris, and assignais, for now and evir, be þir presentis. AND for pe mair securité, þai ar content þat þis present Contract be infert and registrat in pe Bukis of Counsale, and decernit to haue pe strenth of ane Act and Decreit of pe Lordis pairof; and þat Letteris and executorialis to be direct pairvponne, for compelling of aper of pe saidis pairteis to fulfill pe samyn, for pair pairteis, to vperis, in forme as efferis: AND for acting and registering heirof, pe saidis parteis makis and constitutis, be þir presentis,<sup>4</sup> [*Maister David Borthuik*] thair vndowtit and irrevocabill procuraturis, gevand and committand to þame, coninnctlé and feneralé, pair full power, expres bidding, and chairge, to compeir befoir pe Lordis of our fouerane Ladeis Counsale, quhatfumevir dayis and place lauchfull; and pair desyir þis present Contract to be registratt in pe saidis Bukis of Counsale, and pe saidis Lordis to interpone pair auctorité pairto; promittand<sup>5</sup> to abyd ferme and stabill, &c. IN WITNES of pe quhilk thing, bayth pe saidis pairteis and Curaturis abouewrittin, for pair intereis, hes subscriuit þis present Contract with pair handis; and als DAME JONET BETOUNE,<sup>6</sup> pe relict of pe said vmq<sup>16</sup> *Sir Walter*, hes, in signe of hir consent to pe premisses, subscriuit pe samin with hir hand, day, zeir, and place foirfaides, befoir þir Witnessis, *Sir James Douglas of Drumlanrig, knycht, Johne Stewart of Trocquair, Patrik Murray of Fallowhill, . . . . Murray of Cokpule, and Thomas Sinclair*, Writter to pe Previe Seall, with vperis diuerse.

[*Sic subscribitur*] WALTER KER OF CESFURD. WALTER SCOT OF BUKCLEWCH. JANET BETOUNE, LADY OF BUKCLEWCH. JAMES.<sup>7</sup> THOMAS SCOT OF HANYNG. M. JOHNE SPENS, Curatour aboue writtin. JOHNE MAXVELL. J. BELLENDENE, as Curatour. ROBERT SCOT OF THIRLSTANE,<sup>8</sup> with my hand at þe pen, led be *David Lawdè*, Notare Publict.<sup>9</sup>

### III. BAND *subscruuit at KELSO, be THE BARONIS, &c. of the Scherefdomes of BERWIK, &c.* 6th April, 1569.

(THE Editor believes that little apology will be deemed requisite for once more encroaching on the limits of this work, in his desire to preserve, in this place, the following remarkable document, the original of which is deposited in the General Register House, Edinburgh. The reader will readily perceive, that it is chiefly from an extensive perusal of such original and authentic Papers, that he can expect to arrive at a minute knowledge of the internal state of Scotland during the darkest periods of our History.)

BE IT KEND till all men be þir present letteres, WE THE BARONIS, landit men, Gentilmen, Inhabitantis of THE SCHEREFDOMES of BERWIK, ROXBURGH, SELKIRK, PEBLIS, and Proveftis and Baillies of Burrowis and Townis within pe saidis boundis, in name of pe Inhabitantis of pe samyn, vnder-subscriuand, to be bundin and obleift, and be pe tennour heirof, bindis and obleißis ws to pe KINGIS MAIESTIE, ourre fouerane lord, and his dearest coning JAMES ERLL OF MURRAY, Lord Abernethie, REGENT to his hienes his realme and lieges, as followis: THAT IS TO SAY, fforfamekill as my said

<sup>1</sup> Without.      <sup>2</sup> Each other.      <sup>3</sup> Without.      <sup>4</sup> In all deeds where a clause for Registration is inserted, a blank is left to insert the name of the Procurators. In the present instance, all the parties appeared personally, with the exception of the Duke, who had granted a procuration to the person whose name is filled up, according to custom, in the Register.      <sup>5</sup> Promising.      <sup>6</sup> This able Lady has been rendered immortal by *Sir Walter Scott*, in his *Lay of the Last Minstrel*. She was daughter of *John Beaton of Creich*, and possessed the hereditary abilities of her family to such a degree, that the superstition of the vulgar attributed them to magic. After her husband's murder, she rode at the head of her Clan.      <sup>7</sup> James Duke of Chastelherault, who uniformly adopted this princely mode of subscribing his name.      <sup>8</sup> Ancestor of Lord Napier; a better swordsman than an expert clerk.

<sup>9</sup> It was by no means unusual, at that period, that persons of considerable rank were but indifferently skilled in scholarcraft. All business of importance was of old transacted by churchmen or notaries; the office of which last was frequently performed by priests, who thereby added considerable emoluments to the revenues of their monastery.

lord Regentis grace hes at all tymes, and specialie sen his acceptatioun of þe regiment of þis realme, takin greit and paynefull travellis in þe quieting of þe bordouris pairof, and namelie of þe rebellious people Inhabitantis of þe cuntrie of LIDDISDAILL, and vtheiris Thevis, AND we having regard to the innumerabill slauchteris, fyre-raingis, heirschippis, and detestabill enormities, dalie committit be þame vpoun þe peceabill and trew subiectis of þis realme, in tymes bipaft, quhairin þai ar nocht abill to execute þair crueltie, gif we, in þe feir and obedience of God and our souerane lord, aufauldie<sup>1</sup> concur togidder to resist þame, THAIRFOIR we, and euerie ane of ws, underfcrivand, be thir present letteres, avowis and declairis our selffis obedient subiectis to THE KINGIS MAIESTIE, oure onelie souerane lord and his authoritie, and profesit inymeis to all Thevis, Inhabitantis of THE CUNTRIE OF LIDDISDAILL, ESKDAILL, EWISDAILL, and ANNANDERDAILL; and in speciall, to all personis of þe surnames of ARMESTRANG, ELLOT, NIKSOUN, CROSER, LITTILL, BATESOUN, THOMSOUN, IRWING, BELL, JOHNNESTOUN, GLENDONYNG, ROUTLAIGE, HENDERSOUN, and SCOTTIS OF EWISDAILL, and wþeris notorious Thevis, quhair eair þai dwell, and to þair wyffis, bairnis, tennentis, and seruandis; Oblissand ws, þat we nor nane of ws at ony tyme heireftir, fall resset, supplé, or intercommoun with ony of þe saidis Thevis, þair wyffis, bairnis, or seruandis, or gif þame meit, drink, hous, or herbry; or suffer ony meit, drink, or victuallis to be bocht, had, or cairit to þame, furth or throw our landis, baillieries, townis and boundis, quhair we may lett:<sup>2</sup> Nor zit fall we tryift or haue intelligence with þame, in previe or apairt, without knowlege and leif of THE WARDANE obtenit to þat effect: Or suffer þame to resort to Marcattis or tryiftis, throw oure boundis: Nor zit permit þame, þair wyffis, bairnis, tenentis, or seruandis, to dwell, remane, or abyde, or to pasture þair gudis<sup>3</sup> vpoun ony landis outwith LIDDISDAILL, except sic<sup>4</sup> as within viij dayis eftir þe dait heirof, fall find sufficient and responfall fouerteis<sup>5</sup> to THE WARDENIS OF THE MARCHES and their clerkis, that þai fall reforme all enormities committit be þame in tyme bipaft, and keip gude rewle in tyme cumming, and be obedient to þe Lawis, quhen þai falbe callit vpoun: AND all vtheris not findand þe said fouertie, within þe said space, we fall perfew to þe deid with ffyre, fwerd, and all vther kynd of hostilitie, and expone<sup>6</sup> þame, and all þing in þair possessioun, in pray to þe men of weir, as oppin and knawin inymeis to God, THE KING oure souerane, and this Commoun-weill, without fauour, assurance, or freindschip, Renunceand all kyndnes, Bandis, promiseis, assurances, and conditionis, þat we or ony of ws hes enterit in with þame, in ony tyme bigane, befoir þe dait heirof, as we will ansuer to God, and vpoun our dewitie and allegeance to our souerane lord his authoritie, and Regent foirsaid. AND in caise we failzie in ony pairt of þe premiffis, or revelis not þe contravenaris of þis BAND, gif we knaw þame, we ar content to be pveist pairfoir, according to THE GENERAL BAND, and panis contenit þairin. AS ALSUA, in caise in þe resistence or perfute of ony of þe said Thevis, it salhappin ony of þame to be slane and brint, or ony of ws and our freindis to be harmit be þame, we fall euir esteme þe qwerrell and deidlie Feid equal to ws all, and fall neuir aggré with þe same Thevis, bot togidder, with ane consent and avyse: And in þe menetye fall tak afauld, trew, and plane pairt, ilk ane with vther, and specialie, fall assist THE LARD OF BUKCLEWCH, and vtheris LARDIS maift ewest<sup>7</sup> to þe saidis Thevis, at all occasionis convenient. THIS our present BAND quhill þe first day of Auguft nixtocum in full effect and force inviolablie to endure, to þe effect a perpetuale

<sup>1</sup> Sincerely; heartily; literally, *one-foldly*, without duplicity. Even to this day, *two-faced*, *triple-faced*, &c. are employed to denote *double* or deceitful persons. <sup>2</sup> Hinder. <sup>3</sup> Flocks of sheep, or cattle. <sup>4</sup> Such persons. <sup>5</sup> Cautioners. <sup>6</sup> Expose; give them up. <sup>7</sup> Nearest in point of local situation. It must be confessed, that this very remarkable Document gives rather an unfavourable view of the state of the *Borders* at the commencement of the reign of King James VI.; but reference to other 'Bands' and State Papers, which are faithfully conveyed to the public in the works of *Sir Walter Scott*, *Redpath's Border History*, and similar sources of information, prove the picture to be correct and unexaggerated. The influence of THE KING and his Lieutenants was but small, when opposed by the more powerful Barons; who could, in an incredibly short space of time, by means of their signal-fires, &c. alarm the country, and gather a prodigious force, with which they could easily overwhelm the royal troops. The usual policy of the Crown, therefore, was to appoint, as WARDENS OF THE MARCHES, the most stirring spirits of the time; who, vain of their 'brief authority,' were cajoled into the measures of the King and Council, and thus preserved 'guid rewle' on the Border. The private Feuds of the several Clans were also turned by the Government to good account; and by means of such 'Bands' as the present, the more unruly tribes were kept in check.



and perfyte ordour anent pe repreffing of pe faldis Thevis may be takin in pe menetyme. IN WITNES QUHAIROF, we haif fubfcryuit pe famyn with our handis, as followis, AT KELSO, pe sext day of Aprile, the 3eir of God I<sup>m</sup>.V<sup>c</sup>. three scoir nyne 3eris.

S <sup>r</sup> NICHOLAS RUTHERFURD of Hundoley, ANDRO KER. knyt.	GILBERT KER of Prinsydouch.	ALEX <sup>r</sup> L. HOME <sup>1</sup>
JHONK RUTHERFURD of Hunthill.	JOHNE EDMESTOUNE of yat Ilk, kny.	WALTER KER of Cesford.
JHONK MOW of yt Ilk.	WILLIAME DOWGLAS of Cavers.	BURCLEWTH, kny.
RICHARD RUTHERFURD, Provest of Jedbur <sup>t</sup> .	JHONK HALDANE.	THOMAS KER of Fernhirst.
JAMES SCOTT, Baillie of Selkirk.	THOMAS TRUMBUEL of Bederowill.	WILLIAME KER.
JAMES GLEDSTANES of Coklaw.	RICHART RUTHERFURD of Edzerstone.	PATRIK MURRAY of Faulahill.
WATT SCOTT in Bellhauch.	ALEXANDER COKBURN.	WALTER KER of Dolphinstone.
WATT SCOTT of Tuschelaw.	ROBERT SCOT off Edilstane.	ANDW. . . . .
HECTOR TURNBULL, Tutor of Mynto.	THOMAS MAKDOWELL.	ANDRO KER of Ea . . .
CUTHERET CRANSTOUN of Thirlstanemanis.		T. CRANSTOUNE of yt Ilk.
ROBERT SCOTT, Baillie of Hawyke.		THOMAS KER of Nether Howdane.

### Sheep-Stealing—Common Theft and Reset of Theft.

Jun. 21.—JOK SCOTT, alias callit *Jok the Sukler*, sone to Thome Scott in Nether Braidlie.

Dilaitit of airt and pairt of the thiftious Steilling and away-taking fra Adame Almoufe, ane of the Laird of Chifholmes tennentis, furth of that pairt of the landis of Chifholme callit Mouflie, occupyit be the said Adame, ffoure fcheip pertening to him; committit in the moneth of October, 1612. ITEM, off tua fcheip, viz. ane 3ow<sup>2</sup> and ane hog,<sup>3</sup> pertening to George Scott, callit of Dering-ftoun, furth of his landis of Castell-hill; in the moneth of Februar, 1613. ITEM, off ane blak 3ow, pertening to Rowie Scott, callit *Rowie of Huttkill*, furth of the Lyn besyde Eilrig; at Mertimes, 1614. ITEM, off fevin 3ow fcheip, pertening to James Rowie in Raeburne, ffurth of the landis of Raeburne, in Eskdaillmure; in the moneth of October, 1613 yeiris. ITEM, ffor cowmone Thift, and cowmone Reffet of Thift.

PERSEWARIS, Rowie Batie, callit James Rowie; Rowie Scott, in Vtterfyde; Walter Scott, his sone; informeris to his Maiefteis Aduocat: Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr Vmphra Blindschellis, Aduocat.

The pannell denyis the haill poyntis of Thift contenit in his Dittay.

#### ASSISA.

Frances Airmeftrang, callit of Andro Airmeftrang of the Kirk- Kynmonthe, <sup>4</sup>	toun,	Walter Gledftanes of Quhytelaw,
Williame Airmeftrang, his sone, Williame Airmeftrang in Nether	Wrae,	Robert Wauch of Hoip,
in Gryftaill,		Robert Scott in Schellifwoid,
Alexander Armefttrang in Wallis, George Langlandis of that Ilk,		Robert Airmeftrang, callit <i>Rattas</i> ,
Johnne Ellote of Fallin-afche, Lencie Airmeftrang in Qubit-		Williame Airmeftrang, callit
Thomas Airmeftrang in Gingillis, hauch,		<i>Bald</i> , <sup>5</sup>
		Hectour Trumbill of Clarielaw.

VERDICT. The Assyse, having reffonit and voittit vpon the pointis of the

<sup>1</sup> The two principal columns contain autograph subscriptions, the third is all written in the same hand.  
<sup>2</sup> Ewe. <sup>3</sup> A year-old sheep. <sup>4</sup> A descendant of *Kinmont Will*, famous in History and Border Ballad. <sup>5</sup> *Bald*, bold; intrepid. Bald-headed was uniformly written and pronounced *beld*.

Dittay, and being ryplie and at lenth advyfet thairwith, togidder with dyuerſe Depositiones producet be our ſouerane lordis Aduocat, for verificatioun of the ſaid *Jok Scott* his giltines of the ſaidis crymes; as alſo, vpone conſideratioun had be thame to the ſweiring of thais tua pointis of Dittay, ſuorne in their preſens be the ſaidis thre perſewaris; thay all, in ane voce, be the mouth of the ſaid George Langlandis of that Ilk, chancellor, ffand, pronuncet, and declairit the ſaid *Jok Scott*, callit *the Suckler*, to be ffylet, culpable, and convict of airt and pairt of the hail poyntis of Thift aboue ſpecifeit; and of cowmone Theft, and Reſſet of Thift.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and vpone ane gibbet thair fet vp, to be Hangit quhill he be deid: And all his guidis to be eſcheit, &c.

**Egyptians or Gipsies contemptuously repairing and abiding  
within the Realm.**

[THE following is one of the instances of the persecution of the once formidable race of GIPSIES, whose numbers were so considerable, as to excite the legislature to make various enactments for their banishment and extirpation. Notice of this pursuit has been preserved in *the Denmylne MSS.* Adv. Library, among various Minutes of the Proceedings of the Privy Council of Scotland, in the following brief memorandum. August 28, 1616. “ANENT that mater of EGIPTIANIS, now lyand in *the Tolbuith of Edinburgh*, thay war only convict for contraveining the Act of Parliament, in not departing furth of the Kingdome; and no vther cryme was layed to thair charge, and no cryme is knawin whairvpone thay may be challengit. *The Counsell*, according to HIS MA<sup>TIES</sup> direction, hes gewin Warrant for staying the pronouncing of Dome, till HIS MA<sup>TIES</sup> farder pleafour be knawin.”

The Editor has found no other trace of the fate of these unhappy creatures; but it is hoped that the King contented himself with ordering their banishment from the country, under the usual certification.]

Jul. 19.—JOHNNE FAA, Egiptiane<sup>1</sup>; James Faa, his sone; Moyſes Bailzie, Egiptiane; and Helene Broun, ſpous to Williame Bailzie, Egiptiane.

Dilaitit of contravening of the Act of Parliament, maid in anno 1609 yeiris, in thair contemptuous repairing to this cuntrie, being repute and haldin to be Egiptianis, and abiding thairintill, nochtwithstanding thair of, &c. viz.

DITTAY *against Johnne Faa, &c.*

FORSAMERILL AS, be Act of Parliament, haldin at Edinburgh, vpone the xxiiij day of Junij, I<sup>m</sup>.Vj<sup>c</sup>. and nyne zeiris, it is expreſſie provydit, ſtatute, and ordanit, that all Vagabundis, Soirneris, and cowmone Thevis, cowmonlie callit EGIPTIANIS, ſould depart furth of þe kingdome, and remane perpetuallie furth pair of; and nevir to haif returnet agane within the ſamyn, nor be fund pairintill, eftir þe firſt day of Auguſt þaireftir, in the foirſaid zeir of God I<sup>m</sup>.Vj<sup>c</sup>. and nyne zeiris, vnder the pane of deid; and that it ſould be liefum to all his Maieſteis

<sup>1</sup> See Jul. 31, 1611.

guid subiectis, or ony ane of thame, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alfweill men as wemen, as cownoun, notorious, and condampned Thevis; only, to be tryit be ane Affyse that thai ar callit, knawin, repute, and haldin Egiptianis: As the said Act of Parliament at lenth proportis. NOCHTTHELES, it is of verritie, that the foirfaidis persones, being Egiptianis, sua callit, knawin, repute, and haldin, in contempt of þe said Law and Act of Parliament, as Vagabundis, hes lurkit and remanit within this kingdome, sen þe making and publicatioun of the said Act, and nawayis hes past away furth pair of: At þe leift, aganis þe tennour of þe said Act, hes, sen þe said first day of Auguft, 1609 zeiris, repairit within this cuntrie, and ar tane and apprehendit as Vagabundis, and maisterles lymmeris<sup>1</sup> and thevis, reput and haldin, knawin and callit to be Egiptianis; quhairin thay and ilk ane of thame hes contravenit þe tennour of þe said Act of Parliament, and incurrit þe panes and pwnefchment mentionet pairintill; quhilk aucht and fould be inflictit vpon thame, with all rigour, to þe example of vþeris of þair race and vnhappie Companie to eschew þe lyk heireftir.

PERSEWER, Sir Williame Oliphant, kny<sup>t</sup>. PRELOCUTOR in defence, Mr Thomas Wilfoun, Aduocat.

IT is allegit be the pannell and thair prelocutour, that the Dittay is nawayis relevant to pas to ane Affyse, in respect it is nocht subfumet thairintill, that the persones dilaitit was within the cuntrie, the tyme of the making and the publicatioun of the said Act of Parliament, quhilk is the grund of this persute; nather yit is the pannell tane and apprehendit for ony Thift, Soirning, or Oppressioun, nor accuset thairfoir: Off all quhilkis crymes, thay ar willing to byde ane tryell: And thairfoir, the Dittay, as it is set down aganis the pannell, can nocht pas to ane Affyse.—It is ansuerit be my lord Aduocat, that the allegeance aucht to be repellit, in respect of the Dittay and Act of Parliament.

THE Justice Repellis the allegeance; and Ordanis the pannell to pas to ane Affyse.

VERDICT. The Affyse, be the mouth of Thomas Creichtoun, mercheand in Edinburgh, chancellor, ffand, pronuncet, and declairit the saidis *Johne Faa*, *James Faa*, his sone, *Moyfes Bailsie* and *Helene Broun*, all Vagabundis, and repute and haldin to be Egiptianis, to be ffylet, culpable, and convict of contravening the tennour of the said Act of Parliament.

THE Justice Continewit the prouneatioun of Dome vpon the persones foirfaidis, quhill he be advyset with the Lordis of Secreit Counfall: And ordanit thame to be returnit to waird, to the Tolbuth of Edinburgh, in the meyne tyme.

Jul. 24.—SENTENCE. The Justice, in respect na cautioun could be ffand

<sup>1</sup> In our old Laws, this term was always applied to denote a worthless scoundrel, a professed thief, or *reiver*. At present it is applied solely to females of loose character.

be thame, for thair departour furth of his Maiesteis dominionis, and that thair sould never returne agane within the samyn during thair lyftymes, ilk ane of thame vnder the pane of ane thousand merkis money; accoirding to ane Ordinance of the Lordis of Secreit Counfall, direct for that effect, vnder my Lord Chancelleris subscriptioun, daitit the xxiiij day of Julij instant; be the mouth of Johnne Dow, dempster of Court, Ordanit the saidis Johnne Faa, James Faa, his sone, Moyfes Bailzie, and Helene Broun, Egiptianis, and sa reput and haldin, tane and apprehendit, to be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and all thair moveabill guidis to be escheit, &c.

Quhilk was pronuncet for Dome; and that, conforme to the Ordinance of the Lordis of Secreit Counfell, of the dait above expremit.

### Slaughter.

Jul. 31.—ALEXANDER DUMBAR of Kilboyak, and others.<sup>1</sup>

Dilaitit for the Slaughter of vniq<sup>le</sup> Alexander Dumbar of Wafffield.

PERSEWARIS, James and Thomas Dumbaris, as brether.

THE Justice, for cauffis moveing him, speciallie, that the pairties war vnder the termes of aggrement, Ordanit the dyet to Desert.

### Usurping his Majesties Authority—Convocation of the Lieges—Murder under Colour of Law, &c.

[THE particulars of this very remarkable and keenly contested Case<sup>2</sup> are so fully narrated in the proceedings which follow, and in the various Histories of the *Family of Gordon and Sutherland*, that it is unnecessary for the Editor to add any thing farther. It only seems proper to give, in this place, the following notice from the MS. Collections of *Sir James Balfour*, preserved in the Library of the Faculty of Advocates; which, though only relating to the preliminary arrangements, forcibly shows the spirit with which such matters were conducted, even before the Supreme Criminal Tribunal of the kingdom, where the parties were connected with noble and powerful families.—August 28, 1616. ‘ THIS day being appointit to THE LAIRD OF GEICHT, *Johnne Gordon, Sheref-depute of Aberdein*, and the reff of thair complices, for thair compeirance before the Justice and his deputis, in the Tolbuith of Edinburgh, to vnderly the lawis for the slaughter of vniq<sup>le</sup> *Frances Hay*; the Sheref-depute, accompanied with sum Gentilmen of the name of *Gordon*, and vtheris, came to this burgh, with outwarde show, and apperance to have presented himself to his tryell; and by his Petition, gewin in this day to *the Counsell*, he craved Licence to sum Gentilmen of his name to accompany and assist him at the Bar: Which was grantit to sex persones selected and maid choise of be himself. *The Erle of Erroll* came lykwayes heir, for perfute of that mater, he haveing procurit ane Licence from *the Counsell*, convenit at *Aberdene*, for his cuming heir; with condition that he sould keip his lodging, and not come furth thair of, without *the Counsellis* Warrant. He, be Petition gewin in this day to *the Counsell*, cravit Licence that he might go to the bar, to assist the perfute of that mater; bot, in regard he was excommunicat, it was not thought expedient that he sould go in persone to the bar, becaus it was suspectit

<sup>1</sup> See Jul. 24, 1611. On Jan. 15, 1617, “ Sir Williame Hairt, his Maiesteis Justice, Ordanis the dyet to desert.” Whereupon George Duff, writer, protests for relief of the cautioners, &c. <sup>2</sup> See also two entries immediately following this; and especially, that of *George Gordon of Geicht*, Feb. 26, to June 27, 1617.

that the excommunication would be obiectit aganist him, to debar him from proces: And als, becaus HIS MA<sup>TIES</sup> *Advocat* was pairtie perfewar in the Letteris, who wald profecute that mater, als weill as if *the Erle* war present. The Court being fenfit, *the Justice, Justice Clerk*, with the hail memberis of the Court, and the pairteis perfewaris being all present, and *the Sheref-depute* being constantlie looked for to compeir, he notwithstanding absentit him self; and is thairfoir declairit fugitiue, and his cautioneris vnlawit.']

Aug. 28.—JOHNNE GORDOUN of Clubisgoule, Scherref-depute of Aberdene.<sup>1</sup>

Dilatit ffor airt and pairt of the Vfurpatioun of our Souerane lordis royall power and authoritie, in the arrogant and presumptuous cuming, with convocatioun of ane grit number of his Maiesteis legis, vpon the xvij day of December I<sup>m</sup>.V<sup>c</sup>. and fyftene yeiris, to the duelling hous of *Williame Hay of Logyruif*; and without ony lauchfvll Warrant, authoritie, or Commissioun, puting violent handis in the persone of vmq<sup>le</sup> *Frances Hay, sone to vmq<sup>le</sup> George Hay of Ardlethame*, bringing him perforce and aganis his will furth of the said hous, cayreing him with ane grit number of men in airmes to the burgh of Aberdene, as ane captiue and priffoner; committing him in priffone, within the ludgeing of *George Gordoun of Geicht*, ane of his principall takeris, callit "*the Bony Wyfes Inne*," in the Gallowgait of Aberdene, keiping and detening him in maist strait firmance thairintill, be the space of fourtie aucht houris; nocht suffering any man of his kyn or freindis to haif access to him, during all that tyme: Committit be the said *George Gordoun of Geicht, Williame Hay*, his sone in law, *Johnne* and *Alexander Gordones*, his brether, *James Baird* his seruand, and vtheris thair complices. Off the speciall causeing, sending, hounding out, airt, plane pairt-taking, counselling, devyseing, command, assistance and ratihabitoun of the said *Johnne Gordoun Scherref depute of Aberdene*, and quha, during the tyme of the said *Frances* impriffonement within the said *Inne*, resoirtit dyuerse tymes thairto with the said *Laird of Geicht*, to countenance and assist the vnlauchfull keiping and detentioun of the said vmq<sup>le</sup> *Frances* thairintill: AND sicklyk, the said *Johnne Gordoun of Clubbisgoule*, pretendit Schereff depute of Abirdene, being giltie in his own conscience, befoir God, of parcialitie and preoccupyit opinioun, and knawing weill aneuch that the tyme of his priuilege, gif he ony had, was expyrit; notwithstanding thairof, to the heich offence of Almichtie God, contempt of our Souerane lordis princlie power, and to the grit scandall of the Justice of this kingdome, ffor his presumptuous and arrogant vfurpatioun and assumeing to him self, with ane evill conscience, of the place and office of the Criminall Judge, in presenting him self in Judgement, and setting down thairintill as Judge, fenceing of Court, and calling and accuseing befoir him of the said vmq<sup>le</sup> *Frances Hay*, for the allegit Slauchter of vmq<sup>le</sup> *Adame Gordoun*, brother germane to the said

<sup>1</sup> See Feb. 26, 1617, &c.



*Laird of Geicht*; and for nocht admitting and suffering prelocutouris to compeir and defend the said vmq<sup>le</sup> Frances, the tyme of the said perfute; bot be the contrair, debarring *Mr Williame Barclay, Aduocat*, quha was reddie to compeir in his defence, and quha had mony guid and sufficient exceptiones to haif proponit, to haif stayit<sup>1</sup> his puting to the knowlege of ane Assyse, for the said allegit cryme; be sending of *George Leslie of Kincragie*, with ane commissioun to the said Mr Williame, dischargeing him, vpon the perrell of his lyfe, to compeir in the said Frances defence; and assureing him, gif he sa did, fra he war anes doun the stair,<sup>2</sup> thair sould be tuentie quhingeris put until him: And sua, for debarring of the said vmq<sup>le</sup> Frances, and defrauding him of the benifeit of lauchfull defence, quhilk God and nature hes indifferentlie allowit vnto all men: AND for the maist partiall proceeding aganis the said vmq<sup>le</sup> Frances, nochtwithstanding of the premisses, in putting him to the knowlege of ane Assyse of ane number of persones selectit and inaid chose of be the said *Laird of Geicht*, perfewar, and his freindis, and altogidder adictit to thair mynd and directioun; quha, accoirding thairto, convictit him of the said allegit Slauchter: AND for the partiall and wilfull pronunceing vpon the said convictioun, of the Dome and Sentence of daithe aganis the said vmq<sup>le</sup> Frances, to loise his heid: AND for that effect, maist partiallie and vndeutifullie, aganis the office of ane Judge, delyuering of the said Frances bak agane to the said *Laird of Geicht* and his complices, the pairtie perfewaris, quha tuik him to thair awin privat priffone; and vpon the morne thairefter, caryeit him furth at ane bak zet, to ane hole betuix tua mottis,<sup>3</sup> quhair thay crowned thair tragidie with so boutcherlie mangling and demaning<sup>4</sup> the puir gentill-man, be geving to him sex feveral straikis vpon his schoulderis, heid, and nek, as the lyk hes nevir or feldome bene hard or sene: AND sa, vnder the pretext and cullour of law, and scandall of Justice, ffor the crewall and barbarus massacring and slauchter of the said vmq<sup>le</sup> Frances, be the said Johnne Gordoun, scheref-depute, his pretendit vsurpeing Judge; quha thairthrow in a heich degrie hes contempnit and abusit his Maiesteis royall name and authoritie, in making it a cloke and cover to the revenge of the perticuler querrell of him selff and his freindis. In maner specifit and sett doun in the criminall Letteris direct aganis him thairupoun.

THE Justice, be the mouth of Thomas Young,<sup>5</sup> dempster of Court, Ordanit Adame Gordoun of Boighoill (as cautioner and fouertie for John Gordon's entry) to be vnlawet in the pane of ffyve hundreth merkis, for the nocht entrie: And that the said Johnne Gordoun fall be denuncet our fouerane lordis rebell, and put to his hienes horne; and all his moveabill guidis to be escheit, &c.

<sup>1</sup> Delayed; prevented.

<sup>2</sup> By the time he got down stairs.

<sup>3</sup> To a hollow betwixt two

moats or fosses; the ground being probably selected, or constructed, so as to prevent a rescue of the unhappy victim of their barbarity.

<sup>4</sup> Using; treating.

<sup>5</sup> Who appears in this office for the first time.

**Murder under Colour of Law, &c.**

Aug. 28.—GEORGE GORDOUN OF GEICHT,<sup>1</sup> Williame Hay, his sone in law; Johnne Alexander, Robert and Patrik Gordones, brether to the said Laird of Geicht; Johnne Gordoun of Clubisgoulè, Scheref depute of Aberdene; Williame Gordoun in the Maynes of Geicht, servand to the said Laird; Johnne Sinclair, brother to the Laird of Achannachie; Andro Nicolsoun, servand to the said Williame Hay; Patrik Cantlie in Airdifferie, and Andro Mylne, ffalconer.

Dilaitit for the usurpation of our souerane lordis authoritie, &c.<sup>2</sup> at the instance of Mariorie Keith the relict of vmq<sup>le</sup> *George Hay of Ardlethame*, as mother; George Hay, as brother to vmq<sup>le</sup> Frances Hay, sone to the said vmq<sup>le</sup> George Hay of Ardlethame; and of Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intreis. The said Mariorie, &c. producet the Letteris deulie execute and indorfate; vpon the production quhair of, the saidis perfewaris askit instrumentis, and protestit for releif of thair cautioneris.

**Murder under Colour of Law, &c.**

Aug. 28.—GEORGE GORDOUN OF GEICHT, and others above mentioned, and James Baird,<sup>3</sup> in the Maynes of Geicht, servand to the Laird of Geicht.

Sir William Oliphant of Newtoun, kny<sup>t</sup>, producet his Maiesteis Letteris deulie execute and indorfate, raifit at his lordschipis instance, as Aduocat to his Maiestie, for his hienes intreis allanerlie.<sup>4</sup>

**Forcible Abduction and Marriage of a Minor, without having obtained the lawful consent of his Guardians.**

Nov. 8.—SIR PATRIK CHIRNESYDE OF EIST NISBET, Alexander Cranftoun of Burnecastell, Johnne Cranftoun, brother to Williame Lord Cranftoun, Williame Home of Hardeifmylne, and Williame Moffet, his servand.

Dilaittit of violent Rape and Raveifching,<sup>5</sup> taking, and detening of Adame Frenche of Thornydykis, ane young bairne scarce past xiiij zeiris of age, furth of the Toun of Hadingtoun; and thairfra transpoirting him to Rymmiltoun-law,

<sup>1</sup> See Feb. 26, 1617.    <sup>2</sup> As in the previous case.    <sup>3</sup> This person is omitted (probably by a clerical error) in the former case.    <sup>4</sup> Alone; solely.    <sup>5</sup> These terms, in the Ancient Criminal Law of Scotland, as has been frequently noticed in this work, signify merely the act of carrying off by violence, or against the will of the party so abused. The term employed to denote RAPE, as now understood in Scotland and England, was 'FORCEING.' 'Rapt' and 'Raveifching' only inferred what is at present technically termed 'Forcible Abduction.' A stronger illustration of the meaning formerly attached to these phrases could hardly be adduced than the present Trial.

and thairfra, as ane captiue, to Eift Nifbet; and thairfra to Beruik, quhair, but (*without*) consent of Sir Johnne Home of North Beruik, Donatour to the Gift of his Waird and Mariage, he was mareit to Jean Chirnesfyde, dochter to the said Sir Patrik; committit in the moneth of November, 1615 zeiris.

PRELOCOUTOURIS in defence, Mr Alexander Peiblis, Johnne Belfis, Mr Robert Fairlie, Aduocatis.  
PRELOCOUTOURIS in perfute, Sir George Home of Manderstoun, Sir Williame Oliphant of Newtoun.  
PERSEWARIS, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, for his hienes intreis; Sir Johnne Home of North Beruik, kny<sup>t</sup>, as Donatour to the Waird of the said Adame French mariage, for his intreis.

The Aduocat, with Sir Johnne Home of North Beruik, kny<sup>t</sup>, as persewaris, produces the fummondis. Eftir reiding thairof, the Aduocat produces, for Sir Johnne Home of North Beruik his entreis, the Gift of the said Waird and Mariage of Adame Frenche of Thornydykis.

The Pannell, befor farder proces, defyres my lord Justice to heir Adame French of Thornydykis, presentlie in Judgement, quha is the persone allegit ravischet and tane away, to mak his awin Declaratioun of the forme and maner thairof; and thaireftir, thay fall cum to thair Defencis in the cause.—My lord Aduocat Disassentis to ony Declaratioun to be maid be the said Adame Frenche, in this matter; and defyres the pannell to cum to thair awin allegeances, quhy the fact lybellit fould nocht pas to ane Assyse.

THE Justice Ordanis the pannell to propone thair defenffis aganis the lybell and relevancie thairof.

Adame Frenche of Thornydykis, being personallie present, disassentis fra this perfute; and thairupoun askit instrumentis.

It is allegit be my lord Aduocat, that the disassenting of Adame Frenche fould nocht be respectit, becaus he is naither persewar nor defender in the caus; and the Aduocat, with the persewar, haifing sufficient entreis for the King, may persew.—It is anfuerit, that my Lord Aduocatis anfuer touching the perfute, movet be his lordschip and Sir Johnne Home, nawayis can stay this young Gentilman to disassent thairfra, *sed valeat cum processu quantum valere potest*.

It is allegit be the pannell and thair prelocoutouris, that Sir Johnne Home hes na intreis to persew this caus, being criminall; becaus his only intreis is as Donatour to the waird and marriage of Adame Frenche; quhilk Gift, *per se*, can geve him na intreis to persew criminallie, becaus, be the Gift of Waird, he hes nather intreis *in personam neque in rem*: *In personam*, becaus this young Gentilman, befor the intending of this caus, was past fourtene yeiris compleit, and hes electit and chofin Curatouris to him, for administratioun of his persone: *In rem*, he has na intreis, becaus howbeit it may appeir be the Gift producet, that Sir Johnne Home is Donatour to the Waird of this young Gentilman, yet, *in rei veritate, res aliter se habet*, as Sir Johnne Home will nocht deny, and as fall be maid cleir to



the Judge ; in sa far as (at) the tyme of v<sup>m</sup>q<sup>l</sup>e Robert French deceis, father to this young Gentilman, haifing tua father-brether<sup>1</sup> on lyfe, viz., James and Johnne Frenches ; James haifing ane cair of the bairnes educatioun and standing of the hous, delt for the Gift of the Waird and Mariage, to the vtilitie of the bairne ; bot, becaus he was nocht hable to discharge that adminiftratioun of the bairne as become him, in respect of dyuerse trubbillis and cummoris<sup>2</sup> he come vnto, he makis chose of the said (*Sir*) *Johnne Home of North Beruik*, as ane trustie freind to him and the bairne, borrowis his name to the said Gift, and infertis his name thairintill ; nocht that the said Sir Johnne fould rype<sup>3</sup> ony commoditie thair of, bot vseing the said Sir Johnnes name, nocht being hable to discharge the office him selff. For cleiring<sup>4</sup> of this, it is of verritie, that nochtwithstanding of the inferting of the said Sir Johnnes name in the Gift, the said v<sup>m</sup>q<sup>l</sup>e James French intromettit with the haill leving pertening to the said bairne, during his lyftyme, keipit the said bairne in his custodie, at leift was in the custodie of his guidfchir on the mother fyde,<sup>5</sup> within the place of Hardiesmylne, and that but<sup>6</sup> interruption, challenge, or queftioun made be the said Sir Johnne, anent the custodie of the bairne, or vplifting of the maillis<sup>7</sup> and deuteis of his leveing : For forder qualificatioun of this argument, it is lykwayis of verritie, that eftir the deceis of the said v<sup>m</sup>q<sup>l</sup>e James Frenche, v<sup>m</sup>q<sup>l</sup>e Johnne Frenche, younger brother to the said James, being fervet and retouret air<sup>8</sup> to the said v<sup>m</sup>q<sup>l</sup>e James his brother, nocht only intromettit with the said v<sup>m</sup>q<sup>l</sup>e James his leving, bot lykwayis with the haill rentis of the said bairnes leving, *Tutorio nomine*, the said v<sup>m</sup>q<sup>l</sup>e Johnne being feruet and retouret Tutour to him ; quhairby it is cleir that this Gift of Waird of the said minor can gif the said Sir Johnne no intreis to persew this cause, his name being only borrowit to it, as said is. Lyk as, thair is actioun depending at the instance of the bairne and his Curatouris befor the Lordis of Sessiou aganis the said Sir Johnne for his intromiffioun with the maillis and deuteis of his landis, and for transferring and translating of the Gift of the Waird in the persone of the minor, as tane to his awin behuif, and the said Sir Johnnes name only borrowit thairto. And sa, haifing nather entreis *in personam neque in rem minoris*, his Gift can geve him na intreis to persew this caus. *Secondlie*, albeit it war grantit, as it is nocht, that the Gift was tane to the behuif, utilitie, and proffeit of the said Sir Johnne, yet the Gift of the Waird can geve the said Sir Johnne na intereis to persew this caus, being ane Criminall persute, without the expres concurse, assistance, and ratihabitoun of the said minor him selff, aganis quhome the Rapt lybellit is allegit to be com-

<sup>1</sup> Paternal uncles.      <sup>2</sup> Literally *cumbers*, encumbrances, difficulties, embarrassments ; but in this instance it denotes strife, feud, &c., as the word then denoted.      <sup>3</sup> Reap.      <sup>4</sup> Elucidating.  
<sup>5</sup> Maternal grandfather.      <sup>6</sup> Without.      <sup>7</sup> Rents.      <sup>8</sup> Served and retoured heir.

mittit; quha nocht only refuiffis to concur and affist the faid Sir Johnne; bot, be the contrair, compeiris with the defenderis, and affistis thame; affirmeing all that was done be thame, to be lauchfullie done, and quhat was done to him was at his awin defyre, and be his awin speciall consent.

It is anfuerit, be my lord Aduocat, and the faid Sir Johnne Home, that the faid Sir Johnnes entreis is sufficientlie qualifeit and instructit for perfute of the actioun lybellit, feeing it is lybellit that he is Donatour to the Waird and marriage of Adame Frenche, aganis quhome the haill wrongis lybellit war committit, being our fouerane lordis frie lege; and that the custodie and keiping of minoris, quhais landis fallis in our fouerane lordis handis be reffone of Waird, properlie pertenis to the Donatour of the Waird and Mariage: Lyk as, it is expresse qualifeit in the faid Summondis, that the faid minor was in the faid Sir Johnnes possessioun mony yeiris befor the tyme lybellit, furth of quhais possessioun it was nocht lauchfull to the defenderis nor nane of thame to mell<sup>1</sup> with him, in maner lybellit, nor tak him furth of his possessioun: Lyk as, complent being made of befor be the faid Sir Johnne, befor the Lordis of Secreit Counsell, aganis the speciall perfones his away-takeris, viz. Williame Home and Williame Moffet, the faid Sir Johnne was ffund to be ane partie compliner to call for exhibitioun of the faid bairne; in quhais favour ane sentence was gevin and pronuncet, ffinding and declairing that the faidis Williame Home and Williame Moffet had committit ane verrie grit offence and ane most pernicious and wicket preparatiue and example, in trayning and taking away the faid Adame Frenche out of the faid Toun of Hadingtoun, quhair he was placet at the scole be the faid Sir Johnne; in respect quhair of, the faid Sir Johnne hes indoutit rycht and intreis to persew the actioun lybellit; and speciallie, to informe and concur with our fouerane lordis Aduocat, quha hes speciall entreis be him selff, in his hienes name, to persew the crymes lybellit. As ffor the impertinent<sup>2</sup> discourse, that the richt of the Waird was tane to the behove of the bairne be the advyse of vmq<sup>le</sup> James and Johnne Frenches his father-brether, that alledgeance is nather releveant nor instructit; and sa, na respect aucht to be had thairto: And yit, to anfuer to the first pairt, anent James intromiffioun, the allegeance is altogidder irrelevant; for albeit he had intromettit, that establisches na richt of the Waird in his perfone, bot the Donatour had sufficient intreis to persew the intromitteris with the maillis and douteis of the Waird landis: And, to mak the matter mair manifest, James deceit within fyftene dayis efter Robert his brother: Lyk as, vmq<sup>le</sup> Johnne was ane actuall feruand to the faid Sir Johnne, during his lyfytyme, eftir the dait of the faid Gift. And as to the last pairt of the secund allegeance, beiring that the faid Adame French difassentis fra the perfute, and concurris with the defenderis,

<sup>1</sup> O. Fr. *mesler*, to intermeddle; to interfere.

<sup>2</sup> Irrelevant; not pertinent.

affirmyng that all [that] was done to be done of his awin consent, it is anfuert, as of befoir, that his disassenting fra the persute can nocht preiudge ony of the persewaris : And as to the last pairt of the said allegeance, quhilk appeiris to be proponit aganis the intreis, it is rather affirmatioun that the said Sir Johnne hes intreis nor<sup>1</sup> oppositioun aganis the samyn ; and gif it fall pleis the pannell to propose it, as ane defense in the cause, thay fall haif ane direct anfuert ; ffor, be the proponing of that allegeance, it is grantit that the Donatour hes intreis ; and that he is Donatour, it is verifeit be the Gift producet : Bot to mak this matter cleir, it is anfuert directlie, that ane cryme being committit aganis pairteis quha hes intreis, the Confessioun of the pairtie offendit can nevir tak away thair intreis, nather yit the Kingis intreis efter committing of the cryme, ffor, albeit wrang had bene done to ane maior,<sup>2</sup> and the maior wald renunce the actioun, that can nawayis preiudge the Kingis Maiesteis intreis, nor na vther pairtie quha is preiudget ; as is cleir in the haill article of the Cod. L. vnica Codice *de Raptu Virginum, et Lege Raptores, C. de Episcopis et Clericis* : And to mak this matter the mair cleir, it is speciallie declairit be the Act of Parliament maid in October 1612, that the declaratioun of the persone ravischet fall nawayis preiudge the Kingis Maiestie of his intreis to persew the committer of the cryme : And to cleir this matter forder, the said Adame Frenche, eftir his away-taking, be ane Letter, all writtin and subscryuit with his awin hand, grantit and confessit that he was tane away aganis his will and vndone ; as the Letter heirwith producet beiris.

To the quhilkis it is anfuert be the pannell, that the allegeances proponit be thame aganis the said Sir Johnne Homes intreis standis relevant, nochtwithstanding of my Lord Aduocattis anfuert ; becaus the defendaris affirmes constantlie, that of the Law nor Practique of Scotland, the Donatour of the Waird or Mairiage of ony persone hes na actioun criminall competent to him for ony wrang done to the minor, without the concursie of the minor quha is offendit, bot that the Gift of the Waird inferis to the Donatour only ciuile actioun, *per se* : And howbeit the keiping of the minor during the Waird pertenis to the Donatour, yit gif the minor be past xiiij yeiris, *et sic sui juris*, divertis him self willinglie out of the companie of the Donatour, passis forwardis to the electioun of his curatouris, thair is na actioun competent of the law to the Donatour, for exhibitoun and delyvering to him of the minor. Lyk as, Williame Home being summoned befoir the Counsell, for exhibitoun of the said Adame Frenche, and being be Ordinance of the saidis Lordis, thaireftir, sequestrat in the handis and custodie of *James Archbischope of Glasgow*, vpon ane Supplicatioun gevin in be the said Adame him self to the saidis Lordis, the saidis Lordis, be thair Decreit, Ordanit the said Adame to be put to libertie to pas and repas at his plesour, nocht-

<sup>1</sup> Rather than the contrary argument.

<sup>2</sup> A person arrived at lawful age, or majority.

withstanding of the Gift of the Waird disponit to the said Sir Johnne Home, quhais entreis could be na impediment to stay the said Adames libertie: Lyk as, conforme to the said Decreit, being put to libertie, he frelie, volunterlie, and willinglie repairit to the Place of Eist Nisbet, quhairin he hes remanit sensyne, as to ane speciall freind; and, gif neid beis, the said Adame, be his awin Declaratioun, will declair his intentioun of passing to Eist Nisbet. And for instructing thair of, produces the bairnes grevis,<sup>1</sup> to be considerit be my lord Justice, desyring the samyn to be red as ane speciall pairt of the proces. As to the Letter producet be my lord Aduocat, the said Adame denyis the same altogidder to be his hand writt, and thairfor na respect sould be had thairto: Lyk as, the said Adame being personallie present, Judiciallie declairis he can nocht wryte; and this Letter producet be my Lord Aduocat was writtin by<sup>2</sup> his knowlege in *the Guidman of Manderstones* hous, the tyme of his sequestratioun; and in cace it war his hand writt, it could mak na faith in judgement, being direct be ane minor. As to the Act of Parliament producet, quhilk is in anno 1612, the alledgeance foundit thairupoun militatis nawayis in this eirand, nather is this perfute foundit vpon that Act of Parliament; and quhan as my lord Aduocat foundis a perfute thairupoun, it fall haif the awin ansuer.<sup>3</sup> *Igitur, &c.*

The Aduocat, for him self, and for the pairtie, repeittis his former ansueris, with this additioun, that the minor being in the Donaturis possessioun of his Waird and Mariage, lyk as, he was be the space of fyve yeiris befor the Rapt lybellit, could nocht haif been tane out of his possessioun, in maner contenit in the Summondis; and the away-takeris of him aucht to be pwneist accoirding to the desyre of the Summondis. As to the impertinent discourse, that the Waird was tane to the behuif of the bairne, thair is nathing producet to verrifie the samyn; and albeit it war verifeit, it is altogidder irrelevant, in respect of the former ansuer; and speciallie, in respect that the Defenderis had na intreis, in maner lybellit, to haif mellit with the minor: And quhairas thair is mentioun maid of the electioun of his Curaturis, thair was na Curaturis chofin the tyme of the committing of the crymes lybellit, quhilk was done in November 1615, the Curaturis being alledged chofin in Julij thaireftir, 1616. And quhair mentioun is maid of the bairnes libertie and sequestratioun, that is nawayis pertinent to this purpos, in respect of the lybell. *Igitur, &c.*

It is allegit be the pannell, that the electioun of the Curaturis be Adame Frenche in July 1616, is sufficient, nochtwithstanding of his away-taking of befor; and that be reffone that howbeit the Curaturis was nocht chofin befor

<sup>1</sup> Probably *grievances*. There is marked on the margin of the Record, 'Thir grevis tane vp and keipit be my lord Justice.' <sup>2</sup> Without; beside; contrary to. <sup>3</sup> Its own, *i. e.* a special answer to the pursuit so founded.

the allegit Rapt, yit he was maior befor the allegit Rapt, past fourtene yeiris of age, &c. *Igitur, &c.*—It is anfuert thairto be my lord Aduocat and the persewar, that na respect aucht to be had, quhidder he was past xiiij yeiris of age the tyme of the committing of the crymes or nocht, quha being at that tyme in the custodie and keiping of the Donatour to the Waird, and na curatouris chosin to him, the defenderis had na intres to haif mellit with him, as is lybellit. And quhair it is allegit, that the Missiue uset and producet for the said Adame, aucht nocht to be respectit, in respect of his minoritie; it is anfuert, that the samyn aucht to be respectit, being all writtin and subscryuit with his awin hand: And to convert that argument aganis the defenderis, na respect aucht to be had to his Declaratioun, nather be word or writ this day, in respect of his minoritie. As to the Testimoniall producet for his age, na respect aucht to be had thairto, for the reffones aboue writtin, speciallie, in respect he was baptizet the xij of November, 1601, and was tane away in November 1615, sua that it is nocht constant<sup>1</sup> thairby, quhidder he was past xiiij yeiris or nocht the tyme of the Rapt lybellit. *Igitur, &c.*

It is allegit for the Defenderis, that the Dittay is nawayis relevant to infer aganis thame ony criminall perfute, nather can thay pas to the knowlege of ane Inqueist thairfoir; becaus the fact contenit in the Dittay, it is *vel Raptus vel Plagium: Raptus*, of the Law, it is nocht; becaus *raptus et raptura* of the Law is only concerning Virginis, and nocht more. *Cap. de Raptu Virginum, toto titulo*:—Bot quhidder it be *vel Raptura vel Plagium*, yit the Dittay is nocht relevant, becaus *ad crimen Plagii vel Raptura, oportet accedat et interveniat vis et violentia: Oportet de jure ut deportatur de loco in locum, clandestinè, violenter*, and that his freindis and kinsmen be debarrit fra haifing accers to him, quhairby he is depyvet of the libertie of ane frie ledge: Bot sa it is, that nane of thir perticularis, without the quhilkis the Dittay can nocht be relevant, is set doun in this Dittay; ffor first, thair is no violence nor violent fact set doun thairin; it is nocht lybellit that he was violentlie, quyetlie, and clandestanlie transpoirtit fra place to place; or that he was detenit, *quasi in carcere*; or that he was debarrit fra his freindis, or fra haifing accers to his freindis, or thay to him; bot be the contrair, it is affirmet in the Dittay, that he frelie, volunterlie, and willinglie past with Williame Home, his mother-brother,<sup>2</sup> out of the Hous of Mr Williame Bowie, quhilk inferris a frie away-cuming, being with his mother-brother, and nerrest of his kyn, haifing na kyn of the father syde knawin to him: And sa, the Dittay is altogidder irrelevant. As to that pairt of the Dittay, beiring that the remanent defenderis are airt and pairt thairof, thay can nocht pas to ane Affyse vpon that point of the Dittay; becaus, gif thair be nocht

<sup>1</sup> Clear; apparent.

<sup>2</sup> Maternal uncle.

ane cryme committit be the principallis, nor a relevant cryme fet doun against thame, the perfones can nocht be alledgit to be airt and pairt thairof; and albeit it war relevant for the principallis, it is nawayis relevant aganis the remanent perfones, as airt and pairt; becaus airt and pairt, of the Law, is, *qui prodet vel auxilium vel consilium; auxilium, vel ante factum, vel in facto, vel post factum*: Thair is nather *auxilium* nor *consilium* relevantlie lybellit aganis thir defenderis, *neque ante factum, in facto, vel post factum*; ffor thair is nathing lybellit aganis thame, bot that he was first transpourtit to Rymmiltone-law, and thaireftir to Eift Nisbet; and that thaireftir he was mareit to Jeane Chirnefyde, quhilk is na qualificatioun of violence *cum matrimonia sunt libera de jure*; and the mariage of ane minor, eftir his compleit age of xiiij yeiris, quaha hes *consensum* of the Law, can nocht be comptit ony violent fact, becaus it proceidis of his awin propper fact; speciallie, seing the mariage proceidit vpon the Proclamatioun of his bands, publictly, in the parochie kirk, quhilk takis away the grund of the argument of violence vset aganis him. *Igitur, &c.*

It is anfuerit be the perfewaris, for verifeing of thair Summondis, and hail memberis thairof, that the samyn is verrie relevantlie consanet, and aggreis with the Lawis and pratique of the realme of Scotland, Ciuile, and Commoun Law, and Lawis of all Nationis maist ciuile, Ingland and ffrance; and thir anfueris ar proponit be him to verifie all the memberis of the propositioun contenit in the Summondis, and to elyde<sup>1</sup> the exceptiones proponit be the pannell, baith for the principallis, and thais that ar callit for airt and pairt: And as to the first member of the propositioun, the perfewaris alledges, that the samyn is sufficientlie verifeit be the hail article of the Cod. L. nono, Tit. 20. ad Legem Fabiam *de Plagiariis*; lyk as, be the Lawis and pratique of this realme, the taking of ony frie perfone is capitall, and sumtyme thocht to be tressonable: It was fund to be capitall aganis *George Meldrum of Dumbrek*, for taking of *Mr Alexander Gibson*; lyk as, he was perfewit and pwneist to the death thairfoir: *The Marquis of Huntly*, and *the Erles of Craufurd* and *Bothuell*, war perfewit criminallie, for the taking of vmq<sup>o</sup> *Thomas Maister of Glammes*, and put to the knowledge of ane Inqueist. As concerning the Ravischeing, that pairt is verifeit to be capitall, be the Act of Parliament maid in the dayis of King James the Fyft, of worthie memorie, in the moneth of Marche, 1540, cap. 118; and siclyk, be the fairnameit Act, in October, 1612; be the Ciuile Law, the same member anent the Ravischeing is capitale, toto Titulo et Lege vnica *de Raptu Virginum* et *Lege Raptores*, *Codice de Episcopis et Clericis*: And albeit the saidis Lawis chiefie makis mentioun of violence committit against Wemen, yit the Glofs and hail Jurisconsultis resolues, that the same lawis hes place quhair ane man is ravished:

<sup>1</sup> Cut off; redargue. Lat. *elidere*.

And albeit na violence war lybellit, yit thair is sufficient circumftances lybellit to infer the violence; beiring directlie, that quhan the faid *Adame Frenche* defyret to be bak agane to Hadingtoun, the principall perfones defenderis, at the leift *Williame Home, Alexander Cranftoun of Morieftoun, and Williame Moffet*, of the speciall caufing, counfalling, and devyfeing of the haill perfones contenit in the Summondis, had the faid Adame in thair power, and tauld to him planelie that he fould nocht returne, bot that it behovet him to go to Eift Nifbet, to marie the Lairdis dochter; and this was done be thame, eftir that the faid Adame was tane and apprehendit be the faid *Williame Home*, (and) was craftillie movet, perfuaidit, and intyfet to pas with thame furth of Hadingtoun, of intention to haif viffeit *Margaret Hailie*, his guidame, and fifteris, albeit that was nocht thair intention; bot that followit quhilk thay proponit to thame felffis frome the begynning, to keip him in thair handis quhill he war mareit with *Eift Nifbetis* dochter: Lyk as, he was quyetlie and fecreitlie convoyit and cayreit fra Hadingtoun to Rymmiltone-law, in the Merfe, than the duelling-hous of the faid Alexander Cranftoun of Morieftoune, and thairfra, be the faid Williame Home, Alexander Cranftoun, Johnne Cranftoun, and Williame Moffet, to the Place of Eift Nifbet; and thairfra, furth of the realme of Scotland, to the Toun of Beruik in England, quhair he was fecreitlie mareit *clandestinè*: Quhilk anfuer is sufficient to infer the conclufioun of the lybell, in respect of the circumftances contenit in the Dittay: And yit to mak the Dittay relevant, of the Law, albeit thair war na violence lybellit, quhan pairteis are feducet and intyfet, the cryme remanis capitall, as is contenit in the lybell; and alleges Godfredus, ad dictam Legem *Raptors*, et Bald ibidem; Farinacius *de Delictis carnis*, quest. 146, Tit. 16, numero 40; Chessa. *de consuetudine Burgund.* Rub. 1, pag. 57; Salicotus ad dictam Legem vnicam, Cod. *de Raptu Virginum*, quhais woirdis ar thir schortlie, ‘*quod persuasio dolosa, in talibus, plus est quam violenta tractio.*’ Forder, be ane expres Statute maide be Henrie the Third of France, it is ordanit, that quhofoeur fall be fund to haif subornet or intyfit ane chyld, minor, and within xxv yeiris of age, without consent of thair parentis, or vtheris in quhais custodie thay ar, falbe pwneift to the daithe, without ony pardoun. This Law was fet doun, *per expressum*, in the grit Code of the faid King Henrie, Lib. 60, Tit. 2°, Stat. 8°. Lyk as, in the sevint buik of Papon. *de crimine Raptus*, it is expreslie ffund and declairit, that ane Woman, for seduceing or intyfeing of ane young man to marie hir dochter *clandestinè*, was condampnit to the daithe. Lyk as, be the Lawis of England, this cryme is pwneift with fyve yeiris impriffonement, and ane grit fyne at the Princes will; and this Law was fet doun quhair ony perfone is ravifchet fra thair parentis, tutouris, or guardianis: And of this Law mentioun is maid in the 555 leif of the Registar of the Lawis

of England. Julius Clarus, § *Raptus*, num. 6, ait, ‘*Raptum viri etiam puniri pena Raptus, ac si Virgo rapta esset.*’ Be the Lawis of the Maieftie of Scotland, *Quon. Attach.* cap. 95, *de Raptu heredis Maritagium debentis, et ejus pena, &c.* Be the felf fame Law of the Maieftie, in findrie pairtis, Ravifching of Men or Wemen, whois Mariage pertenis to the Prince, is appointit to be criminallie perfewit befor the Justice. And laft, Ravifcheing is fa odious ane cryme in Scotland, that the famyn is exceptit furth of Remiffiones, as ane cryme maift haynous and deteftable.—In refpect of the quhilkis alledgeances, proponit for verificatioun of the propofitioun contenit in the Summondis, the Dittay is relevant aganis the haill perfones on pannell. And that pairt of the lybell, ‘airt and pairt,’ is verrie relevant aganis all perfones, and fpeciallie appointit to be lybellit be Act of Parliament; and the Law is verrie expres in that, that all the perfones that concurris and affiftis the fact quhilk is capitall, ar all culpable as the committeris thair of: Bot in this caice, it is lybellit expreflie, that Williame Home and William Moffet intyfet and tranet<sup>1</sup> the faid Adame furth of Hadingtoun, and convoyit him to Rymmiltounelaw, quhair he was reffaut be the faid Alexander Cranftoun; quhilk Alexander and Johnne Cranftoun convoyit him thairfra to Eift Nifbet, and thairfra altogidder to Beruik, quhan he was mareit *clandestinè*, as faid is, and reffaut be the faid *Laird of Eift Nifbet*, and keipit be him quhill he mareit with his dochter, purpoiffie done to preiudge the faid Sir Johnne Home of the double avail of his Mariage; quhilk makis the haill pannell nocht only to be affifteris of the fact, bot airt and pairt, and direct doaris thair of. And to verifie that he was feducet, intyfet, and cayreit away aganis his will, repeittis the foirfaid Letter, all writtin and fubfcryuit with his awin hand; and the Decreit gevin to the Secreit Counfall, finding ane wrang done, be the away-taking of him. And thir argumentis ar proponit, nocht only to verifie the propofitioun of the Summondis, bot alfo to elyde the exceptiones proponit be the perfones on pannell aganis the relevancy of the Dittay.

To the quhilk it is ANSWERIT be the perfones on pannell and thair prelocutouris, that the pannellis allegeance proponit aganis the irrelevancie of the Dittay ftandis relevant, nochtwithftanding of all the arguments proponit be my lord Aduocat aganis the famyn: ffor, as to the Lawis Ciuile, French Lawis, Inglis (Lawis, and) Municipall Lawis of this realme, thay ar verrie pertinentlie citit be my lord Aduocat, for confirmatioun of the propofitioun of the Dittay, and to infer the conclufioun thair of, gif the fubfumptioun war relevant, quhilk is *factum*; ffor it is nocht contravertit with<sup>2</sup> my lord Advocat, that *Raptus Virginis*, Ravifcheing of wemen, *vel crimen Plagij*, as the taking of his Maiefteis frie lege, is capi-

<sup>1</sup> Trained; led away craftily, or by stratagem.  
doctrines laid down by the Lord Advocate.

<sup>2</sup> It is not controverted, even according to the



tall of the Law, and may be criminallie perfewit at his Maieftis Aduocattis instance; bot the queftioun in this judgement<sup>1</sup> is, quhidder gif this pannell haif committit ony of thir crymes, at the leift quhidder the famyn be relevantlie lybellit to infer the cryme cravet; ffor his lordfchip will nocht deny, that of the Law, to aither of thir crymes thair aucht to intervene *vim et violentiam*, and the remanent circumftances allegit be me ofbefoir, viz. *Abductio per violentiam*, *Deportatio de loco in locum clandestinè*, *Seclufio parentum*, quhairby nather of thame fould haif accels to the pairtie ravifchet, and detenit, and withaldin fra thair kyn and freindis, *quafi et tanquam in carcere*; fua that without thir circumftances concur in this caice, it can nather be *Raptus* nor *Plagium*; and con- fequentlie, thay can nocht pas to the knowlege of ane Affyfe thairfoir. As to the instances citet be my lord Aduocat, betuix *Dumbrek* and *Mr Alex<sup>r</sup> Gibfone*, nixt betuix vmq<sup>le</sup> *Thomas Maifter of Glammis* and *the Erles of Huntlie, Craufurd*, and *Bothuell*, thay militat nathing in this caice; ffor as to *Dumbrek*, he expreflie committit *crimen Plagii*, in taking of the Kingis Maieftis frie lege, quyetlie and clandestinlie, by<sup>2</sup> all his freindis knowlege, be plane violence and force, being accompaneit with ten or tuelf perfones in hofteill and weirfair maner, with wappones prohibeit to be borne or worne, tranfpoirting of him from place to place vnder nycht, debarring his freindis to haif acces to him, and be carieing him to the Castell of Harbottill, in England; fua that the pwneifchment inflictit vpon him was dew, accoirding<sup>3</sup> to the fact. As to the fecund instance, anent *the Maifter of Glames*, it lykwayis far les militatis in this caice, ffor it is not- tour, as my lord Justice, his Affeffouris,<sup>4</sup> and my lord Aduocat knowis rycht weill, that *the Erles of Huntlie, Craufurd*, and *Bothuell*, being banded againft the Kingis Maieftis authoritie, deprehendit *the faid Maifter of Glammis*, in the Kingis Maieftis high way, chaiffit him to the Hous of Kirkhill, and pat ffyre thairto, quhilk inferris *crimen Plagij* of the Law, and ane gritter puneifch- ment: And as to that part of the Dittay, beiring that the faid Adame was intyfet and feducet, that is nawayis relevant to infer ane cryme, ffor ffraud is nocht capitale, of<sup>5</sup> the Municipall Law of this realme, nor yit accoirding to<sup>6</sup> the practique of the fame: And as to the Lawis citet to infer the famyn to be *crimen capitale*, and speciallie the Law of the Maieftie, *Quon. Attach.*, I oppone<sup>7</sup> the daylie custome of this Judgement, the Municipall Law of this realme, and speciallie the Act of Parliament in anno 1612, ffor it is expreflie fet down in the Dittay, that the faid Adame Frenche come with the faid Williame Home out of the faid Mr Williame Boweis hous, the famyn can infer na Rapt; nocht only

<sup>1</sup> Court; tribunal.    <sup>2</sup> Without; against; beside.    <sup>3</sup> Corresponding; conformable.    <sup>4</sup> It was the uniform custom, in all cases of difficulty and interest, for several Members of the Privy Council to sit in judgment with the Justice, as Assessors. Their names are only occasionally inserted in the Record in remarkable Cases.    <sup>5</sup> According to.    <sup>6</sup> Corresponding with.    <sup>7</sup> Oppose.

for the argumentis, that he was, *sui juris*, past the age of xiiij yeiris, bot his being in companie with his kynsmen, can nocht infer ane Rapt, speciallie, quhair he is nocht detenit *per vim nec violentiam* fra the prefens of his freindis. And quhair as, my lord Aduocat affirmes the Mariage to haif bene clandestine, and sa, nocht lauchfull, the contrair is affirmit—it was nocht clandestine; becaus thair preceidit Proclamatioun of Bandis,<sup>1</sup> the mariage was maid publictly in the paroche Kirk, within the town quhair the parentis of the Gentilwoman had residence, off the speciall consent and assent of the said Adame; the said Williame Home being present at the time of the geving of his consent, and in companie with him, being his mother-brother. And sua, thair being nathing qualifeit in the subsumptioun of the Dittay to infer ony violence, the pannell can nocht pas to the knowlege of ane Assyse thairfoir: ffor as to thais wordis set down in the Dittay, that thai wald nocht suffer him to pas bak agane, thair is nathing product to instruct that point of the Dittay, nor na pairt thairof, tuicheing the allegit fact; ffor, be the Cowmone Law and diuerse Doctouris, sic as Julius Clarus, Baldus, Hostiensis, and remanent Doctouris treittand *de crimine Plagij vel Raptu Virginis*, thay conclud the samyn nawayis to be ane cryme quhairvpone ony pairtie may be accuset criminallie, except thair concur violence and violent deidis to that effect. This is cleir in the Cowmone Law, Digest. *de Incendio, Rapina, et Naufragio, &c.*; sua that the hail Doctouris and Cowmone Law concludis, that *nunquam fit Raptus sine vi et violentia. Igitur, &c.*

The Perfewaris repeatit thair former ansueris, with the hail argumentis proponit for verificatioun of the propositioun of the Summondis: and lykwayis repeatit the Summondis, and hail pairtis thairof, quhilkis ar relevantlie lybellit, as ane direct ansuer to the last argument proponit. And as to the consent of the said Adame, ansueris as ofbefoir, that ane fact capitall being committit, the pairtie aganis quhome the samyn is done may mak na<sup>2</sup> confessioun nor declaratioun to the prejudice ather of the Kingis Maiestie, or the pairtie interreit.<sup>3</sup> *Igitur, &c.*—To the quhilk it is ansuerit, that the pannell declairis, that as yet thai haif proponit na alledgeance vpone ony contrair Confessioun of the pairtie; bot gif ony sic allegeances he hes to propone, reserues the samyn to be proponit *suo loco*: And thairupoun askit instrumentis.

THE JUSTICE continewis Interlocutour vpone the allegeances foirsaidis, and ansueris maid thairto, to the morne, the nynt of November instant. The pairteis and Assyse wairnit, *apud Acta*: And Ordanet the pannell to find Cautioun for thair compeirance the morne, to the effect foirsaid.

The Laird of Eift Nisbet elder, become souertie for the entrie of Alexander Cranftoun of Burnecastell, vnder the panes contenit in the Actis of Parliament.

<sup>1</sup> Bans.<sup>2</sup> Is not entitled to make any confession, &c.<sup>3</sup> Interested.

—The said Alexander become cautione for the entrie of Eist Nisbet, Johnne Cranstoun, Williame Home, and Williame Moffet, the morne, vnder the panes, &c.

Nov. 9.—THE JUSTICE, befoir Interloquitour to be pronouncet be him in the matter, Ordanit the perfonen on pannell, and fiklyk the said *Sir Johnne Home of North Beruik, knycht*, perfewar, to find caution for keiping of his Maiesteis peace, in nocht trubilling and molesting of vtheris,<sup>1</sup> by way of deid, in thair bodeyis, landis, or guidis, vtherwayis nor by ordour of Law and justice, under the panes following, viz. The said *Laird of Eist Nisbet*, the said *Sir Johnne Home* of North Beruik, and *Alexander Cranstoun*, ilk ane of thame vnder the pane of fyve thousand merkis; and the saidis *Johnne Cranstoun* and *Williame Home* vnder the pane of I<sup>m</sup> (1000) merkis, for ather<sup>2</sup> of thame.

James Faufyde, younger of that ilk, become plege and fouertie for Sir Patrik Chirneyde; Johnne, Maister of Cranstoun, for Alex<sup>r</sup> Cranstoun; Alexander Chirneyde, younger of Eist Nisbet, for Johnne Cranstoun; and the said Alexander Cranstoun of Burne Castell, for Williame Home, that thair fall keip his Maiesteis peace, and that Sir Johnne Home of North Beruik, kny<sup>t</sup>, fall be harmles and skaithles of thame in his body, landis, possessiones, and guidis, and onnawayis<sup>3</sup> fall be molestit nor trubillit be thame or ony of thame thairintill, nor be na vtheris of thair causing, sending, hounding out, command, reffet, assistance, or rathabitoun, quhome thay may stop or lat,<sup>4</sup> directlie nor indirectlie, vtherwayis nor be ordour of Law and Justice, &c.

Sir George Home of Manderstoun, Johnne Home, younger of Aytoun, and Daud Home of Wedderburne, younger, become pleges and fouerteis, coniunctlie and feuerallie, for Sir Johnne Home of Northberuik, that Sir Patrik Chirneyde, &c. fall be harmeles and skaithles, &c.<sup>5</sup>

(Nov. 20.)—MY LORD ADUOCAT, befoir Interloquitour, declairis he will nocht insist any forder at this present, in perfute of the perfonen on pannell, for the crymes lybellit: And in respect of the haynoufnes of the fact, and evill preparatiue<sup>6</sup> and consequence quhilk may follow, desyres that caution may be tane of the defenderis for thair entrie, vpon a fyftene dayis wairning, to abyde tryell for the samyn, &c.—It is allegit be the pannell and thair prelocutouris, that in respect of the allegeances proponit, alsweill dilatour as peremptour in this cause, and of my Lord Aduocattis anfuers maid thairto, quhilk lyis at Interloquitour, his lordschip, as perfewer, can nocht be hard to reseill<sup>7</sup> fra this perfute; nather can the pannell be astricted to find caution, seing thay ar willing, vpoun my lord Justice Interlocutour, to defend thame selffis, as accoirdis of the Law: And in all humilitie abydis his lordschipis Interloquitour thairupoune.

<sup>1</sup> Each other.    <sup>2</sup> Each.    <sup>3</sup> In nowise.    <sup>4</sup> Hinder.    <sup>5</sup> In the same terms as above.  
<sup>6</sup> Precedent; example.    <sup>7</sup> Resile; draw back.

Mr Alex' Peiblis, as prelocutour for Adame Frenche, personallie present, produces ane Supplicatioun to my lord Justice, for his lordshipis informatioun in this caus, anent the said Adames passing away ffurth of Hadingtoun with the pannell, and that the samyn was of his awin frie will and consent; and desyret the samyn to be red, and to remane in proces; and takis instrumentis vpon the production thair of.—It is allegit be my lord Aduocat, that eftir his Declaratioun aboue writtin, that he desiftis fra this perfute, the persones on pannell, and far les the said Adame Frenche, quha is nawayis convenit, ather as persewar or defender in this matter, can be sufferit to produce ony informatioun or vther allegiance in this cause; nather aucht my lord Justice to admit the production thair of, eftir the Declaratour foirfaid.

The pannell desyret the Supplicatioun foirfaid to be red, befoir my Lord Justice geve any Interloquitour, quhidder my lord Aduocat may reseill *pure et simpliciter, vel pro loco et tempore*.—The Supplicatioun gevin vp agane to the pannell, at command of my lord Justice.

THE JUSTICE findis that my lord Aduocat may verrie weill desift fra this perfute and tak vp his proces, feing he is persewar of the caus; and that, nochtwithstanding of the alledgeance maid be the pannell in the contrair.

The pannell takis instrumentis of the production of the former Supplicatioun be Adame Frenche, and that the said Adame Frenche is personallie present, reddie to declair, baith be woird and writ, that he past away with his Mother-brother of his awin frie will and consent.—My lord Aduocat, in the contrair, fays the samyn fould nocht be admittit.

The parties find caution 'that thai fall compeir befoir the Justice, or his deputis, the thrid day of þe nixt Justice-air of the Scherefdome quhair thai duell ["Beruik"], or soner vpon xv dayis wairning, to vnderly the law for the crymes aboue specifit; vnder the panes contenit in the Actis of Parliament.'

### Slaughter.

Nov. 13.—ROBERT ROBERTSOUNE, seruitour to James Fawfyde, younger of that ilk.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Johnne Faufyde, fervand also to the said James Faufyde, be streking him in the bellie with ane knyfe, within the barne of Faufyde, vpon the tent day of November instant; quhair of, vpon the tuelf day of this instant moneth, he deceiffit.

PERSEWAR, James Faufyde, Younger of that ilk, as maister.

The pannell Confessis the cryme, and craves Godis and the parteis pardoun, and mercie for the samyn.

VERDICT. The Affyse, all in ane voce, be the mouthe of Johnne Hall in Prestoune, chancellor, ffaund the said Robert to be Culpable and conuict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

### Falset—Perjury.

Dec. 20.—ALEXANDER CUIK, Notter, Schereff clerk of Beruik.

Dilaittit of Falset, committit be him in his office of Notarie, in geving out tua feuerall extractis of ane Seafing, of tua feuerall daittis: And of Periurie, eftir he was solempnelie fuorne, in presens of the Lordis, to declair the veritie in the premissis.

### DITTAY against the Pannell.

FORSAMEKILL AS, it is expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, maid aganis false Notteris, and false periuret Witneffis, that gif ony Notter committis ffalset, and beis convict and fund giltie pairof, (he) fall be pwneift to the daithe: And siclyk, quhair ony Witnes depones ffalslie, fall lykwayis be pwneift, be pearceing of pair tungis, and escheiting of all pair moveabill guidis; and forder pwneischment to be inflictit in the persone of pe saidis ffals Witneffes, at the sicht of and discretion of pe Judge, accordring to the qualitie of pe fact: As pe saidis Lawis and Actis of Parliament in thame selfis proportis. Nochtwithstanding quhairof, it is of veritie that pe said *Alexander Cuik*, being imployit as Notter be *Johnne Home of Slegden* for geving Seafing to him of pe Landis of Eifter Pleulandis, giftet and disponit to him be our Souerane lord, as vaikand<sup>1</sup> in his Maiesteis handis be pe sforfaltour of vmq<sup>1c</sup> *Frances Erle Bothuell*; and that, conforme to ane Precept direct furth of pe Chancellarie to Adame Cokburne, Schereff depute of pe Scherefdome of Beruik for pe tyme, vnder pe Quarter Seill, for geving Seafing to pe said Johnne Home pairof; and to extract and draw furth to him ane Instrumēt pairupoun; the said Alexander maift ffalslie and erroneousslie, for his awin gane and lucre, extractit out of his Prothogoll<sup>2</sup> tua feuerall Extractis of pe foirsaidis Instrumētis of Seafing, of tua dyuerse daittis, the ane of pe dait pe xxij of Februar 1592, and the vper in anno 1593: As pe saidis tua Extractis producet, vnder pe saidis Alexanderis subscriptioun, beiris. Lyk as, in regaird of pe said ffalse Extract of pe foirsaid Seafing, ane actioun of Improbatioun being intentit, and as zit depending befoir pe Lordis of Seffioun, at pe instance of his Maiesteis Aduocat, and *Walter, Lord of Balcleuch*, as heritour of pe Lordschip and barrony of Haillis, quhairof pe saidis landis of Eifter Pleulandis ar pairt and pertinent, and lykwayis at pe instance of *Alexander Hailie*, burges of Edr, as takisman pairof, aganis pe said *Johnne Home*, sfor improving of pe foirsaid Instrumēt of Seafing, extractit be pe said *Alexander Cuik*, and gevin to pe said Johnne Home of the saidis Landis; and pe said Alexander being dyuerse tymes summond in pe said actioun of Improbatioun, to haif gevin Testimonie and declaratioun pairanent; and, in end, compeirand befoir pe saidis Lordis, vpon the tuelf day of December instant, and being examinat in pair lordschipis haill presens, anent pe trew dait of pe foirsaid Instrumēt of Seafing, and being solempnelie fuorne to declair pe veritie pairin, the said *Alexander Cuik* than affirmet, constantlie, that pe trew dait of pe said Seafing was vpon pe xxij day of Februar, 1591, to the quhilk he was Notter; and abaid at pe Extract of pe Instrumēt gevin furth be him to pe said Johnne Home pairupoun; and pairwith declairit that pe vther Extract of pe same Seafing, drawin furth be him to *Alexander Hailie*, beiring dait pe xxij of Februar, 1<sup>m</sup>.Vc.

<sup>1</sup> Lat. *vacare*. Fr. *vaquer*.

<sup>2</sup> Protocol-book—an official Register ordained to be kept by every Notary.

fourcoir threttene, was ffalfe; AND pe said Alex<sup>r</sup> being paireftir, vpone the xvij and xix dayis of pis instant moneth, re-examinat, in pe saidis Lordis prefens, and folempnelie fuorne to declair pe verritie, concerning pe dait of pe saidis tua Extractis, he vareit fra his former Depofitiones, maift impudentlie: Lyk as, his Prothogoll buik was viciat be him, in pe dait foirfaid, fcoiring out ‘ primo,’ and putting in ‘ tertio;’ and pairefter fcoiring furth ‘ tertio,’ and wryting agane ‘ primo.’ Qubairin he hes declairit him felf to be ane ffals and infamous Notter; and be his contrair Depofitiones, maid in his examinatioun, to be ane manifft ffals and menfuorne Witnes: Lyk as, pe saidis Lordis of Counfell, be pair Decreit, gevin vpone his tryell and Examinatioun, hes fund pe said Alex<sup>r</sup> to be ane ffals Notter and manifft Periuret Witnes: As the Extract paiof, vnder pe fubfcription of *my Lord Clerk of Register*, daitit pe xix day of pis instant, togidder with his Depofitiones, maid in prefens of pe saidis Lordis, beiris. LYK AS, for verifeing of his ffalset aboue writtin, pair was ane Band maid be him to the said *Alexander Haitlie*, quhairin he obleift him felf to ftand and abyde at the Inftrument extractit be him, daitit pe 23 of Februar, 1593, he procureing his Maiefteis Remiffioun for pe famyn. FOR pe quhilk ffalset and Periurie, committit be pe said Alexander, he aucht and fould be pwneift to pe daith, in example of vtheris.

## ASSISA.

James Levingftoun of Jerifwoid, Jo<sup>n</sup> Keir, mercheand burges, Ed<sup>r</sup>, Thomas Mulliekyn, mercheand  
George Logane of Bonytoun, Patrik Somervell, mercheand burges of Edinburghe,  
James Nafmyth of Poffo, burges thair, James Halyburtoun, mercheand  
Joseph Douglas of Pompharftoun, Robert Halyburtoun, mercheand burges thair,  
Johnne Gairdin, merchand burges burges thair, Jo<sup>n</sup> Mitchelhill, mercheand burges  
of Edinburghe, Jo<sup>n</sup> Keir, skipper, burges thair, thair,  
James Douglas in Lugtoun, Johnne Reid, indueller in Leyth, Rob. Moffett, merch<sup>d</sup> burges thair.

The Aduocat takis instrumentis of the fweiring of the Affyfe: And for verifeing of the Dittay, producet the tua Inftrumentis of Seafing, vnder the pannellis fubfcription, baith to ane effect, of dyuerfe daittis: Producet lykwayis, the pannellis feuerall Miffiue Letteris, direct to *Alexander Haitlie*, beirand, that the Seafing extractit to him, of the dait the xxij of Februar, I<sup>m</sup>.V<sup>c</sup>. fourcoir threttene, was the trew Extract, and that he wald abyd thairat: Producet alfo, dyuerfe Letteris, writtin be the pannell to *Williame Ker*, beirand that the Seafing extractit to him, of the dait the xxij of Februar I<sup>m</sup>.V<sup>c</sup>. fourcoir ellevin, was the trew Extract, and that he wald abyde thairat: And ficlyk, producet ane Letter, direct be him to the Lordis of Seffion, being feik for the tyme, all writtin and fubfcriuit with his hand, teftefeing the said Extract gevin to the said *Williame Ker*, daitit in anno 1591, to be the only trew Extract: Producet alfo, the pannellis Depofitiones, maid be him in prefens of the Lordis, beiring the Confeffioun of the Extract of the Seafing in anno 1591, to be the trew Extract, and the vther, of the dait 1593, to be ffals: And vpone his Re-examinatioun, beiring the Seafing gevin in anno 1593 to be trew, and the vther in anno 1591 to be ffals: Togidder alfo with his Prothogoll-buik, alfo producet, quhair it is twyfe mendit in the dait of the said Seafing. And laft, producet the Lordis Decreit, finding the pannell to be ane ffalfe Notter, and ane manifft

periuret Witnes. And vpon the production thair of, askit instrumentis; as also vpon the pannellis Judiciall Confessioun of the said ffalset.

Quhilk crymes he Confessit, judiciallie, in thair presens and audience, to be of veritie; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouthe and declaratioun of the said George Logane of Bonytoun, chancellor, ffand, pronuncet, and declairit the said Alexander Cuik to be ffylit, culpable, and convict of the saidis crymes, specifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed<sup>r</sup>, and thair, as ane ffalse Notter and Periuret Witnes, to be Hangit vpon ane gibbet, quhill he be deid; and all his moveabill guidis to be escheit, &c.

[*Sir Williame Heart of Prestoun, Justice-Depute.*

ASSESSOURIS TO THE JUSTICE, nominat be the Lordis of Secreit Counsell, conforme to thair lordschip Actis of Counsell, daitit the xx of Februar, 1617.

Sir Richard Cokburne of Clerkingtoun, kny <sup>t</sup> ;	Sir Alexander Drummond of Meidhope, kny <sup>t</sup> ;
Lord Previe feill;	Sir Andro Hammiltoun of Reidhous, kny <sup>t</sup> ; and
Sir Williame Levingtoun of Killythe, kny <sup>t</sup> ;	Sir James Skene of Curriehill, kny <sup>t</sup> . <sup>1</sup> ]

**Usurping his Majesty's Authority—Murder under Colour of Law.**

Feb. 26, 1617.—GEORGE GORDOUN of Geicht.

Dilaitit of Vfurpation of our fouerane lordis autoritie, in the violent and vnlauchfull taking of vmq<sup>le</sup> Frances Hay, sone to vmq<sup>le</sup> George Hay of Ardlethame, ffurth of the Place of Logyruif, pertening to Williame Hay, ffear of Brunthillis, his brother-in-law, vpon the xvij day of December, 1615 yeiris; bringing him as ane captiue and prissoner to the burgh of Aberdene; keiping and detening him in captiuitie, in a priuat hous or ludgeing of the said Laird of Geicht, within the Gallowgait, callit 'the Bony wyfe's Inn,' for the space of ffourtie aucht houris, or thairby, &c.<sup>2</sup>

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord, for his Maiesteis intreis; Mariorie Keith, as mother to the said vmq<sup>le</sup> Frances Hay.

PRELOCUTORIS in defence, The Laird of Clwny, (Alexander Gordoun,) the Laird of Strathdoun, Mr Thomas Nicolfone, elder, Mr Alexander Peibles, Mr Robert Fairlie, Aduocattis.

The JUSTICE and ASSESSOURIS, with the advyse of ather pairtie, alfweill persewar as defenderis, continewis this dyet to Fryday nixt, the last of this instant. The persones of Assyse wairnet *apud Acta*; ilk persone vnder the pane of thre hundreth merkis.

Alexander Gordoun of Clwny become fouertie for the entrie of the said Laird of Geicht, &c., vnder the pane of ffyve thowfeand merkis money.

<sup>1</sup> All ordinary Lords of Session, with the exception of Sir Alexander Drummond, who was an Extraordinary Lord. <sup>2</sup> See Aug. 28, 1616, where the Dittay is inserted. The great importance of this remarkable Case induces the Editor to preserve all the useful information which is to be gathered from the Records.

[*Sir Williame Heart and Mr Alexander Coluile, Justice-Deputes.*]

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>; Mariorie Keith, as mother; George Hay, as brother to the defunct; Williame Hay, ffear of Brunthillis, George Hay, his brother.

PRELOCUTOURIS in perfute and fortificatioun thairof, Frances Erle of Errole, Laurence lord Oliphant, My Lord Zester, Alexander Keith of Ludquharne.

PRELOCUTOURIS in defence, George Marqueis of Huntlie, My lord of Eglingtoun, My lord Viscount of Lauderdaill, My lord Ochiltrie, Mr Thomas Nicolfoune, and Mr Alexander Peiblis.

Feb. 28.—THE lord Aduocat producet his Maiesteis WARRANT, anent the perfute of the pannell for the crymes contenit in the Summondis, daitit at Quhytehall, the 17 of ffebruare instant; and desyret the samyn to remane in proces.

Eftir reiding of the Dittay, it is allegit be the pannell and his prelocutouris, that thair is dyuerse substantiall heidis contenit thairintill, quhilkis ar nawayis infert in the coppie gevin to thame be the Messinger executour of the Summondis; and producet the coppie, subscryuit be the Messinger, for verificatioun thairof: And in respect that na autentik coppie is delyuerit, desyres ane continuatioun of this dyet to the morne, to the effect thai may be advyset with the Dittay, and vpone thair Defenffis to be proponit be thame aganis the samyn.—It is anfuert be my lord Aduocat, that the allegeance foirsaid aucht to be repellit, and na continuatioun sould be grantit, in respect of the Summondis and Executiones thairof, producet, beiring ane autentik coppie to be delyuerit to the pannell: And forder, thair was na necessitie to charge the pannell, or to geve him ane coppie of the Summondis, bot only to his cautioneris, quha become souertie for his entrie to vnderly the law for the crymes lybellit.

THE Justice Repellis the allegeance; in respect of my lord Aduocatis anfuert.

Thaireftir the pannell, nochtwithstanding of my lord Justice interlocutour, desyres ane convenient tyme to be grantit to thame to reid and confider the Summondis producet; and that thai may haif libertie to remoue thame selffis apairt, to aduyse thairupoun.—Quhilk the Justice grantit; and ordanit the Summondis to be gevin vp to the pannellis prelocutouris, to be advyset thairupoune.

IT is allegit be Mr Thomas Nicolfoun, for the pairt of the pannell, that he did na wrang in taking of ffrances Hay *privata autoritate*; becaus it is of verritie, that vpone Fryday, the fyftene day of December, immediatlie preceeding the day of his allegit taking, quhilk was vpone the xvij day of the said month, the said vmq<sup>le</sup> *Frances Hay* had flane vmq<sup>le</sup> *Adame Gordoun*, brother to the pannell, for the quhilk he fled; and sa, the said Laird of Geicht, being the avenger of bluid, viz. the eldest brother of the said Adame, it was lauchfull to him to ferche and feik the malefactour, to the effect he mycht be presentit to the Justice: Lyk as, be Act of Parliament, maid in the dayis of King James the first, of worthie memorie, Parliamento sexto, cap. 89, the Scheref and hail cuntrie is



commandit to ferche and feik the man-slayer, being certifeit of the Slauchter; and sa, mekill mair mycht the avenger of bluid, be doing na wrang in the taking: Lyk as, eftir the taking of him, he presentit him to the Schereff but<sup>1</sup> ony hurt of sence, or iniurie done to him: And that it is lauchfull to ony of the people, alsweill as to the avenger of bluid, it is cleir, be ane verrie trew example; ffor gif ane Theif steill ony mannis guidis, it is lauchfull to the persone fra quhome the guidis ar stowin, to convene his kyn and freindis, and raise the cuntrie, and persew the Theiff sa lang as he is *in fuga*, ay and quhill he apprehend him, or put him out of the cuntrie; and this he may do but ony Warrant of ane Magistrat; as is cleir and nottour be the daylie practique of the cuntrie: *Ergo*, in this cryme of Slauchter, quhilk is of far gritter importance than steilling of guidis, it was lauchfull to ony of the people, *multo magis* the avenger of bluid, to apprehend the malefactour, and delyuer him to the Justice: And as it was lauchfull to the pannell to ferche, feik, tak, and apprehend the malefactour, and delyuer him to the Justice, evin sa it was lauchfull to him to do the samyn with conuening of his freindis, (nawayis granting he did the samyn,) and with quhatfumeuir airmes; ffor vtherwayis, this absurditie fould follow, that the malefactour fould escaip, and the innocent persone fould be flane; in sa far as, gif the innocent persone fall preife to apprehend the malefactour airmet with hagbutis and pistolettis, namelie, haifing the benefit of ane house, it war easie for him to sla sic as socht him; and sa he fould nocht be apprehendit. *Secundo*, for this caus he did na wrang, becaus it is an reule of the Law, that *concesso aliquo extremo, conceduntur omnia media, per que pervenitur ad illud*; than it is subsumet, gif it was lauchfull to tak the man-slayer, as is afoir provin, *ergo*, it was lauchfull to vse all the midiffis<sup>2</sup> be the quhilk he fould be taken, baith of airmour and vtherwayis.

It is anfuert be my lord Aduocat, to the *first* pairt, anent the avenger of bluid, thair is nather Law nor resson can mak *the Laird of Geicht* the avenger of bluid, bot only the Kingis Maiestie, his Justice, and vtheris haifing power and autoritie of his Maiestie. As for the argument proponit vpon the Act of Parliament maid in the dayis of King James the first, the allegeance foundit thairupoun is altogidder irrelevant, impertinent, and altogidder repugnant and disconforme to the Act; be the quhilk, it is statute, that the Man-slayer fould be persewit be the Schereff, and the cuntrie to concur; and gif the malefactour be tane be the Schereff, he fould be put in sure firmance, quhill<sup>3</sup> the Law be done vpon him; and gif he be tane reid-hand,<sup>4</sup> to be done with that sone.<sup>5</sup> It is nevir allegit that the Schereff followit the allegit malefactour, nather that he was

<sup>1</sup> Without.  
 commission of the fact.

<sup>2</sup> Means.

<sup>3</sup> Until.

<sup>4</sup> With the red or bloody hand; instantly after

<sup>5</sup> Sun; day; before sunset of that day.

tane with reid-hand ; sua that the allegiance is altogether irrelevant, quhilk is founded vpon that Act, as direct repugnant thairto : And as to that pairt of the allegiance, beirand that the Laird of Geicht tuik and apprehendit the allegit malefactour, that alledgeance contenis ane grit abfurditie, haifing nather Warrant, grund, nor fundament, nather of the Lawis of the realme, nor of the Ciuile Law ; feing, be the Lawis of this realme, the Schereff is appointit to follow the Man-slayer ; and be the Ciuile Law, it is nocht leifum<sup>1</sup> to ony privat man to tak and apprehend ony perfone, without ane Commiffioun and Warrant frome the Magiftrat : *Leg. Neminem, Cod. de exhibendis Reis, lib. 9, Tit. 3, Leg. vltima, Neminem exhibendum esse in iudicio precipimus, nisi de cuius exhibitione Iudex pronunciauerit.* Item, Bartolus, ad dictam Legem : Et Domaderius, cap. 15, num. 40, idem afferit : Et toto titulo, Codice de Plagiariis : Et lege Raptores, de Episcopis et Clericis : Item, Julius Clarus, § finali quest. 31, in principio : Be the quhilkis premisses, it is cleir, that ane privat perfone, and speciallie the pairtie, had na power to tak the allegit malefactour. As to the argument proponit vpon the example of the profecutioun and following of ane Theif, it is altogidder impertinent to this purpois ; feing the Theif is followit, *in ipso actu*, immediatlie eftir the committing of the cryme, with the guidis and geir of the followeris ; quhilk is permittit be the Lawis of this realme, be the Actis of Parliament maid thairanent, and the vniuerfall confuetude of the same, it is lauchfull to ony man, in following of his awin guidis and geir, to apprehend the Thevis ; and albeit the Theif be flane in the following, the Slayer is maid frie be the lawis of the realme. It is abfurditie to think that the Schereff him selff may follow ony man committer of the Slauchter, and instantlie put handis in him, at his awin hand, *nisi in flagranti crimine*, quhilk is nocht allegit in this caice ; and albeit he war tane *in flagranti crimine*, or reid-hand, as the Act of Parliament beiris, the Law ought to be done vpon him within that sone. And quhair it was allegit, that gif it war lauchfull to the Laird of Geicht to perfew or tak him, it was lauchfull to tak him with convocatioun of our fouerane lordis legis, and with wapponis forbiddin ; it is anfuerit, that the first propositioun is altogidder abfurd, in respect of the first anfuer maid be the perfewaris ; and consequentlie, the taking with convocatioun of his ffreindis, and forbiddin wappones, feing he had na authoritie, nather to tak, nor beir forbidden wapponis : In respect quhair of, the first allegiance, and hail argumentis thairin contenit, aucht to be repellit.

It is duplyit for the pannell, that his allegiance proponit ofbefoir standis verrie relevant, nochtwithstanding of ony anfuer maid thairto ; and quhair the samyn is querrellit,<sup>2</sup> that thair is no law that makis the avenger of bluid, bot

<sup>1</sup> Lawful.<sup>2</sup> Disputed ; argued.

the famyn pertenis only to the Kingis Maieftie, it is anfuerit, that the pannell makis no queftioun thairin *quo ad executionem*; bot the Law callis him the ane avenger of bluid, *quia habet jus profequendi fecundum formam juris*. As to that pairt, alledgeing the difconformitie betuix the allegeance and the Act of Parliament, it is duplyit, that thai ar verrie conforme; becaus be baith the Actis allegit, the Kingis haill legis ar commandit to concur and affift the taking of the malefactour with the Scheref, *ergo*, thair was na wrang done, feing the Schereff was in ferching; and in refpect that he could nocht ferche in all pairtis; and the notorietie of the fact, and the malieftouris fleing, being *in fuga*, and fa taking the cryme vpone him, quhatfoeuer was done be the pannell man be eftemit as concurring with the Sher e speciallie, haifing refpect, that the pannell tuik the malefactour but ony wrang or hurt of his body, or iniurie done to him, and referuit him faif but ony iniurie, quhill he was presentit to the Schereff, &c.<sup>1</sup>

THE JUSTICE, with advyfe of his Affefforis, Continewis all forder difputatioun in this mater to the morne, the firft of March, 1617.—The Laird of Clwny again becomes his furety.

[*Mr Alexander Coluile, Justice-Depute.*]

DECLINATURE OF THE JUDGE.

Mar. 1.—IT is allegit be the pannell, that Mr Alexander Coluile can nocht be Judge in this caufe, in refpect he is fourtis of kyn to the Countes of Errole; my Lord of Arrole, hir husband, being perfewar, viz. The faid Mr Alex' Coluiles grandame was ane dochter of the Houfe of Lochlevin, quha is ane; the faid Mr Alexanderis guidfchir, tua; the faid Mr Alexanderis father, thre; and him felf the fourt: And referris the probatioun of this rekning to Mr Alexanderis awin ayth of verritie.—It is anfuerit be my lord Aduocat, that this Declinatour can nocht be reffaut this day, becaus Mr Alexander Coluile, being Justice-depute in this Judgement, quhilk is ane ordiner and Supreme Jurifdiction, na declinatour aucht to be proponit aganis him; at the leift, na kinreid<sup>2</sup> fould be ony caus to declyne him. *Secundo*, the declinatour can nocht now be reffaut, becaus the Court being fenfit yefterday, he fitting as Judge, the perfewaris and defenderis compeirand with thair prelocutouris, thair is ane Interlocutour pronuncet in this caus; and eftir pronunceing thairof, ane peremptour exceptioun (was) proponit be the pannell aganis ane member of the Dittay; eftir the quhilk, ane declinatour can nocht be proponit.

To the quhilk it is anfuerit be the pannell, that the declinatour exceptioun

<sup>1</sup> It has not been deemed expedient to insert the whole of the arguments of the parties in this keenly contested case, which are extremely prolix, and occupy above sixty pages of the Record. The opening of the pleadings has been given as a specimen of the procedure of the Court at this early period.

<sup>2</sup> No objection on the ground of kindred or relationship.

standis relevant, nochtwithstanding of my lord Aduocattis twa answers; namelie, the *ffirst* beirand, that Mr Alexander is ane Ordiner Judge of this Court, creat; electit, and fuorne; that pairt of the answere *non relevat*; becaus the creatioun and admissioun of Mr Alexander Coluile takis nocht away the pannellis exceptioun declinatour, *ex superveniente causa*, vpon consanguinitie of bluid to the persewar; ffor than it sould follow, that in an actioun persewit befor the Lordis of Sessioun, quha are supreme Judges of the land in ciuile cauffis, at the instance of ane persone, quhais brother is ane of the Lordis of Sessioun, it sould follow that he sould be Judge to his brother, persewer in the caus persewit be him aganis ane vther, quhilk can nocht be: As to the *secund* member of the answere, beirand, that the pannell can nocht be hard to propone this Declinatour this day, be reffone that in ane Court haldin yisterday in the samyn caus, Mr Alexander sat as Judge, befor quhome the pannell proponit dyuerse exceptiones dilatour and peremptour, aftir the proponing quhairof, the pannell can nocht be hard to propone ony exceptioun declinatour, be reffone that ane exceptioun declinatour is the first exceptioun sould be proponit in judgement; —to the quhilk it is answereit, that nochtwithstanding of the said secund answere, the exceptioun declinatour standis relevant aganis the said Mr Alexander Coluile, be reffone thair was ane sufficient judgment and judicatorie establischet yisterday by<sup>1</sup> the said Mr Alexander, to wit, Sir Williame Heart, ordiner Justice, quha sat in judgement, and pronuncet Interloquitour in this caus; sa that this exceptioun, gif it had bene proponit yisterday, could nocht be respectit, becaus the Judgement had bene ane perfyte Judgment without him, quhilk is nocht this day in this caice; and sua, be the presens yisterday of the said Sir Williame Heart, and his absence this day, the caice is alterit: In respect quhairof, the exceptioun standis relevant, nochtwithstanding of the answere. And forder, quhair it is answereit, that Mr Alexander Coluile is Justice-generall, *in criminalibus*, thair can no exceptioun of consanguinitie be proponit aganis him as depute, it has nather Law to sustene the answere, and it is aganis the daylie practique; ffor thair is na Judge in Scotland that hes that priuilege to sit *in causa consanguinei*, bot only the Lordis of Sessioun; quhilk is done of necessitie, for vtherwayis thair will be no judgement thair, quhilk is nocht in this caice,—ffor the removeing of ane only Judge may be suppleit be the fitting of ane vther, *vbi non est penuria*: And this was practizet in the grittest pannell that was in our dayis, betuix the Lairdis of Caddell and Ardkinglas, for the slauchter of the Laird of Caddell; in the quhilk, the Justice-depute was set,<sup>2</sup> as being depute to the Erle of Ergyle, quha bakit<sup>3</sup> the persute; lyk as, the Kingis Maiestie haveing chofin dyuerse Judges *successiué* eftir vtheris, thay war all declynit, pairtlie vpon consanguinitie with the Erle of Ergyle, and pairtlie as being pensioneris to sic as assistit.

<sup>1</sup> *Forbye*; besides; independent of.<sup>2</sup> Declined.<sup>3</sup> Backed; countenanced; supported.

the perfute; and namelie, Mr Thomas Henderfoun, Commiffar, was fet, becaus he was within greis<sup>1</sup>-defendant with the Hous of Bafs; and Mr Thomas Nicolfoun, as pensioner to my Lord Ogilvie, quha fortifeit the perfute.

It is allegit be the perfewaris, that the declinatour aucht nawayis to be reffaut for the refones proponit of befoir; and speciallie, that this Court is a Supreame Court *in suo genere, viz. in criminalibus*, and that the said Mr Alexander Coluile hes-alreddie fittin and voittit in this caufe, eftir the proponing of dilatour and peremptour exceptiones thairin, na declinatour exceptioun being proponit aganis him: And quhair it is allegit be Mr Alexander Peibles, that the Lordis of Seffioun will be declynit, viz. ane brother may nocht judge in ane vther brotheris caus, nor the fone in the fatheris caus, *et e contra*; that is of verritie, in respect of ane speciall Act of Parliament maid thairanent; but in all vther cauffis, thair is na exceptioun, nather of affinitie nor confaguinitie, that will declyne ony of the Lordis of Seffioun. As to the practique allegit concerning *Arkinglas* proces, that aucht nawayis to be respectit in this Judgement, becaus the Justice Generall was pairtie perfewer, and affistit the perfute, and sa nane of his deputis could fit; bot we ar nocht heir in that caice.

THE JUSTICE, with advyse of his Assessoris, continewis Interloquitour vpon the allegeances foirfaidis, and anfueris maid thairto, anent the declinatour proponit aganis him, to Tyfday nixt.—The Assyse wairnit *apud Acta* for thair compeirance the said day, ilk persone vnder the pane of ffoure hundreth merkis.

DECLINATURE of two of the Assessors.

Mar. 4.—IT is allegit be my lord Aduocat, that my Lord of Meidhoip can nocht be Assessor to the Justice in this caus, in respect my Lord Marqueis of Huntlie, and my Lord of Meidhopes wyfe, ar within greis-defendant, viz.: My Lord Marqueis is ane; his Lordschipis mother, the Countes of Huntlie, tua; and hir father, James Duik of Chattellerault, third; on the ane fyde: And the Bischope of St Androis, brother to the Duik, ane; the Laird of Blair, his fone, tua; and my Lord of Meidhopes wyfe, the Laird of Blairis dochter, the third; on the vther fyde. In respect quhair of, he can nocht be Assessor.

It is lykwayis allegit be my Lord Aduocat aganis Sir Andro Hammiltoun of Reidhous, that his lordschip can nocht be Assessor to the Justice in this caufe; because my Lord Marques and he ar ferdis of kyn, and sa within greis-defendant, viz.: my Lord Marqueis is ane; his Lordschipis mother, the Countes of Huntlie, tua; James, Duik of Chattellerault, hir father, thred; and Beatoun, the Duikis mother, quha was sifter to the Laird of Creiche, fourt; on the first pairt:—And siclyk, the Laird of Creiche-Beatoun, brother to the Duikis mother, ane; the Lady Balcleuch, dochter to the said Laird of Creich, tua; my Lord of Reidhouse mother, the said Lady Balcleuches dochter, thrid; and my Lord of

<sup>1</sup> Certain degrees of near relationship, called *degrees-defendant*.

Reidhous, him self the fourt. In respect of the quhilk rekning, the veritie quhair of is sufficientlie knawin to my Lord him self, he can nocht be Assessor in this cause.—It is answerit be Mr Thomas Nicolson, as prelocutor for the pannel, that he can nocht be bund to geve ane answer to the tua allegiances foirsaidis, foundit vpon the declinatour of the tua Assessouris; becaus in the last Court haldin on Setterday, the first of this instant moneth of Marche, thair was ane Declinatour exceptioun proponit be the pannel aganis the Justice him self, quhy he could nocht sit as Judge in this cause, viz., that he was within greis-defendant to the Countess of Errole; my Lord of Errole, hir husband, being ane persewar. To the quhilk declinatour, dyverse answeris, dupleis, and tripleis war proponit, quhilk as yet ar nocht discussit, bot the Judge continewit Interloquitour vpon the said exceptioun-declinatour to this day: And thairfoir, *ante omnia*, befor ony alledgeance may be had ather be persewer or defender, Interloquitour man<sup>1</sup> be first pronuncet vpon the said alledgeance, conforme to the ordour of the proces; quhilk man be done of necessitie; for, gif the Justice find the declinatour relevant, quhilk will be provin be his awin aith of veritie, than consequentlie he can nocht sit as ane Judge; and gif he be removet as Judge incompetent, he can nocht pronounce Interloquitour in the allegiances proponit aganis my Lord of Meidhoip and my Lord of Reidhouse as Assessouris, quhidder thay may be Assessouris or nocht, *qui vbi non est Judex, ibi nec Assessor, nec processus, nec sententia interloquutoria, litiscontestatio, nec sententia definitiua*: And thairfoir, quhill first it be pronuncet vpon the foirsaid declinatour proponit aganis the Judge him self, thair can na alledgeance be proponit or discussit aganis the Assessouris.

It is answerit be my lord Aduocat, as of befor, that the said Declinatour aganis the Judge, as Justice-depute, can nocht be reslavit, in respect of the estait of the proces.

THE Justice continewis the dyet, and Interloquitour vpon the exceptiones-declinatour aboue written, to Fryday nixt, the sevint of Marche instant: And Ordanis Cautioun to be of new fund be the pannel for his entrie that day, to vnderly (the Law) for the said cryme, vnder the pane of ffyve thousand merkis.

The Assyse wairnit thairto, *apud Acta*, ilk persone vnder the pane of ffyve hundreth pundis money.

[*Mr James Bannatyne and Mr Alexander Colville.*]

COMPEIRIT judiciallie Williame Hay, seruitour to my lord Erle of Errole, and producet ane Commiffioun of Justiciarie, vnder his Maiestis Caschet<sup>2</sup> and Court signet, subscriuit be my Lord Chancellor, my Lord of Mar thesaurer, and

<sup>1</sup> Must. <sup>2</sup> A silver stamp, bearing an exact *fac-simile* of the King's signature, invented for the purpose of abridging labour to the King, whose subscription is required to so many documents. It is still in use, and is affixed to certain writings not requiring his Majesty's 'sign-manual.'

my lord Marqueis of Hammiltoun ; quhairby Mr James Bannatyne of Newtyld is constitute his Maiefteis Justice be Commiffioun. As also producet thairwith ane Act of Counfall, beirand the faid Mr James acceptatioun of the faid Commiffioun of Justiciarie and office thairof, and geving his ayth in thair lordschipis prefens, for his faithfull difcharge of the faid office. Of the quhilk Commiffioun and Act of acceptatioun and creatioun, the tennour followis :

*COMMISSION in favour of Mr James Bannatyne of Newtyld.*

JAMES R.

JAMES, be the grace of God, King of Grit Britane, France, and Ireland, defender of pe faithe. To all and findrie our legis and subiectis quhome it effeiris, to quhais knowlege thir our letteris fall cum, greting. FORSAMKIL AS George Gordoun of Geicht, being callit and convenit befoir our Justice, in our Tolbuthe of Edinburghe, to haif vnderlyne pe law for pe taking, detening, and executioun of vmq<sup>le</sup> Frances Hay, and for beiring, weiring, and schaiting of hagbutis and pistolettis, and for pe perfute and invasioun, hurting, wounding, and mutilatioun of the thre brether of Brunthillis ; in maner, and at pe tyme specifeit and contenit in the Criminall Letteris direct pairupoun : And dyuerse dyettis being keipit to this effect ; in end, the matter hes resfaut ane delay and continuatioun, by the age, infirmitie, and feiknes of Sir Williame Heart, quho may nocht attend pairupoun ; and by ane declinatour proponit aganis Mr Williame Coluile, colligue to pe faid Sir Williame, in the office of Justiciarie, fua that now the delay and hinder of Justice proceidis vpon the want of ane vnsuspect Judge. QUHAIRFORE, We, with advyse of the Lordis of our Secretit Counfall, haif maid and constitute our louit *Mr James Bannatyne of Newtyld*, oure Justice in that pairt, to the effect vnderwritten ; Geveand, grantand, and committand to him our full power and commiffioun, expres bidding, and charge, to vse and exerce the office of our Justice in all and findrie thingis concerning the Tryell of pe faid George Gordoun of Geicht, vpon the perticular crymes and pointis of Dittay specifeit and contenit in pe Criminall Letteris raifet aganis him. And for this effect, to fence, hald, and continew Justice Courtis, ane or ma, within the Tolbutth of our burgh of Edinburgh, fuitis to mak be callit, absentis to amerchiat, and to creat officeris and memberis of Court neidfull, if neid beis ; and in the saidis Courtis the faid George to call, be Dittay to accuse, and him to the knowlege of ane Assyse to put ; and as he fall happin to be fund culpable or innocent of pe crymes contenit in the saidis Criminall Letteris, or ony of thame, to caus Justice be miniftrat vpon him, conforme to pe lawis of our realme ; Assyffis neidfull to this effect, ilk perfone vnder fuche panes as fall be thocht meit, to summond, wairne, chuse, and caus be fuorne, and generallie all vper thingis to do, exerce, and vse, quhilkis for executioun of pis our Commiffioun, ar requisite and necessar ; ferme and stable halding, and for to hald all and quhatfoeur thingis fall be lauchfullie done heirin. GEVIN vnder our signet, Att Edinburghe, pe fourt day of Marche, and of our regne pe xiiij and fiftie zeiris, 1617.

AL. CANCELL<sup>r</sup>. AL. MAR. HAMILTON.

APUD EDINBURGHE, *quarto die mensis Marcij, anno domini millesimo sexcentesimo decimo septimo*,  
Red, past, voittit, and allowit. J. PRYMOIS.

*ACT of Acceptation by Mr James Bannatyne.*

APUD Ed<sup>r</sup>, *quarto die mensis Marcij*, 1617. The quhilk day *Mr James Bannatyne of Newtyld*, being maid and constitute our fouerane lordis Justice, for trying of George Gordoun of Geicht, vpon the crymes specifeit and contenit in the Criminall Letteris raifit aganis him, at the instance of the mother, broper, and freindis of vmq<sup>le</sup> Frances Hay, and at the instance of the brether of Brunthill, and of our fouerane lordis Aduocat, for his hienes intreis ; as in the Commiffioun maid to the faid Mr James pairupoun, of the dait of thir presentis, at lenth is contenit. The faid Mr James compeirit personallie, befoir the Lordis of Secretit Counfall, Acceptit the faid Commiffioun vpon him, and gave his aithe

that he fall discharge the said Commissioun vpriochtie and faithfullie, accoirding to his knowlege; as he will anfuere to God and the Kingis Maiestie pairapoun.

*Extractum de libris Actorum Secreti Consilij. f. d. n. Regis, per me Jacobum Prymrois Clericum ejusdem, sub meis signo et subscriptione manualibus.* JACOBUS PRYMROIS.

[*Mr James Bannatyne and Mr Alexander Coluile.*]

Mar. 7.—THE Justice continewis this matter to the morne, the aucht of this instant. The Assyse wairnit thairto, *apud Acta, &c.*

The Laird of Geicht protestis, that the productioun of the said Commissioun of Justiciarie, and fenceing of this dayis Court, sould nawayis preiudge him of his declinatour the nixt dyet, nor ony vther declinatour proponit be him of befoir in this cause.—My lord Aduocat protestis in the contrair.

[*Mr James Bannatyne.*]

Mar. 8.—THE perfewaris, nochtwithstanding of the former declinatour proponit aganis the tua Assessouris, ar content that thair remane Assessouris in this caus, conforme to the Counsellis Act maid anent thair constitutioun; and passis fra the saidis declinatouris.

Mar. 11-12.—THE 'disputatiounis' proceeded at great length, on both fides, on this day, 'Tyfday the xj instantis,' and the following day, on the merits of the cause. They are very prolix, and unnecessary to be inserted in this place.

Mar. 13.—THE Justice and Assessouris, ffor obedience of ane WARRANT of the Lordis of Secret Counfall producet be my Lord Justice Clerk, continewis this Justice Court, and all forder disputatioun in this cause, to the aughtene day of Junij nixtocum; and Ordanis the pannell to find caution, &c.

JUSTICE, Justice Clerk, and your deputis. 3ow fall, vpon the sight heirof, continew your Court and dyet appointit for Tryell of George Gordoun of Geicht, ffor the taking, detening, and executionn of vni<sup>q</sup> Francis Hay; and for pe beiring and weiring of haquebutis and pistolettis; and for pe perfute and invasioun of the breper of Brunthillis, vntill the aughtene day of Junij nixtocum; takand new caution, conforme to pe ordour: Quhairanent thir presentis fall be your Warrant. ATT ED<sup>s</sup>, the xij day of Marche, 1617.

AL. CANCELL<sup>s</sup>. AL. MAR. BYNNING.

My lord Aduocat declaris that he consentis to the former continewatioun, only becaus of his Maieftis Letter, direct to the Lordis of Secret Counfall, in that matter, and vpon na vther respect.—The parties find caution for keeping of his Majesties peace, &c.

(Jun. 18.)—THE Justice, be directioun of his Maieftie, continewis this dyet to the xxvij of Junij instant, &c.

(Jun. 27.)—THE Justice, be directioun of the Kingis Maieftie, declairit be my lord Aduocat, Continewis all forder disputatioun in this proces, and tryell of the perticuler crymes *respectiue* contenit in the summondis, to the thrid day of the nixt Justice-air of the scherefdome quhair the pairteis, alsweill perfewaris as defenderis, duellis ('Aberdene'), or soner vpon xv dayis wairning: And Ordanis



*the Laird of Geicht* to find Cautioun for his compeirance, to the effect and in maner aboue writtin, vnder the pane of ffyve thowfeand merkis, conforme to his Maieftes directioun, reportit be his Maieftes Aduocat, as faid is.

The faid Laird ffand Williame Gordoun of Rothemay, ffear of Cairneburrow, fouertie for his entrie, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

**Adultery—Bigamy.**

Mar. 14.—ALEXANDER THOMESONE, skynner, burges of Edinburghe, brother to Johnne Thomefone, Leyth; Johnne Guthrie, *alias* callit Williame Laird, and Jonet Cuthbert.

Dilaittit of the crymes of Adulterie, committit be thame, in maner, and at the tymes specifit in thair Dittayis.

The pannell acknowleges the crymes contenit in thair feuerall Dittayis, and craves God and the Kingis Maieftes pardoun; and offeris thame in his Maieftes will thairfoir.

VERDICT. The Affyse, be the mouthe of George Carnebie, indueller in Ed<sup>r</sup>, all in ane voice, ffand the faidis perfones to be ffylet, culpable, and convict.—

SENTENCE. In respect of the quhilk convictioun, THE JUSTICE, conforme to ane Warrant of the Kingis Maieftie, quhair of the tennour followis:

To our JUSTICE GENERALL of our Kingdome of SCOTLAND, and his deputis quhatfoeir, quhome thafe presentis may concerne; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrant and command frome ws, our Aduocat is criminallie to accuse and perfw befor yow one Alex<sup>r</sup> Thomefoun and one Jonet Cuthbert, tuo famous and notorious Adulteraris: Although thair cryme and offence thairin be capitall, and moft, by our Lawis, infer payne of death againft thame, zit, out of our princelie grace and mercie, We ar plesed to mitigat the severitie or extremitie of Law in thair behalf. Requyreing yow, by these presentis, in caice of pair convictioun, to ordane the faid *Alexander* to be Banifched our dominiones, and his efcheit to be furthwith vptakin for our vse be our thesaurer: AND that pe faid *Jonet* be Banifched our burgh of Ed<sup>r</sup>, and the pairtis of pe cuntrie pairabout. In which behalf, and for performeing of pe whole premisses, these falbe to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januare, 1617.

Ordanit and Adjudget the faid *Alexander* to be banifched his Maieftes hail dominionis, and nocht to returne within the samyn at na tyme heireftir, without his Maieftes Licence, vnder the pane of deid; as also, that his hail moveable guidis be efcheit, &c. AND ficlyk, Ordanit the faid *Jonet* to be banifchet furth of the burgh of Ed<sup>r</sup> and tuelf myles thairaboutis, and nawayis to be fund thair-intill, at na tyme heireftir, without his Maieftes Licence, vnder the faid pane of deid. And as concerning the faid *Johnne Guthrie*, Ordanit him to be tane bak to the Tolbuth of Ed<sup>r</sup>, therein to remane in sure firmance, vnto the tyme Dome be pronuncet againft him.

SENTENCE *against Johnne Guthrie, alias Williame Laird.*

Compeirit Sir Williame Oliphant of Newtoun, knycht, Aduocat to our fouerane lord for his hienes intreis, and producet his Maieftis Warrant, direct to the Justice, quhair of the tennour followis :

To our JUSTICE GENERAL of our Kingdome of SCOTLAND, and his deputis quhatfoeur, whome these presentis may concerne ; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrant and command from Ws, our Aduocat is criminallie to accuse and perlew, befoir yow, on *Johnne Guthrie*, for mariage of tuo wyfes, and keiping (befydis thame) of a thrid woman for his concubene ; whiche being a cryme so odious and intollerable amongft Christianes, and mereiting to be most exemplarie puneifched : THESE ar pairfoir expresse to will and command yow, in caice of the said Johnne convictioun, to caus pronunce and execute Dome and Sentence of Death aganis him, accoirding to pe ordinance of our Lawis maid for pwneifchment of suche offenderis. In which behalf, and for performeing of pe whole premisses, these fall be to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januar, 1617.

THE JUSTICE Ordanit the said Johnne Guthrie, *alias Laird*, to be tane to ane gibbet, besyde the croce of Ed<sup>r</sup>, and thair to be HANGIT quhill he be deid ; and all his moveable guidis to be escheit and inbrocht to his Maieftis vse, &c.

[*Archibald Earl of Ergyle, Justice General ; Mr Alex. Coluile, his depute.*]  
Slaughter.

Jul. 16.—JOHNNE KIRKPATRIK, seruant to Mr Walter Kynnynmonth of Callinche (Kilduncane.)

Dilaitit of airt and pairt of the Slauchter of vmq<sup>1</sup> Andro Kynnynmond, sone to David Kynnynmond of that Ilk ; committit vpone the tent day of Junij last-bypast, viz. The said Johnne being in companie with Mr Walter Kynnynmond, appeirand of Kilduncane, his maister, Jedione Kynnynmond, brother to the said Mr Walter, Patrik Kynnynmond, sone to the said Mr Walter, Hew Dik, seruant to the said Mr Walter, Thomas Fentoun, messinger citiner<sup>1</sup> in St Androis, Thomas Fentoun, his sone, thair, Johnne Cleilland, and . . . Cleilland, sones to Robert Cleilland of Fermlaw, and . . . Broun, citiner of St Androis, with convocatioun of his Maieftis leiges, to the number of tuentie perfones, or thairby, all bodin in feir of weir, with fuordis, daigeris, plait-flevis, hagbutis, and pistolettis, expresse prohibeit to be borne, worne, vsed, or schote with, be the Actis of Parliament ; haifing confauct ane deidlie feid, rancour, and malice aganis the said vmq<sup>1</sup> Andro, vmbefet<sup>2</sup> his hie way and passage, vpone Cires-mure, ane myle or thairby fra the burch of Couper ; quhair he, being only accompaneit with ane servand of his awin, war, in sober and quyet maner, for the tyme, cuming furth of the hie way, lipning for na harme, &c., and thair set vpone the said vmq<sup>1</sup> Andro, schot him throw the body with hagbutis, and crewallie hurt and demanit<sup>3</sup>

<sup>1</sup> Citizen ; inhabitant ; probably inferring that he was not a free *burgess*.  
' waylaid.'

<sup>2</sup> Abused. Literally, treated ; used.

<sup>3</sup> Beset ; blockaded ;

him and his seruand with fuordis, in dyuerse pairtis of thair bodeyis, to the effusioun of thair bluid in grit quantiteis : Off the quhilkis (woundis) and hurtis gevin to the said vmq<sup>1b</sup> Andro, he immediatlie deceiffit, &c.

VERDICT. The Assyse, be pluralitie of voittis, ffand, pronuncet, and declairit the said Johnne to be ffylet, culpable, and convict of airt and pairt, &c.

The Justice superceidis the pronunceing of Dome, &c.<sup>1</sup>

[*Mr Alexander Coluile, Justice-Depute.*]

**Child-Murder.**

Jul. 24.—BESSIE DUNCANE, feruitrix to George Craig in Eister Dudingstoune.

Dilaitit of the crewall and vnnaturall Murthour and putting to death of ane young infant man-bairne of hir awin, immediatlie eftir the beiring thair of, be putting it vnder the stra of the bed quhairupone scho lay ; and thaireftir lying thairupoun, and smoiring<sup>2</sup> the said infant to deid : committit in ane bak hous of the said George Craigis, vnder nycht, vpon the fourtene day of Julij instant ; Williame Borthuik, sone to Johnne Borthuik in Waster Dudingstoun, ane young boy of xvij yeiris of age, being the father thair of.

The said Bessie, with teiris, in grit penitencie, confessit the Dittay to be of verritie ; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Levingstoun, bailzie of Dudingstoun, ffand, pronuncet, and declairit the said Bessie, in respect of her awin Judiciall Confessioun, to be ffylet, culpable, and convict, &c.

SENTENCE. To be tane to ane gibbet at the mercat croce of Ed', and thair to be Hangit quhill scho be deid ; and all hir moveabill guidis and geir, gif scho ony hes, to be escheit, &c.

**Falset—Forgery—Perjury.**

Nov. 17.—MR JOHNNE MUREHEID, Notter in Tueidmouthe.

Dilaitit of airt and pairt of the formeing and wryting of ane fals nyntene-yeir Tak,<sup>3</sup> and counterfuteing of vmq<sup>1b</sup> Johnne Nisbet of Swannisfeild his subscriptioun thairto (allegit fetter<sup>4</sup> of the said Tak) eftir his deceife : And of periureing him self, in maner set down in his Dittay.

The pannell allegit that my lord Justice can nocht be Judge competent to him, in this matter ; becaus he (the pannell) is ane stranger, quha hes duelt and had his continuall residence out of this cuntrie within the toun of Tued-mouth, in Ingland, thir dyuerse yeiris bygane ; and thairfoir, conforme to the Act of Par-

<sup>1</sup> No farther entries occur ; so that it is probable a Remission was granted.      <sup>2</sup> Smothering ; suffocating.      <sup>3</sup> A Lease for nineteen years.      <sup>4</sup> The landlord or proprietot of the ground, who set it in Lease.

liament, aucht to be remandit fra this Judicatorie to the Justice of England, at the leift, to the Bifchope of Dureham, within quhais diocie he duelt, the pannell being ane Ecclefiasticall perfone, fervand at the Kirk of Tuedmouth: And laft, he appaillis to his Maieftis mercie and clemencie; and offeris him felf in his hienes will, for the crymes contenit in the Dittay.

My lord Aduocat, for verificatioun of the Dittay, producet the pannellis Depositiones, with the fals Tak, quhilk is fund to be ffals and ffenzeit befor the Lordis of Sefsioun, and in respect thair of ordainit to be cancellat and diftroyt: And anfuerand to the allegeances maid be the pannell, fays, that nochtwithftanding thair of, he aucht to be put to ane Affyfe, in respect the Act of Parliament allegit, is only in faouris of fic perfones as duellis in England, and being citet for flauchter, thift, burning of houffis, and vtheris crymes, perticulerlie expreffit thairin, quhair of the cryme lybellit is nawayis comprehendit, and ar fugitiue thairfoir; and the pannell, cuming willinglie to this cuntrie to beir witneffing in ane matter betuix tua Scottis perfones, was nawayis fugitiue: And as to the privilege of his profefioun, that he is ane Ecclefiasticall perfone, fays that the famyn aggrages his offence: And thairfoir, fould be juftlie puneift for the ffalfet and Periurie confellit be him and contenit in his Dittay.

THE JUSTICE, nochtwithftanding of the pannellis allegeances, Remittis him to the tryell of ane Affyfe.

## ASSISA.

Eduard Johnneftoun, Proveift of Annan, James Douglas, bailzie of Dalkeith,  
Johnne Ramfay, mercheand burges of Edr, James Nafmyth of Poffo.<sup>1</sup>

VERDICT. The Affise, all in ane voce, be the declaratioun of Eduard Johnneftoun, chancellor, ffand the faid Mr Johnne to be ffylet, culpable, and convict of the fforgeing and fformeing of the faid fals Tak; and of counterfuteing of the faid vmq<sup>te</sup> Johnne Nisbetis fubfcriptioun thairto, eftir he was deid; and Periureing of him felf, in maner fpecifeit in his Dittay.—SENTENCE. To be tane to the mercat croce of Edr, and thair vpone ane gibbet to be Hangit quhill he be deid; and all his moveabill guidis to be efcheit, &c.

**Usurpation of the King's Authority—Jamesucken, &c.**

Jan. 9, 1618.—THOMAS MELDRUM of Idene,<sup>2</sup> Walter Grant, his fervand,  
James Grant in Tulliebo, his brother, and Johnne Roifs,  
also his feruand.

Dilaitit of Vfurpatioun of our fouerane lordis authoritie, in cuming, vnder filence and clud of nycht, to Johnne Meldrum of Ordley his duelling hous of

<sup>1</sup> The remainder are 'mercheandis in Edr.' George Drummond of Cattifelbok (*Cal's-elbow*), Mr Johnne Rutherford, Proveift of Jedburgh, and six others, were each 'vnlawit in pe pane of ane hundredreth merkis,' for not passing on the said Assise. <sup>2</sup> See Nov. 20, 1618, &c.

. . . ., and thair, be way of Hamefucken, clymmyng the walls thairof, turring<sup>1</sup> the ruif of the chalmer quhair he lay bedfast, nocht weill convaleffit of ane fever quhairwith he was afflictit and visseit, be the space of tuentie foure oulkis ofbefoir : And for taking of him furth thairof, and cayreing him as ane captiue and priffoner to the place of Idene, quhair he was detenit in privat and strait priffone, be the space of foure dayis and foure nychtis ; vrgeing him, all that tyme, to discharge certane actiones quhilk he had depending aganis the said Thomas : And for the haill remanent crymes contenit in the Letteris : Committit vpon the aucht of Maij, 1612 yeiris.

PERSEWAR, Johnne Meldrum of Ordley, Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our fouerane lord, for his hienes intris.

PRELOCUTORIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, Mr James Lawtie.

THE JUSTICE, for obedience of the Warrant of the Counsell, direct to him, subferyuit be my Lord Chancellor, continewis this dyet to the xvj instantis : And Ordanis the pannell to find caution for thair compeirance that day, vnder the panis contenit in the Actis of Parliament.—Patrik Meldrum, ffear of Idene, become fouertie for the said Thomas, his father, &c.

(Jan. 16.)—Continued, by Warrant of the Secret Counsell, to the xxj instant.

(Jan. 21.)—The Justice, of consent of pairtie, continewis this matter to the thrid day of the nixt Justice-air of Aberdene, or foner, vpon xv dayis wairning. George Seatoun of Schettin and the said Patrik Meldrum become pleges and fouerteis, coniunctlie and feuerallie, &c.

[*Mr Alexander Coluile, Provost of Kilmondy, Justice-Depute.*]

**Slaughter—Convocation of the Lieges, &c.**

Jan. 14.—WILLIAME JOHNNSTOUN, callit of *Lokarbie*; Archebald J., his brother; Mungo and Hercules J., sones to the said Williame; Williame J., sone to vmq<sup>le</sup> George J., in Lokarbie; Williame J., in Grenefyde; Thomas Harknes, in Lokarbie; Johnne Chalmer, thair; Andro Chalmer, thair; Johnne Johnnestoun, sone to David J., in Cleuchheid; Williame J., in Auldwallis; Patrik J. of Mylnebank, his brother; Johnne J., in Turmour, callit of *Lokarbie*; Andro J., his sone; Archy Halyday, in Turmour; Andro Chalmer, thair; Johnne Bell, in Lokarbie; Francis Bell, thair; James Kennydie, in Bektoun; Andro Chalmer, in Dames.

Dilaitit of airt and pairt of the Slaughter of vmq<sup>le</sup> James Johnnestoun, in Kirktoone; committit with convocatioun of our fouerane lordis leigis, vpon the

<sup>1</sup> Forcing a passage, by breaking through the roof. Fr. *tirer*; and A. S. *tyr-an*, to tear.

xxv day of April, 1617, be geving to him of dyuerse crewall and deidlie woundis in the heid, left airme, left hand, and left pape:<sup>1</sup> Off the quhilkis he nevir convaleffit, speciallie of the woundis ressaute in his heid, threfcoir and nyne banes being tane furth thair of; and at last, vpon the first day of December last, he deceiffit, being vnder cure of the saidis woundis sevin monethis and ten dayis of befoir.

PERSEWARIS, Agnes Johnnestoun, the relict, Sir Williame Oliphant of Newtown, kny<sup>t</sup>.

PRELOCUTORIS in defence.

Mr Thomas Nicolfone, Mr Alexander Peiblis, Mr James Oliphant, Adame Cuninghame.

The Justice, of consent of pairtie, continewis this dyet to the xxv of Februar nixt, and Ordanis the pannell to find caution for thair entrie that day, vnder the panes contenit in the Actis of Parliament: Quha for obedience of the said ordinance, ffand James Johnnstoun of Waftraw, and Archibald Douglas of Kelheid, brother to my lord of Torthorrell, bayth personallie present, cautioneris and fouerteis, conjunctlie and seuerallie, for thair re-entrie, &c.

(Feb. 25.)—Compeirit Mr James Oliphant, and producet ane Warrant of the Lordis of Secreit Counsell, procuret be the (saidis) persones (on pannel), daitit the xix day of Februare instant, be the quhilk the Justice is ordanit to continew this dyet to the xxvij day of Marche nixtocum, &c. Which desire was granted; Robert Johnnstoun of Raecleuch becoming cautioner for the pannels' entrie.

PERSEWAR, Andro Johnnestoun, as sone.

PRELOCUTOR in perfute, Sir Robert Gordoun of Lochinvar, kny<sup>t</sup>.<sup>2</sup>

(Mar. 27.)—It is declairit be the pannell, befoir thair cum to thair allegeance, be way of informatioun to the Justice, that it wald pleis his Lordschip vnderstand, that the matter fell furth eftir this maner. My Lord of St Androis that now is, being Archebischope of Glesgow for the tyme, haifing ane cair to haif the haill Kirkis within his dyocie<sup>3</sup> sufficientlie plantit; and eftir vizitatioun, cuming to the Kirk of Dryfdail, quhair it was fund be him that the watter of Dryfe ran fa violentlie, eftir ane speat,<sup>4</sup> throw the haill kirk yaird and landis adjacent thairto, that the Kirk it selff was liklie to becum ruinous and decay, except the course of the said watter had bene divertit and drawin ane vther way thairfra: For remeid quhair of it was aggreit, with consent of the haill gentilmen of the parochin, that the said watter fould be divertit ane vther way; and accoirding thairto, it was appointit, that vpon the said xxv day of Apryle, the said Williame Johnnstoun, with assistance of the parochin, fould cum, with spaidis and schuiles, to mak ane watter-gang: In the doing quhair of, the said vmq<sup>10</sup> James Johnnstoun, with his sones, come bodin in feir of weir, and maid interruptioun to the persones foirsaidis that war casting the said watter-gang, and inuidit and persewit dyuerse of the persones that war working, for thair slauchter; be occasioun of the quhilk

<sup>1</sup> Breast.

<sup>2</sup> These in addition to the persons abovenamed.

<sup>3</sup> Diocese.

<sup>4</sup> Flood.

perfute and invasioun ane straik was gevin to the said vmq<sup>le</sup> James vpon the heid with ane spaid or schule, be quhat perfone the pannell knawis nocht: Eftir the quhilk straik he convaleffit, and was at tua feuerall Justice-Courtis in Jedburgh; was also at the Parliament in Ed<sup>l</sup>; raid in dyuerse pairtis of the cuntrie, and within England; and thaireftir, fell seik of ane fever, quhair of he deceffit; as is nottour to the haill cuntrie.

Quhilk being premitit,<sup>1</sup> it is allegit peremptourlie for the pannell, that thay can nocht be put to ane Assyse for the cryme lybellit, in respect the said vmq<sup>le</sup> James Johnnstoun, for quhais slauchter thai ar perfewit, was flane at the horne, and deceffit vnrelaxit thairfra, ffor ane criminall cause, viz. ffor airt and pairt of the Slauchter of vmq<sup>le</sup> Hew Dowglas of Dalvene. *Igitur, &c.*—To the quhilk it is anfuerit be the perfewaris, that the allegeance aucht to be repellit, because the said vmq<sup>le</sup> James was relaxt fra the said Hoirning: And producet the Relaxatioun for verificatioun thair of.<sup>2</sup>—It is duplyit be the pannell, that the Relaxatioune producet meittis nocht the Hoirning; becaus the said vmq<sup>le</sup> James Johnnstoun is relaxt fra the horne lang eftir the tyme lybellit of the straikis gevin to him quhair of he deceffit, to wit, lang eftir the xxv day of Apryle, 1617, he nocht being relaxit quhill the xxviiij of October thairefter.—To the quhilk it is anfuerit be the perfewaris, and allegit,<sup>3</sup> that the Hoirning quhair-upoun the said allegeance is foundit is null, becaus the said vmq<sup>le</sup> James Johnnstoun being designet be the said Letter of Hoirning to haif ane certane duelling-place, viz. in Twnnergathe, the tyme of the raising thair of, he is nather charget personallie nor at his duelling-place, quhilk aucht to haif bene done; he being ane Scottis subiect, duelland within Twnnergath, quhair he duelt the tyme of the geving of the charge to him, be oppin proclamatioun; lyk as, he duelt thairin dyuerse yeiris of befor.—It is anfuerit be the pannell aganis the allegeance, foundit be the perfewaris vpon the nullitie of the Hoirning, that the said allegeance aucht to be repellit, in respect of the privilege and Dispensatioun fet down in the Letteris of Hoirning producet, quhilk sustenis the charge gevin to him, be oppin proclamatioun at the croce of Dumfreis, to be als lauchfull as gif he war charget personallie or at his duelling-place, for the ressonne specifit in the Letteris.

It is allegit be the perfewaris, as to the Relaxatioune and allegeance maid thairupoun, that the said Relaxatioun is lauchfull and sufficient in the self; becaus the samyn is purchest be the said vmq<sup>le</sup> James, and he lauchfullie relaxt, be vertew thair of, lang befor his daithe.—The pannell repeitit thair former anfuer.

<sup>1</sup> Premised.      <sup>2</sup> On margin, '1 Aprilis, 1618. This Relaxatioun gevin vp agane to Andro Johnnstoun, producer thair of.'      <sup>3</sup> Pleaded; urged as a plea.

It is ffordere allegit be the pannell and thair prelocutouris, that thair can nocht be put to ane Affyse for the cryme lybellit, becaus the said vmq<sup>re</sup> James Johnnstoun was flane and deit at his Maiefties horne ffor ane criminall cause, viz. ffor the steilling of tua horse pertening to James M<sup>re</sup>mathe in Knokinhair; committit be him in the moneth of September, 1597; ffor the quhilk, being persewit criminallie befor the Justice, and charget to vnderly the Law within the tolbutth of Ed<sup>rd</sup>, vpon the xxj day of Januar, 1607 yeiris, was, for nocht finding of cautioun, denuncet and declairit fugitiue fra his hienes lawis for the said cryme: And ffor verificatioun thair of, producet the Extract of the Hoirning.—To the quhilk it is anfuerit be the persewaris, that the Summondis and Dittay aucht to pas to ane Affyse, nochtwithstanding of the allegeance proponit be the pannell, foundit vpon the tua criminal Hoirningis producet; becaus the said vmq<sup>re</sup> James Johnnstoun of Kirkstoun was nocht only relaxt fra the first Hoirning befor his deceis, bot also becaus it is speciallie provydit be Act of Parliament, maid in the moneth of October, 1612 yeiris, that all persones duelland vpon and within the boundis of the lait Bordouris of this kingdome, speciallie within the boundis of the scherefdome of Dumfreis and stewartrie of Annandaill, quhair the said vmq<sup>re</sup> James duelt, ar fred and releuit of all and quhatfumeuir criminell cauffis that could be laid to thair charges, ffor quhatfumeuir ffyre-raifingis, slauchteris, thiftis, and stouthes, or vther criminall cauffis quhatfumeuir, befor his Maiefties going in Ingland, quhilk was in Apryle, 1603 yeiris, &c.

THE JUSTICE continewis Interlocutour, vpon the allegeances foirfaidis, to Wednisday nixt. The Affyse wairnit *apud Acta*, ilk persone vnder the pane of ij<sup>o</sup> merkis. Williame Douglas, younger of Caschogill, become fouertie for the entrie of the haill persones on pannell, &c.

(Apr. 1.)—THE Justice, be directioun of the Lordis of Secreit Counfall, Ordanis the persones on pannell to find cautioun for thair entrie and compeirance of new agane, befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdome or stewartrie quhairin thay duell; or soner, quhan or quhair it fall pleis his Maieftie, vpon xv dayis wairning, &c. Williame Douglas of Caschogill plege and fouertie, &c.

#### **Invading—Hurting and Wounding—Slaughter.**

Feb. 13.—HEW FALCONER of Innerlochtie; Hew Falconer, his sone; Frances Hay and Alexander Hay, sones to Williame Hay of Mayne; Thomas Grant, brother to James Grant in Daltulleis; Lauchlane Grant of Wester Elcheis; Johnne Grant, his sone.

Dilaitit of airt and pairt of the invading, hurting, and wounding of Thomas Grant of Cardellis, and slauchter of vmq<sup>re</sup> Patrik Grant, his sone; committit within the burgh of Elgyn, the xj of November last, 1617.



PERSEWARIS, Thomas Grant of Cardellis, as father; Johnne Grant, appeirand of Cardellis, as brother; Sir Williame Oliphant of Newtown, knycht, for his Maiesteis intreis.

THE JUSTICE, of consent of ather pairteis, and accoirding to ane directioun gevin to his lordschip be the Lordis of Secreit Counfall, continewis this matter to the thrid day of the nixt Justice-air of the scherefdome quhair the defenderis duellis, (Elgyn,) or soner, vpone xv dayis wairning, &c.

Sir Alexander Gordoun of Clwnie, kny<sup>t</sup>, become souertie for the said Thomas Grant, vnder the pane of tua thowseand merkis; Sir Alexander Falconer of Halkertoun, kny<sup>t</sup>, become souertie for the said Hew Falconer and his sone; James Hay, appeirand of Mayne, become souertie for Frances and Alexander Hayis, his tua brether; and Robert Innes of Balvany for Lauchlane and Johnne Grant—all vnder the panes contenit in the Actis of Parliament.

### Slaughter.

Mar. 18.—WILLIAME JOHNNSTOUN, callit of Lockerbie, and Johnne Carutheris of Rammerfcaillis.

Dilaittit of airt and pairt of the Slauchter of vmq<sup>le</sup> Cristopher Wigholme,<sup>1</sup> burges of Sanquhar; committit in Junij, 1594.

PERSEWAR, Niniane Wigholme, as sone; Sir Williame Oliphant, knycht.

PRELOCUTOURIS in defence, Mr James Oliphant, Adame Cuninghame, Aduocattis.

The persewar passis fra the persute of the said Johnne Carrutheris *pro loco et tempore*.—It is allegit for Williame Johnnstoun, that he can nocht be put to the knowlege of ane Affyse for the crymes lybellit, in respect his Maieste and Estaittis, be Act of Parliament, maid in October 1612, hes, for the resson mentionet thairintill, geving ane generall pardoun to all maner of perfones duelland within the boundis of the lait Bordouris of this Kingdome, for all maner of crymes committit be thame preceding his Maiesteis going in Ingland, &c.—To the quhilk it is anfuert, that the allegeance aucht to be repellit, in respect of the summondis beiring the fact lybellit to be persewit be the pairtie, with concurse of his Maiesteis Aduocat; quha is speciallie exceptit in the said Act, and hes power, be vertew thairof, to persew.

THE Justice continewis Interloquitour to Fryday nixt; and Ordanit the pannell to find cautioun for his compeirance, as also for the entrie of his brother, the said day.—Robert Somerwell of Smailhomes become souertie, &c.

(Mar. 20.)—THE JUSTICE ordanit cautioun to be ffund, that the said Williame and Frances fall compeir befor the Justice or his deputis, the thrid day of the Justice-air of the scherefdome or stewartrie quhairin thay duell, or soner, vpone xv dayis wairning.—Robert Somerwell of Smailholme, and Williame Johnnstoun of Currielaw, become pleges and souerteis, &c.

<sup>1</sup> This name is now written *Wigham*, and *Whigam*.

**Slaughter.**

Mar. 18.—ROBERT SYMMER, sone to the Laird of Balzordie.

Dilaittit of the crewall Slauchter of vmq<sup>le</sup> Daid Graham, sone to vmq<sup>le</sup> James Grahame of Leuchland; committit vpon the xxix day of Apryle, 1616 yeiris, vpon the Hauche of Infche, neir to the Mekill-mylne of Brechin, be streking him throw the body with ane rapper-fuord; quhairof, within fex or fevin dayis thaireftir, he deceiffit.

PERSEWER, James Grahame, as brother to the defunct; James Keith of Harviestoun, brother-in-law; Sir Robert Grahame of Morphie, neir kinsman; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr George Symmer.

The pannell, being accuset be Dittay, of the slauchter of the said vmq<sup>le</sup> Daid Grahame, denyis the famyn, with the hail circumstances fet down in the Dittay, concerning the said slauchter.

**ASSISA.**

Dauid Lyndfay, in Brechin,	Dauid Gairdin of Lawtoun,	Johnne Cob, citiner of Brechin,
James Ramsay, thair,	Patrik Guthrie of Kinblakmonth,	Williame Carnagy, skynner, burges
Johnne Vdny of Kethik;	James Halyburton, mercheand	of Edinburghe,
James Smyth, in Brechin,	burges of Edinburghe,	Williame Ruthvene of Bandane,
Andro Thomesoun, thair,	Johnne Peter, wryter, burges thair,	Williame Elder, tailzeour, burges
Johnne Anderfoun, burges of	Laurence Heiring, brother to	of Edinburghe.
Montrois,	Lethindie,	

VERDICT. The Assyse haifing reffonit and voittit vpon the pointis of the said Dittay, and being ryplie and at lenth advyfet thairwith, togidder with the Letteris of Hoirning producet be his Maiesteis Aduocat, beiring the said Robert to haif bene denunciit rebell in Majj, 1616, for nocht finding of cautioun to haif compeirit befor the Justice to haif vnderlyne the Law for the said slauchter; ffor the quhilk fact, he hes bene fugitiue and furth of the cuntrie senfyne; togidder with ane Commissioun, and vther probatioun producet also be his hienes Aduocat, for instructing the said Dittay—thay all in ane voce, be the mouth of the said Johnne Vdny, chancellor, fand the said Robert to be FYLET, culpable, and convict of the said Slauchter.

SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be efcheit, &c.

**Intercommuning with the Clan-Gregor.**

Mar. 18.—COLENE BRUCE, sumtyme duelland in the Middilhauch of Huntingtour.

Being brocht furth of the Tolbuth or Waird-hous of Edinburgh, quhairin he hes bene wairdit thir dyuerse monethis bygane, and presentit vpon pannell, be directioun of the Lordis of Secreit Counfall, to heir and fie the dome vnderwrittin pronuncet aganis him, as he that became in his Maiesteis will ofbefoir,

ffor the affisting, reffett, fupplie, and intercowmoning with THE CLANGREGOUR; and accoirding to his Maiefteis will than publeift and declairit, vpon the faxt day of Auguft, 1605, was ordanit to be Banifchet his Maiefteis hail dominiones, nevir to be fund agane within the famyn, vnder the pane of deid, for the faid cryme.—(See this Collection, II. p. 457.)

SENTENCE. The Juftice of new agane, conforme to ane Warrant and delyuerance of the Lordis of Secreit Counfall, fubfcryuit be my Lord Chancellor, and be my Lord of Mar, Grit-Thefaurer, daitit the xvij day of Marche instant, Ordanit the faid Colene Bruce to be Banifchet, as of befoir, his hienes hail dominiones, and nevir to be fund within the famyn, vnder the pane of deid, but forder fauour: Lyk as, to be returnet bak agane to the faid waired be the Magiftratis of Edinburgh, to be keptit be thame thairin, in fure firmance and captiuitie, vnto the tyme a Schip be preparit, quhairin he may be tranfpoiritit.

### Slaughter at a Funeral.

Jun. 10.—JOHNE JOHNESTOUN of Tunnergathe; Blench Bell, his spous ('*paft fra*'); Johnne, *alias Jok*, Williame, frances, and James, four fones to the faid Johnne; James Johnneftoune; Andro Johnneftoune, in Kirkton; Williame, francie, and George, his thre brether; David Bell, callit of Craighous; Williame Johnneftoune, in Hilbank; Johnne, his brother; Williame and Johnne Johnneftoune, in Schaw; Williame J. in Hilbank; Johnne, his brother; James Johnneftoun, in Hill ('*paft fra*'); Patoun Bell, in Yle ('*paft fra*'); Jok Burges, in Kirkhouffes ('*paft fra*'); Jok Johnneftoune, in Foulraw ('*paft fra*'); James Johnneftoune, fone to Twnergathe; frances J. in Myreheid; James J. in Court; James Bell, in Twnergathe ('*paft fra*'); Johnne Bell, in Holmheid ('*paft fra*'); George Johnneftoune, fone to Johnne Johnneftoune of Twnergathe.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>h</sup> Frances Johnneftoune, brother-germane to Williame Johnneftoune of Lockerbie; committit vpon the xxj day of Apryle laft, at the Buriall of Thomas Johnneftoun, 3ounger of Fingland, befyde the Kirk of Twnergathe, and zaird thairof.

PERSEWARIS, Williame Johnneftoune of Locherbie, brother; Sir Williame Oliphant, kny<sup>t</sup>.

James Johnneftoun of Waftrow became fouertie for the entrie of James of the Hill, the thrid day of the nixt Juftice-air of the fcherefdome quhair he duellis; or foner, vpon xv dayis wairning.—Johnne J. of Twnergath, fouertie for the entrie of Patoun Bell, Jok Burges, Jok J. of Foulraw, and James Bell of Twnergathe.—And Johnne Carmichell in the Maynes, fouertie for the entrie of Johnne Bell in Holmeheid.

THE JUSTICE, of confent of the perfewaris, continewis this dyet aganis the remanent perfonis nocht *paft fra*, to the fevint day of Auguft nixt; and Ordanis thame to find fouertie for thair entrie that day.

James Gordoun of Buithill, brother to Lochinvar, fouertie for the entrie of

Johnne of Twnergathe and his fones—Johnne of T. fouertie for Frances of Myreheid, &c.—Johnne Gordoun of Hiffilfeild, for Andro J. in Kirktoon, &c.

(Aug. 7.)—The Justice, of consent of pairtie, continewis this dyet to the xvij of November nixt.—Niniane Johnnestoun of Powdene, cautioner for Twnergathe and Andro J. of Kirktoon—and thay, conjunctlie and severallie, for the entrie of the remanent perfones.

(Nov. 18.)—Continued to the thrid day of the nixt Justice-air of Dumfries, or foner, vpon xv dayis wairning.

### Slaughter at a Funeral.

Jun. 10.—JAMES JOHNNSTOUN of Waftraw; William J. of Locherbie; Archibald, his brother; Nicolas Cairleill, spous to the said Williame ('*past fra*'), and others.<sup>1</sup>

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Andro Johnnstoun, sone to Johnne Johnnstoun of Twnergathe; and Slauchter of vmq<sup>le</sup> Johnne J., brothergermane to Andro J. of Kirktoon; committit the xxj day of Apryle last, within the Kirk-3aird of Tounergathe, at the Buriall of Thomas Johnnstoun, zounger of Fingland.

#### PERSEWARIS.

Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord; Johnne Johnnstoun of Twnergathe, as father to the said vmq<sup>le</sup> Andro; Johnnstoun of Kirktoon, as brother to the said vmq<sup>le</sup> Johnne.

The same procedure takes place in this case as in the preceding; and is finally, on Nov. 18, continued to the Justice-air of Dumfries, &c.

### Rape—Forcing and shamefully Abusing, &c.

Jun. 17.—MR DAVID WEDDERBURNE, indueller in Dundie, and Andro Crystie, indueller in Leith.

<sup>1</sup> The other pannels follow:—Mungo Johnnstoun, sone to the said Williame; Williame J., brother-sone to the said Williame of Locherbie; Andro Chalmer, in L. ('*past fra*'); Johnne C. and Andro C., his tua fones, thair ('*past fra*'); Williame Brydane, in Gymmenbie ('*past fra*'); Mathow Brydane, thair ('*past fra*'); Heckie Johnnstoun, thair ('*past fra*'); Andro Grahame, in Locherbie; Williame Grahame, in Westwoid ('*past fra*'); Hercules Johnnstoun, in Locherbie; Margaret J., wedow, in Nitholme ('*past fra*'); Williame Kennedie, zounger of Hallaites; Johnne K. of Hallaites ('*past fra*'); Johnne Chalmer, in Studrigis ('*past fra*'); Thomas Harknes, oistler in Locherbie; Johnne Johnnstoun of Turmour, callit of Locherbie; Dorathie J., his spous ('*past fra*'); Andro J., his eldest sone; Andro J., brother to the said Johnne of Twrmour; Williame J., also his brother; Johnne Bell, his ferrand ('*past fra*'); Thomas J. of Fingland; Johnne J. in Burfs, callit of Fingland; Johnne J., callit *Gawinis Johnne*; Gib Mundell, in Lairdholme ('*past fra*'); Adie Blaiklok, thair, callit of Birkkay ('*past fra*'); Hercules J., callit *the Bastard*, in Locherbie; Johnne J., sone to Williame J. of Auldwallis ('*past fra*'); George J. in Mylnebank; Johnne J., sone to Daid J. of Cleuchheidis; Mungo Kennydie in Astork; Andro Irwing, alias Myller, in Wylihoill ('*past fra*'); Mathow Thorbrand, thair ('*past fra*'); Williame T., thair ('*past fra*'); James Grahame, in Quhyteftanebill ('*past fra*'); Thomas Manekitoun, in Midge-bray ('*past fra*'); Daid M., thair ('*past fra*'); Symone Hall, thair ('*past fra*'); Johnne Corrie, in Preiftbuttis; Gawin Smyth, thair; Thomas Johnnstoun, callit *Geordis Thome*, thair; Johnne Kennydie of Hallaites ('*past fra*').

Dilaitit of the Foirceing and schamefull abusing of Jonet Crambie, dochter to vmq<sup>r</sup> George Crambie, burges of Bruntieland, and Jonet Broune, hir mother; committit within the dwelling-house of Alexander Anderfone in Bruntieland, vpon the xxvj day of Marche last.

PERSEWARIS.

Jonet Brown, as mother to the said Jonet Crambie; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.  
PRELOCUTORIS in defence, Mr Thomas Nicolfoun, Mr Vmphra Blindschell, Mr Johnne Russell.

It is allegit be the pannell and thair prelocutouris, that na proces can b grantit in this matter, nather can thai (be) put to the knowlege of ane Affyse for the cryme lybellit; becaus the said Jonet Crambie, speciall pairtie perfewar, to quhome the allegit cryme is done, is nocht present to perfew thame for the samyn.—It is anfuert be my lord Aduocat, that the allegiance aught to b repellit, in respect that the mother is present, and is reddie to perfew, quha is sufficient; or ony of the kyn and freindis to perfew, with concurrence of his Maiesteis Aduocat.—It is replyt be the pannell, that the mother is only for her (awin) intereis; quha can nocht perfew thame for the allegit cryme, t pairtie allegit offendit being on lyfe.—It is anfuert, that the allegiance aucht to be repellit, in respect of the former answer.

The pannell defyres the mother to be solemnelie suorne, vpon the verritie of the Dittay, befor thai cum to thair defense.—The mother refuises to geve her aith vpon the Dittay, as it is qualifeit, in respect scho was nocht present; bot declairis that hir dochter past saif and haill furth of hir hous; and come bak agane to hir hous schamefullie abusfet, &c.; quha than repointit to hir that scho was forcet be the pannell, in maner specifeit in the Dittay.—The pannell takis instrumentis, that the mother refuiffing to sweir; and protestis for remeid of law, for thair schamefull sclander.

THE JUSTICE Ordanis the pannell to find caution for thair compeirance the thrid day of the nixt Justice-air of the scherefdome quhairin thai duell,<sup>1</sup> or foner, vpon xv dayis wairning, to vnderly the law for the samyn, vnder the pane of I<sup>m</sup> merkis for ilk ane of thame.—Mr Johnne Elphinstoun, indueller in Leith, become fouertie for the said Andro, vnder the pane of I<sup>m</sup> merkis. Andro Watfone, bailzie and burges of Bruntieland, become fouertie for the said Mr David, vnder the said pane.

**Slaughter.**

Jun. 20.—JAMES STEWART, sone to vmq<sup>r</sup> Johnne Stewart of Kilpatrik.

Dilaitit of the cryme following, viz. fforfamekill as, he haifing consauet ane deidlie ffeid, rancour, and malice aganis Andro Cuninghame in Belliemichell, in

<sup>1</sup> Forfar and Edinburgh.

Arrane, in the moneth of Maij laft, come bodin in feir of weir,<sup>1</sup> with ane fuord and vther wappones, *inuafue*, to the faidis Landis of Belliemichell, of purpois to haif darnet<sup>2</sup> himfelf in the brome,<sup>3</sup> neir to the faid Androis hous, thair to haif murthouret him: In his cuming to the quhilk brome, being efpuyt be ane . . . . Jerveife, fervand to the faid Andro, quha was addreffing him felf in to the faid Androis hous, to geve him adverteifment of the faid James being thair; the faid James followit the faid . . . . Jerveife, and befor he could cum to his maifteris hous, ouertuik him, and with ane fuord ftrak him in the bellie, and flew him thairwith.

The pannell confeffes the Slauchter of . . . . Jerveis; and offeris to fatisfie the pairtie and the Kingis Maieftie for the famyn, feing nane perfewis him bot his Maiefteis Aduocat, for his hienes intreis.—The Aduocat takis instrumentis of the pannellis confeffioun of the cryme.

VERDICT. The Aiflyfe, be the mouth of Mr Donald Campbell, chancellor, all in ane voce, in respect of the faid James Judiciall Confeffioun, ffand and declairit the faid James to be ffylet, culpable, and convict of the Slauchter of the faid vmq<sup>4</sup> . . . . Jerveis.—SENTENCE. To be tane to the Castle-hill of Edinburghe, and thair his heid to be ftrukin frome his body; and his hail guidis and geir to be efcheit, &c.

### Theft.

Jul. 2.—GILBERT ELLOTE, callit *Gib the Galzart*.<sup>4</sup>

Dilaitit of the thiftious fteilling of ane purfe fra Johnne Airmeftrang, callit of the Holme, vnder filence and clud of nycht, within the duelling hous of Alexander Young in Selkirk, in the moneth of Maij laft, be taking the faid purfe, with ffourtie pundis being thairin, furth of the faid Johnne Airmeftrangis breikis, in maift thiftious maner; and drinking of ten merkis of the money that was thairin; and abffracting the reft of the ffourtie pund, vnto the tyme the famyn was challanget vpon him, and reftoirit bak agane thaireftir to the faid Johnne Airmeftrang, awner thairof.

The pannell declairit that he nawayis ftaw<sup>5</sup> the purfe, in maner ffpecificeit in the Dittay; bot allanerlie, that he being in Alexander Youngeis hous, in Selkirk, ryfeing in the moirning, ffand the purfe vpon the fflore of the chalmer; quhilk he retenit, and fpendit of the money that was thairin ten merkis allanerlie,<sup>6</sup> in recompance to the faiffer;<sup>7</sup> and reftoirit the faid purfe, with the reft of the money

<sup>1</sup> Furnished in warlike manner.

<sup>2</sup> Concealed; hidden.

<sup>3</sup> Broom; *planta genista*.

<sup>4</sup> ‘William Johnstone of Wamphray, called *the Galliard*, was a noted freebooter. His *nom de guerre* seems to have been derived from the dance called *the Galliard*. The word is still used in Scotland to express an active, gay, dissipated character.’—*Border Minstrelsy*, i. 230. It is right, however, to inform the reader, that this *sobriquet* was very prevalent on the Border.

<sup>5</sup> Stole.

<sup>6</sup> Only.

<sup>7</sup> Salvage money, and for restoring what was lost.

being thairin, to the said Johnne Airmstrang, sa sone as he vnderstuid the samyn pertentit to him; affirmeing, that the said Johnne Airmstrang wald nawayis infist aganis him for Thift.—The Aduocat anfuertis, that his Declaratioun maid can nocht be respectit; bot he sould be put to ane Assyse, in respect of his depositioun maid be him, in presens of the Justice, confessing the steilling of the purse and money thairintill, in maner specifeit in the Dittay.

The Justice Ordanis him to pas to ane Assyse, nochtwithstanding of his former allegeance and Declaratioun maid be him thairintill.

VERDICT. The Assyse, be the mouth of Johnne Scott of Sundelishoip, chancellor,<sup>1</sup> for the maist pairt, ffind, pronuncet, and declairit the said Gilbert to be fylet, culpable, and convict of the away-taking furth of Alexander Youngis hous in Selkirk, of the said Johnne Airmstrang his purse, with ffourtie pundis being thairintill; quhilk purse was delyuerit bak agane to the said Johnne, and haill sowme aboue specifeit, except ten merkis thairof allanerlie: And Clanges him of the steilling of the samyn.—SENTENCE. To be SCURGET throw the burgh of Edinburgh; and also to be actit to be Banischet furth of this realme, and neuer to be ffund agane within the samyn, without his Maiesteis Licence, vnder the pane of deid, but fauour.

The said Gilbert actit himself to depairt furth of this realme, within xx dayis eftir the dait heirof; and nevir to be ffund agane within the samyn, without his hienes Licence, vnder the pane of deid.

### Murder.

Jul. 8.—JOHNNE MENZEIS and Andro Menzeis, brether to Williame Menzeis of Castelhill; Raulff Dalzell at the mylne of Durisdeir, James Barbour in Colymme, Hectour M<sup>c</sup>Quhynzie in Thornehill, Jonet M<sup>c</sup>Rone, spous to Johnne Williamfoun in Dufdeir, Johnne Williamesone hir spous for his intreis, Marioun M<sup>c</sup>Rone, sifter to the said Jonet.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of Patrik Douglas, sone to Hew Douglas of Balliebught; committit the fyftene day of Marche last, at the gavill of the said Johnne Williamfones hous, in Dufdeir, in his ganging furth of the toun of Dufdeir to the place of Moirtoun.

PERSEWAR, Hew Douglas of Belliebucht, Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTORIS in defence, Mr Thomas Nicolfoun, Mr Lueis Stewart, James King.

THE Justice, with consent of my Lord Aduocat, continewis this matter to the thrid day of the nixt Justice-air of the Scherefdome of Dumfreis, or soner vpone fyftene dayis wairning; and ordanis the pannell to find Cautioun for thair re-entrie to that effect.—The Laird of Dalzell, elder, and Williame Menzeis of

<sup>1</sup> The remainder are merchants and burgesses of Edinburgh.

Castelhill, become pleges for Johnne and Andro Menzeis—and Robert Douglas of Cafchogill for the entrie of Hectour M<sup>c</sup>Quhynzie.

### Slaughter—Dememoration.

[THE Case which follows, affords one among numerous other instances, of the unhappy consequences resulting from the deadly feuds, which occurred almost daily; and strongly points out their prevalence in Scotland, to a very lamentable extent. *Sir James Balfour*, in his *Annales*,<sup>1</sup> states, that ‘*the Young Laird of Cultmalindie-Bruce*, in Perthshyre, killed *Tofchoe Laird of Minewaird*, sifter sone to *Sir James Campbell of Lawers*, in the toune of Perth. *Cultmalindy*, the committer of the slaughter, fled.’ But *Fleming*, in his MS. Diary or Chronicle,<sup>2</sup> gives a much more minute detail of this affair, in the following passage, extracted from the Original MS. :—‘VPOUN Midfomer-day, the xx of Junij, 1618 yeiris, at twa efternoon, (*Dauid*) *Tofcheoch of Monivaird younger* slaine in the South-gait of Perth be *Lourence Bruce younger of Cultmalindeis*, his brother, and diuers thair associates. The twa that was with *Monyvaird*, the ane deidlie hurt, bot deit not; the vther, his richt hand clene strukin fra him. This done in a moment of time. All the committeris thairof eschewit out of the towne, befoir any of the townis-men hard of ony sliche thing.’]

Jul. 29.—PETER BLAIR, brother-germane to Andro Blair of Gairdrum.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq<sup>le</sup> *Dauid Tofcheoche*, 3ounger of *Monyvaird*; and Demembring of *Dauid Malloche*, his seruand, of his richt hand; committit within the burgh of Perth, vpon the xxiiij day of Junij laft.<sup>3</sup>

The said Andro (as cautioner for his brother) nocht compeirand nor enterand the said Peter, the Justice ordanit him to be in ane amerceament and vnlaw, viz. tua hundreth merkis: Lyk as, the said Peter was decernit, for his nocht compeirance, to be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

### Slaughter—Dememoration.

Jul. 29.—LAWRENCE BRUCE, appeirand of Cultmalundie; Alexander Bruce, his brother; Williame Oliphant of Gask; Laurence Oliphant his brother; Alexander Fleming of Monefs; Williame Douglas of Annatroche; Johnne New, servand to my Lord Oliphant; Donald Paterfone, servand to the Maister of Oliphant, and George Tyrie, messinger in Perth.

Dilaitit of airt and pairt of the above slaughter, &c.

Eduard Tofcheoche, elder of Monyvaird, as ffather o vmq<sup>le</sup> *Dauid Tofcheoche*, 3ounger of Monyvaird, produced the Letters deulie execute and indorfate vpoun Peter Blair, brother-germane to Andro Blair of Gairdrum; be vertew quhairof the saidis Laurence, &c. ar denuncet rebellis and put to the horne, for nocht

<sup>1</sup> Orig. MS. Adv. Library.  
1618, Nov. 17, 1619, Mar. 12, 1623.

<sup>2</sup> Orig. MS. preserved in Adv. Library.

<sup>3</sup> See Dec. 4,



finding of caution for their compeirance this day and place, in the hour of caus, to haif vnderlyne the law, &c. Vpoun the productioun of the quhilkis Letteris, the said Eduard, with Archibald Campbell, brother to the Laird of Laweris, askit instrumentis; and Protestit for releif of George Bischope of Orknay, cautioner.

### Slaughter.

Jul. 29.—ALEXANDER HERVIE in Innerrowrie.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>1</sup> George Robertfone, serwand for the tyme to Patrik Con of Auchry; committit within the duelling hous of Thomas Chalmer in Turray, in anno 1599 yeiris, be streking him in the bellie with ane knyfe, quhair of he deceift.

#### PERSEWAR.

Alexander Soure, as brother on the mother syde, and serwand for the present to the Laird of Skeane.

#### PRELOCUTORIS in defence.

Frances Erle of Errole, The Erle of Rothes, The Laird of Balquhane, (Johnne Leslie,) Mr Thomas Nicolfoune, Aduocat.

The persewar, with Mr Andro Skene, producet Hoirning aganis the pannell, quhairby he is denuncet vpone the xxv of Julij instant, for nocht finding of caution to compeir this day to vnderly the law for the said cryme; and thairupoun askit instrumentis, and protestit for his cautioneris relief, in respect na repourt was maid to the officer, of the finding of ony caution, quhairby ane Assyse mycht haif bene summond.—The pannell takis instrumentis of his entrie, and protestis for his cautioneris releiff: And as to the Hoirning producet, allegis the samyn is null, in respect caution was fund be him for his compeirance lang befor his denunciatioun, viz. vpone the xxiiij day of Julij of befor: And as concerning the Slauchter lybellit, he offeris him self to the tryell of the Law for the samyn, as altogidder innocent thairof, disaffenting to all maner of continuatioun; and thairupoun askit instrumentis.

THE JUSTICE continewis this dyet to the secund of December nixtocum; and Ordanis the pannell to ffind caution for his entrie that day, vnder the panes contentit in the Actis of Parliament.

The pannell, for obedience of the Justice ordinance, ffind Jonne Leslie, ffear of Balquhane, cautioner for his compeirance befor the Justice or his deputis, the saidis day and place.—The said Alexander Hervie being suorne, maid fayth that he dred<sup>1</sup> bodelie harme of Alexander Soure (Sowre), insafar as he had affirmet, in prefens of dyuerse famous<sup>2</sup> perfonas, that ' gif he gat nocht his intent befor the Justice, that he sould wair<sup>3</sup> his mother sone vpone him also!' And thair-

<sup>1</sup> Dreded; feared.      <sup>2</sup> Persons of good fame and credibility.      <sup>3</sup> Literally, expend; i. e. that he would hazard his own life in his endeavour to be revenged of him.

foir, desyret Lauborrus of him.—The said Alexander Soure declairit he had na cautione, becaus he was bot ane pur man ; and offerit *cautionem juratoriam*.<sup>1</sup>

THE JUSTICE Ordanit him ather to find caution and lauborrus for the indemnitie of the pannell, vnder the pane of ij<sup>c</sup> merkis, or ellis to be tane to waird, to remane thairin quhill caution war fund.

Compeirit Mr Andro Skeane, and become fouertie and lauborrus for the said Alexander Soure, that the said Alexander Hervie fall be harmeles and skaythles of him in his perfone, landis, and guidis ; and nawayis to be molestit or trubillit be him thairin, nor be na vtheris of his caufing, &c. vnder the pane of tua hundreth merkis.

(Jul. 30.)—Alexander Gourlay of Southane, in Fyfe, become plege, fouertie, and lauborris for Alexander Sowre, &c. Mr Andro Skeane relieved.

(Dec. 2.)—THE JUSTICE, in respect nane of the Assyse compeiris, continewis all tryell in this matter to the thrid day of the nixt Justice-air of the Scherfedome of Aberdene, &c.—Johnne Leslie, fear of Balquhane, become fouertie and lauborrus for the said Alexander Hervie, that the said Alexander Sowre fall be harmeles and skaithles of him, &c. vnder the pane of foure hundreth merkis.

### Stealing of a Purse.

Jul. 30.—JOHNNE BROUNE.

Dilaitit of the steilling of ane purse, with xxij li. being thairin, in Carnewath mercat, vpon Mydsomer-day last, quhilk pertenit to James Walker, cordiner in Lynlythgow ; and he being schortlie thaireftir challenget, made restitutioun of the said purse and money bak agane to the said James.

VERDICT. Convict of the steilling of the said purse.—SENTENCE. To be Scurget throw the burgh of Edinburgh, and Brunt<sup>2</sup> vpon the cheik : And to be Banisheit his Maiesteis haill dominiones, speciallie this his kingdome of Scotland ; nevir to be fund agane within the famyn, vnder the pane of deid, but<sup>3</sup> faour.

### Forging of an infamous Pasquil against the Scottish Nation, &c.

[THE Case of MR THOMAS ROSS forms one of a series of sanguinary and barbarously vindictive acts of KING JAMES VI, which, unquestionably, must leave an indelible stain on his memory and character, as a despotic and cruel tyrant. It has already been frequently shown, in the course of this work, that whenever there occurred the slightest attack on his personal dignity, or any speech, lampoon, or other writing, at all infringing on his kingly prerogative, &c. his Majesty was relentless in the severity of the punishment, which he never failed to cause be inflicted on the luckless offender. As so many shocking Cases of this description have already been given in the present Collection, it is enough, without fatiguing the reader with any recapitulation, barely to refer him, among other cases of a

<sup>1</sup> Juratory caution.

<sup>2</sup> Burnt ; branded.

<sup>3</sup> Without.

similar nature, to the Trials of *Diksoun*,<sup>1</sup> Aug. 3, 1569; *Tennent*,<sup>2</sup> Oct. 10, 1600; *Cornuall*, Apr. 25, 1601; and *Fleming*,<sup>4</sup> May 17, 1615; which are the leading instances of the insane and blood-thirsty spirit above alluded to.

With regard to *the facts* attending the case of Mr Thomas Ross, there seems to be no reason for doubting that they occurred almost exactly as they are narrated in the abstract of the Dittay, which has been preserved in the Books of Adjournal. In case, however, that this example should prove *infectious*, the Record informs us, that the offensive papers were 'gevin vp agane to my lord Aduocat,'<sup>5</sup> to be destroyed—'as nocht worthie to remane in ane Register, to offend the earis or eyis of the posteritie!' Every search has been made in the *Denmylne Collection* of MSS., and other Collections in the Advocates' Library, the Warrants of the Privy Council of Scotland, and other similar sources, but no trace can now be had of the *Theses* and *Annexa*, which must have proved very interesting and curious at this distance of time.

In order that the reader may have an opportunity of judging for himself, the Editor has made every enquiry in his power, for the purpose of elucidating this disgraceful and sanguinary page of the personal history of 'the British Solomon.' *Sir James Balfour*<sup>6</sup> gives the following account of this extraordinary tragedy. "THE 20 of August, this zeire, *Mr Thomas Roffe*, a brother of the Houffe of *Cragie*, in *Perthshyre*, was sentenced by the Justice-Generall to loffe his head,<sup>7</sup> at the Croffe of Edinbrughe; and thereafter, the same head to be affixed one the jayle—for propofinge certane villanous and opprobrious Theses, in defamations of his auen natiue countrey and countreyemen, and affixing them on a Church-dore, in *Oxford*, before sermon, one a Tuesday; offering them to be publickly dispute, and himselue (miserable wretche!) to defend them. This sentence was put in executione within 2 dayes thereafter."<sup>8</sup>—Another authority<sup>9</sup> narrates the proceeding thus. "MR THOMAS ROSS, Minister at Cargill, having been convicted by an Assize, at Edinburgh, of writing, at Oxford, in England, against the Scots Nation, was executed at Edinburgh.<sup>10</sup> His right hand was first stricken off; thereafter, he was beheaded, quartered, and put upon the Ports. He was of the House of Craigie, being a son of John Rofs, Laird of Craigie, and went to Court. He wrote very unnaturally, and whereof he was not wife, against the Scots Nation. He was conveyed to Scotland in a ship. Mr Thomas Rofs was infane, and his infirmity was pled in his defence. He affixed to the door of St Mary's Church, in Oxford, a Latin Thesis, in which were ten propositions; wherein he attempted to prove, that the English ought not to allow so many of the Scots to remain among them. The King was ridiculously incensed, and instead of confining him, as one in his condition needed to be, he sent him to Scotland, along with strict orders that he should suffer death."

It seems very singular, when all circumstances are considered, that so remarkable an occurrence has been entirely passed over in silence by *Spotswood* and *Calderwood*, in their Church Histories.

There cannot be a doubt that *Mr Thomas Ross* was a man of an ancient, influential, and highly respectable Family; and the Editor believes, that having embraced Episcopacy, he had gone to prosecute his studies in Oxford. It would appear, from the preceding notices, that *Ross* had previously

<sup>1</sup> See Vol. I. 385.    <sup>2</sup> *Ibid.* II. 332.    <sup>3</sup> *Ibid.* II. 349.    <sup>4</sup> *Ibid.* III. 359.    <sup>5</sup> Sir William Oliphant of Newton.    <sup>6</sup> *Annales*, MS. Adv. Library—and II. 70, Edin. 1824.    <sup>7</sup> "In September 1618, *Mr Thomas Ros*, sone to the Lard of Cragie, wes, for vretting, at Oxford, in Inghland, aganis the Scottis natioun, being send to Scotland be schip, convict be ane Assyse, his richt hand first struckin aff, thaireftir beheadit."—MS. Adv. Library.    <sup>8</sup> An obvious oversight of *Sir James Balfour*, who had probably noted down the day of his intended execution—omitting to rectify the date, after the King's Warrant had been received.    <sup>9</sup> *The Rev. James Scott's* transcript of the *Diary or Chronicle of John Mercer*, who was appointed Town-Clerk of Perth, Oct. 6, 1623, and lived to a great age. Orig. in Adv. Library. The Editor has the pleasure of notifying, that this interesting Diary is preparing for publication by his friend *James Maidment, Esquire*, as his contribution to THE MAITLAND CLUB, the Members of which have chiefly directed their attention to the printing of Historical works illustrative of Scottish affairs.    <sup>10</sup> "2 Sep. 1618. MR THOMAS ROSS, Minister at Cargill, went to Court; and thair, for tum infamous writtingis, and railling aganes the Scottis Natioun, werie onnaturallie, being on of the sones of the Hous of Cragie; quhair of he wes not wyise. He wes headit in Edinbrughe, quharerit, and putt wpon the Portis."—*Fleming's (Mercer's) Chron.* MS. Adv. Library.

been *Minister of Cargill*; and as he is so designed in these accounts, it is likely that he had not been deprived of his living before the period of his execution. The conduct of KING JAMES in the whole of this matter, and his barbarous treatment of *Ross*, become altogether inexplicable, when it is considered, that at this very time, he was struggling to force Episcopacy upon the people of Scotland, as the permanent and established Religion of the country. In such circumstances, it seems strange indeed that he should have so rancorously pursued so zealous a convert to the forms and tenets of the Church of England, at the precise time that that person (a *Minister*, too, of the Kirk of Scotland) was doing every thing in his power to qualify himself for effectually pleading and maintaining the establishment of Episcopacy—a measure so near James's heart. *Ross*, however, had, for the indulgence of some mad and absurd frolic, written the Pasquil or Thesis in question, and affixed it to the Church-door of *St Mary's, Oxford*, as was then usual at all the great Universities in Europe, where public disputations were often held.<sup>1</sup> It was pleaded by the unfortunate man, that he had done so in a fit of *insanity*, which seems to have been credited by his contemporaries;—but all these circumstances combined, could not induce the King to save his life; on the contrary, they only inflamed his rage the more against poor *Ross*.

The only thing which can be urged in palliation of the rigorous sentence, which the King insisted on being put in execution, is, that at the time when KING JAMES succeeded to the English Throne, and for a long time after, the Scotch were peculiarly unpopular in England, and such swarms of needy adventurers had travelled southward, that not only were the greatest jealousy and hatred manifested on the part of the English, but it actually became necessary that a legislative enactment should be made, to prevent bloodshed and scenes of violence throughout the country. As remarkable instances of the rancorous feelings which existed against the Scotch, a curious passage may be cited from *Calderwood*,<sup>2</sup> which forcibly illustrates the state of the public mind, in England, upon this subject.—‘THE SCOTISHMEN lying at Court were in danger of their lives, be reafone of the great malice of the English conceived against them. *Sir John Ramsay's* brother smote the *Lord Montgomeries* brother on the face, with a rod, for a lie given him at a Horse-race. There were present about ane hundreth Scotish-men, all in danger to be maffaced, if the English had not been stayed by a Counsellor. *James Maxwell*, one of the Gentlemen of the King's Chamber, pulled ane Englishman's eare till it bleade. Oure countrymen durft not repair soe frequently to the Exchange or Comedies as they did before. The *Lord of Kinloffe* was in great danger at a Comedie, but was convoyed secretly away be ane aged gentleman, who was weill acquent with his father. This lybell was affixed in open places,—

‘THE SCOTS DOE WHIPPE OUR NOBLEMEN WITH RODS—THEY KILL OUR FENCERS TRATROUSLY UNDER TRUST.’

‘The *Lord Sanguhar* indeid hired two Scotishmen to kill ane English fencer, who, six or seaven years before, had putt furth his eye at fencing! They killed him in an Innes, whilles he was putting the cupe to his head. To content the English, the King consented that *Sanguhar* should be *hanged*. For the greater contempt of our Nobility, he was hanged among a number of Theaves!’

It is barely possible that the King may have discovered certain indications at Court, which, in a manner, forced him to sacrifice *Ross*, for the purpose of checking in the bud any future attempts at

<sup>1</sup> It may be esteemed worthy of remark here, that a shadow of this ancient custom is still observable at the Scottish Bar, where, previous to the inauguration of each candidate for admission into the body of the Faculty of Advocates, a *Thesis*, with its *Annexa*, is publicly notified on the walls of the Parliament-House—and especially at the *outer-door* of that Hall. It intimates that a public disputation, “*Disputatio Juridica*,” is to be held on a certain day, under the auspices of the Dean of Faculty; and the subject-matter of the *Thesis* is thus notified. Originally, the candidate had stoutly to maintain his ground against all comers, in the Latin tongue. It is almost unnecessary to add, that this *Disputatio Juridica* has now degenerated into a piece of empty form; in point of fact, it is “elegantly understood”—as no disputation whatever takes place, excepting that which is apt to arise with the printer and book-binder, who are the only parties at all benefited by this edifying solemnity. It is high time that such an useless waste of money should be prevented—and the sum at present bestowed in this way appropriated to the support of the splendid Library under the charge of the Faculty. <sup>2</sup> *Church History, Adv. Library, MS. ad ann. 1612.*

fomenting these national jealousies. This, however, is merely matter of conjecture, and the only plausible apology which can be adduced for the perpetration of so tyrannical an act.

A very extraordinary instance of the same insane rage upon the part of the King, we learn from a rare Poem, entitled, a 'Counter-buffe to Lyfimachus, Junior, calling himself a Jesuite;' quarto, 1640, pp. 16;<sup>1</sup> where the fate of STERCOVIUS, a Pole, is alluded to. That stranger had unhappily appeared in Scotland in the dress of his native country, which attracted the attention of the idle, and brought down upon him the derision and abuse of the populace.

' Hither he came, clad all in antique fort,  
Where seen in streets the subject of a sport,  
He soon became to childish gazers, who  
With shrieks and clamours hiss him to and fro,  
Till forced he was with shame and speed to pack him,  
And to his feet and loathsome cabin take him !'

Nettled at such rude and inhospitable treatment, he published 'a Legend of Reproaches' against the Scottish Nation, shortly after his return home; which, having reached the ears of his 'most sacred Majesty,' he procured the *arrest and execution* of the hapless STERCOVIUS! This out-herods Herod, with a vengeance! The death of this Pole was accomplished at an expense to the King of no less a sum than *six hundred pounds sterling*—an immense sum in those days. The instrument whom JAMES employed was one *Mr Patrik Gordon*,<sup>2</sup> a subject of Scotland, then resident in Poland. With a dexterity for which the sapient James was celebrated, he attempted to extort the price of this innocent man's blood from the *Royal Burghs of Scotland*! It is believed, however, that he was foiled in that attempt, by the Privy Council declaring themselves incompetent judges of the matter.<sup>3</sup>

In a very curious Collection, privately printed at Edinburgh, 1828, 'A Third Book of Scottish Pasquils,'<sup>4</sup> the cases of *Ross* and *Stercovius* are particularly noticed; and a copious extract from the 'Counterbuffe' is there given. That singular Poem introduces *Ross's* story thus—which is enough for our present purpose.

. . . . ' A Scot of ancient race,  
A scholler, too, as thou art, lived a space  
In England's Court; and for some private hate,  
A Pasquill did against his country wreat,  
As thou hast done in fouler sort; more full  
Of vild aspersions from thy phrantick skull!  
Well, then, King *James* of lasting memorie, who  
Could not brook that any calumnie  
Should be asperft upon his native land—  
After some tryall there, he gave command  
The Lybeller should home go, and sustaine  
Of doome unpartiall laws th' unpitied paine.  
And here being tryed, judged, and adjudged, they fand  
That he should lose his head and faultie hand;  
Which straight was done, in public view—and so  
I think the matter with thyself will go !'

THE FAMILY OF ROSS OF CRAIGIE, near Perth, were probably a branch of the Family of the ancient *Earls of Ross*, and were reckoned among the most respectable Families in the shire. Many

<sup>1</sup> A copy is in the valuable Collection of David Laing, Esquire.    <sup>2</sup> Probably the author of the 'History of the Valliant Bruce,' in heroic verse.    Dort, 1615; quarto.    <sup>3</sup> See Decree of Lords of Privy Council, in *Charter-room of the City of Edinburgh*.    <sup>4</sup> Prefatory Notice, xii.    The two preceding 'Books' bear date, 1827, and 1828.

particulars concerning them are to be found in History so early as the reign of Robert Bruce, and in the records of the Religious Houses at Perth, to which they were benefactors. *Nisbet*, in the Appendix to his second Volume,<sup>1</sup> gives a list of some of the distinguished Families in the Kingdom to whom they were allied.<sup>2</sup>

It cannot be disguised, that however honourably born this family may have been, various members of it figured in Books of Adjournal, and others of them suffered the last punishment of the Law, for their crimes. JOHN ROISE of Craigie, James and Williame Roise, his brothers, John Roise, servant to vmq<sup>le</sup> James Roise in Maitlandis, Lancelot Moncrief, servant to the Laird of Craigie, were, along with William Lord Ruthven, Henry Lord Methven, and others, brought to the bar of the Court of Justiciary, Nov. 12, 1571, for Oppression, Hamesucken, Convocation of the Lieges to the number of two hundred armed persons, besieging the Place of Dupplin, &c.<sup>3</sup> This appears to have proceeded entirely from one of those deadly Feuds which were unhappily so common in Scotland at that time. Their antagonist was Laurence Lord Oliphant. But the most atrocious instance which the Editor can at present recollect, occurs in *Fleming's Chronicle*,<sup>4</sup> under date Apr. 8, 1608; where it is recounted, that 'PATRIK EVIOT, brother-german to the Laird of Balhousie, wes murtherit in Blelok be his wife, JONET ROSS, quha wes air to the Lairdship of Craigie and Kynfawnes, both. He wes schote with ane gun in his bed, sleiping, be James M<sup>c</sup>Nair. Thairefter, they wer both taikin and execute—and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 of Maij, 1608. The heid and arme putt wp on the Castell-Gawill-Port.<sup>5</sup> It will be recollected how narrow an escape *Patrick Eviot*, the husband of *Jonet Ross*, had previously made, when he was attacked by Sir Henry Lindsay of Carreston.<sup>5</sup>

After the death of JONET ROSS, the heiress of Craigie, (who seems to have wished to transfer, by marriage, her large estates to her blood-stained paramour, *James M<sup>c</sup>Nair*,) her uncle, *Robert Ross*, succeeded to the Estate of Craigie. *The Laird of Balhousie* at this time was *Colin Eviot*. The Reverend Mr Scott informs us, that "*Patrick*, his brother, had suffered trouble and loss by a sentence of Parliament, for the friendship he had expressed to the Earl of Gowrie, in 1600. The *Eviots* had been proprietors of the lands of Balhousie and Muirton, near Perth, for more than three hundred years. They were great benefactors to the Religious Houses, especially to the Black Friars' Monastery, at Perth; and some of the younger sons of the Family were in Clerical Orders. *Colin Eviot* was succeeded by his son *Patrick*, who, before 1618, had sold the lands of Balhousie to *John Matthew*, and was himself designed *Patrick Eviot* of Muirton. He was married, and had children."

The reader's indulgence is requested for the minuteness and prolixity of this Notice; which, however, has proceeded from the Editor's anxiety to throw all the light in his power on so extraordinary a Trial.]

Aug. 20.—MR THOMAS ROISE, sone to vmq<sup>le</sup> Johnne Roise of Craigie.

Dilaitit of the devillische and detestable fforgeing, ffenzeing, blasphemous vttering, and by writ publictie exposeing, of ane villaneous, infamous, and devillische Writt, all writtin with his awin hand, concerninge ane PASQUEILL or THESE; togidder with ten feuerall abhominable ARTICLES or APPENDICES, confirmeing the samyn—that all SCOTTISMEN aucht to be schote<sup>6</sup> furth of THE COURT OF ENGLAND, excepting his gracious MAIESTIE, his sone, and ane verrie few vtheris, and that the INGLISCHMEN ar nichtillie blindet, fylet, and diffauet,

<sup>1</sup> *Nisbet's Heraldry*, App. to Vol. II., p. 23.   <sup>2</sup> See MS. Transcript of *Mercer's Chronicle*, before quoted, and noticed by *the Reverend Mr Scott*, Adv. Library.   <sup>3</sup> See this Collection, Vol. I., p. 25.   <sup>4</sup> *Advocates' Library*, MS.   <sup>5</sup> See this Collection, Vol. II., p. 409; Feb. 1, 1601.

<sup>6</sup> Ejected; thrust out by violence.

(althocht quik-sichtit vtherwayis,) that thay fould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scoureings of people to radge and dominire within thair boundis and intrallis, &c.

My lord Aduocat producet the said Mr Thomas Roise Dittay, togidder with ane directioun of the Counsell, vnder forme of Act, ordaning him to perlew the said Mr Thomas for the crymes thairin contenit.

*DITTAY against Mr Thomas Roise.*

MR THOMAS ROISE, sone to vmq<sup>re</sup> *Johne Roise of Cragie*, 3e ar indytit and accuset, FORSAMEKILL AS, albeit it be expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, alsweill maid be his Maiestie as be his hienes progenitouris, of worthie memorie; speciallie, be the 43 Act of the secund Parliament of King James the first, intitulat, 'that Liefing-makeris tynes thair lyfe and guidis:' And siclyk, be ane Act maid be King James the secund, the 100 Act, contenit in the auld prentit Actis of Parliament, the foirfaid Act is ratifeit in all pointis, and Ordanit to be put in executioun in all tyme cuming; be the whilk, it is statute, 'that Leafing-makeris fall tyne lyfe and guidis to the King, and be at his Will:' As lykwayis, be the 134 Act of the aucht Parliament, haldin be his Maiestie, our darrest souerane, him selff, and his hienes Estaittis, in the moneth of Maij, 1584; and in the tent Parliament, haldin also be his Maiestie and his Estaittis, the tent of December, 1585, *articulo primo*, intitulat, 'Authouris of sklanderous speiches or writtis falbe pwneifchet to the deathe.' Quhilkis Actis ar ratifeit and approvin in his Maiesteis fourtene Parliament, haldin the aucht of Junij, 1594: And be dyuerse vtheris Actis, alsweill maid be his Maiesteis selff as his Maiesteis progenitouris of renowned memorie, that all Liefing-makeris and telleris of thame, quhair may ingender discord betuix the Kingis Maiestie and his people, quhair euir thay may be gottin, fall be challanget be thame that power hes, and tyne thair lyfe and guidis to the King; and that nane of his subiectis, of quhatfumeuir functioun, degrie, or qualitie, fall presume or tak vpon hand, privatlie or publictly, in Sermones, declamationes, or familiar conferences, to vtter ony fals, sklanderous, or vntrew speiches, to the disdayne, reproche, or contempte of his Maiestie, his Counfall, and proceedingis; or to the dishonour, hurt, or prejudice of his hienes, his parentis, or progenitouris; or to meddle in the effairis of his hienes and his estait, steiring vp his hienes subiectis to mislyking, seditioun, or vnquyetnes; and that nane presume or tak vpon hand, publictly to declame, or privatlie to speik or wryte ony purposis of reproche or sklander of his Maiesteis persone, estait, or gouvernement; quhairby ony mislyking may be movet aganis his hienes and his nobilitie, and loveing subiectis, in tyme cuming; vnder the pane of death, to be inflictit vpon thame with all rigour: As the saidis Actis of Parliament in thame selffis

proportis. NOCHTWITHSTANDING quhairof, it is of verritie, that ye, the said *Mr Thomas*, in the moneth of Julij lastbypast, contrair to the tennour of the saidis Actis of Parliament, hes fallsie, sklanderuslie, calumniousslie, dispytefullie, and devillischlie, within the toun of *Oxford*, in ENGLAND, fforget, ffenzeit, and blasphemousslie vtterit, and be writt exposet publictlie to be red and defendit be yow, (as ye affirme by your devillische writt,) within THE VNIUERSITIES OF OXFURD, CAMBRIDGE, PAREIS, and vtheris places mentionet in that villaneous, infamous, and devillische Writt; all writtin with your awin hand, in Latine, ane Propositoun or These, contening ten feuerall abhominable articles and (appendices), confirmeing the samyn, that all SCOTTISMEN aucht to be schote furth of *the Court of ENGLAND*, (excepteing his gracious MAIESTIE, his sone, and ane verrie few vtheris,) and that the INGLISCHMEN ar nichtilie blind, fyllet, and diffaut (althocht quik-sichtit vtherwayis) that thai sould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scoureingis of people to rage and dominire within thair boundis and intrallis. To the quhilk Propositoun, ye haiff fett doun and subioynet ten feuerall fals reafones, leasngis, and vntreuthis, for confermeing your devillische propositoune. (Quhilkis ten reafones ar repeatit in this place as ane pairt of your Dittay, bot purpoisslie omittit and left out heirop, as nocht worthie to remane in ane Register, to offend the earis or eyis of the posteritie.<sup>1</sup>) The quhilk blasphemous, iniurious, sklanderous, and devillische propositoun, and ten reafones, as ye terme thame, subioynet be yow thairto, for confirmatioun thairof, all writtin with your awin hand, ar ffals and manifest leasngis and vntreuthis; and war affixt be yow (maist impudentlie, as ane liar and defamear of your countrie and natioun, nocht worthie to haif inioyit the naturall air thairof) vpon *the Marie-Kirk-dur* of the said VNIUERSITIE OF OXFURD, vpon ane Twisday, being ane preiching-day, in the said moneth of Julij last, as the people war dissolueing and skailling fra the sermone, and as *Doctour Godwene, Vice-Chancellor of the Vniuersitie of OXFURD*, was cuming out of the Kirk; to the intent the samyn mycht be publictlie red and disperfit amangit his Maiesteis subiectis of ENGLAND: Off plane purpois and intentioun thairby to haif steirit thame vp to the crewall, barbarous, and vnmercifull murdering, massacreing, and assafine of the hail SCOTTIS people, alsweill noble men and counsalouris as vtheris of the SCOTTIS NATIOUN quhatfumeuir, his Maiesteis guid subiectis and servandis, attendantis vpon and about HIS MAIESTEIS royall persone in Court; quhilk could nocht haif bene accomplischet without the extreme danger and perrell of HIS MAIESTEIS sacreid persone, his gracious QUENE, and of THE PRINCES hienes. In the doing quhairof, ye haif

<sup>1</sup> (Marked on the margin,) 'Thir Thesis, with the argumentis or reafones subioynet pairto, ar gevin vp agane to my lord Aduocat.'



fforget, maid, and writtin innumerable leafingis, ffalse, fklanderous, and vntrew speiches and wrytingis, quhilk mycht haif ingenderit discoird betuix his Maieftie and his guid fubiectis; to the difdane, reproche, and contempt of his Maieftie and his noble progenitouris and thair proceidingis, and of your natie countrie, nocht worthie to haif the name of ane borne fubiect thairin; and thairby, hes medlit with his hienes effairis, eftait, and gouvernement, maift ffallie, barbaruffie, and vnnaturalie; contravening thairthrow (ye being ane SCOTTISMAN, albeit vnworthie) the tennour of the Lawis and Actis of Parliament thairof, and incurring defervetlie the panes and pwneifchment aboue written, mentionet thairintill; quhilk aucht and fould, in maift exemplarie maner, be inflictit vpon yow, with all rigour; to the terrour and example of vtheris to attempt the lyk. Quhilk is mair nor nottour, and ye can nocht deny.

MY LORD ADUOCAT producet the faid Mr Thomas Roifs Dittay, togidder with ane directioun of the Counfell, vnder forme of Act, Ordaning him to perfew the faid Mr Thomas for the crymes thairin contenit.

The faid Mr Thomas, eftir reiding of the Dittay, and his accusatioun of the crymes mentionat thairintill, acknowleges and confelles the famyn crymes to be of veritie; declairing that THE THESIS producet war writtin be him furth of ane mad and diftemperat humour, being *inops mentis* for the tyme; quhilkis he now, from his heart, repentis; craueing God, his Maieftie, and haill cuntrie people<sup>1</sup> pardoun for that his offence: And offeris him felf in his Maiefteis will, being a gracious Prince, quhais Royall difpofitioun, in all his proceidingis, hes ever inclynet rather to mercie, quhilk is the richt hand of God, nor<sup>2</sup> to the rigour of Justice, quhilk is his left hand: Defyreing thairfoir, in all humilitie, my lord Justice and Lordis of his Maiefteis Counfall present,<sup>3</sup> to interceid at his Maiefteis handis, for fauour in his behalff.

My lord Aduocat takis instrumentis of the pannell his Judiciall acknowledge-ment and Confessioun of the cryme contenit in his Dittay.

THE JUSTICE ffindis the Dittay relevant, and Ordanis the famyn to be put to the knowlege of ane Affyfe of the perfones fummond to that effect.

## ASSISA.

James Somerwell of Spittell,	Johne Levingftoun of Hayneing,	James Hoppringile of Heriote
James Levingftoun of Jerifwoid,	Robert Johnnftoun of Wamfray,	mylne,
Patrik Hunter of Hiltarvet,	Ja <sup>s</sup> Douglas, portioner of Lugtoun,	Robert Phillope, Schereff-clerk
Johne Achiefoun, portioner of	Eduard Johnneftoun, elder, bur-	of Dumfreis,
Inuerefk,	ges of Edinburgh,	Mr James Ord,
George Redik, Shereff-depute of	Johne Ker, portioner of Duding-	George Carnebie, burges of Edr,
Kirkcudbrycht,	ftoune,	Hew Rois of Balnamukie.

Eftir fweiring of the Affyfe, the faid Mr Thomas of new agane, in thair

<sup>1</sup> Countrymen.

<sup>2</sup> Than.

<sup>3</sup> Sitting as Assessors. Their names are not recorded.

presence and audience, confesses the wryting and affixing of the THESES and APPENDICES following thairupone; and that the THESES producet ar the samyn that was writtin and affixt be him: And as of befoir, he offeris him selff in his Maiesteis will for that offence.

My lord Aduocat takis instrumentis of the sweiring of the Assyse: and for verificatioun of the Dittay, produces the foirfaidis THESIS or PROPOSITIOUN, with the ten fals and vntrew ARGUMENTIS or REASONES following thairupone, all writtin with the said Mr Thomas awin hand. Repeittis the said Mr Thomas Judiciall Confessioun, first maid in presens of the Justice, and thaireftir renewit be him in the said Assyse presens and audience; and his becuming in his Maiesteis will, as guiltie and culpable of the saidis crymes: And lykwayis produces, for the said Assyse forder informatioun, the said Mr Thomas awin Depositiones maid and subscryuit be him at Edinburgh, the xj August instant, in presens of his lordschip, as his examinatur, nominat and appointit be the Lordis of his Maiesteis Secreit Counsell. And in respect thair of, and that the said Mr Thomas, eftir reiding of his Depositiones to him judiciallie, in presens of the Justice and Assyse, abydis thairat, and that thairby the saidis crymes ar clerlie verifeit and provin with sa manifest probabilities; in caice ony of thame acquit the pannell, (as he thinkis nane of thame will be sa voyde of knowlege or conscience sa to do,) Protestis for wilful and manifest Errour, with all perrel of the Law that may follow thairupone.

VERDICT. The Assyse,<sup>1</sup> being ryplie and at lenth advyset thairwith, togidder with the villannous and infamous Pasqueill or Theses, and damnable Appendices subioynet thairto; his Judiciall Confessioun and acknowlegeing thair of, and becuming in his Maiesteis will for the samyn, as altogidder giltie and culpable thair of; his subscryuit Depositiones, producet be our souerane lordis Aduocat, for cleiring and instructing of the said Dittay; togidder with the feuerall Actis of Parliament quhairvpon the said Dittay is foundit; thay all in ane voce, be the repourt and declaratioun of the said Johnne Levinstoun, chancellor, ffand, pronuncet, and declarit the said Mr Thomas to be Giltie, culpable, and convict of the said devillische fforgeing and exposeing, be writt, of the said villannous and false Theses, and ffalse and damnable Appendices subioynet thairto; and affixing the samyn (thay being manifest lewis and vntreuthes) vpon the said Kirk dur, in forme and maner specifeit in his Dittay; and of the samyn Dittay, and hail crymes contenit thairintill, and of contravening, thairthrow, the tennour of the saidis Actis of Parliament; quhairby he hes incurrit and fallin vnder the danger,

<sup>1</sup> Mr Alexander Hammiltoun of Kinglas; Raulf Ker, bailzie of Lander; Robert Moutray of Seyfeild, . . . . Allardice of Skadowie; Charles Cairnecrofe of Birkfneip; Johnne Paterfone, Schereff-clerk of Fyfe; Johnne Hailie in Sneip; David Ramsay in Pethheid of Lefuaid, . . . . Portious of Glenkirk, and Robert Creichtoun, brother to Innernytie; ilk ane of thame vnlawit in the pane of ane hundreth merkis, for thair nocht compeirance vpon the said Mr Thomas Assyse.

and within the compas of the panes and pwneifchment mentionet thairintill, justlie merited be him.

THE JUSTICE, in regaird of his convictioun, Ordanit him to be tane bak to waird, and to be keipit in irnes, quhill his Maieftie by acquentit with his convictioun, and quhat exemplarie pwneifchment fall be execute vpon him for his offence.

Sep. 10.—SENTENCE. The Justice, conforme to ane Warrant and directioun of his Maieftie, direct to my Lord of Bynning, his hienes Secreter,<sup>1</sup> be the mouth of Johnne Dow, dempfter of Court, Ordanit the said Mr Thomas to be tane to the Mercat-croce of Edinburgh, and thair, vpon ane scaffold, firft his rycht hand to be strukin aff, and thairefter his heid to be strukin frome his body: And his heid to be thaireftir affixt and fet vpon ane irne prik vpon the *Nether-boll-Poirt*; and his said rycht hand to be also affixt vpon the *Wast-Poirt* of the said burgh of Edinburgh: And his hail moveable guidis and geir, &c. (gif he ony hes) to be efcheit to his Maiefteis vse, as convict and culpable of the said haynous cryme.

CURIA JUSTICIARIE, &c. per M. Rob. Fairlie, *Justiciarium f. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij, specialiter constitut.*

#### Mutilation.

Nov. 4.—WALTER SCOTT, sone to Johnne Scott in Newark.

<sup>1</sup> The following extraordinary composition has fortunately been preserved among the *Denmylne MSS.*, Advocates' Library—but the King's 'Warrant and directioun' has probably been too pithy to have been filed by that obsequious courtier the 'Secreter,' even in his private Collection, as being considered too strong meat for posterity! Having the fear of his Majesty before his eyes, he perhaps felt that his own head and hand might be called on to answer for disobeying the strict injunctions given him.

MOST SACRED SOUERANE,

THE furious wretche MAISTER THOMAS ROS, wes, according to your MAIESTIES commandement, put to his tryall, and convicted of the haynous crymes conteaned in his diuelish Pasquil, produced for verificatioun of his guiltines, to the Assyse. The Dome is delaied till your MA<sup>TIE</sup> be pleased to signifie your royall determination in it.

His malicious frenesie is so mixed with presumption of his owne wourth, as he thinkis the vse of his learning and eloquence necessar to the world; and that his passioun having furneiffed so much staf, in so bad a pourpose, he is able, in ane subiect so wourthie and true as the commendation of your Royall guiftes of bodie and mynd, and most princelie actions, to kythe miracles in dew publeiffing thairof! To this sence, he spak in jugement: And leauing to your MAIESTIES euer gracious clemencie, multiplied exemples of diuine and humane Histories, to the commendatioun of the famous Princeis who had gracioullie pardoned heigh offences; adding exemples of manie, who being transported be passion to madnes, had thairefter recouered thair fetled jugement, and done great and wourthie materis; promeiffing no les of him self.

Your MAIESTIES Aduocat has wyselie considered, that the infame of his Dittay meritis not to be infert in the Register of the Adiornall. Always I haue sent to James Douglas the copie of the proces, that when your MA<sup>TIE</sup> defyres to sie it, he may haue it reddie, and may conceale it from all vthers. So expecting the signification of your MAIESTIES farder pleasour, anent this vnnatural and furious foole, I besaik God long to preferue your MAIESTIE in perfection of all honour, happines, and contentment.

Your most sacred Maiefteis most humble, faithfull, and bund subiect and seruant,

ED<sup>R</sup>, 22 Aug. (1618.)

BINNING.

TO THE KINGIS most sacred MAIESTIE.

Dilaitit of airt and part of the hurting, wounding, and mutilatioun of Adame Dalgleishe, fone and appeirand air to Johnne Dalgleishe of Deuchar, of thre fingeris of his left hand; committit in the moneth of Auguft, 1617 yeiris, at Muriefones-hill, befide the burgh of Selkirk, vpon fet purpois, prouifioun, and foirthocht felonie.

PERSEWARIS, Adame Dalgleishe, Sir Williame Oliphant, kny<sup>t</sup>.  
PRELOCUTOR in defence, Mr Thomas Nicolfone, Aduocat.

It is allegit be the pannell and his prelocutour, that this matter can nocht be put to ane Affyse; becaus, gif ony hurt or mutilatioun was gevin be him to the perfewer, nocht granting the famyn, it was done in his awin defence; infafar as, vpon the fevint of Auguft 1617, the pannell was fet vpon be Adame Dalgleishe, perfewar, neir to the toun of Selkirk, and was crewallie hurt be him: ffor the quhilk, the faid Adame, vpon the xxvj day of Marche 1618, being fummond befoir the Scheref of Selkirk and his deputis, to vnderly the Law for the hurting and wounding of the faid Walter Scott, defender, in the heid, to the effufione of his bluid in grit quantitie, was, be ane Affyse of xv fworne men, fund gyltie, and convict of the bluid and bluid-wyte: And producet the Rolment of Court, for verificatioun thairof, vnder the fubfcription of Alexander Wilkiefoun, clerk of the faid Schereff-Court. *Secundo*, the Dittay is nawayis relevant to pas to the knowlege of ane Affyse, becaus *mutilatio est tantum amputatio membri*; and thair is na member cuttit af, ffor the perfewaris haill hand, and fingeris thairof, ar yit extant be oculour inspectioun; and he is able to move his hand and fingeris, and to grip thairwith.

It is anfuerit be the perfewaris, that the allegeances foirfaidis aucht to be repellit, in respect of the fummondis and Dittay producet; with ane Testimoniall of the Chirurganes, fubfcryuit be the Deacone and thre of his bretherene, testie- feing the mutilatioun, togidder with the perfewaris awin mutilat hand, mutilat in thre fingeris thairof fchawin judiciallie to the Judge. And as to the Rolment of Court producet, na respect fould be had thairto, the famyn being altogidder null and repugnant to the lawis of this realme; be the quhilk, ane Sentence is gevin out in ane Criminall matter, the partie accused nocht compeirand, convictand him of ane cryme; quhairas, be the Law, (he nocht being present nor compeirand,) he aucht nocht to haif bene put to ane Affyse; bot the maift that could haif bene done be the Schereff in that Judicatorie, was allanerlie, to haif vnlawit him *in pena contumacie*: And albeit the Schereff and his depute wald geve out his or thair Testimoniall, that the faid Adame Dalgleishe, quha is mutilat, was the perfewar, na respect fould be had thairto, becaus that is na part of thair office: And thairfoir, na respect fould be had to the Rolment of Court.

To the quhilks, it is replyit be the pannell, that the Rolment of Court is fufficient to instruct his allegeance; becaus, quhatyir the pannell did, it was in

his awin defence, in respect of the forme of proceeding vsēt in the Scheref Court, quhilk is, to put the pairtie accusēt to ane Assyse, albeit he be absent and compeiris nocht; always,<sup>1</sup> it is sufficient to instruct that pairt, that he is convict of the bluid and bluid-wyte, and was *contumax*,<sup>2</sup> and compeirit nocht; quhairupoun he tuik the cryme vpone him: And as for that pairt of the allegeance maid be the pannell, that the taking away of the finger is nocht *amputatio membri*, becaus the finger is nocht *membrum*, bot *pars membri*, as sayis BALDUS, *Leg. non sunt liberi*, ff. *de statu hominum*,—whois wordis ar, *Nota, digitus non dicitur membrum sed pars officialis membri; et sic amputans digitum non dicitur amputare membrum*: And BARTOL. Confilio 201, sayis, *Queritur numque digitus sit membrum? Respondetur quod non, sed potius pars siue officium membri; per Legem, non sunt liberi*, ff. *de statu hominum*.—*Tertio*, the persewar is nocht mutilat in thais thre fingeris, becaus he is able to grip with thame and hald; and sa thay ar nocht vnprofitable.—*Last*, thair can na payne of the body be inflictit, albeit the thre fingeris was mutilat, as is allegit; becaus na pane corporall can follow, feing na death followit; bot only ane arbitrarie and pecuniall payne, to be modifeit be the Judge.

It is anfuerit be the persewaris, to that pairt of the allegeance proponit, that the cutting af of ane finger is nocht mutilatioun, it is nocht pertinent to this purpois; becaus the persewar compleinis that he is mutilat of thre fingeris, quhilk ar nocht cut aff, bot mutilat and maid vnhable, quhairby he hes nocht the full and rycht vse, nather of his thre fingeris, nor yit of that hand: And as for the mutilatioun it self, and verritie thair of, it is verifeit be oculour inspectioun, and be the Chirurgenes Testimoniall producet: And quhair it is allegit, that the Rolment of Court producet, is only vsēt bot to verifie that the persewar is culpable of the bluid and bluid-wyte, repeitis the anfuer maid thairto of befoir, with this eik,<sup>3</sup> that the Schereff had na power to put him to ane Assyse, he nocht compeirand; sa that the Declaratioun maid be the Inqueist, aucht nawayis to be respectit: And as to the Schereff, he had nocht power to geve ony Declaratioun thairupoun; and the pairteis contumacie and absence is na cause to convict him of the bluid or bluid-wyte; and becaus of his absence, he could be na forder convict bot in payment of the vnlaw; sua that, in respect of the premiffes, na respect aucht to be had to the Rolment of Court or ony pairt thair of: And albeit a pairtie be *contumax* and compeir nocht, that contumacie convictis him nocht of the cryme; vtherwayis, gif ane pairtie war *contumax*, it war nocht neidfull to put him to ane Assyse of new, quhilk war ane grit absurditie; feing, findrie persones being summoned to compeir befoir the Justice Generall and vtheris Judges in Criminall causses, thay purge thair contumacie, and offer thame selfis to ane tryell; and cowmonlie thay ar clanget be the Assyse; as was

<sup>1</sup> At all events.<sup>2</sup> Contumacious; showed contempt of Court by not appearing.<sup>3</sup> Addition.

ffund in this Judgment, betuix *Cunninghame* and *Wylie*. And as to the Doctouris of the Law allegit, na respect aucht to be had thairto in this Judicatorie, in respect of the inviolable practique obseruet within this realme; quhairin, mutilatioun of ony pairt of ane mannis persone, be the quhilk he is frustrat of the rycht vse thairof, is put to ane Assyse determinatioun; the Justice advyfes and resolues vpon the pwneischment, be advyfe of the Lordis of Secreit Counsell.

THE perfewar Restrictis this Lybell to the mutilatioun of the thre last fingers of his left hand allanerlie.

It is forder allegit be the pannell, that he can nocht be put to ane Assyse for the mutilatioun lybellit; in respect, gif ony hurt or mutilatioun be gevin to the perfewar, it was done be the perfewar him self, in drawing of his awin fuord the tyme lybellit; quhilk he has dyuerse tymes confessit to Andro Scott Chirurgane, and vtheris; and desyres the perfewaris ayth to be tane thairupoun.

The perfewar, being solemnie suorne vpon the last allegeance, anent the mutilatioun be him self with his awin fuord; he, be his grit aith, denyit the samyn; and affirmet that he was mutilat be Walter Scott, defender, and na vther: Quhairupoun my lord Aduocat askit instrumentis.

THE JUSTICE findis the Dittay relevant; and remittis the samyn to the tryell of ane Assyse.

ASSISA.

Robert Trumble of Huttrilburne, Johnne Trumble of Howdene, James Kene, bailzie of Selkirk, James Pringill in Tynneis.<sup>1</sup>

The perfewar, be his grit ayth, swore the Dittay to be of verritie: Quhairupoun my lord Aduocat askit instrumentis. And in respect thairof, and of the Chirurganes Testimoniall producet, with the evidence of the mutilatioun, be schawing of the perfewaris mutilat fingeris, Protestis for Wilfull Errour, gif the Assyse acquit.—The pannell repeittis the allegeances maid be him of befoir, now to the Assyse, speciallie, that pairt thairof, that the cryme was committit in his awin defence, and that he was perfewit be the perfewar, and is convict thairof, and of the bluid and bluid-wyte, as the Rolment of Court beiris.

VERDICT. The Assyse, be the mouth and declaratioun of James Wauch in Selkirk, chancellor, ffand the said Walter Scott to be ffylet, culpable, and convict of the mutilatioun of the said Adam of thre fingeris of his said left hand, in manner and at the tyme specifit in the said Dittay.

THE JUSTICE, in respect of the former convictioun, Ordanit the pannell to find caution for his compeirance befoir the Justice or his deputis, in the Tolbuth of Edinburgh, the ellevint day of November instant, to heir sic Dome and pwneischment to be inflictit vpon him for the said cryme, as fall be inioynet be

<sup>1</sup> The rest of the Assise were persons of no note.

the Lordis of Secret Counfall: And that he onnawayis depairt furth of the burgh of Edinburgh, in the meane tyme; vnder the pane of fyve thousand merkis money.—George Scott of Castelyde, Robert Scott of Hertwoidmyres, Walter Scott in Loquharret, and Williame Mitchelhill, burges of Selkirk, become cautioneris and fouerteis, &c.

Nov. 11.—CONTINUED to the xiiij day of Januar nixt.

(Jan. 13, 1619.)—THE JUSTICE, of consent of Adame Dalgleishe, perfewer, continewis the pronouncing of Dome, to the tent day of Februar nixtocum.

(Feb. 11.)—THE dyett DESERTIT, be directioun of the Thesaurer for the Kingis pairt; in respect the pairteis ar agreit be my Lord of Balcleuches Decreit gevin thairin, to quhome the matter was submittit.

### Slaughter.

Nov. 11.—GAWIN NISBET, sone to Robert Nisbet of Dalzell, and James Scott in Ardblairis.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> James Hammiltoun in Brigbrae; committit at ane Oisler-hous, callit the Woman-hill, in the moneth of . . . , 1617.

PERSEWAR, Robert Hammiltoun, as brother.

THE Justice, of consent of aither pairtie, continewis this dyet to the thrid day of the air (of Lanerk), or soner, vpon xv dayis wairuing, &c.

[*Mr Alexander Coluile.*]

### Cutting and Carrying away of Growing Timber.

Nov. 18.—DAVID SPALDING of Effintullie, and Alexander Robertstone of Myddill Downie.

Dilaitit of airt and pairt of the cutting down of certane grit growand treyis, and away-taking thairof, furth of Johnne Erle of Mar his Forrestis and woidis, within the boundis of Braemar, Cromar, Strathdie, and Glengarie.

In respect of thair compeirance, offerit thame selffis to the tryell of the Law, as altogidder infocent thairof; and protestit for thair cautioneris releif; and that thai sould nocht be trubillit or charget for the saidis allegit crymes.

### Slaughter.

Nov. 18.—JAMES MYDDILTOUN, sone to Robert Myddiltoun, tailzeour, burges of Edinburgh.<sup>1</sup>

The famyn day compeirit personallie, in judgement, Robert Wynrahame, Herauld, and product ane Supplicatioun, quhilk was gevin in to the Lordis of his Maiesteis Secret Counfall, be James Myddiltoun, sone to Robert Myddiltoun,

<sup>1</sup> See Aug. 26, 1612, where the whole particulars of the Trial are inserted.

tailzeour burges of Edinburghe, anent the said James puting to libertie ; togidder with the saidis Lordis of Secretit Counfall thair Warrant and delyuerance on the bak thairof. Off the quhilk SUPPLICATIOUN and delyuerance the tennour followis.

MY LORDIS OF SECRETIT COUNSALL, vnto your lordschipis humlie meanis and schawis I, your seruitour, *James Mydiltoun*, sone lauchfall to vmq<sup>le</sup> Robert Mydiltoun, tailzeour burges of Edr, That quhair, vpon occasioun of that vnhappy accident of the slauchter of vmq<sup>le</sup> *Clement Mauchane*, committit be me, I was takin, presentit to iustice, and convict for pe same, and the dome of death was pronuncet aganis me accoirdinglie thairfoir : And pe pairtie, from tyme to tyme, thir sex zeiris bygane, haifing gevin eir to the offeris of Assythement,<sup>1</sup> quhilkis war by me and my freindis maid and offerit vnto thame ; in end, by submissioun of pe matter vnto your lordschipis Sentence and Decreit, as gevin and pronuncet pairintill, quhairby I am decernit to be BANISCHET pe realmes of Scotland and Inland, and ordanit never to returne agane within the same, without Licence and consent of Sir Johnne Cokburne of Ormestoun, kny<sup>t</sup>, Justice clerk, and Mr James Mauchane, brother to the said vmq<sup>le</sup> Clement Mauchane, first had and obtenit pairto, vnder the pane of deid, to be execute vpon me without fauour ; conforme to pe Sentence and dome alreddie gevin and pronuncet aganis me in pis matter. Accoirding quhairvnto, I am maift willing to act my self in pe buikis of Adiornall : In confideratioun quhairrof, I humblie befeik your lordschip to geve Warrant and command, heirby, to the Justice clerk and his deputis to tak me actit in the buikis of Adiornall, in maner and to the effect foirfaid, vnder pe pane aboue writtin : Quhairanent pir presentis fall be vnto pe Justice clerk and his deputis ane Warrant sufficient : And your lordschipis ansuer.

APUD ED<sup>a</sup>, xvij Nouembris, 1618, THE LORDIS Ordanis the Justice, Justice clerk, and his deputis, to appoint and set a Justice Court, and to tak pis supplicant actit in pe buikis of Adiornall, that he fall depairt furth of the realmes of Scotland and England, within pe space of ane moneth estir pe dait heirof ; and returne (nocht) agane within pis realme, vnder the pane of deid : And he haifing actit him self, as said is, Ordanis pe said Justice to caus put him to libertie : And Ordanis this supplicant, that, during the tyme of his remaning within pis cuntrie, he hant<sup>s</sup> nocht Kirk nor mercat, and that he weir nocht a swoird.

AL. CANCELL<sup>s</sup>. SANCTANDROIS. LAUDERDAILL. CARNAGY. J. PRYMROIS.

AND accoirding to the said WARRANT, the said Robert Wynrahame desyret my Lord Justice to tak the said James Mydiltoun actit ; lyk as, the said James Mydiltoun, immediatlie thaireftir, being, be directioun of the Justice, brocht furth of waird be George Foulis, his Maiesteis Maister Cunzeour,<sup>2</sup> and ane of the present Bailleis of Edinburghe, and presentit vpon pannell, conforme to the foirfaid Supplicatioun and Warrant on the bak thairof, maift willinglie become actit, bund, and obleift, that he fall depairt and pass of the realmes of Scotland and Inland, within the space of ane moneth, &c.<sup>4</sup> Quhairvnto my Lord Justice interponet his authoritie and Decreit : And in respect of the former Act, and for obedience of the said Warrant, Ordanis the said James Mydiltoun to be fred and

<sup>1</sup> A compensation or *solatium*, by way of fine, paid to the relations of the murdered party.  
<sup>2</sup> Haunt ; frequent.      <sup>3</sup> Coiner ; Master of the Mint. This officer (George Foulis of Ravelston) was the son-in-law and successor of GEORGE BANNATYNE, the far-famed Compiler of the greatest body of Ancient Scottish Poetry now extant ; in honour of whom the Literary Association, termed THE BANNATYNE CLUB, assumed his name.      <sup>4</sup> As above narrated.



releit furth of the said Tolbuth and waird of Edinburghe be the Proveist and bailleis of Edinburghe.

The said James Mydiltoun, *olim in carcere*, and now at libertie furth of waird, Ratifeis, approves, and affirms the Band maid and subscriuit be him and his freindis, anent his Banischment, &c., and payment of the fowmes of money thairin contenit, &c.

### Slaughter.

Nov. 20.—PATRICK HEROUN of Kierochtrie.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>h</sup> Robert Gordoun of Bairnairny; committit within the duelling hous of Andro M'Dowell, mercheand in Monygof, in the moneth of September last.

PERSEWAR, Alexander Gordoun of Barnernie, eldest sone.

The pannell protestis for his cautioneris releif; and offeris him self to the tryell of the Law, for the said allegit cryme, quhair of he is altogidder innocent; disaffenting to all maner of continuatioun.

THE Justice Continewis this dyet, of the perseweris consent and defyre, to the thrid day of the nixt Justice-air of the scherefdome quhair the pannell duellis, (Wigtoun,) or soner, vpone xv dayis wairning. And ordanis caution to be ffund be him for his entrie to that effect, vnder the panes contenit in the Actis of Parliament: Quha fund Sir Patrick M'kie of Larg caution for his entrie, &c.

### Usurping King's Authority, by taking Captive and Detaining, &c.

Nov. 20.—THOMAS MELDRUM of Idene;<sup>1</sup> Walter Grant, his servand; James Grant in Tilliebo; Johnne Roife, servand to the said Thomas.

Dilaitit for taking and apprehending of Johnne Meldrum of Ordley captiue and priffoner, furth of his duelling hous of Ordley, vpone the viij day of Maij, 1612 yeiris, vnder nyct; cayreit him to the said Thomas duelling hous of Idene, quhairin he was detenit, *in privato carcere*, be the space of foure dayis and foure nyctis; and thairfra, cayreit him to Sir Alexander Gordoun of Clwneis hous, quhair he was detenit, *in privato carcere*, the space of tua dayis and tua nyctis; and thairfra brocht him, as ane captiue, all the way to the burgh of Edinburghe, to the duelling hous of Alexander Watsone, quhairin he was detenit, *in privato carcere*, as ane priffoner, the space of xxiiij houris: Vfurpeand thairby his Maiesteis authoritie vpone thame, in taking and detening of the said Johnne, *in privato carcere*, but<sup>2</sup> Commiffioun or authoritie, be the spaces foirsaid.

PERSEWARIS, Johnne Meldrum of Ordley; Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTORIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, elder.

<sup>1</sup> See Jan. 9, 1618.

<sup>2</sup> Without.

It is allegit be the pannell, that na proces can be grantit at Johnne Meldrumis instance, becaus he is rebell and at his Maiesteis horne; and producet fyve feuerall Hoirningis for verifeing thair of.—My lord Aduocat declairis he infistis in the perfute for the Kingis Maiesteis intreis aganis the pannell, quha had na power to tak and detene the said Johnne, in maner lybellit.

It is allegit be the pannell, that gif the Dittay war trew, (nocht grantand the samyn,) that thai did na wrang in taking and detening of the said Johnne Meldrum, becaus the tyme of his taking, he was rebell and at the horne; and repeittis the Hoirningis producet for instructing thair of: And as the pannell could nocht be callit for Slauchter of ane rebell at that tyme, far les can thai be perfewit for his taking.—It is anfuerit be my lord Aduocat, as perfewer, that the exception aucht to be repellit; *ffirsl*, becaus he infistis vpon the hail lybell *coniunctim*, as ane cryme to infer the conclusioun thairin contenit, viz. taking and detening of Johnne Meldrum *in privato carcere*, as the lybell beiris: *Secundo*, adheirand to the first anfuer, geveand<sup>1</sup> the said Johnne had bene rebell, the pannell had na Warrant to tak or apprehend him, thay nor nane of thame being Magistrattis, haifand na Jurisdiction, power, nor commissioun; feing the pannell could nevir haif bene accuset for suffering a rebell to pas vp and doun the cuntrie, nather warthay astrictit of the Law<sup>2</sup> to tak him, nather mycht thay tak him.

It is duplyit be the pannell, that the exceptioun standis relevant, nochtwithstanding of the anfuer, infasar as the Kingis Maiesteis rebell can haif na benifeit of his Maiesteis Lawis; and thairfor, as nocht being the Kingis frie leige, it was lauchfull to the pannell to tak him; and in the Law it is cleir, *quod capere Bannitum unicuique permittitur*, L. finali Cod. *de Maleficis et Machematicis*; Baldus in Lege prima, Cod. *de Summa Trinitate*: And the resson of the Law is, *quia Bannitus habetur pro fugitivo; et fugitivum quilibet potest capere*; Bald. in Lege *qui bonis*, Cod. *qui bonis cedere*: And it was nevir practizet in this Judicatorie, that Hoirning being obiectit and producet, ather for hurting, slaying, or taking of ony man, proces was grantit. And it being now opponit, that the persone tane was the Kingis Rebell, the pairtie perfewit was nevir, nor can nevir be put to the knowlege of ane Assyse. Lykas, it is allegit, that *the Laird of Drumlangrig*, being accuset for taking of *Kirkmichell*, was nocht put to ane Assyse. It is forder eikit to the allegeance, that the pannell had ane speciall intreis to tak him, becaus he was rebell and at the horne for nocht removeing fra his landis of Woidheid, quhilkis landis of Woidheid he violentlie possessit, and opprest the tennentis. Lyk as, the said Thomas Meldrum of Iden, finding the said Johnne Meldrum to be nyne or ten tymes his Maiesteis rebell, and haifing letteris of Captioun to tak and apprehend him, the said Johnne being

<sup>1</sup> Giving or granting, for the sake of argument.

<sup>2</sup> Bound by law.

ane fugitiue and ane howlat,<sup>1</sup> nocht appeirand in the day; and it being cum to the pannellis knowlege, the tyme lybellit, that he was cum, vnder filence of nycht, and enterit within the houffis, the pannell, vpon suddantie, being adverteist by the spyis, nocht haifing the occasioun<sup>2</sup> of ane messinger, was forcet of necessitie, *propter periculum fuge*, to pas him self, with his awin domestik servendis, and to seasevpon the said Johnne, of intentioun to exhibeit him to Justice, he being his Maiesteis rebell for causses Criminall, sic as for invading *the Guidman of Harthill, &c.*, as the Hoirningis beiris: Lyk as, with all convenient dilligence, the pannell brocht the said Johnne Meldrum to Edinburghe, of intentioun to exhibeit him to justice; and in the meane tyme, he being seafit vpone and put in waird, at the instance of dyuerse perfonas, baith for dett, ryottis, and oppreffiones. Quhairvpone the pannell meanit him self<sup>3</sup> to the Lordis of Secreit Counsell; quha, be thair Warrant and directioun, vpone the xxj of Maij, 1612, Ordanit the said caution for observeing his Maiesteis peace, and his personall compeirance, quhan euir he fould be charget thairto, vnder the pane of V<sup>m</sup> (5000) merkis, as the Ordinance, heirwith producet, beiris. Sua that the pannell, being *in prosecutione proprie injurie*, for freithing<sup>4</sup> him self and his tennentis of ane manifest opprefour, *et quum latitabat tanquam fugitivus*, as said is, he was *in optima fide* to tak him; and nather the captor nor detentioun can be comptit criminall, becaus it is lauchfull, *cuilibet ex populo*, to tak ane notorious malefactour, and to exhibeit him to justice; and his detentioun is nocht *culpa*, becaus he was presentit to justice.

It is anfuert be my lord Aduocat to the first pairt of the Duply, that he repeitis his former anfuert; for albeit ane rebell may nather persew nor defend in judgement, that is na reafone quhairfoir everie privat man fould tak him at his awin hand, and detene him in his privat hous, as is set down in the lybell. Quhair the defender wald compair ane rebell *cum bannito*, nocht grantand to the Law allegit, quhilk makis na mentioun *de Bannito*, ffor *Bannitus* was properlie callit he quha transgressit aganis the Empyre or the Estait. As to the allegeance proponit aganis all the perseweris rebelliones, thair is nocht ane proponit for ane criminall cause persewit criminallie; and as to the haill ciuile Hoirningis, repeittis as ofbefoir. And quhair it is allegit, that he was rebell at the instance of Thomas Meldrum him self, ane of the pannell, for nocht removeing fra his landis of Woidheid, it is anfuert, that albeit he was pairtie aganis him, that gave him na authoritie to tak him at his awin hand, speciallie being duelling and remaning in his awin hous, and vpone his awin heritage of Ordley, and nawayis being fugitiue fra his Maiesteis lawis at that tyme. As to the Hoirning vsset aganis him, at the instance of his Maiesteis Aduocat for the tyme, the Guidman of Hearthill

<sup>1</sup> Owl. Such persons were likewise often termed *night-hawks*.

<sup>2</sup> Opportunity; convenience.

<sup>3</sup> Made suit; complained.

<sup>4</sup> Freeing; ridding.

and his bairnis, is na Criminall Hoirning, becaufe it proceidis frome ane perfute agitat afoir the Counsell; and ffordere, to purge that Hoirning, he was relaxt thairfra, lang ofbefoir, viz. in *anno* 1609. As to the Letteris of Captioun producet, na respect fould be had thairto, becaus thair is an executioun producet, quhairupoun I tak instrumentis, defyreing the hail blankis thairintill to be scoirit; and allegis, that na respect fould be had thairto, becaus the Letteris of Captioun ar nocht direct to him, nor to nane of the perfones that concurret with him in the taking of the said Johnne Meldrum: Lyk as, na respect aucht to be had to the saidis Letteris of Captioun, becaus thair is na executioun producet. As to the Warrant of the Secreit Counsell, producet, the perfewar acceptis the samyn, and alledges that this Warrant, gevin vpon the xxj of Maij, 1612, could be na Warrant to the perfones on pannell, nor nane of thame, to haif tane him vpon the aucht day of Maij preceeding, and to haif keipit him *in privatis carceribus* to the said xxj day, *quum carcer est meri imperij, et non competit privato*; and ane Ordiner Judge hes nocht power to keip ane perfone tane *in privato domo* attour<sup>1</sup> the space of xxiiij houris. Sua, infistand vpon the hail lybell coniunctlie, as is confauct, the hail argumentis proponit for the pannell aucht to be repellit.

It is forder exceptit be the pannell, that with the Hoirningis producet, and allegeances foundit vpon the rebelloun of the perfewar, the defender did na wrang to tak or detene the perfewar, for the reffones foirlaidis. And quhair it is allegit, that he mycht nocht detene him, *quia carcer est meri imperii*; *ffirst*, it is allegit, that quhan ane rebell is tane *ad hunc finem*, to present him to the Judge Ordiner, thair is na wrang done, quhilk is in this caice; as is decydit in the Law laitlie allegit, *quod ait Pretor, Si debitorum ff. Digest. que in fraudem creditorum*: And thairfoir, seing the defender tuik the perfewer, being ane rebell, and detenit him quhill<sup>2</sup> he brocht him to the sait of Justice, and thair presentit him, thair can be na vsurpation of the Kingis authoritie: And as for the space of detentioun, it may be langer or schorter, accoirding to the distance of the place; as is cleir in Julius Clarus, L. quinta § finali, *si captus, et aliquis potest illum detinere, et captum Judici presentare, etiam post septem dies*. And the same Clarus schawis, quhair it was practizet contra Dominum Joannem Stephanum, *qui furem septem dies detinuit, &c. sed cum compertum fuerit, quod Judici et officialis obtulerit, absolutus fuerit*.—*Secundo*, it is nocht capitall, bot the grittest pane that is inflictit is, *tot dies manere in carcere publico, quot illum in privato incluserit*: ffor albeit Lex vnica, Cod. *de privato carcere*, appointis it *penam maiestatis*, yit it is mendit be the nixt Constitutioun immediatlie thair-estir following, quhilk appointis the pane foirlaid. Ita Cujacius, &c.: And, gif neid beis, fall be provin be the consuetude of all Nationes; and gif *privati*

<sup>1</sup> More than; above.<sup>2</sup> Until.

*carceres* (quhairin thay ar done be manifest vsurpatioun) ar nocht capitall, *multo minus* can the pannell fall under ony corporall pwneifchment, haifing tane ane manifest oppreffour, and presentig him to Justice. *Last*, as to the Relaxatioun fra *Harthillis* Hoirning, it is null, becaus the Kingis Aduocat and the pairtie is thairintill ordanit to be summond, quhilk is nocht done.

My lord Aduocat, anfueraud to the first pairt of the secund allegeance, sayis, that the persewer is formallie contrair to the pannell, and that the lybell contenis ane sufficient Criminall caus, to put the pannell to the knowlege of ane Assyse: And quhair it is allegit, that the pannell brocht the persewer and presentit him to ane Judge, desyres the pannell to condiscend vpon the name of the Judge to quhome he was presentit; ffor it is treuthe, that quhan he was brocht to Ed<sup>r</sup>, he brocht him to the calsay,<sup>1</sup> and than tuik instrumentis of his setting to libertie; and thairefter, certane of his creditouris, be vertew of Captioun, tuik him and pat him in waird. And quhan it is allegit that the taking of persones and keepig of thame in *privatis carceribus* is nocht capitall, the direct contrair is of verritie; becaus the said cryme is nocht only capitall, bot, be the rigour of the Law, is tressonable; as was decydit befor the Justice General aganis *the Erles of Huntlie* and *Crafurd*, ffor taking of *the Maister of Glames*. As to the practique of *the Laird of Drumlanrig*, in that caice it was alleget, for defence of *Drumlanrig*, that *Kirkmichell* was tane be vertew of Letteris of Captioun, direct to *the Schereff of Nidisdail*, and na Interlocutour was pronuncet in that cause, becaus the persewar past fra the persute thairof, *pro loco et tempore*. In respect quhairof, the lybell standis relevant; and, nochtwithstanding of the saidis allegeances maid be the pannell in the contrair, fould be put to the knowlege of ane Assyse.

THE JUSTICE continewis his Interlocutour to the thrid day of the nixt Justice air of the scherefdome of Aberdene, or soner, vpon xv dayis wairning — Patrik Meldrum ffeiar of Iden become souertie for the entrie of the saidis Thomas Meldrum of Iden, his father.

### Slaughter—Horse-stealing.

NOV. 20.—JOHNNE MELDRUM of Ordley.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Cristian Watfone, spous to Alexander Bythe sumtyme in Scottistoun, in manner specifeit in the Letteris; committit in Marche 1614: And for airt and pairt of the Steilling of tua horsis fra Thomas Meldrum of Idene; committit in September, 1608.

PERSEWARIS, Alexander Bythe, as spous; Thomas Meldrum of Idene; Sir Williame Oliphant, kny<sup>t</sup>.  
PRELOCUTOUR in defence, Mr Vmphra Blindschellis, (Advocate.)

<sup>1</sup> Causeway; the paved public streets within the gates.

THE JUSTICE continewis this dyet, for tryell of baith the crymes aboue written, to the thrid day of the nixt Justice-air of the Sherefdom of Abirdene, &c.—Mr Williame Levingstoune become fouertie, &c.

### Slaughter—Demembration.

Dec. 4.—WILLIAME STEWART, at the mylne of Dalcrove.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Dauid Toscheoche, younger of Monyvaird, and of airt and pairt of the Demembring of Dauid Malloche, his ferwand, of his rycht hand; and remanent crymes contenit in the Letteris; committit the 24 of Junij last, within the burgh of Perth.<sup>1</sup>

Compeirit Hew Campbell *excusatorio nomine* for *Annas Grahame Lady Monyvaird*, and producet the Letteris deulie execute and indorfate, togidder with ane Testimoniall, subscryuit be the said Annas, and be Mr Johnne Menteith Minister at Monzie, and Mr Dauid Drummond Minister at Creiff, testifeing the said Annas Grahame to be newlie delyuerit of hir birth; and thairthrow, vnhabie to travell to the keiping of this dyet and perfute of the said Williame Stewart for the said cryme: And in respect thairof, protestit for releif of the Lairdis of Laweris and Inchebrakie, cautioneris for repoirting and perfute of the saidis Letteris.

THE JUSTICE continewis the dyet to the thrid day of the nixt Justice-air of the Scherefdom of Perth, or soner, vpon xv dayis wairning; and ordanis the pannell to find caution for his re-entrie. *Plegio, Waltero Stewart de Heildoun.*

PERSEWAR, Dauid Malloche, sumtyme servand to vmq<sup>le</sup> Dauid Toscheoche.

(Feb. 25, 1620.)—THE persewar declaris, that at the tyme of the raising of the Letteris aganis the pannell, informatioun was gevin to him that the said W<sup>m</sup> Stewart was in companie with Laurence Bruce of Cultmalundie, Alexander Flemyng of Moness, Alexander Bruce, and remanent perfonnes thair complices, at the away-streking of his hand; bot sensyne, he hes tryit<sup>2</sup> that he is altogidder innocent thairof, nather was he vpon the grund at the committing of that fact: In respect quhairof, he passis *simpliciter* fra the said Williame his perfute.

Continued to the air of Perth, tertio Itineris, or soner, vpon xv dayis wairning. Thomas Layng, indueller in Leyth, cautioner.

### Slaughter.

Dec. 9.—ROBERT CAMPBELL, sone to Colene Campbell, burges of Glesgow.

PERSEWARIS, Thomas Symfoun at the Waft-poirt of Edinburghe, as brother to the defunct; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

<sup>1</sup> See this Collection, Jul. 29, 1618, and Nov. 17, 1619.      <sup>2</sup> Proved; ascertained.

The pannell takis instrumentis of his entrie, and offerris him selff to the tryell of the Law for the said allegit cryme; affirmeing him selff to be altogidder innocent thair of; and disaffentis to all forder continuatioun, in respect that, to the keiping of that dyet, and cleiring of his innocencie of the allegit Slauchter aboue writtin, being out of the cuntrie this threttene moneth bygane, he being maid foirfene<sup>1</sup> thair of, be Letteris direct to him, and reffaut be him in *Spane*, he hes cum furth of *Spayne*, and left his affairs thair vnperfyttit, haifing na vther errand to returne hame bot to cleir him selff of sic ane haynous imputatioun; quhair of he is innocent.

INTERLOCUTOR. The Justice continewis this matter, and all tryell to be tane thairintill, to the thrid day of the air (Renfrew), or foner, vpon xv dayis wairning; and Ordanis the pannell to find caution for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament: Dischargeing in the meane tyme all letteris to be direct aganis him or his cautioner, except he be resident within the cuntrie for the tyme, nocht vpon the poynt of his voyadge; nather that ony Letteris be direct in the tyme of wynter: And declaris, that in caice he be charged vpon the poynt of his voyadge, for his compeirance vpon a fyftene dayis thaireftir, in caice at the day of compeirance it be allegit be his cautioner that he could nocht guidlie enter him, becaus he was boun<sup>2</sup> to his voyadge furth of the cuntrie the tyme of the geving of the charge, respect and confideratioun fall be had to the said allegeance, the samyn being lauchfullie verifeit and provin to be of veritie: And last, the Justice Discharges the haill perfonas summoned vpon this Assyse fra all compeirance herein in tyme cuming, in respect this is the secund dyet keipit be thame, and nathing is done thairintill, &c.

[CURIA *Justiciarie f. d. n. Regis, tenta in pretorio de Edinburghe, per M. Patricium Sandis, Justiciarium f. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij.*]

### Slaughter.

Jan. 15, 1619.—ANDRO WAST, mafone burges of Dundie.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>1</sup> Alexander Tailzeour, his prenteis, be throwing ane four-futtit stule at his breift and heart, and geving him ane deidlie fraik thairwith; committit within his awin duelling hous, in Dundie, in the moneth of Januar, 1611; quhair of he deceift, in Februar thaireftir, being cayreit fra Dundie to his fatheris hous in Elgyn, in ane horse-litter, in grit dollour and payne, quhair he deceiffit of the said deidlie hurt.

PERSEWARIS, Johne Tailzeour, mafone burges of Elgyn, as father; Sir W. Oliphant of Newtown, kny<sup>t</sup> PRELOCUTOR in defence, Mr Alexander Peiblis.

It is allegit be the pannell, that the Dittay, as it is qualifeit, is nawayis relevant to pas to ane Assyse; becaus it is cleir, be the Dittay, that eftir the allegit fraik gevin to the defunct with the stule lybellit, he travellit the space of fourfoir myles frome Dundie to Elgyn; quha, eftir his coming to Elgyn, be the exces of travell, he contractit ane fever, quhair of he deceift.—It is anfuerit be my lord Aduocat, that the allegeance aucht to be repellit, in respect of the Dittay beiring the defunct to haif reffaut ane deidlie fraik, quhilk was the cause of his daithe.

<sup>1</sup> Acquainted.

<sup>2</sup> Prepared; furnished; equipped.

THE JUSTICE findis the Dittay relevant ; and Ordanis the famyn to be tryit be ane Affyse.

The Aduocat takis instrumentis of the fueiring of the Affyse ; and thaireftir declairit, that feing they ar all induelleris in Dundie, to quhome the treuth of this matter was best knawin ; and that the defunct reffaut ane deidlie fraik, quhair of he deceift, protestis for Wilfull Errour, gif thay acquit.—The pannell protestit in the contrair, affirmeing that the Defunct past hail and feir<sup>1</sup> furth of Dundie to Elgyn, and travellit lxxx myles thaireftir, vpon fute.

VERDICT. The Affyse, be the repoir and declaratioun of Robert Moreife, merchand in Dundie, chancellor, fband, pronuncet, and declairit, all in ane voce, the said Andro Wast to be Clene, innocent, and acquit of the said crewall Slauchter.

**Slaughter—Proof in exculpation, by Witnesses, refused.**

Jan. 15.—JAMES SCRYMGEOUR in Balquhadlie.

Dilaitit of airt and pairt of the Slauchter of vinq<sup>10</sup> Johnne Eduard in Acharne, be streking him ane deidlie fraik in the heid, in September 1617 ; quhair of he deceiffit in Januar thaireftir.

PERSEWARIS, Johnne Eduard, as sone ; David Eduard, as brother ; Sir W. Oliphant, kny<sup>t</sup>.

PRELOQUITOURIS for the pannell, Mr Thomas Hoip, Mr William Oliphant, younger.

It is allegit be the pannell and his prelocutouris, that the Dittay is nawayis relevant to pas to ane Affyse, nather in the distinct memberis nor *conjunctim* ; nather can ony Homiceid be tryit or pwneift, except the famyn proceed vpon ffoirthocht ffellony. As to that member of the Dittay, beiring the defunct to haif bene best and dung with ane rung,<sup>2</sup> *non relevat* to infer ane cryme. *Secundo*, as to that article thairof, quhair the pannell haket his heid with ane quhinger,<sup>3</sup> (nocht granting the famyn,) it is na capitall cryme, bot ane ryote ; the tryell quhair of pertenis to the Counsell. *Tertio*, quhair it is allegit, that he was strukin to the grund, and hurt in his nobill pairtis, *non relevat*, vnles the persewar condiscend quhat intrallis or noble pairtis was brokin. *Quarto*, as to that point of the lybell, quhilk is the chiefest member, beiring, that be occasioun of the hail fraikis preceeding, he dwynet and pynet away to the tyme of his daith, *nullo modo relevat*, vnles he say *positiue*, that he deceift be thais fraikis ; *nam non dici potest prebere occasionem mortis, nisi sit causa mortis*.—It is anfuerit be my lord Aduocat, that the allegiance foirfaid aucht to be repellit, in respect of the lybell beirand, that the defunct deceift of the fraikis lybellit.

It is forder allegit be the pannell, that the Dittay, as it is mendit, is nawayis relevant ; becaus the preceeding qualificatioun can nocht be estemit *causam mortis*, except it war lybellit, that the defunct, immediatlie eftir the allegit fraikis, he

<sup>1</sup> Whole and sound, or hearty.

<sup>2</sup> Basted and violently struck with a cudgel or heavy staff.

<sup>3</sup> Hacked or *notched* his head with a sort of hanger or short sword.



fell doun in found<sup>1</sup> to the grund; or ellis, that be the fraikis he contractit a deidlie diseafe and lay bedfast, ather immediatlie eftir the fraikis to be the caus of a supervenient diseis; ffor be the cowinoun consent of all Laweris, *vulnus non dicitur causa mortis, quando a die vulneris vsque ad vigesimum primum diem nulla supervenit febris vulnerato*. Panormitanus, ad Cap. *presbiterium, extra de Homicidium*. In the quhilk place, Panormitan and all the Canonistis consentis, *quod hoc sit iudicium medicorum*; ffor if ony ffever had followit, gif he had convalesfit thaireftir, the ffever falling out vpon the fraik was na caufe of deathe; *multo magis* in this caice, na fever following vpon the allegit fraik gevin. In respect quhair of, the Dittay is nawayis relevant, *hoc autentico maxime*, that in the Dittay it is confest, that the persone flane was threscoir ten yeiris of age, sa that it was nocht possible to him to ressaue deidlie woundis, and to leave in health sa ang but<sup>2</sup> seiknes.

It is anfuert be the persewaris, that the allegance aucht to be repellit, in respect of the Dittay beiring deidlie woundis, in maner qualifeit in the Dittay; and that he dwynet and continewit in grit pane to the tyme of his deceis.

It is duplyt be the pannell, that my lord Aduocattis reply is only in respect of the last member; and thairfoir the vther tua, as nocht relevant, fould be scoiret out of the Summondis.

My lord Aduocat declairis, he infistis vpon the Dittay *conjunctim*, as it is confaueit.—The pannell allegit in the contrair, that it can nocht be conjoynet.—It is allegit *peremptorie* be the pannell, that it can nocht be affirmet that *Johnne Eduard* deit of the allegit fraikis, in respect of the lybell, quhilk beiris, that he levit be the space of foure monethis (albeit, *in rei veritate*, he levit quhill a thre dayis befor Fastrenisevin,<sup>3</sup> quhilk was the 18 of Februar): becaus *secundum sententiam omnium medicorum, nullus lethaliter vulneratus potest vivere ultra quadraginta dies*. Jul. Clarus ad § *Homicidium*, vbi subdit, *quod ita observat communis stilus, et si vulneratus post illatum vulnus ambulaverit, non presumitur decessisse ex vulnere*. Lege vnica, Cod. *de Emendatione servorum*. Bartol. ad *Legem finalem*, ff. *ficarijs*, particulo preterea extra *de Clerico percussore*. Pharmacius *de Homicidio*, Tit. 14, quest. 125, num. 46, vbi testatur de communi medicorum opinione, *Vulneratum qui ultra quadraginta dies vitam porrigit, non presumitur ex vulnere decessisse*. And be all thair consentis, gif the pairtie nocht onlie leave,<sup>4</sup> bot also gif he leave in healthe, without seiknes, and walk vp and doun in healthe, as ane haill man, the space of thre dayis, it is accoirdit, that the wound can nocht be the caufe of daithe: And the grund<sup>5</sup> of this is tane out of the law of Moyfes, Exod. cap. 21, ver. 21. Off the quhilkis it is subfumet, nocht onlie that the defunct levit fourtie dayis, bot neir-hand foure tymes fourtie

<sup>1</sup> In a swoon or fainting fit.    <sup>2</sup> To live, in health, so long without sickness.    <sup>3</sup> Fasten's-eve; the day before the commencement of Lent.    <sup>4</sup> Live; survive.    <sup>5</sup> Ground; warrant.

dayis, ffor he deit vpon the 16 or 17 of februar 1618 : During the quhilk tyme, he was nocht onlie frie of feiknes, nor nevir lay bedfast, except in the ordiner tyme of rest, in the nycht ; bot also, he walkit vp and doun the cuntrie and parrochines about, as ane haill man, and nevir tuik bed quhill aucht dayis befor his deceis, at quhilk tyme he was tane with ane fever, quhair of baith he and his wyfe deceiffit.—Nather can the accufer, quhilk is the defunctis sone, be hard to allege in the contrair ; becaus, at Martimes thaireftir, he forcet his father out of his awin hous ; and the particuleris of this exceptioun the pannell offeris to prove be Witnesses, quha are summond be the Lordis delyuerance : Quhilkis Letteris, proceeding vpon the said delyuerance, thay produce, and desyres that the Witnesses may be callit and admittit thairupone. *Last*, the lybell can nocht be sustenit *ad hunc effectum*, to pwneis the pannell to death, becaus *nullum Homicidium morte punitur, nisi homicidium dolosum et deliberatum sive ex feloniam ; aut culposum vel casuale non puniuntur ad mortem*. And for proveing of this propositioun, the pannell cites the third Parliament of King James the first, cap. 51, Quhair the Estaitis distinguisches betuix Slauchter of suddentie, and Slauchter of ffoirthocht ffellonie ; and declairis ffellonie to be pwneift be death ; bot the vther, that the pairtie skaithed fall follow, and the pairtie trespaffand defend, accoirding to the courfe of the auld Lawis of this cuntrie : And siclyk, in the 6 Parliament of King James the first, cap. 95, quhilk contenis the same distinctioun, and closes this article, that gif it be ffoirthocht ffellonie, he fall die thairfoir. Vpon the quhilkis it is subfument, that it was nevir lybellit, nor can be lybellit, that this Slauchter was committit vpon ffoirthocht ffellonie ; bot be the contrair it is trew, that quhateuir the pannell did, he did it as maister to Findlay Ramsay and vmq<sup>r</sup> Johnne Eduard, being baith his tennentis, *et sic dans operam rei licite* ; in sa far as Johnne Eduard, being decernit in Court, in Junij 1617, of his awin consent to haif done wrang in teilling and sawing<sup>1</sup> of ane peice of land pertening to the said Finlay Ramsay ; and be the Act of Court, the officer was ordanit to pas the tyme of scharing, and scheir and leid the coirnes, as sawin vpon Finlay Ramsayis grund ; lyk as, the saidis coirnis war arreiftit be the officer, vpon the sext of Junij 1617 ; and thaireftir, in the tyme of scheiring, the said officer haifing past to the grundis, and scharne the coirnes, and being leiding the samyn away, the said Johnne Edward cam maift prouddie and contemptuoullie (his maister being vpon the grund), and defoircet the officer in his presens ; quhairupone the officer brak his wand :<sup>2</sup> Lyk as, the defunct being commandit be his maister to desist, he maift prouddie repynet contrair his Maisteis lawis ; and the pannell being present, haifing ane littill stalff in his hand, strak the defunct thairwith vpon the heid, and did no forder ; nochtwithstanding quhair of,

<sup>1</sup> Tilling or ploughing, and sowing.      <sup>2</sup> Broke his staff or wand of office, symbolical of his being *deforced*, as it was termed, i. e. violently and forcibly interrupted in the execution of his office.

the defunct prouddie cayreit away the coirnes to his awin zaird, walking foundlie vpon his feit, without ony appeirance of hurt. And for verifeing thairof, producet the deforcementis.

It is anfuerit be the perfewaris, to the firft allegeance, proponit *peremptorié*, the famyn aucht to be repellit, in refpect of the Dittay, Lawis and pratique vniuerfallie obferuit in this Judgment, and all vther Criminall Courtis within this realme, quhairin Dittayis ar evir fund relevant, and remitted to the knowlege of ane Inqueift, being lybellit and fet down in maner as this Dittay is lybellit; and that the perfone offendit deceiffit throw the hurtis and woundis gevin to him: And quhair it is meant,<sup>1</sup> that he furvivet efter the geting of the hurtis the fpace of fyve monethis, that pairt is nawayis relevant mair nor was the firft; in refpect that the Dittay beiris, that the defunct was hurt and woundit vpon the nynt of September 1617, and he deceffit thairof vpon the aucht or nynt of Januar thaireftir, 1618; quhilk Dittay beiris lykwayis, that he dwynet continuallie fra the tyme of his hurting to the hour of his daith.—Quhair it is allegit, that WITNESSES aucht to be reffaut vpon this allegeance, anfueris, na Witneffes can be reffaut in Criminall cauffis, conforme to the Lawis of this realme, except in matteris of Treffone: And albeit Witneffes mycht be reffaut, yit thay can nocht be reffaut vnto the tyme the allegeance be firft fund relevant; and gif it war fund relevant, thair aucht na Witneffes be reffaut befor the Affyfe, feing the hail poyntis confitis *in facto*, and the tryell thairof is remittit to the Affyfe, quha becumis bayth tryeris and Witneffes thairin:<sup>2</sup> And as to the Lordis deliuerance grantit for fummondng the Witneffes, it aucht nocht to be refpectit, becaus it is privat, and grantit be the Lordis *parte non citata*. As to the laft allegeance, beiring, that na man fould be pwneift to the daihe, except it be done vpon ffoirthocht fellonie, the perfewer denyis that propofitioun altogidder, in refpect of the vniuerfall pratique of this realme; be the quhilk, all perfones criminallie perfewit for Slauchter ar put to the knowlege of ane Inqueift, and pwneift to the daihe; this lybell contenand ane verrie relevant caufe, qualifeit with all the circumftances neceffar aganis the pannell, as committer of the Slauchter, with all circumftances of the Law requifite.

It is duplyit, that Witneffes may be examinat befor the Affyfe, vpon the treuth of the exceptioun peremptour; and being remittit be the Judge, with the lybell, to the Inqueift, thay may cognofce thairupoun, and vpon the Witneffes Depofitiones, fa far as the famyn may geue thame licht concerning the fact: And be speciall Act of Parliament, maid in his Maieftis xj Parliament,

<sup>1</sup> Represented. Literally, complained.

<sup>2</sup> For an elucidation of the ancient practice upon this point, reference is made to Mr Hume's valuable Commentaries on the Criminal Law of Scotland. The present case affords ample illustration of the doctrines held relative to the Law of Evidence, in matters Criminal, at the commencement of the Seventeenth Century.

cap. 90, it is statute, that all writtis, Witnesfes, and other probatioun, fall be led and deduced befor the Affyse, and that for tryell of the treuthe, *quia probationes in criminalibus debent esse luce meridiana clariores*: Lyk as, Witnesfes war admittit in the Criminall cause perfewit be *Strauchane* aganis *Geillis Johnne-stoune*. And quhair it is affirmet, that the Warrant is purchest for fummond- ing of Witnesfes, *parte non citata*, it is nocht ane Warrant against justice, bot for fortherance of justice, and cleiring the treuthe. And as to the last, the samyn is foundit vpon tua Actis of Parliament, quhilk can nocht be derogat be ane contrair custome; lyk as, my lord Aduocat is nocht hable to schaw quhair this exceptioun, being proponit, was repellit.

INTERLOCUTOR *of Relevancy.*

THE Justice REPELLIS the hail allegance, in respect of the Dittay, and anfuers maid be my lord Aduocat in fortificatioun thair of. And Ordanis the Dittay, quhilk is ffund relevant, to pas to the knowlege of ane Affyse.

Quhairupoun my lord Aduocat askit instrumentis.

THE Justice, in respect thair is nocht ane number of substantious perfones, landit men, accoirding to the qualitie and rank of the defender, present, to pas vpon his Affyse, Continewis all forder tryell of this matter to the thrid day of the nixt Justice-air of the scherefdome quhair the defender duellis, or soner, vpon fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament; with this restrictioun, that na Letteris be direct furth in this matter befor the first day of Junij nixt.

Quhairvpon the said James Scrymgeour, defender, askit instrumentis; and quha, for obedience of the said Justice ordinance, ffand Johnne Scrymgeour of Ballanscho cautioner, to the effect, and vnder the panes foirsaid.

[*Mr Patrik Sandis, Justice-Depute.*]

**Slaughter committed at a Bridal.**

Jan. 29.—JOHNNE SWYNE, fervand to the Laird of Randiefurd.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>10</sup> Johnne M<sup>c</sup>cairtour, fervand for the tyme to Jonet Mayne, wedow, in Menstrie, be streking him with ane durk in the bellie, quhair of he deceiffit; committit at ane brydell,<sup>1</sup> in the evening eftir supper, within the sayd Jonet Maynes duelling-hous, vpon the xxij day of December last, being Tyfday befor 3ule.<sup>2</sup>

PERSEWAR, Gilchryft M<sup>c</sup>cairtour in Buttergask, as father.

The pannell confessis the cryme, and cravis Godis mercie and pardoun for the samyn.

VERDICT. The Affyse, all in ane voce, ffand, pronuncet, and declairit the said

<sup>1</sup> Bridal (*bride-ale*), wedding.

<sup>2</sup> Yule, or Christmas.

Johnne Swyne, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his move-  
abill guidis to be efcheit, &c.

### Child-Murder.

Jan. 29.—BESSIE WEIR, servand to James Lowriestone in Over Gogar.

Dilaitit of the crewall and vnnaturall Murthour of hir awin infant bairne, borne and brocht furth be hir, in fornicatioun, to James Threipland in Biggar; committit vpon the xx day of Januar instant, about midnicht, within ane zaird lyand to the said James Lowriestones hous in Over Gogar, immediatlie eftir hir delyuerie thairof.

VERDICT. The Assyse, all in ane voce, be the mouth and declaration of Robert Wilkie in Rathobyres, chancellor, in respect of the said Bessie hir Judiciall Confessioun of the said cryme, ffand, pronuncet, and declairit her to be culpable and convict thairof.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair hir heid to be strukin frome hir body; and all hir guidis, gif scho ony hes, to be efcheit, &c.

[*Mr Alexander Coluill, Justice-Depute.*]

### Slaughter.

Feb. 3.—HABBIE RAE in Moufwall, Pait M'keg, servitour to the Laird of Lag, and twenty others.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Carutheris, callit of Dormont; committit vpon the secund of Januar last, with schottis of hagbutis and pistolettis, within the dwelling-hous of Johnne Mundallis in Torthorrell.

PERSEWARIS.

Margaret Johnnestoun, as mother; Frances Carutheris, as brother; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.  
PRELOCUTORIS in defence, Mr Thomas Hoip, Mr James Hammiltoune.

Continued to the Justice-air of Dumfries, 'tertio Itineris, vel super premonitione xv dierum.'

### Slaughter.

Feb. 3.—JAMES DOUGLAS of Moufwall; Johnne and Williame Greir-  
fones, his servandis; Johnne Carleill, sone to Thomas C. in  
Bankis; Johnne Blak in Moufwall; and Habbie Dikfone, thair.

Dilaitit for the above Slaughter. These persons were all 'denuncet rebellis, and put to the horne, for nocht finding of caution for thair personall compeir-  
ance.'

(Jul. 21.)—CONTINUED to the air of Dumfries, *tertio Itineris*, &c. Johnne Lord Fleming, cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

**Slaughter.**

Mar. 10.—MR THOMAS DOUGLAS, Minister at Balmirrienoche.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Thomas Creichtoun of Bodumcraig; committit betuix Balmirrienoche and Couper in Fyfe, vpon the xij day of Februar laft, 1619.

THE Justice, in respect of the feiknes of Jeane Carmelie, the defunctis relict, quha can nocht be presnt to concur in this perfute, continewis this matter to the thrid day of the nixt Justice-air of the Scherefdome of Fyfe, or foner, vpon fyftene dayis wairning: And ordanis the pannell to find cautoun for his re-entrie; quha fand James Douglas of Moirtoun, portioner of Gogar, &c.

**Treasonable Murder under trust, credit, and assurance.**

Apr. 2.—JOHNNE MAXWELL of Garrarie, and George Maxwell, his sone.

Dilaitit of the crewall and odious Murthour under trust, credeit, and assureance, of vmq<sup>le</sup> Johnne M<sup>c</sup>Kie of Glashek; committit vpon the viij day of Julij 1618; in forme and maner specifeit in the Dittay producet against thame, viz.

*DITTAY against Johnne Maxwell of Garrarie, and George Maxwell, his sone:*

FORSAMEKILL AS, in the ellevint Parliament baldin by our souerane Lord and Estaittis of this kindome, att the burgh of Edr, the xxix day of Julij, 1587, cap. 51, it is statute and Ordanit, that the Murthour and Slauchter of quhatfumeir his Maiesteis legis, quhair the pairtie slane is vnder the trust, credeit, assureance, and power of the slayer, all sic Murthour and Slauchter to be committit estir the dait of the said Act, the samyn being lauchfullie tryed, and the perfones dilaitit fand giltie thair of be ane Affyse, fall be Treffone; and being fund culpable, fall fforfalt lyfe, landis, and guidis; as in our said Act of Parliament at mair lenth is contenit. AND trew it is, that the said *Johnne Maxwell of Garrarie*, haifing, in his politique and craftie maner, vpon sic conditiones of satisfioun and recompence best knawin to him self, conqueist and acqyrat fra the said vmq<sup>le</sup> *Johnne M<sup>c</sup>Kie of Glashek* his haill worldlie moyane<sup>1</sup> and estait; and thairby drawin him to his daylie companie and attendance, alswell within his hous of *the Garrarie*, as vther pairtis of the cuntrie quhair he maid his repair and residence, he, furth of his avariciouse and churlische dispositioun, lotheing and weireing<sup>2</sup> of the said *Johnne M<sup>c</sup>Kie* his companie, in the moneth of Julij, in the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and aughtene yeiris, to red and exoner him self of his cumpanie, devyset and concludit in his devillische heart, the pitifull<sup>3</sup> and treffonable Murthour of the said vmq<sup>le</sup> *Johnne M<sup>c</sup>Kie*, as followis; and finding the said vmq<sup>le</sup> *Johnne* to be alwayis under his trust, credeit, assureance, and power; in sa far as, be the space of nyne monethis, or thairby, preceeding the tyme foirsaid of the said intendit Murthour, the said vmq<sup>le</sup> *Johnne* was for the maist pairt refoirting and making his daylie residence with him, at bed and buird, within his *Place of Garrarie*, sua that thairby na suspitioun of iniurie to be done be the said *Johnne Maxwell* towardis the said *Johnne M<sup>c</sup>Kie* could be thocht vpon be him; the said *Johnne Maxwell*, for effectuating of his treffonable and devillische plott, vpon the xvij day of the said moneth of Julij, in the yeir of God foirsaid, knawing the tyme of the said vmq<sup>le</sup> *Johnne M<sup>c</sup>Kie* his dyet, in cuming to his *Hous of Garrarie*, vnder the silence and clud of nycht, accompaneit with the said *George Maxwell*, his sone, and vtheris thair complices, bodin<sup>4</sup> with fuordis and vtheris wapponis *inuasivé*, in the said vmq<sup>le</sup> *Johnne* his cuming to the said *Place of Garrarie*, pat violent handis in his perfone, baud baith his handis and

<sup>1</sup> Meana.

<sup>2</sup> Getting fatigued or wearied.

<sup>3</sup> Piteous.

<sup>4</sup> Furnished; provided.

feitt, and thaireftir, in maift crewall and mercieles maner, playing the pairt of hangmen and burriowis,<sup>1</sup> with ane hair tedder,<sup>2</sup> strangillit and wirreit him to deid; and haifing, be that violent and crewall meane, bereft him of his lyfe, thay thaireftir cayreit him to ane peit mofs or burne, callit *the Burne of Raniefloun*, within ane half myle to the faid *Hous of Garrarie*, quhairin they flang him: And fa, the faid vmq<sup>le</sup> *Johnne M<sup>c</sup>Kie of Glassak* was maift treflonabillie and crewallie murtherit and flane be the faid *Johnne Maxwell of Garrarie*, and *George Maxwell*, his fone, he then being vnder thair trust, credeit, affurance, and power, in maner befoir deducet; and thay, and aither of thame, ar airt and pairt of the faid treflonabill and barbarous Murthour, committit vnder trust and credeit; vpon set purpois, prouifoun, precogitat malice, and foirthocht fellonie, in hie and manifest contempt of our fouerane lordis authoritie and lawis, and expres aganis the tennour of the faid Act of Parliament; incurring thairthrow the pane and pwneifchment aboue writtin, expreffit thairintill, viz. as Traturis and Murthouraris of the faid vmq<sup>le</sup> *Johnne M<sup>c</sup>Kie*, vnder trust, to fforfalt thair lyvis, landis, and guidis, to the terrour and example of vtheris to attempt the lyk heireftir.

PERSEWARIS, Niniane M<sup>c</sup>Kie, eldest fone to the defunct; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>,  
Aduocat to oure fouerane lord.

PRELOCUTOURIS in defence, Mr Alex. Peiblis, Mr Laur. M<sup>c</sup>gill, Adame Cunninghame, Aduocattis.

The Aduocat producet his Maiefteis Warrant, daitit at New-mercat, the 13 of Januar, 1619, commanding him to infist in the pannellis perfute, for the Murthour contenit in the Dittay: Quhilk Warrant his lordschip tuik vp agane.—My lord Aduocat declairis, that he is nocht prepairit, at this tyme, to perfew in this matter; and thairfoir defyret the famyn mycht be continewit to the fevint of July nixt.—The pannell, with thair prelocutouris, altogidder difassentis to the faid continuatioun, and offerit thame selffis instantlie reddie to abyde the tryell of the Law for the faid cryme, as altogidder innocent thairof; and thairupoun askit instrumentis.

THE Justice, nochtwithftanding of the pannellis offer and declaratioun, continewis this dyet to the faid fevint day of Julij nixt; and Ordanis the pannell to be tane bak to waired to the tolbutth of Edinburgh.

The pannell offeris cautioune for thair compeirance the faid day; and allegit, in respect thairof, thay fould nocht pas to waired.

THE Justice Ordanit thame to geve in their Supplicatione to the Counfall, be quhais Warrant and authoritie thai war committit, and to crave thair libertie and fredome furth thairof, vpon thair offer of cautioun to thair lordschipis, for thair entrie, the day foirfaid; and accoirding as the Counfall fould command, in that matter, it fould be obeyit.

PRELOCUTOUR in defence, My Lord Maxwell.<sup>3</sup>

(Jul. 7.)—THE JUSTICE, be directioun of the Lordis of Secreit Counfall, and conforme to thair Lordschipis expres Warrant, continewis this dyet, and all tryell to be tane thairintill, to the xv day of December nixtocum: And Ordanis the pannell to find cautioune for thair compeirance and re-entrie that day, to vnderly the law for the faid Murthour, ather<sup>4</sup> of thame vnder the pane of thre

<sup>1</sup> Old Fr. *boureau*, an executioner.  
Prelocutors.

<sup>2</sup> A hair *tether* or halter.

<sup>3</sup> In addition to the above

<sup>4</sup> Each of them.

Thowfeand merkis. Quha, for obedience of the faid ordinance, ffand Eduard Maxuall of Hillis cautioun.

In respect of the quhilk cautioun fund be thame, the Justice ordanit the Provoft and Bailles of Edinburgh to put them to libertie furth of thair waird, &c.

[ASSESSORES JUSTICIARIO, *Dominus Willielmus Levingstoun de Kilfith, et Dominus Georgius Erskin de Innerteill, Senatores Collegij Justicie.*]

PRELOCUTORIS in perfute, My Lord of Gairleis, The Laird of Larg-McKie.

PRELOCUTORIS in defence,<sup>1</sup> The Maister of Maxwell; The Guidman of Hillis; Edward Forrefter, Commiffar of Kirkcudbrycht; Johnne Young, notter.

(Dec. 15.)—THE pannell takis instrumentis of thair entrie; as also, that *my Lord of Gairleis* compeiris to perfew thame of thair lyves; and proteftis for thair cautioneris releif.—The perfewaris producet the Dittay, with the Letteris and Roll of Affyse; and proteftis for thair cautioneris relief, and defyret proces.

The perfones on pannell denyis the haill crymes contenit in the Dittay, and paffis fra all difputatioun aganis the relevancie thairof; and offeris thame selffis to the tryell of ane honest and vnfuspectit Affyse.

ASSISA.

Johnne Dalrumple of Schalloche,	Johnne Maitland of Clonhie,	Andro Craufurd of Barquharrie,
Andro Bruce of Bofark,	Johnne Kirkpatrik of Bracho,	Dauid Welfche of Colliestoun,
Williame Middlemeift, Conftable	Gilbert Baird of Kilhinzie,	Walter Cant of Wast-mylne,
of Dumbartene,	George Logane of that Ilk,	James Birnie of Browbrie,
Duncane Hunter of Ballagane,	Williame Cunninghame of Pol-	Malcolme Dalrumpill of Water-
Williame Creichtoun of the Hill,	quharne,	fyde.

IT is allegit be the pannell, that *Johnne Dalrumple* can nocht pas vpon thair Affyse, becaus he is nocht ane landit man of that qualitie and rank quhilk fould be admittit to pas thairupoun; the faid Johnne Maxwell of Garrarie being ane landit Gentilman, in the rank of ane Barroun, worth thre thowfeand merkis of zeirlye rent, and aboue. *Secundo*, the faid Johnne is vset and producet be my Lord of Gairleis, ane of his perfewaris, as ane Witnes befor the Counfell, and hes gevin his Depofitioun in this matter alreddie; and in respect thairof, can nocht be ane Affysfour. *Tertio*, he is man, tennent, and fervand to *Jofiah Stewart*, quha hes afftit this perfute fra the first begynning thairof, and behavet him felf as partie.—It is anfuerit be my lord Aduocat, that the allegeance aucht to be repellit, as altogidder irrelevant, the faid *Johnne Dalrumple* being ane Gentilman of guid fame, and haifing fufficient moyane of his awin, quhairupone he levis: And his Depofitioun maid be him as ane Witnes can nocht stay him to be ane Affysfour: And as to that pairt, that he payis mail and dentie to *Jofias Stewart*, wha is partie aganis thame, *non relevat*, becaus he is nocht ane perfewar, nor compeiris nocht in this Judgement to perfew, nather payis he ony dentie to him bot for his teyndis, quhilk teynd-dentie can nawayis stay him to pas vpon this Affyse.—It is allegit be the pannell, that, with the teynd-dentie, he is also fubiect to the faid *Jofias* in daylie fervice.—The faid *Johnne Dalrumple* being fuorne, declaris he is no forder fubiect to *Jofias*, bot only in payment of his teynd.

THE Justice admittis *Johnne Dalrumple*, and Ordanis him to be purget of partiall counfall; quha, being of new fuorne, declarit he had gevin na partiall counfall, in this matter, in faouris of this perfewar aganis the perfonis on pannel;—quha was thairfoir admittit.

It is allegit aganis *Walter Cant of Westmylne*, that he can nocht be admittit vpon this Affyse,

<sup>1</sup> In addition to the Prelocutors who are already noted, under date, April 2, and Jul. 7.



because he is nocht duelland within Galloway, nor the foure halfis thairabout, conforme to the Act of Parliament, in anno 1579.—It is anfuerit be my lord Aduocat, that the allegiance aucht to be repellit, because he is duelland within Scotland; and the Act of Parliament citet is only in matteris of Perambulation, for tryell of methis and marches, and is nocht extendit to the crymes of Slauchter and Mutilatioun, &c.—It is allegit, that he can nocht be admittit, because of the foirfaid Act of Parliament, for *ex argumento a paritate rationis*, gif the perfones of Inqueist, in matteris of Perambulation, man (*must*) be induellaris within the boundis of the Scherfedome quhair the landis lyis, or foure halfis about, *multo magis*, in tryell of a Slauchter or Murthour committit, fould the Assyfouris be induellaris within the boundis of the Scherfedome quhair the fact was done, or four halfis about.—Anfueris, *Statuta sunt stricti juris, et non admittent extenſionem*.

The lyk exceptioun proponit aganis *Andro Bruce of Bosfark*, quha duellis nocht within the Sheredome, or foure halfis about.—My lord Aduocat repeatit his former anfueris for *Andro Bruce*.

It is forder allegit that *Walter Kant* is man, tennent, and fervand to *my Lord of Murray*, quha assistit this perfute; and thairfoir, can nocht pas vpon this Assyfe. The said Walter being suorne, gif he be man, tennent, or fervand to the Erle of Murray? Declairis, he is ane of his Lordschipis vassallis, and haldis his landis of him in ffew.

THE Justice, nochtwithstanding of the former allegiances maid aganis the saidis Walter and Andro, and that the said Walter is ane ffewar, Admittit thame vpon the Assyfe.

It is allegit aganis *Duncane Hunter of Ballagane*, that he can nocht pas vpon this Assyfe, because he is ane removeable tennent to the *Laird of Drumlangrig*, quha assistit this perfute, and is within degreis-defending to the *Lord of Gairleis*, perffewar. The *Laird of Ballagan* being suorne, declairit that he is *Drumlangrigis* vassall, and na removeable tennent; quhome the Justice, in that respect, admittit.

It is allegit aganis *Eduard Maxwell in Laroche*, that he can nocht pas vpon this Assyfe, because *non habet in bonis*, and is nocht worth the Kingis vnlaw. *Secundo*, thair is bluid and deidlie ffieid standing betuix the pannell and him vnreconceillit. *Tertio*, he is alreddie reffaut witnes, and hes deponit in this matter, being producet be *my Lord of Gairleis* to that effect.—Anfueris, because he hes alreddie deponit as ane Witnes, he may the mair cleirly be admittit ane Assyfour.

THE Justice, in respect thair is na penurie of Assyfouris, Ordanis him to stand by.

*David Welsche of Colliestoun* admittit, of consent.

THE lord Aduocat, for verificatioun of the Dittay, producet ane Testimoniall, subſcryuit be dyuerſe Gentilmen and vtheris, testifeing the forme of *Glassakis* binding, the tyme of his out-taking of the burne; and that he hes bene first strangillit, befoir his caſting thairin. As lykwayis, producet the pannellis Depositione, with the Depositiones of dyuerſe famous Witneſſes, reffaut and examinat be the Lordis of Secret Counsell, in that matter; and thairupoun also askit instrumentis; and proteſtis, in respect thairof, for Wilful Errour, gif the Assyfe acquit.—The pannell proteſtit in the contrair, gif thay convict thame of that detestable cryme; quhair of, vpon thair kneis, with grit and ſoleme aithes, thay affirmet thame selfis to be altogidder innocent.

VERDICT. The Assyfe, for the maist pairt, be the mouth and declaratioun of William Cunninghame, chancellor, ffand, pronuncet, and declairit the saidis *Johnne Maxwell of Garrarie*, and *George Maxwell*, his lauchfull ſone, to be GILTIE, culpable, and convict of airt and pairt of the treſſonabill and barbarous

Murthour of the said vmq<sup>le</sup> *Johnne M<sup>c</sup>Kie of Glassak*, committit be thame in forme and maner specifeit in thair Dittay.

SENTENCE. The Justice, be the mouth of Andro M<sup>c</sup>cairney, dempster of Court, adiugit thame to be tane to the Mercat-Croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis: And all thair landis, heritages, tenementis, annualrentis, takis, steidingis, rowmes, possessiones, coirnis, cattell, inficht pleneiffing, guidis, and geir, to be fforfalt and escheit to our fouerane lordis vse, as culpable and convict of the said tressonable and detestable cryme; Quhilk was pronuncet for Dome.<sup>1</sup>

### Hurting and Wounding.

Jun. 2.—NORMOND ROBIESOUN, sone to Robert Robiefoun, mercheand burges of Sterling.

Dilaitit of airt and pairt of the Hurting and Wounding of Johnne Robene, sone naturall to Johnne Robene, notter, burges of Sterling, in the casting of him down to the grund, and louping vpon his bak with the hail force of his body; and thairthrow breking of his bak-bone, and mutilating and making him impotent thairof, he being ane young boy of nyne yeiris of age, or thairby; committit in the Valay of Sterling, in the moneth of September, 1617 yeiris.

PERSEWARIS, Johnne Robene and his father; Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOUR in defence, Mr Thomas Nicolfoun, elder, Aduocat.

THE Justice continewis this dyet to the thrid day of the air of the scherefdome of Sterling, or soner, to ane fyftene dayis wairning; and ordanis the pannell to find caution for his re-entrie. Robert Robiefoun, mercheand, his father, becomes cautioner.

### Slaughter.

Jul. 2.—JOHNNE M<sup>c</sup>DOWELL of Freuche.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Alexander M<sup>c</sup>kie of Balfeir.

PERSEWAR.

Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOUR in defence.

Mr Thomas Hoip.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of

<sup>1</sup> Sir Johnne Dumbar of Mochrum, kny<sup>t</sup>; James Kennydie of Crugiltoun; Alex. Dumbar, appeirand of Mochrum; Hew Kennydie of Areis; Adame Ahannay, burges of Wigtoun; Robert Maxwell of Barvannok; Vthreid Campbell of Areis; Johnne Carutheris of Wadfute; Harie Cunninghame of Kildonnane; Johnne Broune, 3ounger of Carlattyre; George Gordoun of Barkeoche; Johnne M<sup>c</sup>dowell of Freuche; Patrik Ahannay of Kirkdail; Alex. M<sup>c</sup>culloche, appeirand of Netoun; Alex. Cunninghame of Powtoun; Fergus Dumbar, burges of Stranraer; and Adame Lyndfay, burges of Quhithorne, vnlawit, for thair nocht compeirance vpon the said Assyse; ilk ane of thame in the pane of ane hundreth merkis.

the scherefdom quhair the pannell duellis, (Wigtoun,) or sōner, vpone xv dayis wairning. Plegio, Pat M<sup>c</sup>dowall de Creoches.

**Hurting and Wounding—Masterful Theft and Stouthreif.**

Jul. 11.—JOHNNE MURRAY, sone to Thomas Murray, in the Stanehous of Geicht.

Dilaitit of the invading of Andro Meldrum of Rothiebirfbane, his maister, in cuming out the hie way betuix Kynroschyre and the fferrie-syde : Hurting and Wounding him, with ane suord, in the heid and face, of purposis to haif slane him : And thaireftir, Steilling and away-taking, be way of maisterfull Thift and Stouth-reif, of his maisteris bonnet-caice, togidder with tua pair of filk schankis,<sup>1</sup> tua pair of filk gairtanes,<sup>2</sup> tua pair of roses<sup>3</sup> of taffitie, tua small lynning schankis, thre bonnet mutches,<sup>4</sup> thre pair of handis,<sup>5</sup> fyve overlayeris,<sup>6</sup> ane peirlet lane<sup>7</sup> ruff, tua naipkynnis, ane kame-caife,<sup>8</sup> with ane brusch, with certane vther necessaris, being within the samyn, worth tua hundreth pundis ; by and attour<sup>9</sup> certane writtis and eidentis,<sup>10</sup> being also thairintill ; committit in the moneth of Maj last.

PERSEWARIS, Mr Andro Meldrum of Rothiebirfbane ; Sir Williame Oliphant of Newton, kny<sup>t</sup>.

THE Justice, in respect thair is nocht ane sufficient number of Assyse compeirand, continewis this dyet to the xxj instantis : And Ordanis the pannell to be tane bak to waird, to the said day.

Andro Frafer of Staniewoid, William Keyth of Seatoun, James Seatoun, brother to the Laird of Mony, Mr Robert Elphingftoun, Tutour of Glak, Johnne Ogilvie, zounger of Glaffall, and Alexander Frafer, indueller in Leyth, nocht compeirand on Assyse, the Justice ordanit ilk ane of thame to be vnlawit in the pane of ane hundreth merkis.

ASSISA.

Robert Frafer of Durres,	James Hervie of Elrig,	Nicoll Zule, mercheand,
James Cheane, in Elrig,	Andro Hervie, his brother,	Johnne Penman, mercheand,
Mr Robert Elphingftoun, Tutour	James Keith of Craig,	Mathow Bailzie of Littilgill,
of Glak,	Mr James Stewart, Commiffar	Johnne Fairholme, mercheand,
James Gairne of Blakfurd,	of Dunkeld,	Thomas Broun, lokfmyth.
Johnne Arbuthnot of Carnegaw,	Clement Ruffell, mercheand,	

Jul. 21.—THE Aduocat takis instrumentis of the sweiring of the Assyse ; and producet the pannellis Depositiones, for verificatioun of the Dittay ; and protestis for Wilfull Errour, gif thay acquit, &c.

VERDICT. The Assyse, be the mouth of the said Mr Robert Elphingftoun,

<sup>1</sup> Silk stockings.    <sup>2</sup> Garters.    <sup>3</sup> Rosettes for the knees.    <sup>4</sup> Caps.    <sup>5</sup> Probably a sort of mittens or gloves.    <sup>6</sup> A broad folding collar, falling over the shoulders and worn below the ruff, which was fastened about the neck.    <sup>7</sup> A pearled lawn ruff ?    <sup>8</sup> Comb-case.    <sup>9</sup> Over and above.    <sup>10</sup> Writings and Title-deeds.

chancellor, ffand, pronuncet, and declairit, all in ane voce, the said Johnne Murray, conforme to his awin Judiciall Confessioun and Depositiones producet, to be ffylet, culpable, and convict of the haill crymes aboue expremit.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be Hangit, quhill he be deid, and all his moveable guidis to be efcheit, &c.

**Taking the King's Free Liege—Famishing one of the Lieges to Death 'in privato carcere.'**

Nov. 10.—PATRICK COWIE, in Kincairdin ; Johnne Dow, his fervand ; Johnne Anderfone, cordiner thair ; Thomas Cowie, querriour thair ; and Daud Miller, falter in Eifter Kincairdin.

Dilaitit of the taking and keiping of vmq<sup>10</sup> Thomas Daudfoun, hynd and fervand to Alexander Leask, in Porter, be the space of fyftene dayis, *in privato carcere*, within the said Patrik Coweis hous ; and thairfra cayreing him to the pitt of Tullieallane, quhair, throw want of intertenement,<sup>1</sup> he ffamifchet and deit of hunger ; and remanent crymes contenit in the Letteris.

PERSEWARIS, Sir Williame Oliphant, kny<sup>t</sup> ; Alexander Leask, as Maifter.

The Justice continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome quhair the defenderis duellis, (' Clakmannane,') or foner, vpone xv dayis wairning : And Ordanis thame to find new cautioun, &c. ; quha ffand Sir George Bruce of Carnok, kny<sup>t</sup>, personallie present, for thair re-entrie.

**Mutilation and Demembration.**

Nov. 17.—WILLIAME OLIPHANT of Gask.

Dilaitit for airt and pairt of the Demembering of David Malloche, fervand for the tyme to vmq<sup>10</sup> Daud Toscheoche of Monyvaird of his rycht hand.<sup>2</sup>

Compeirit Lawrence Oliphant of Coudie, and producet ane Warrant of the Lordis of Secreit Counfall, direct to my Lord Justice ; quhair of the tennour followis.

**WARRANT of the Lordis of Secreit Counfall.**

JUSTICE, Justice clerk, and 3our deputtis. Forfamekill as the xvij day of November instant is appointit to Williame Oliphant of Gask, for his compeirance befor 3ow, to vnderly the Lawis for the Mutilatioun and Dismembering of Daud Malloche: Nochtwithstanding, accoirding to the Kingis Maieftis expres Warrant, command, and directionis in this matter, theafe ar to command 3ow to continew the said dyet to the tuentie fyve of Februar nixtocum ; to the effect, in the meane tyme, the said Williame may tak some courfe for satisfacioun of his partie : And that 3ow tak cautioun of the said Williame for his personall compeirance the said day, and difpenfe with him and his cautioner for his nocht compeirance at this dyet : Quhairanent thir presentis falbe 3our Warrant. AT ED<sup>3</sup>, the xvj day of November, 1619.

AL. CANCELL<sup>r</sup>. MAR. MELROIS. LAUDERDAILL.

THE Justice continewis the said dyet to the said xxv day of Februar nixtocum ;

<sup>1</sup> Sustenance.

<sup>2</sup> See Jul. 29 and Dec. 4, 1618.

<sup>3</sup> Peter Oliphant of Rescobie.

and Ordanis caution to be fund for the said Williame Oliphant his compeirance that day, &c.—Gilbert Adamefoun of Scoureing-burne become fouertie, &c.

(Feb. 25, 1620.)—COMPEIRIT Laurence Oliphant of Condie, and producet ane Warrant of the Lordis of Secret Counfell, quhair of the tennour followis.

JUSTICE, Justice clerk, and your deputtis. Quhair as, the xxv day of Februar instant is appointit to Williame Oliphant of Gask, for his compeirance befor you, to vnderly the law for the slaughter of the Laird of Monyvaird, and mutilatioun and demembring of David Malloche, his fervand, of his rycht hand,<sup>1</sup> and vtheris crymes specifeit in the Letteris raisit thairanent: Neuertheles, this is to command you to continew the said dyet to the nynt day of Junij nixtocum, vpoun new caution, conforme to the ordour: And that you dispens with the personall compeirance of the pairtie: Quhairanent thir presentis fall be your Warrant. At Halvudhous, the xxiiij of Februar, 1620.

AL. CANCELL<sup>r</sup>. MAR. MELROIS. LAUDERDAILL.

Sir Johnne Carmichell of Medowflat, Capitane of Craufurd, becomes fouertie, &c.

(Jun. 9, 1620.)—THE dyet deserted, by command of another Warrant, signed 'Al. Cancell<sup>r</sup>. Melrois.'

[IF it were necessary still farther to prove the melancholy effects of the DEADLY FEUDS which raged in Scotland previous to the Eighteenth Century, perhaps few better illustrations could be adduced than what is contained in the present Case. The following affecting document is taken from the *Denmylne MSS.*, and requires no comment.]

LETTER, *the Privy Council of Scotland to the King, relative to the DEADLY FEUD between the Lairdis of Cultmalundie and Monyvaird.*<sup>2</sup>

MOST SACRED SOUVERANE,

WHEREAS your MAIESTIE was pleafit, tua yeiris syne, or thairby, to recommend vnto ws the satling and remoueing, by ane amicable forme and maner, the deadlie ffeade standing betuix THE LAIRDIS OF CULTMALINDIE and MONYVAIRD and thair ffreindis,<sup>3</sup> vpoun occasioun of the slaughter of THE LAIRD OF MONYVAIRD; and to move the pairtie greueed to accept of suche OFFERIS as the offendaris might reafounable performe: WE accordinglie wrote for sa mony of the ffreindis as we know to haif cheif interesse in that mater, and vsed the best meanes we could to haif broght the same to some freindlie dresse; bot that dyet being cassin af, vpoun alledgeance that some of the speciall ffreindis wer omittit and not writtin for, we appointit a new dyet, and wrote for the whole ffreindis that wer gevin vp, who returnit thair answer to ws, in write, vnder thair handis, that they could not medle in that mater, nor tak burdyne for *Monyvaird*, who is the principall pairtie haueand interesse, in respect of his minoritie. Whairupoun the mater desertit, and we could go no forder thairin. At this secund dyet *Cultmalundie eldair* exhibit befor ws OFFERIS, in write, vnder his hand, maid to the pairtie, contening the fowme of ane Thowland crownes for the Affythement of that Slaughter, with the Banishment of *Alexander Bruce his sone*, and *George Tyrrie*, Messinger, who wer alledgeit to be the actuall slayaris of *Monyvaird*, during your MA<sup>r</sup> plefour: And at that same tyme, we causit him gif satisfioun to *Duncane Campbell* and *David Malloche*, who wer deadlie hurte quhen *Monyvaird* was slayne, by payment making to thame of twa Thowland pundis: Quhairupoun thay haif gevin ane discharge of thair interesse in that mater; as the same produceit befor ws beiris.

<sup>1</sup> The local saying,—

'AFF HANDS IS FAIR PLAY—DAVID MALLOCH SAYS NAY!'

seems quaintly to allude to this incident.

<sup>2</sup> *Sir James Balfour's MS. Collections*, Adv. Lib.

<sup>3</sup> Blood-relations.

This feade has altogidder vndone *Auld Culmalindie*; for his estait is exhaustit and wrackit, and he is become verie waik of his judgement and vnderstanding, by the greif that thir troubles hes broght vpoun him; whilkis wer the occasioun of his wyffis deathe, and of the exyle and banishment of his sones and freindis, now be the space of foure yeiris; in the quibilk exyle, tua of his freindis of goode rank and qualitie hes depairtit this lyffe.

This being the effect of oure dealing in this buffynes, We haif beene intreated be the pairtie, humelie to present the same to your Maiesteis consideratioun. And so continewing our vncessant prayeris vnto God for youre MA<sup>s</sup> long and happie reigne, We rest,

YOUR MA<sup>s</sup> humbill and obedient subiectis and seruitouris,

AL. CANCELL<sup>r</sup>. MAR. MELROS. GEORGE HAY.

HALIERUDHOUS, xxj of Marche, 1622.

TO THE KING his most sacred and excellent MAIESTIE.

### **Taking Captive—Murder—Masterful Theft and Stouthreif.**

Dec. 8.—DUNCANE CAMPBELL of Glenlyoun.

Dilaitit of airt and pairt of the violent Taking and Apprehending of vmq<sup>le</sup> Allane M<sup>c</sup>rannald in Swynnart, cayreing and keiping him captiue and priffoner ane nycht, within the said Duncane his Place of Megernie:<sup>1</sup> And for Murthereing him with durkis, vpon the morne eftir his taking, ane myle or thairby fra the said Hous: And be way of Maisterfull Thift and Stouth-reif, steilling and away-taking fra him of his purse, with ane thowfeand pundis of gold and silver being thairintill; committed in anno 1601 yeiris.

PERSEWAR, Angus M<sup>c</sup>rannald of Vlladill, as brother.

THE JUSTICE continewis this matter to the thrid day of the nixt Justice-air of the Sherefdom quhair the defender duellis, (Perth,) or soner, vpon xv dayis wairning.

Archibald Campbell of Glencarradell become cautioner for his re-entrie.

### **Murder.**

Dec. 8.—JOHNNE MOITT in Wasthouffis, aboue Newbottile.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of Bessie Broun, his vmq<sup>le</sup> spous, be streking hir in the heid, and wounding hir thairin with ane grit kent,<sup>2</sup> to the effusioun of hir bluid; committit be him vpon ane Setterday, at evin, in the moneth of October last; quhair of scho deceiffit within tuelff houris thaireftir.

PERSEWAR, Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr Alexander Cuming.

It is allegit be the pannell, that na proces can be led aganis him, vnles thair

<sup>1</sup> In Glenlyoun, Perthshire. In the preface to Douglas's Baronage, notice is taken of a very remarkable Red-book, (*an Leavar-diarig*), written in the Celtic character, which was destroyed in the fire which consumed Miggerny Castle. It is there remarked, that 'some extracts from this book are in the hands of several Families in the Highlands.' See likewise, Prefatory Notice to HISTORY OF THE KENNEDIES, Edinburgh, 1830. 4to. <sup>2</sup> Staff, or cudgel.

war ane pairtie informer to assist his Maiesteis aduocat, and to fueir the Dittay to the Assyse, the Dittay being ffund relevant to pas thairto ; and feing nane of the kyn and freindis of the woman flane compeiris to perfew, or to informe his Maiesteis Aduocat in this persute, the Justice can nocht put him to ane Assyse. —It is ansuerit be my lord Aduocat, that the allegiance is impertinentlie proponit be the pannell ; and sayis, that albeit the freindis of the pairtie flane and he wald collude<sup>1</sup> togidder, yit, feing the Prince wantis ane subject, be the fact committit, the Kingis Aduocat hes verrie guid intreis to perfew, without ony informer : And thairfoir, nocht only sould the Dittay pas to ane Assyse, bot he, for committing of the ffact lybellit, sould be exemplarie pwneist for the samyn, being fund giltie thairof.

**VERDICT.** The Assyse, for the maist pairt, be the mouthe of Thomas Hog, in Eifthouffis, chancellor, ffand, pronuncet, and declairit the said Johnne Motte to be ffylet, culpable, and convict of the said Slauchter.—**SENTENCE.** To be tane to the Castelhill of Edinburghe, and thair his heid to be strukin frome his body ; and his hail guidis to be efcheit, &c.

### **Slauchter—Wearing and Shooting of Hagbutis and Pistolets.**

Dec. 22.—**JOHNNE LYDDELL** of Halkerstoun.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>re</sup> Johnne Bell, fervand to Johnne Lord Borthuik ; committit vpon the landis of Hauch-heid, vpon the aucht of October last, quhair the said Johnne Lyddell, with ane charget hagbut in his hand, invalidit the said vmq<sup>re</sup> Johnne Bell for his slauchter, schote him in his lichtig<sup>2</sup> of his horse with tua bullettis, at the left pape, throw the heart ; and slew him with the said schote : And for contravening of the Actis of Parliament, in beiring and schuiting of hagbutis and pistolettis, &c.

The Justice, of consent of aither pairtie, continewis this matter to the nyntene of Januar nixt : And Ordanis the pannell to be returnet to Waird to the Tolbuth of Edinburghe, out of the quhilk he was tane.

**PERSEWARIS**, Barbara Levingstoun, the relict ; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, his Maiesteis Aduocat, for his hienes intreis.

**PRELOCUTORIS** in defence, James Lyddell, in Leyth ; Mr Johnne Cranstoun, Minister thair ; Mr Laurence M'gill, and Mr David Prymrois, Aduocattis.

(Jan. 19, 1620.)—It is allegit be the pannell, that the Dittay in that point thairof, 'airt and pairt,' is nocht relevant, except the persewar condiscend vpon the names of the perfones that war complices or affociattis.—Ansueris, aucht to be repellit, in respect of the Act of Parliament, sustening airt and pairt to be

<sup>1</sup> Enter into collusion with each other, to defeat the ends of public justice.    <sup>2</sup> Alighting.

relevant aganis any persone accuset of ane cryme.—The pannell denyis the haill Dittay to be of verritie.

THE JUSTICE remittis the tryell thairof to the Affyse.

Barbara Levingstoun, relict, being solemlie sworne, declairit, that the Dittay is of verritie; and that scho hes just caus to perfew the pannell for the Slauchter of hir husband. Quhairvpoun my lord Aduocat askit instrumentis, and Proteftis for Wilfull Errour aganis the Affyse, gif thay acquit: As also, tuik instrumentis of the productioun of the hagbut, quhairwith the said vmq<sup>le</sup> Johnne Bell was slane.

VERDICT. The Affyse, be pluralitie of voittis, fand, pronuncet, and declairit the said Johnne Lyddell of Halkerstoun to be Clanget, innocent, and acquit of the said Dittay, and haill crymes aboue writtin mentionet thairintill.

In respect quhairof, the Justice ordanit him to be put to libertie furth of the said Tolbuth of Edinburghe, quhairin he was wairdit, and na langar to be detenit thairintill for the saidis crymes; he making satisfioun to the javellour<sup>1</sup> for his expenffis.

### Slaughter.

Jan. 19, 1620.—ALEXANDER GRAHAME, sone to vmq<sup>le</sup> Daid Grahame, in Arduthie, and Johnne M'kane, sone to Williame M'kane, burges of Montroise.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Mr Alexander Keith, brother to Sir George Keith of Drumtochtie; committit be thame, in companie of Robert Grahame, brother to the said Alexander, vpon the Sandis of Montrois, vnder nycht, vpon the tent of December laft.

PERSEWARIS, Sir George Keith of Drumtochtie, kny<sup>t</sup>, James Keith of Harviestoun, Mr Williame Keith, brother to the defunct; and Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTORIS in defence, Mr Alexander Peiblis, Mr Roger Mowat, Aduocattis.

The persewaris producet Hoirning aganis Robert Grahame, sone to Daid Grahame of Arduthie.

The persones on pannell offerit thame selffis to the tryell of the Law, for the crymes contenit in the Summondis, quhairof thay declairit thame selffis to be innocent; disaffenting *simpliciter* to all forder continuatioun.—My lord Aduocat declairis that this Slauchter was committit vnder nycht, quhairof as yit na certane licht of the pannellis guiltines thairof is brokin vp; and thairfoir, desyres thame to be put vnder cautioun, for thair re-entrie, vpon xv dayis wairning.

THE Justice continewis this dyet to the thrid day of the nixt Justice-air of the Scheref dome quhairin the pannell duellis, (Forfar,) or soner, to ane fyftene dayis wairning.

<sup>1</sup> Gaoler; jailer. Old Fr. *javilleur*.



**Slaughter.**

Jan. 21.—**JOHNNE DUNCANE**, baxter<sup>1</sup> in Dudingstoun.

Dilaitit of the crewall Slauchter of vmq<sup>16</sup> Johnne Buchannan, baxter, indueller of the Cannongait; committit in the hie-way betuix Eifter and Wester Dudingstoun, vpone the faxt of Januar instant, be streking of the said Johnne Buchannan with ane knyfe, vnder the left pape; quhairof, within tuelf houris thair-estir, he deceffit.

PERSEWARIS, Margaret Robertfoun, the relict; Sir Williame Oliphant, kny<sup>t</sup>.

The pannell acknowleges the cryme, and craves God, his Maiestie, and the pairtie pardoun thairfoir.

VERDICT. The Assyse, all in ane voce, in respect of the pannellis Judiciall Confessioun maid be him, confessing the said cryme to be of verritie, ffand, pronuncet, and declairit the said Johnne Duncane to be ffylet, culpable, and convict, &c.—SENTENCE. To be tane to the Castell hill of Edinburgh, and thair his heid to be strukin from his body; and all his moveable guidis to be escheit to his hienes vse, as convict of the said cryme.

**Murder—Horse-stealing.**

Feb. 25.—**JAMES REOCHE**.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of vmq<sup>16</sup> Alexander Sandiesone, servand to Hew Falconer of Innerlochtie; committit in September, vpone Michelmes Evin, in anno 1618, at the zett of Innerlochtie, in staying the said James, and resisting him and his brother in the steilling and away-taking of the said Hew Falconeris horse furth thairof, be schuteing the said Alexander throw the body with ane pistolett.

PERSEWARIS, Hew Falconer of Innerlochtie, his maister; Sir Williame Oliphant of Newtown, kny<sup>t</sup>.

It is alleget be the pannell, that the allegit Slauchter was nocht committit be him; bot the defunct, being ravischeing ane woman, the pannellis brother being thair present, and he in companie with him, imployit thair help to preserve the woman and to set hir frie; for the quhilk, the defunct, haifing ane knyfe in his hand, invaidit the pannellis brother thairwith; quhairupoun the pannellis brother, for his awin faiftie, drew ane pistolet frome his fyde, and schote the defunct thairwith; and sa, the fact being committit be his brother, the pannell can nocht be perfewit thairfoir.—It is anfuerit be my lord Aduocat, that the allegeance aucht to be repellit, in respect of the Dittay beiring him to be airt and pairt of the defunctis slauchter; and that the Slauchter was committit be thame in the steilling of ane horse fra the defunctis maister, haifing cum that eirand to the Hous, at that tyme of the nycht.

<sup>1</sup> Baker.

## ASSISA.

Mr James Stewart of Ladywall, Mr James Forbes of Haughtoun, Alex. Farquhar, tailgeour burges of  
 Walter Hay in Forresteris-sait, Johnne Roife, proveist of Nairne, Edinburgh,  
 Williame Douglas of Erlesmylne, Mr David Stewart, and Johnne Caddell, burges of  
 Alex<sup>r</sup> Brodie, chalmerlane of Patrik Weymes, servandis Edinburgh,  
 Kinloife, to the Earl of Murray, Alex. Home, burges thair,  
 David Dumbar in Tarves, Thomas Hunter, burges thair.

The Aduocat takis instrumentis of the suering of the Affyse; and producet, for instructing the Dittay, the pannellis Deposition, maid in presens of the Lordis of Secretit Counsell; and protestis for Wilfull Errour, gif thay acquit.

VERDICT. The Affyse, all in ane voce, fand the said James Reoche to be ffylet, culpable, and convict of airt and pairt of the Slauchter of the said vmq<sup>l</sup> Alexander, committit vnder nycht, in the steilling of the said Hewis horse.—

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and his haill guidis confiscat to his Maigestis vie.

## Hamesucken—Slaughter.

Mar. 8.—JOHNE ROGERSOUN, in Bratmureland.

Dilaitit of the crewall Slauchter of vmq<sup>l</sup> Katharene Broun, spous to Hew Broun in Windiehillis,<sup>1</sup> be (by) cuming be (by) way of Hamefuckin to hir duelling hous in Windiehillis, in the moneth of Apryle 1613 yeiris, quhair scho was in sober maner for the tyme; and thair crewallie inuidit hir for hir slauchter, becaus scho had houndit hir dog at his schein; tuik hir be the spaldis,<sup>2</sup> and violentlie flang hir over tua kyis<sup>3</sup> bakis; thaireftir threw hir fydis to ane tumber bed,<sup>4</sup> and thairby brak hir haill intrallis within hir; and thaireftir, with his feit and handis, crewallie punchet and strak hir vpon the bak, wambe,<sup>5</sup> and fydis, and brak hir heart-pypes thairwith; sua that thairby scho tuik bed, and keipit the bed the space of sax dayis, or thairby, continuallie vomeiting hir heart-bluid; and in the moneth of Maij thaireftir, scho deceiffit of the saidis hurtis; and sa, was crewallie and vnmerciefullie slane be the said Johnne Rogerfonne: And he is airt and pairt of the said slauchter; committit vpon set purpois, prouifoun, and foirthocht felonie, as at lenth is contenit in the said Dittay.

PERSEWAR, Hew Broun in Windiehillis, as spous to the defunct.

PRELOCUTORIS in defence, the Laird of Cloisburne; Adame Cunninghame, Aduocat.

The pannell offeris him selff to the tryell of the law for the cryme foirfaid, quhair of he is altogidder innocent.

## ASSISA.

Johnne Padzeane, younger of Newtown, Thomas Wauche, elder of Schawis,  
 Mr Alexander Flemyng, minister at Dalgarnok, Thomas Wauche, his sone.<sup>6</sup>

<sup>1</sup> The crime is thus briefly described in another place,—'be geving hir dyuerse bauch, blaie, and bludie stralkis, in dyuerse partis of hir bodie.' <sup>2</sup> Fr. *épaules*, shoulders. <sup>3</sup> Cows. <sup>4</sup> That is, dashed her with violence against or upon a wooden bedstead. <sup>5</sup> Belly. <sup>6</sup> The rest of the Assise are persons of no note.

VERDICT. The Assyse, all in ane voce, be the repoint and declaratioun of the said Mr Alexander Flemyng, chancellor, ffand, pronuncet, and declairit the said Johnne Rogerfoun to be Clene, innocent, and acquit of airt and pairt of the slauchter, and hail circumstances thair of specifeit in his Dittay.

**Forgery—Falset—Counterfeiting a Subscription to a false Bond.**

Apr. 20.—THOMAS DEMPSTER, sumtyme of Muresk.

Dilaitit of airt and pairt of the ffalsiefeing, fforgeing, and devyfeing and counterfuteing of the subfcriptioun of ane ffalfe Band of Reuerfioun, &c. specifeit in his DITTAY following, viz.

FORSAMEKILL AS, albeit the said Thomas, be his birth, was ane gentilman borne, provydit, be vertew of his parentis and prediceffouris, to the fuceffion and richt of dyuerse landis, rowmes, and poffeffiones; the quhilkis, be his leud and godles misgovernment, ar maist fchamefullie and vnworthiellie fpendit and put away, to the impoverifching alswell of him self, as preiudice and difapointment of his posteritie: GIT the said Thomas, altogidder fenles of that his miserable cairage, nawayis being movet thairwith, bot rather refolveing to rwn heidlongis in all godles and cruiket courfes, as a man fauld and gevin over to the practize of the famyn; amangis vtheris, his vnlauchfull and damnable proceedingis, a fourtene zeir fyne or pairby, he maist fallie, fraudulentlie, and diffaitfullie plottit, devyfet, forget, and drew vp ane falfe and counterfute BAND, contening the tennour of ane fals and simulat Reuerfioun, as gif the famyn had bene maid and subfcryuit be vmq<sup>le</sup> *Walter Barclay of Toweis*, quhais name and fubfcriptioun was also fallie counterfute be the said Thomas, with the Witnesfes fubfcriptiones infert thairintill; beirand in effect, that the said vmq<sup>le</sup> *Walter Barclay* confeffit and grantit him to haif reffauit fra vmq<sup>le</sup> *James Dempfter of Auchterles*, his father, ane Reuerfioun maid and subfcryuit be vmq<sup>le</sup> *Patrik Barclay*, sumtyme of *Towie*, his father, in faouris of vmq<sup>le</sup> *Johnne Erle of Buchan*, Lord of *Glendovachie*, subfcryuit at the *Castle of Banff*, the first day of July 1547 zeiris, for redemeing and outquyteing fra the said vmq<sup>le</sup> *Patrik* and his airis, *Lairdis of Towie, of the Landis of Collane*, with the ffifcher-heaven and remanent pairtis, pendicles, and pertinentis of the famyn, lyand within the Lordfchip of *Glendovachie*, and Sherefdom of *Banff*, vpon payment and delyuerance of ane hundreth angellnobles gold and wecht; with ane nyntene zeir Tak, eftir the Redemptioun, contening frie Office and iurisdiction of *Bailzerie*, with payment of thre-fcoir merkis, as for the zeirlic maill thair of allanerlie: And that be vertew of the foirfaid simulat Band, the said vmq<sup>le</sup> *Walter Barclay of Toweis* obleift him to delyuer bak agane the famyn Reuerfioun to the said *James Dempfter*, father to the said Thomas, at quhat tyme or how fone it fould happin him, and his airis, to be distreffit or put at for delyuerie, or exhibitoun of the famyn, be the airis maill of the said vmq<sup>le</sup> *Erle of Buchan*, and vtheris haiffand richt thairto; and thairwith to pay to the said *James Dempfter* and his airis, the fowme of ten thowfeand pundis of liquidat expenffis, in caice of failzie: As the said Band, contening the tennour of the said fals Reuerfioun, with dyuerse vtheris clauffes at lenth fet doun thairintill, all fallie forget, devyfet, and counterfute, first be the said Thomas, and thaireftir writtin over at his command and direction be *Airthour Meldrum*, Scule-maifter and Reidar at *Kintor*, and antedaitit be him, at the said Thomas command, at *Lambes laft*, daitit at *Mure-efk*, the first day of October 1585, be the fpace of threttie-four zeiris of befoir, in the self propertis. LYK AS, in ane actionn of Improbatioun intentit laillie befoir the Lordis of Counfell and Seffioun, at the inftance of *Sir Patrik Barclay*, now of *Towie elder*, and *Patrik Barclay younger* his fone, with concurrence of our fouerane lordis Aduocat, for Improbatioun of the foirfaid Band and Reuerfioun, ingroffit thairintill, the saidis Lordis of Counfell and Seffioun, efter tryell tane be them in the premisses, hes ffand and declairit be thair Decreit, gevin vpon

the secund day of Marche instant, conforme to the said *Thomas* awin Confessioun and Deposition, subscriuit be his awin hand, in thair hail Lordschippis prefens, that the foirsaid Band and Reuerfioun foirsaid, ingrossit thairintill, is fals and fenzeit, fallie forget, fabricat, and devyset be the said *Thomas*, and the said *Airthour Meldrum*, at his command and direction: And that the said *Airthour*, be his command and direction, counterfute the names and subscriptions of *Patrik Chalmer*, *Alexander Frazer*, and *Alexander Watfoun*, thre of the Witnesses insert thairintill: And that the said *Thomas* him self counterfute, and pat to with his hand the name and subscription of the said v<sup>m</sup>q<sup>le</sup> *Walter Barclay of Towie*, allegit maker of the said Band, with the names of *George Leslie*, and *James Innes*, uther tua Witnesses insert thairintill: AND in respect thairof, the samyn Band was, be thair Lordschippis direction, in thair Lordschippis prefens, immediatlie cuttit, cancellit, and destroyit, and declairit to mak na fayeth in judgement, nor outwith, in tyme cuming: AND the said *Thomas*, for his former ffalfett, (was) also Ordanit be the saidis Lordis Decreit to be pwneist in his persone and guidis, conforme to the lawis of this realme; quhilk aucht and sould be execute vpone him with all rigour, to the terrour and example of vtheris to attempt the lyk. As the saidis Lordis Decreit, togidder with the said *Thomas*, his awin and the said *Airthour Meldrumes* Depositiones, confessing cleirlye the ffalfet aboue writtin, producet be our said souerane lordis Aduocat with the Dittay aboue specifeit, for verification thairof, at lenth beiris.

The pannell allegit, that in respect the ffalfe Reuerfioun quhairupoun he is accuset, was nevir vsfet nor abiddin at be him, to the hurt of *the Laird of Towie* or ony vther, that thairfoir the Justice could nocht put him to ane Affyse.—It is anfuert be my Lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay, and of the Lordis Decreit, quhairupoun the samyn is foundit, ffinding the Reuerfioun to be ffalslie sforget be the pannell, and that *the Laird of Towie*s subscription was fallie counterfute, and put thairto be the pannell; and thairfoir Ordaning him to be pwneist, conforme to the Lawis of this realme.

THE Justice Repellis the pannellis allegiance, in respect of the anfuert; and Ordanis the Dittay to pass to ane Affyse.

## ASSISA.

George Logane of Bonytoun, elder,	James Halyburtoun, mercheand,	Archibald Law, goldfmyth,
Williame Lauder, bailzie of	Patrik Elis, 3ounger, mercheand,	Harie Hoip, mercheand,
Dumbar,	Capitane Patrik Heiring,	George Hammiltoun, mercheand,
Malcolme Stevinsoun, Tutour of	Johnne Dougall, mercheand,	Eduard Johnnestoun, mercheand,
Hirdmestoun,	Johnne Schaw, mercheand,	Williame Crytiesoun, tailzour.
Michell Ramsay of Forther,	Johnne Smyth, mercheand,	

VERDICT. The Affyse, be the repourt and declaratioun of the said Chancellor, all in ane voce, ffand, pronuncet, and declairit the said *Thomas Dempster* to be ffylet, culpable, and convict of the hail ffalfettis set down in his Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveable guidis and geir pertening to him to be escheit to his Maiesteis vse, &c.<sup>1</sup>

<sup>1</sup> The frequency of the crime of Forgery, during some years preceding the date of this Trial, seems to have induced the Public Prosecutor to make several severe examples. Not a few of the criminals were persons of considerable rank in society, who, by desperate courses, had been reduced to the worst shifts to procure the means of subsistence.

**Murder.**

Jun. 14.—ROBERT HODGE in Spitteloun, and James Mitchell, myller at Dalmahoy mylne.

Dilaitit of airt and pairt of the Slauchter and Murthour of vmq<sup>le</sup> Patrik Mitchell, skynner; committit in Marche last or thairby, be streking him with kentis and flailis, in dyuerse pairtis of his body, and douking him in the mylneleid or dam of Dalmahoy-mylne; quhairof he within xxiiij houris deceiffit.

PERSEWAR, Johnne Mitchell in Langfyde, as father.

PRELOCUTORIS in defence, Mr Robert Lermonthe, The Laird of Dalmahoy.

THE Justice continewis this dyet to ffryday nixt.

Jun. 16.—COMPEIRIT Johnne Mitchell, perfewar, and declairit that the perfones on pannell ar altogidder innocent of the crymes contenit in the Letteris; and thairfoir he past *simpliciter* fra thair perfute, as innocent thairof.—The pannell takis instrumentis of the perfewaris Declaratioun, and passing *simpliciter* fra thair perfute; and nochtwithstanding thairof, offerit thame selfis to the tryell of the Law for the said allegit crymes, seing thair is ane sufficient number of honest men heir present, quha war summoned be the perfewar to pas on thair Affyse, and quha best knawis the verritie of that matter; and thairfoir, as of befoir, defyret my lord Justice that thai mycht be put to ane tryell, &c.

THE Justice, in respect of the perfewaris declaratioun and passing fra the pannellis perfute, Ordanis the dyet to desert; and na Letteris to be direct aganis thame, in this matter, in ony tyme cuming, at the instance of thir perfewaris.

**Murder committed under Trust and Friendship.**

Jun. 16.—HARIE GORDOUN of Haddo.

Dilaitit of the crewall Murthour and Slauchter of vmq<sup>le</sup> Johnne Johnnestoun, servand and neir kynsman to the Laird of Caskieben, be schuiting him throw the body with ane double musket, charget with fyve bullettis, vnder trust and freindschip, at the dur of the said Hareis duelling-hous, the xxiiij of Marche last.

Robert Johnnestoun, in Corshill, as father to vmq<sup>le</sup> Johnne, togidder with Sir Williame Oliphant, producet the Letteris, deulie execute and indorfate, &c.

THE Justice Ordanit Adame Gordoun of Boighoill, as cautioner, to be vnlawit for nocht entrie of the said Harie, in the pane of Tua hundreth merkis: And siclyk, that the said Harie be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

**Murder by Browning, &c.**

Jun. 16.—DONALD NEILSONE of Affint, Neill Neilfone, his sone, and Neill M'Eane Allafter.

Dilaitit for taking vmq<sup>le</sup> Donald M<sup>c</sup>Allaister V<sup>c</sup>Eane V<sup>c</sup>Henrie, binding him hand and fute, and casting him in ane boit; and thaireftir cayreing him to ane craig<sup>1</sup> in the Sea of Clafneffie, in Affint, quhair the fie overflowing the faid craig, he was pitiefullie<sup>2</sup> drownit and cayreit away to the grit Ocean-fie; and fa, crewallie Murthouret be thame.

Michaell Anderfone, tailgeour in the Potter-raw, as cautioner, amerciated for nocht repoirting of the Letteres deulie execute and indorfate, and perfewing thairof, purchest at the instance of Johnne M<sup>c</sup>Angus V<sup>c</sup>Henrie, neir kynnifman of the faid vmq<sup>le</sup> Donald, viz. 100 merkis for the faid Neill M<sup>c</sup>Ean Allaister; and for the vther tua defenderis, ather of thame in tua hundreth merkis.

### Slaughter.

Jun. 20.—WILLIAME JOHNNESTOUN, elder of Kellobank; Williame Johnneftoun, zounger, his sone; and Johnne Johnneftoun, alfo his sone.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Williame Johnneftoun of Kynnelheid; committit in anno 1619.

PERSEWAR, Jeane Johnneftoun, as dochter.

ASSISTERIS of the perfute, Robert Johnneftoun, callit of Moffope, Thomas Johnneftoun of Beirholme, James Johnneftoun of Erfchag.

PRELOCUTORIS in defence, Mr Thomas Nicolfone, elder, Mr Laurence M<sup>c</sup>gill (Advocates.)

The perfewaris passis *simpliciter* fra the pannellis perfute, for the crymes foirfaidis: Quhairvpon the pannell askit instrumentis.

Continued, 'for the Kingis pairt,' to the third day of the next Justice-air, or sooner, on xv days warning.

### Taking captibe and prisoner—Oppression, &c.

Jul. 12.—WILLIAME GARIOCHE, sone to James Garioche of Kinstair, and Thomas Anderfone in Awfurd.

Dilaitit for being in companie with *Alexander Forbes*, sumtyme of *Toweis*, vpon the xxj day of Januar, 1620 laft, bodin<sup>3</sup> with foure pistolettis and tua lang gwnes, fuordis, durkis, and vtheris wappones *invasué*; and cuming airtie in the moirning, befor the brek of day, to the duelling-hous of George Garioche, in Tuliechetlie, sone-in-law to Johnne Bonar, in Tulliechetlie, quhair the faid Johnne was, in sober and quyet maner, for the tyme, lying in his bed; and be plane force and violence entering within the faid hous, pat violent handis in the perfone of Barbara Forbes, ane servand thairof, drew hir to the ffyre, and in maist barbarous and crewall maner held hir aboue the famyn, thraitning to cast hir thairin,

<sup>1</sup> Crag, or rock.

<sup>2</sup> Piteously; lamentably.

<sup>3</sup> Furnished; provided.

and to burn hir quick,<sup>1</sup> gif scho reveillit nocht to thame quhair the said Johnne Bonar was : AND lykwayis, ffor the putting violent handis in the persone of Robert Broun, ane vther fervand of the said hous, and halding ane drawin durk to his breift, thraitning to strek him thairwith, gif he also reveillit nocht to thame quhair the said Johnne Bonar was for the tyme : AND last, vponne knowlege gevin to the said Alexander Forbes of Toweis and his complices, that the said Johnne Bonar was in his bed within the said hous, ffor thair cuming to him to his bedsyde, and drawing him furth of his bed in maist violent maner, taking him captiue and priffoner, and cayreing him furth of the said hous be the space of tua myles, to the watter of Lochell, and douking<sup>2</sup> him dyuerse tymes thairin ; and thair compelling him to yeild to the furneiffing to the said Alexander Forbes, and delyuering to him of ffyve hundreth merkis money ; and becaus of the said Johnne Bonar his refusall of performeing thaireftir of his promeis, ffor cayreing him with thame, as ane captiue and priffoner, to the duelling-hous of Robert Merfar of Edindowie, and keiping him thairin, as ane captiue and priffoner, be the space of tua dayis and tua nichtis togidder : AND for beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament.

Compeirit personallie the said Williame Garioche and Thomas Anderfones, and maist willinglie offerit thame selffis to the tryell of the law, disaffenting *simpliciter* to all maner of continuation : And thairfoir protestit for thair cautioneris (Mr Williame Forbes of Craigievar, and Alexander Hill, litster,<sup>3</sup> burges of Aberdene) releif.—Compeirit on the vther pairt, Johnne Forbes, elder of Brux, as procurator, speciallie constitute, for the said Johnne Bonar, perfewar, and be vertew of ane Letter of procuratioun, subscriuit with his hand, of the dait the aucht day of July instant ; bearing, that the said Johnne, in regaird of his grit age and inhabilitie to travell to the keiping of this dyett, and that he vnderstuid the saidis Williame and Thomas, quha had fund cautione, war innocent of the haille crymes aboue writtin, Ordanit the said Johnne Forbes of Brux to pas *simpliciter* fra thair persute, &c. Quhilk protestatioun the Justice admittit.

#### House-breaking—Stouthreif—Theft.

Jul. 21.—PATRIK GRANT of Davachmoir ; Duncane Grant, in Wester Bunlody ; James M'allaster Vic Eane Oig, in Inchebroun ; Ewin M'neill V'quyane, in Littill Clwne.

Dilaitit for breking of Johnne Grant of Glenmorieftoun his hous of Belmacaene, in Vrquhart ; breking vp of fourtene lokit kiftis<sup>4</sup> being thairin ; steilling and away-taking of certane guidis and geir being within the saidis kiftis, all pertening to the said Johnne Grant ; committit in Apryle, 1615 yeiris.

<sup>1</sup> Alive.

<sup>2</sup> Ducking.

<sup>3</sup> Dyer.

<sup>4</sup> Locked chests.

PERSEWAR, Johnne Grant of Glenmoriestoun.

The persewar passis *simpliciter* fra the perfute of the said Ewin ; and declairis him to be innocent thair of.

Continued to the thrid day of the nixt Justice-air of the scherefdome quhair thay duell, or foner, vpon xv dayis wairning. Johnne Grant, appeirand of Ballindalloche, become fouertie, &c.

### **Taking captibe—Oppression—Starving to death.**

Jul. 26.—ROBERT M<sup>c</sup>COULE, in Wester Kindrogine ; Robert Glas, thair ; and Johnne Bowy M<sup>c</sup>kerra Dowy, in Straloch.

Dilaitit for Ufurpatioun of our fouerane lordis authoritie, in taking of vmq<sup>le</sup> Allaister M<sup>c</sup>gilliemule, in Inneridrie, ane simple pur man, furth of the duelling hous of Johnne Roy M<sup>c</sup>gilliemule, vpon the landis of Bordland, within the scherefdome of Perth, binding him hand and fute, and cayreing him, as ane captiue and priffoner, with thame to the Castell of Blair, in Athole, and stryppit him naikit of his claites, and thaireftir casting him in the pit of the said Castell, quhair, in the deid tyme of winter, viz. in December last, he fameischet with hunger and cald, eftir he had remanit foure dayis and foure nichtis thairintill : And thaireftir cayreing him out of the said pitt to ane gibbet (being deid) vpon the landis of Blair, quhair thay hang him vp as ane malefactour, but power or commissioun gevin to thame, or ony preceeding tryell tane of his guiltines of ony cryme.

THE Justice ordanit Johnne Fergussone of Belnacult, in Straloch, as cautioner and fouertie, to be vnlawit for nocht entrie of ilk ane of the saidis personis, in the pane of ane hundreth merkis : And siclyk, that thay fall be denuncet rebellis and put to the horne, and all thair moveabill guidis to be escheit, &c.

### **Hurting and Wounding—Demembration.**

Nov. 3.—JOHNNE STEWART of Hulreid ; James Blaikwoid, his servand ; and Johnne Pollok, sone to Johnne Pollok, in Caldcoittis.

Dilaitit of airt and pairt of the crewall Hurting and Wounding of Johnne Allansone, sone to Andro Allansone, in Waterfute, in his heid, be geving to him of fevin bludie woundis thairintill, tua crewall woundis in his schoulderis and airmes : As also, of difmembring him of his thombe and thre fingeris of his left hand ; committit vpon the landis of Gorballis, pertening to Sir George Elphingstoun of Blytheswoid, kny<sup>t</sup>, in his cuming frome Glasgou to his fatheris hous, in Watterfute, in the moneth of Junij last ; vpon set purpos, prouifioun, and ffoir-thocht ffellonie.

PERSEWAR, Johnne Allansone.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.



It is allegit be Mr Thomas Hoip, as prelocutour for Johnne Stewart of Hulreid, that the Dittay can nocht be put to ane Assyse aganis the said Johnne, nor his men, becaus per Legem, *si quis in rixa, &c.*; quhair ane persone, callit for ane cryme and is fugitiue thairfoir, the remanent perones, his allegit complices, enterand, can nocht be tryit be ane Assyse, or persewit for the samyn: As also, he takis instrumentis of that poynt of the Dittay, beirand the fact lybellit to be committit vpon foirthocht fellonie. It is forder allegit be Mr Thomas, that the Dittay is nawayis relevant to pas to ane Assyse, for Dismembring, seing the persewar wantis nocht ane member, bot onlie his thombe and tua fingeris, *quia digitus non est membrum, sed tantum pars membri.*

Mr James Hammiltoun, as prelocutour for Johnne Pollok, takis instrumentis, that the persewar is willing to pas fra the said Johnne Pollokis perfute *simpliciter*, as altogidder innocent of the cryme lybellit; and protestis, in caice he persew nocht Pollok, that the persewaris cautioneris be vnlawit: And thairfoir, in respect of Pollokis innocencie, he offeris him to the tryell of ane Assyse. Takis instrumentis also of the persewaris declaratioun, beirand that he nevir saw the said Johnne Stewart and remanent perones on pannell befoir his cuming to the grund of Gorballis, that day of his hurting thairupoun; as also, that Johnne Stewart said thease wordis at that tyme, 'It is ane mervellous matter we can nocht get James Pollok and Johnne Allansone red!'

THE Justice repellis the allegeances aboue writtin, concerning the Law allegit be Mr Thomas Hoip, and concerning the dismembring, in respect of the Dittay: And Ordanis the samyn to be put to ane Assyse.

VERDICT. The Assyse, all in ane voce, fand the saidis Johnne Stewart, James Blaikwood, and Johnne Pollok to be Clene, innocent, and acquit, &c.

### Slaughter.

Nov. 17.—JAMES MURE, in Dalmahoy,<sup>1</sup> and Thomas Aikman, thair.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>16</sup> Johnne Weir, in Dalmahoy; committit with stanes, rungis,<sup>2</sup> and vtheris wappones *invasuè*, vpon the last day of September lastbypast, vpon set purpois, prouisioun, and foirthocht felony.

PERSEWARIS, Margaret Wynrahame, the relict; Thomas and William Weir, brether.

PRELOCUTOUR in defence (for Thomas Aikman), Mr Robert Lermonthe.

VERDICT. The Assyse, all in ane voce, fand the said *Thomas Aikman* to be Cleane, innocent, and acquit: And siclyk, that the said *James Mure* is Giltie, culpable, and convict of the said slauchter.—SENTENCE *against Mure*. To be tane to the Mercat croce of Edinburghe, and thair his heid to be strukin frome his body; and all his moveable guidis to be escheit, &c.

<sup>1</sup> See Jun. 14, 1630.

<sup>2</sup> Cudgels; staves.

**Slaughter.**

Dec. 1.—**JOHNNE BROUN**, tailzeour, hantand<sup>1</sup> in Craufurdmure.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>1e</sup> James Williamfone, in Glengeich; committit the xxvj day of November laftbypaft, within the duelling hous of Johnne Gibfone, elder, in Craufurdton, be hurting him with ane fuord in the heid, airmes, and vtheris parttis of his body; quhairof, vpon the morne thaireftir, being the xxvij day of November, at tuelf houris in the day, he deceiffit.

**PERSEWARIS**, Symone Williamfone, burges of Edinburghe, and Robert Williamfone, brethir to the defunct; James Williamfone, brother-in-law; Sir Williame Oliphant, kny<sup>t</sup>.

**ASSISA.**

Mathow Bailzie, of Littillgill,	Thomas Johnnstoun of Beirholme,
Mr James Bailzie, fone to Mathow,	Williame Tailzeifeir of Herklaw,
Johnne Makmath of Corbank,	Johnne Vmphray in Glenmuklek. <sup>2</sup>

The said Robert Williamfone, brother to the defunct, fuoir the Dittay to be of verritie: Quhairvpoun my lord Aduocat askit instrumentis; and protestit for Wilfull Errour aganis the Assyse, gif thay acquit.

**VERDICT.** The Assyse, all in ane voce, be the declaratioun of the said Mathow Bailzie, chancellor, fand the said Johnne Broun to be ffylet, culpable, and convict of airt and pairt of the said crewall Slauchter.—**SENTENCE.** To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin frome his body; and all his moveabill guidis to be efcheit, &c.

**Slaughter.**

Dec. 15.—**SIR JAMES MAXWALL** of Calderwoid, kny<sup>t</sup>; Alexander Lyndfay of Dunrod; Johnne Lyndfay, his brother naturall; and James Maxwall, fone to Williame Maxwall of Newlandis.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>1e</sup> Alexander Lekkies of that ilk; committit in September 1601 yeiris.

**PERSEWARIS**, Alexander Lekkies of that ilk, as fone; Adame Cuninghame of Markinfche, the spous of Euphame Maxwall, relict of the said vmq<sup>1e</sup> Alexander, for his intreis; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord.

**PRELOCUTOR** in defence, Mr Thomas Hoip, Aduocat.

The Justice, conforme to ane Warrant of the Secret Counfall, direct to him, quhairof the tennour followis:

**JUSTICE**, Justice Clerk, and your deputis. Quhairas the fyftene day of December instant is appointit to Sir James Maxwell of Calderwoid, kyn<sup>t</sup>, W<sup>m</sup> Maxwell of Newlandis, James, J<sup>n</sup>, and James Maxwell his fones, Alex<sup>r</sup> Lyndfay of Dunrod, and James Wauchope in pe Airdis, ffor pair compeirance befor you, to vnderly the lawis for the Slauchter of vmq<sup>1e</sup> Alex<sup>r</sup> Lekkies of pat ilk: Nochtwithstanding, for certane cauffis moveing ws, it is our will, and we Command you to continew pe said dyet, vntill the

<sup>1</sup> Dwelling, but having no fixed residence.

<sup>2</sup> The rest of no note.

sextene day of Januar, in the zeir of God *J<sup>m</sup>.Vj<sup>o</sup>*. taentie tua zeiris : And that ze tak new caution of thame, conforme to the ordour: Qubairanent thir presentis fall be 3our Warrant. AT ED<sup>a</sup>, the tuelf day of December, 1620.

AL. CANCELL<sup>a</sup>. MAR. MELROIS. NITHISDAILL. LAUDERDAILL. CARNEGY.

Continewis this dyet to the said xvj day of Januar, in anno foirsaid.—Sir Alexander Hammiltoun of Innerweik, kny<sup>t</sup>, elder, and Alexander Levingstoun of Belstane, become pleges and fouerteis for the entrie of the saidis Sir James, &c.

(Jan. 16, 1622.)—SIR James Maxwell compeirit, and personallie productet ane WARRANT of the Lordis of Secreit Counfall, proceeding vpon ane Supplication gevin in by thair Lordschippis ; quhair of the tennour followis.

MY LORDIS OF SECREIT COUNSALL, vnto 3our L. humlie meanis<sup>1</sup> and schawis, we 3our seruitouris, *Sir James Maxwell of Calderwoid*,<sup>2</sup> sone to vmq<sup>le</sup> *William Maxwell of Newlandis*, *Alex<sup>r</sup> Lyndsay of Dunrode*, and *Jo<sup>s</sup> Lyndsay*, his brother naturale, That quhair, the sextene day of Januare nixtocum is appointit to us for our compeirance befor his Maiesteis Justice, to vnderly the Law for the Slauchter of vmq<sup>le</sup> *Alex<sup>r</sup> Lekie of that Ilk*, at the quhilk day the Justice intendis to proceed in this matter ; albeit it be of verritie, that be pe mediatioun and travellis of some weill affectit Noblemen, Barrones, and Gentilmen, commoun and indifferent<sup>3</sup> freindis to both us pairteis, who hes delt and travellit betuix us, for bringing of this vnhappie feid, whilk hes bene of so long continuance betuix our Houffis, to some termes of aggrement and reconciliatioun : Thay broght pe matter to this poynt, that I, pe said *Sir James*, fall superceid and continew the profecutioun and following out of pe action of Reductioun, quhilk I haif presentlie in dependance befor pe Lordis of Counfall and Sessioun, aganis pe said *Laird of Lekkie*, and that I fall suffer the same to rest and sleip<sup>4</sup> till pe said sextene day of Januar nixtocum ; and that the Criminall dyet foirsaid, appointit for our Tryell befor pe Justice, fall be continewit till Witsonday nixt ; to the effect, that in this meane tyme, forder travellis may be tane for bringing of the feid and querrell betuix us to ane more happie and finall conclusioun : AND with this appointment of freindis, bothe we pairteis restit weale satisfest and content. THAIRFOIR we befeik 3our Lo. to geve command to pe Justice, Justice clerk, and pair deputies, to continew pe dyet foirsaid, appointit for our compeirance befor thame, to vnderly the Law for pe Slauchter, vnto pe said terme of Witsonday nixtocum ; and that pai dispenfe with our personall compeirance, and tak new caution for us, conforme to pe ordour : And to discharge thame of all proceeding aganis us in the mean tyme, and of thair offices in that part, quhill pe said terme of Witsonday : Whairanent thir presentis fall be pair Warrant. And 3our Lordschippis anfuer. [*Followis the Lordis delyuerance.*] APUD ED<sup>a</sup>, *quarto Decembris*, 1621, *fiat ut petitur*, to the xix day of Junij nixtocum : Becaus the *Erle of Mar*, being personallie present, testifeit pe consent and appointment within writtin.

AL. CANCELL<sup>a</sup>.

For obedience of the quhilk Warrant, the Justice continewis this dyet in the same forme, force, and effect, with all tryell of the pannell for the Slauchter aboue writtin, to the said xix day of Junij, &c.—Sir George Elphingstoun of Blythefwoid, kny<sup>t</sup>, became fouertie for the entrie of the said Laird of Calderwoid, &c.

(Jun. 19, 1622.)—THE Laird of Calderwoid productet his Maiesteis Letter following :

<sup>1</sup> Complains.      <sup>2</sup> It is likely the following words are omitted in the record, through a clerical error : ' Kny<sup>t</sup>, James Maxwell, sone, &c.      <sup>3</sup> Disinterested.      <sup>4</sup> When no proceeding takes place in suits before the Court of Session for *year and day*, the process is technically said to *fall asleep*, and is revived by a Summons of *Wakening*, &c.

JAMES R.

TRUSTIE and weilbelouit, We greit 3ow weill. WHAIR AS, We be credible informet that *Sir James Maxwell of Calderwood, kny<sup>t</sup>*, and *Alexander Lindsay of Dunrod*, with thear complices, ar summond, to vnderly our Lawis, for þe Slauchter of v<sup>m</sup>q<sup>le</sup> *Alexander Lecky of that Ilk*, alleadged committed be thame, We ar well pleased to grant vnto the said *Sir James* a Respitt for the same, during the space of certane monethis estir the dait heirof: AND thairfoir haif thought goode, by these presentis, to will and requyre 3ow not to medle in any wyse, nor to tak cognitioun of the said cause, till the fyft day of October nixt. Wherein We expect 3owr conformitie to our pleafour. GEVIN at our Court of Grenewiche, the first of Junij, 1622.

THE Justice continewis, &c. *Sir Johnne Hammiltoun of Lettrik*, and *James Maxwell of Kirkconnell*, cautioneris, &c.

PRELOCUTORIS in defence, *Joseph Myller*, Aduocat; *Archibald Hammiltoun*, Commiffar of Lanark.

(Oct. 5, 1622.)—JOSEPH MYLLER producet tua feuerall Testimoniallis, the ane subscryuit be the Minister of Lanark, and dyuerse elderis of the Seffioun of that Kirk; and the vther subscryvet be the Minister of Carlouk, and certane of the elderis of that Kirk, testifeing the deceife of *Sir James Maxwell of Calderwood, kny<sup>t</sup>*: And vpon the production thairof askit instrumentis.

The Laird of Dunrod presentit to the Justice ane LETTER of HIS MAIESTEIS, quhair of the tennour followis.

To o<sup>r</sup> trustie and weilbelouit, o<sup>r</sup> Justice, Justice clerk, and pair deputeis whatfoeir.

JAMES R.

Trustie and weilbelouit, We greete 3ow well. Whairas, We hane bene pleased to write to o<sup>r</sup> Counsell, willing thame to employ their best meanes, for reconciliatioun of *Sir James Maxwell of Calderwood* and *Alexander Leckie of that Ilk*: We haif lykwayis thoct by these presentis to will and requyre 3ow nocht to proceed in the criminall actioun intendit aganis the said *Sir James Maxwell* and his complices, for the Slauchter of v<sup>m</sup>q<sup>le</sup> *Alexander Leckie of that Ilk*, till 3e fall vnderstand by o<sup>r</sup> said Counsell that þai haif gevin vp all forder deilling in that matter. So, expecting 3o<sup>r</sup> conformitie to this o<sup>r</sup> plef<sup>r</sup>, we bid 3ou fare weill. GEVIN at Windefore, the seavinthe day of August, 1622.

Conforme to the quhilk directioun of his Maiestie, the Justice deferris all proceeding aganis the pannell.

The said *Johnne Lyndsay* disaffentis to the said continuatioun, and affirmes him self to be innocent of the said Slauchter; and thairfoir offeris him self presentlie to the tryell of the Law for the samyn.—The Justice Ordanis him, with the remanent defenderis vpon pannell, to find caution. *James Lyndsay of Scheillis*, and *Alexander Levingstoun of Belstane*, become cautioneris, &c.

[*Mr Robert Fairlie, Justice-Depute.*]

**Taking captive King's free lieges—Cruel oppression—Murder, &c.**

Feb. 7, 1621.—JAMES PARK in Cathkyn, and *George Park* in Wester Gremlear, his brother.

Dilaitit of airt and pairt of the Taking of v<sup>m</sup>q<sup>le</sup> *William Knox*, in Cathkyn, furth of his duelling hous, vnder silence of nyct, and with cudgellis and rungis besting and dinging him in the breift, sydis, bak, and bellie; thairby breking

and bruseing his haill intrallis and nobill pairtis within him, setting thair feit betuix his leggis vpon his ball-cod,<sup>1</sup> and forcing thairby his stanes to loup vp in his lifkis;<sup>2</sup> binding him thairefter with ane coird, or hair-tedder, to ane horse and ane sled,<sup>3</sup> and cayreing him with thame as ane captiue and prissoner to the toun of Hammiltoun: Off the quhilkis hurttis and dedlie woundis, he deceiffit, in the moneth of Januar; the samyn being done to him in the moneth of October of befoir, in the yeir of God I<sup>m</sup>.V<sup>o</sup>.lxxxxvj yeiris.

PERSEWARIS, Johnne Knox, as sone; Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTORIS in defence, Mr Tho<sup>s</sup> Hoip, Mr Ja<sup>s</sup> Hammiltoun, Mr Lueis Stewart, (Advocates.)

It is allegit be the pannell, that the Dittay contenis tua feuerall crymes; the first, for taking and apprehending of his Maiesteis frie lege but<sup>4</sup> Commissioun, quhilk is tressonable; the vther cryme, for Murthour and Slauchter of him, in in maner lybellit. As to the first cryme, quhilk inferris the cryme of Tressone, *non relevat*, becaus, taking without imprissoning *in privato carcere*, and detening him thairin, *per spacium viginti quatuor horarum*, can nocht, be<sup>5</sup> the law, infer *penam privati carceris*. And as to the Murthour lybellit, *non relevat* to pas to ane Assyse, except it war condiscendit, at quhat tyme he contractit the deidlie seiknes, eftir the geving of the straikis quhairupoun daith followit, as is allegit in the lybell. My lord Aduocat conioynes the tua crymes lybellit, and concludes thairin only *penam capitis* to be inflictit vpon the committeris; and thairfoir desyres the Justice to put the haill lybell *coniunctim* to the knowlege of ane Assyse.—The perfewar, Johnne Knox, declairis that he will nocht perfew at this tyme, becaus the speciall persones that ar summoned, and best knawis the treuth of the pannellis giltines, ar nocht present: And thairfoir, desyres that the matter may continew to ane fyftene dayis wairning, and the pannell put vnder new cautioun.—The pannell disassentis to the said continuatioun; and in respect, thair is ane sufficient number of Assyse present, all summoned be the perfewar, offeris thame selfis to the tryell of the law for the haill crymes lybellit; quhairof thay declair thame selfis to be altogidder innocent: And protestis, in respect of thair former offer, that thay be nawayis trubillit or perfewit for the saidis allegit crymes, in ony tyme cuming.

THE Justice continewis this matter to ane fyftene dayis wairning; and ordanis the pannell to find cautioun, &c. Williame Anderfone, portioner of Littil Govane, became cautioner, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

**Usurping King's authority—Taking captive &c.**

Feb. 9.—RICHARD GRAHAME of Hospitalscheillis, and Robert Merfar, messinger in Abirdene.<sup>6</sup>

<sup>1</sup> Testes.    <sup>2</sup> Reins.    <sup>3</sup> Sledge, or cart without wheels.    <sup>4</sup> Without.    <sup>5</sup> By.  
<sup>6</sup> Cautioners, 'George Erle of Marshell, and James Garioche of Kinfair.'

Dilaitit for cuming to Patrik Farquhar, burges of Ablrdene, his duelling-hous thair, and maist violentlie, but ordour of Law,<sup>1</sup> or concurrence of the Magiftratis of the said burgh, and without ony Commiffioun or vther Warrant, putting violent handis in the perfone of the said Patrik Farquhar, taking him furth of his said hous; and thairfra, cayreing him, as ane captiue and priffoner, to the said Richerd Grahames Hous of Overcraig: As also, for cayreing him to the priffone of Stanehyve, quhairin he was keipit be the fpace of tuentie dayis: LYK AS, he was keipit and detenit in the said Richerd Grahames Hous, *tanquam in privato carcere*, be the fpace of tuentie foure houris; vfurpeing thairby our fouerane lordis authoritie vpone thame: AND sic lyk, for tranfpoirting him to the duelling hous of Mr Williame Reid in Cowie, quhairin he was keipit in ftrait firmance the fpace of vther xxiiij houris: Vfurpeing thairby our fouerane lordis authoritie vpone thame.

PRELOCUTORIS in defence, Mr James Oliphant, Mr Roger Mowat, Aduocattis.

The said Patrik Farquhar declairit, that the saidis Letteris war altogidder raifit but<sup>2</sup> his warrant, and by<sup>3</sup> his knowlege; and without ony informatioun gevin be him to our fouerane lordis Aduocat, or to the said James Keyth,<sup>4</sup> or ony vther thairintill: And thairfoir, he renuncet all actioun Criminal or Ciuile that he had or could allege aganis the said Richard and Robert, and past *simpliciter* fra thair perfute, as altogidder frie and innocent thairof.—My lord Aduocat declairis, that thair is collufioun and fecret aggrement betuix Patrik Farquhar and the perfones on pannell; and defyres the pannell thairfoir to be put vnder new cautioun, for thair compeirance of new agane, vpone xv dayis wairning, for his Maieftis intereis allanerlie.—Johnne Grahame, indueller in Edinburgh, becomes cautioner to the above effect.

My lord Justice Ordanit na letteris to be direct furth aganis the pannell, at the instance of the said Patrik, for the crymes foirfaidis, in ony tyme cuming, in respect of his former declaratioun.

### Slaughter.

Feb. 23.—JOHNNE BELLENDEN, indueller in Edinburghe.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> James Dalmahoy, burges of Edinburgh.

PERSEWARIS.

Agnes and Helene Dalmahoy, fisteris; Sir Johnne Dalmahoy of that Ilk, kyn<sup>t</sup>; Andro Ker of Zair.

PRELOCUTORIS in defence, James Borthuik of Newbyres, Mr Laurence McGill.

THE JUSTICE, of consent of pairtie, continewis the dyet to the fevint of Marche

<sup>1</sup> Without legal warrant.    <sup>2</sup> Without.    <sup>3</sup> Beside; past; without; contrary to.    <sup>4</sup> Of Harviestoun, cautioner for producing the Letters duly executed against the pannell.

nixtocum. And ordanis the pannell to be tane bak to waird, thair to remane quhill the said day.

Mar. 7.—CONTINEWIS this matter to Fryday nixt, the nynt *instantis*.

Mar. 9.—THE perfewaris paffis fra the perfute of the pannell, *pro loco et tempore*.

### Slaughter.

Mar. 30.—MR JAMES BAILZIE, sone to Mathow Bailzie of Littilgill.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> James Dalmahoy, merchand burges of Edinburgh.

PRELOCUTORIS in defence, Mathow Bailzie of Littilgill, Mr James Hammiltoun.

The saidis Mathow, and Mr James, declairit, that Mr James Bailzie, his sone, the tyme of the geving of the charge to him, for his compeirance, was and is as yit hevielie diseasit with felknes, that he is nocht able to travell to the keiping of this dyet, &c.

*Johnne Loverance*, Minister at Robertoun being solemplic fuorne, declairit, that he is Minister at the Kirk of Robertoun, and within this thre dayis viffet Mr James Bailzie within the parochin, quhair he was lying bedfast, heavilie diseasit with feiknes, and nawayis of habilitie to travell, vpon horse or fute, to the keiping of this dyet; as he fould anfuer to the grit and Almychtie God. —*Johnne Dunfyre* in Robertoun, also fuorne, is conforme to the said Johnne Loverance, Minister.—*Mungo Inglis* thair, lykwayis deiplic fuorne, depones conforme to the Minister.

THE Justice ordanit caution of new agane to be ffund for the said Mr James Bailzie, that he fall compeir the thrid day of the nixt Justice-air of Lanerk, or soner, vpon xv dayis. The said Mathow becomes cautioner.

[*Mr Robert Fairlie, Justice-Depute.*]

### Murder under trust, credit, and assurance.

Apr. 13.—GEORGE ERLE OF CAITHNESS, and James Sinclair in Diran.

Dilaitit of airt and pairt of the crewall and treffonabill Murthour and Slaughter vnder trust, credit, and affurance of vmq<sup>le</sup> Thomas Lyndfay in Scraibster in Kaithnes; committit be thame and thair compliceis, in forme and maner specifit in the Letteris.

Robert Monro of Aldie, Commissar of Kaithnes, as brother on the mother fyde, to the said vmq<sup>le</sup> Thomas, producit the Letteris deulie execute and indorfate vpon the said Erle and James Sinclair, be the quhilkis, thay and ather of thame ar denunciit rebellis and put to the horne, for nocht finding of caution, to haif compeirit befor the Justice or his deputis this day.

THE Justice, vpon the productioun of the saidis Letteris deulie execute,

indorfat, and regiftrat, adjudget the faid Erle and James Sinclair, in refpect thairof, and of thair nocht compeirance perfonallie this day, to be ffugitiues fra his Maiefteis lawis for the faid treffonabill Murthour, as culpable and fugitiue thairfoir.

[*Mr Alexander Coluile, Justice-Depute.*]

**'Forcing'—Rape.**

JUN. 27.—JAMES M<sup>c</sup>NACHT in Igifzaird, and Thomas Weir in Gairdingholme-fute.

Dilaitit of the fforceing of vmq<sup>le</sup> Jonet M<sup>c</sup>rone, fervand for the tyme to Thomas Weir in Gairdingholme-fute, and abufeing hir, in the moneth of November, 1620 yeiris, in sic foirt, that within tuentie dayis thaireftir fcho deceiffit.

PERSEWAR, Williame Campbell, coufing-germane to the defunct.

PRELOCUTORIS in defence, Mr Lueis Stewart, and Adame Cuninghame, (*Advocates.*)

The pannell defyres to vnderftand the perfewaris entreis to perfew; and that he declair how neir of kyn he is to Jonet M<sup>c</sup>rone.—The perfewar declairis he is coufing-germane to the faid vmq<sup>le</sup> Jonet, viz. fcho was his father-fifter dochter; and thairfoir hes guid intreis to perfew.—It is allegit be the pannell, that he can nocht be eftimat ane lauchfull perfewar, becaus the perfewaris father was the defunctis bastard-brother; and fa, of the Law, can nocht perfew, his father being bastard; the verritie quhairof referris to the perfewaris ayth: Quha declairit the allegiance to be of verritie.

THE JUSTICE, in refpect thair was na lauchfull perfewar to infift in this perfute, Ordanis the dyet to defert.

The pannell takis instrumentis thairupoun, and affirmes that thai ar altogidder innocent of the crymes lybellit; and gif ane lauchfull perfewar, ather for the parteis or the Kingis entreis, war present, thay wald maift willinglie offer thame felffis to the tryell of the law for the faidis crymes; and difaffentit, *simpliciter*, fra ony continuation, without ony exceptioun to be proponit aganis ony lauchfull perfewar or perfones of Affyfe, being honeft and vnfulpect perfones; protesting, in the meane tyme, for thair cautioneris relief, fund for thair compeirance this day.

**Slaughter.**

JUL. 19.—HENRIE BAIRD, at the Mylne of Mukard.

Dilaitit of the crewall Slaughter of vmq<sup>le</sup> Robert Huttone, duelland within the parochin of Mukard, befyde Castell Campbell, be cafting of ane otter-ftalff, with ane tua-granet fork of irne at the end thairof, at the faid vmq<sup>le</sup> Robert, quhilk peirfit him in the bellie, quhairof he immediatlie thaireftir deceiffit; committit vpon the nynt of July instant, vpone fet purpois, prouifioun, and floir-thocht ffellonie.



PERSEWAR, Johnne Huttone, at the Kirk of Mukard, as brother to the defunct.

The pannell confessis the fact, and craves God mercie.

VERDICT. The Assyse, all in ane voce, fand the said Henrie Baird, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of airt and pairt of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin fra his body; and all his moveable guidis to be escheit, &c.

**Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.**

Jul. 20.—WILLIAME DOUGLAS of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrene, his brother naturall; Robert Greir, younger of Lag; and others.<sup>1</sup>

Dilaitit for contravening his Maiesteis Actis of Parliament, in making of convocatioun of his hienes legis: AND beiring and weiring of hagbutis and pistolettis: AND for airt and pairt of the Slauchter of vmq<sup>le</sup> Thomas Coupland in Caschogill: AND demembring of Robert Douglas, sone to Sir Robert Douglas of Caschogill, kny<sup>t</sup>, of his left lug:<sup>2</sup> Committit in Maij lastwas, vpone the tuelf day thairof, at the Mofs of Caschogill.

PERSEWARIS, Margaret Corbie, the relict; Williame, Robert, and Thomas Couplandis, as fones; and . . . . Coupland, as dochter to the said vmq<sup>le</sup> Thomas; Sir Robert Douglas of Caschogill, kny<sup>t</sup>, as father to Robert Douglas, and maister to vmq<sup>le</sup> Thomas.

PRELOCUTORIS, Mr Thomas Hoip; Mr Thomas Nicolfone, younger; and James Dowie, wryter.

**Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.**

Jul. 20.—SIR ROBERT DOUGLAS of Caschogill, kny<sup>t</sup>; Robert Douglas, his sone; Johnne Paterfone, in Caschogill; Thomas Paterfone, thair; Williame Coupland, thair; Hob Coupland, thair; Mathow Cowane, thair; and twenty-seven others.

Dilaitit for contravening of the Actis of Parliament, in making of convocatioun of his Maiesteis legis; beiring and weiring of hagbutis and pistolettis; and invaiding of the Laird of Drumlangrig, his brother, and remanent persewaris, with schottis of hagbutis and pistolettis; committit at the Mofs of Knockconnie, pertening to David Douglas, heritour thairof, vpone the tuelf day of Maij last.

<sup>1</sup> The rest of the pannells were, 'Duncane Hunter of Ballagan; James Johnnstoun of Lochhous; James Johnnstoun, callit *Braikinsyde*, James Johnnstoun, callit *Croftheid*, James Douglas, and Robert Grahame, all four servandis to the said James of Lochehous; Archibald Douglas, servand to the Laird of Mouffell; Robert Creichtoun, sone to . . . Creichtoun of Craufurdton; Thomas Bell, sone to *Reidcloke*; James Douglas, callit in *Glenmeid*; Christie Airmestrang in Bigholme, his sone in law; Andro Hunter in Auchinbaithe; James Douglas, Thomas Mairtene, Johnne Paterfone, callit *the sukler*, all servandis to the said Laird of Drumlangrig; Hob Hunter in Crarieknow; and Johnne Rig, messinger.'  
<sup>2</sup> Ear.



PERSEWARIS, Williame Douglas of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killiévarrane; James Johnnstoun of Lochehous; Robert Dalzell, sone naturall to Sir Robert Dalzell of Eliok, kny<sup>t</sup>; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

Ane WARRAND was producet to my lord Justice, quhair of the tennour followis.

JUSTICE, Justice Clerk, and 3our deputis; forfamekill as the tuentie day of July instant is set and affixed for perfute of *Williame Douglas of Drumlangrig*, and certane his speciall freindis and kynfmen befoir 3ow, for þe slauchter of vmq<sup>le</sup> *Thomas Coupland*, with hagbuttis and pistolettis; as also, for perfute of *Sir Robert Douglas of Cafchogill*, and certane his freindis and pairt-takeris, for making of convocatioun of his Maiesteis legis, and beiring, weiring, and schuiting of hagbutis and pistolettis, contrair his Maiesteis Actis of Parliament; as the Letteris, *hinc inde*, raifit be ather pairtie thairintill, beiris: AND becaus, be the mediatioun of freindis, the saidis actiones ar liklie to pak up and agrie, and that no forder truble be had amangis pame pairintill: It is pairfoir our will and plefour, that 3e continew the saidis dyettis to the thrid day of þe nixt Justice-air of the Scheref dome quhair þe saidis pairteis duellis, or soner, vpone fyftene dayis warning; dispensand with thair nocht compeirance befoir 3ow this day, and takand new caution for þe haill perfonas re-entrie contenit in the Letteris, to that effect, vnder the panes contenit in the Actis of Parliament. Quhairanent thir presentis fall be to 3ow ane sufficient Warrant. Subscryuit at Edinburgh, the xx day of July, 1621.

HAMMILTOUN. AL. CANCELL<sup>r</sup>. MAR. MELROS.

THE Justice continewis the saidis tua dyettis to the thrid day of the nixt Justice-air of the Scheref dome of Dumfreis, quhairin the haill perfonas duellis, or soner, vpone fyftene dayis.

Compeirit perfonallie . . . . Douglas of Caveris, Scheriff of Teviedaill, and become fouertie for the said Williame Douglas of Drumlangrig: And siclyk, Johnne Wilfone of Croglene, James Menzies of Enoche, and Malcolme Dalrum-pill of Enoche, fouerteis, conjunctlie and feuerallie, for Sir Robert Dalzell of Eliok, James Douglas of Mouffell, &c, that thay fall compeir, &c.—And on the vther pairt, compeirit Sir Williame Douglas, younger of Cafchogill, kny<sup>t</sup>, and become plege and fouertie for his father, and haill remanent defenderis, &c.

[*Mr Robert Fairlie, Justice-Depute.*]

**Slaughter—Wearing of Hagbutts and Pistolets, &c.**

Aug. 24.—CAPITANE JAMES JOHNNSTOUN of Thornik.

Dilaitit of the felloun and crewall Slauchter of vmq<sup>le</sup> Williame Johnnstoun, brother germane to Robert Johnnstoun of Wamfray: And for contravening of the Actis of Parliament, in beiring, weiring, and schuiting of hagbutis and pistolettis, and slaying the said vmq<sup>le</sup> Williame Johnnstoun thairwith; and remanent crymes contenit in the criminall Letteris.

THE Justice ordanit James Johnnstoun of Braikanfyde, cautioner for the said Capitane, to be vnlawit and americiat, for nocht entrie of the said Capitane, in the pane of ffyve hundreth merkis: And siclyk, that the said Capitane James, for his nocht compeirance, fall be denunciit rebell, and put to the horne; and all his moveabill guidis to be escheit, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

**Slaughter in Single Combat, or Duel, while in Foreign Service.**

[THE following Trial is one which possesses considerable interest and importance, as well from the light which it throws on the application of the LAWS OF DUELLING, in Scotland and in the Low Countries, as from the rank and situation of the parties implicated. *Captain Harry Bruce*, who had subsequently been employed to superintend the martial exercises of CHARLES, PRINCE OF WALES, afterwards the unfortunate KING CHARLES I, was rigorously pursued, by the vindictive and mercenary spirit of the relatives of *Captain John Hamilton*, in the Supreme Criminal Tribunal of Scotland, after he had long before been honourably acquitted by Court Martial in Flanders—under the impression, no doubt, that they would either extort a large sum of money from this new Court favourite, or procure his ruin or death. The DUEL or SINGLE COMBAT referred to in this case, and into which *Bruce* had been dragged by the rashness and insolence of his antagonist, had taken place no less than about *seventeen years* previous to those proceedings !

The reader may here be referred to the Case of "Capitan Johne Rig, Archeour of the Gaird of France," in a former part of this Collection, Vol. II., p. 382.]

NOV. 14.—CAPITANE HARIE BRUCE, seruitour to THE PRINCE his Hienes.

Dilaitit of airt and pairt of the Slaughter of v<sup>m</sup>q<sup>le</sup> Capitane Johnne Hammiltoun; committit in ane Singular Combat, in the Law Countreyis of fflanderis, in *anno* I<sup>m</sup>.Vj<sup>c</sup>. and fyve yeiris.

PERSEWARIS, Margaret Hammiltoun, as sifter; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOUR in defence, Mr Robert Foullis.

The pannell producet ane WARRANT and command of the Lordis of Secretit Counfall, quhairof the tennour followis.

ACT OF THE LORDS OF PRIVY COUNCIL.

AT EDINBUR<sup>t</sup>, the threttene day of November, the 3eir of God I<sup>m</sup>. fex hundreth tuentie ane 3eiris. ANENT the Supplicatioun presentit to the Lordis of Secretit Counfall be *Capitane Harie Bruce*, seruitour to THE PRINCE HIS HIENES, makand mentioun, that quhair, the xiiij day of November instant is appointit vnto him, vpon the complent of *Margaret Hammiltoun*, as sifter, with the remanent kyn and freindis of v<sup>m</sup>q<sup>le</sup> *Capitane Johnne Hammiltoun*, ffor his compeirance befoir the Justice or his deputis, in the Tolbuthe of Ed<sup>t</sup>, to vnderly the law for the Slauchter of pe said v<sup>m</sup>q<sup>le</sup> *Capitane Johnne Hammiltoun*, committit be the said *Capitane Harie*, in ane Singular Combat, in the Law Countreyis of fflanderis, some fevintene 3eiris ago; lyk as, the Justice intendis to proceid aganis him, in that matter, althogh it be of verritie, that gif respect be had to the nature and qualitie of the perfute, and to the circumstances of the Slauchter, quhan, quhair, and vpon quhat occasioun it fell out, it will be fund that the tryell thairof can no way be propper nor competent befoir the said Justice, nor in no vther Judicatorie within this Kingdome; becaus the said Slauchter was committit outwith his Maiesteis dominiones, within the territoireis of the *Estatis of the Law Countreyis*, in ane Singular Combat, quhairvnto the said *Capitan Harie* was vrged and drawin by the grittest respectis of credeit and reputation quhairwith a Gentilman could be affailzeid: AND howeir the said *Capitane Johnne Hammiltoun* and he be borne Scottisfmen, and in that respect obleist in all submissiue deuteis of allegeance to thair naturall Soverane, 3it the tyme of that vnhappie slauchter, and dyuerse 3eiris befoir, thay war bothe in actuall seruce, and suorne *Officeris* to the saidis *Estatis*, and als far subiect to thame and to thair Judgement and Jurifdicioun, in all matteris, alsweill impoirting lyfe and death, as guidis and geir, as gif thay had

bene thair naturall-borne subiectis: And thair was no difference betuix thame and the natiues of the cuntrie, in pointis of subiection to the saidis *Eftaitis* and pair lawis, the saidis *Eftaitis*, at that tyme, being pair souerane Judges in all matteris, of quhatfumeuir qualitie, occurring within thair boundis. AND twitcheing the matter it selff, the treuth is, as was clerlie verifeit befor *the Counsell of Weiris*<sup>1</sup> establisched be the saidis *Eftaitis*, for trying and cenfureing of matteris of this kynd, that the said *Capitane Harie* was dyuerse tymes challenget to the Combat be the said vmq<sup>1e</sup> *Capitane Johnne Hammiltoun*, nochtwithstanding of the mony offeris maid be the said *Capitane Harie* to geve him all dew satisfioun and reffone, in the matter contravertit betuix thame, that, in respectiue termes of confideratioun, could be craved; bot the moir the said *Capitane Harie* eschewit his Challenge, he was so much the moir earnest in following of the same, obiecting vnto the said *Capitane Harie* the reproche of cowardice, and protesting to abuse him, in his private revenge, accoirdinglie: And so, the said *Capitane Harie*, finding him selff interest and tuiched in so heigh a poynt of credeit and reputatioun, quhilk being anes lost, was nevir to be recoverit, bot wald cary with him to the grave ane infamous imputatioun, and an ignominious spott of vnworthie cowardice; and haifing respect, pairwithall, to his birth and parentage, quhilk he was lothe to blemishe, in a matter of this kynd; and aboue all thingis, haveing euir befor his eis the equitie of his caus, with ane full and constant assureance, that God, who is pe trew sercheour of the heart, and vpone quhois devyne Providence the event of such duellis dependis, wald iustifie his pairt, in that uniufl Challenge quhilk was revertit vpone him, he acceptit and vnderit the Challenge, quhairin it pleit God to iustifie and cleir the equitie of his caus, by making the said vmq<sup>1e</sup> *Capitane Johnne* to vnderly the dew desert of his error and rashenes: Quhairvpone, the said *Capitane Harie*, being callit befor the said *Counsell of Weir*, and the forme and circumstances of pe samyn being narowlie examined and ryped vp be thame, the qualitie of the said *Capitane Harie* and pe said umq<sup>1e</sup> *Capitane Johnne*, thair persones being sworne and actuall Officeris in the airmie, making thame subiect vnto the said *Counsell of Weir*, and punisheable be the lawis of that *Eftait*; thay ffand, that pe said *Capitane Harie* had done nothing vnbesameing the deutie of a souldiour, suppoirtit with the testimonie of a good conscience: And pairfoir, restoirit him to his place and charge, quhairin he serued with good credeit dyuerse zeiris paireftir. AND quhair as, he looked that this forme of tryell, vset aganis him be the said *Counsell of Weir*, who wer only Judges to him in this caice, sould haif securet and warranted him frome ony new perfute, zit the sifter and ffreindis<sup>2</sup> of the said vmq<sup>1e</sup> *Capitane Johnne* callit him, for pe same Slauchter, befor his Maiesteis Justice, in the sax hundreth and fyve zeir of God;<sup>3</sup> quhair of informatioun being fend vnto him frome hence, he maid his adress to HIS MAIESTIE, acquentit his hienes with the pericularis of this matter, and all that proceedit pairin; quho, estir confideratioun pair of, nocht only vterit his discontentment that ony such matteris sould haif bene walknit heir, bot HIS MAIESTIE was gracioullie pleit to grant vnto the said *Capitane Harie* his Remiffioun for that deid, and wrait a Letter vnto the *Lordis* of his Maiesteis *Previe Counsell* ffor discharginge the Justice to meddle in that matter: Quhilk Remiffioun and Letter being delyuerit to the lait *Erle of Dumbar*, and presentit vnto the saidis *Lordis*, as some of thame rememberis; the sleuth and negligence of those who war trusted with the said *Capitane Harie* his effairis, sufferit his Letteris to perrishe; and the matter has euir restit and fleipit senfyne till now. AND quhairas this matter is alreddie tryed and censured by those whome it properlie concerned, humblie thairfoir desyreing the saidis *Lordis* that thay wald geve command to the Justice, Justice clerk, and thair deputtis to desert the said dyet, and to desist and ceis fra all proceeding thairintill; lyk as, at mair lenth is contenit in the said Supplication. Quhilk being red, hard, and confidderit be the saidis *Lordis*, and thay being pairwith weill advyset, THE LORDIS OF SECRET COUNSALL ffindis it verrie necessar and expedient, that pai vnderstand HIS MAIESTIE'S Will and plefour in this matter, afoir thay gif ony finall sentence or

<sup>1</sup> Council of war; court-martial.

<sup>2</sup> Blood-relations.

<sup>3</sup> Anno 1605; a mode of expression by no means infrequent in pleadings, &c., for the sake of brevity.

direction thairnant : And thairfor the saidis Lordis Ordanis and commandis his Maieftis Justice, Justice clerk, and thair deputis, to continew the said dyet to the tuentie nynt day of Marche nixtocum, and to desist and ceis fra all forder proceeding pairin, quhill the said day ; takand new caution of this supplicant, for his compeirance to his tryell the said day, conforme to the ordour obseruet in suche caices ; to the effect that in this meane tyme the saidis Lordis may haif convenient tyme and lasure to informe HIS MAIESTIE anent the estait of this matter ; and to attend HIS MAIESTEIS gracious Will and pleafour pairanent. For quhilk purposis the saidis Lordis Ordanis ane Missive Letter to be writtin to his Maieftie.

EXTRACTUM de Libris Actorum secreti Consilij, f. d. n. Regis, per me Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

Accoirding to the quhilk ACT, and for obedience of the ordinance mentionet thairintill, the Justice continewis this dyet, with all tryell to be tane for the said cryme, to the said tuentie nynt day of Marche nixtocum.—Mr James Bruce, indueller in Edinburghe, becomes cautioner for his entry, &c.

(Mar. 29, 1622.)—COMPEIRIT Mr James Bruce, indueller in Edinburghe, as he that was cautioner for the said *Capitane Harie* his entrie, and productet

ACT OF SECREIT COUNSALL.

APUD HALYRUIDHOUS, xxvj die mensis Martij, anno dom. 1<sup>m</sup>. Vj. xxiij<sup>o</sup>. THE Lordis of Secret Counfall, accoirding to ane Warrant and direction in writ, signed be THE KINGIS MA<sup>TY</sup>, and this day presentet vnto thame, Ordanis and Commandis the Justice, Justice clerk, and pair deputis to Desert pe dyet appointit to *Capitane Harie Bruce* for his compeirance befor thame, to vnderly the law for pe Slauchter of vni<sup>q</sup><sup>le</sup> *Johne Hamiltoun*, and to desist and ceise frome all proceeding aganis him at this dyet. Quhairanent the Extract of pir presentis fall be vnto thame a Warrant. EXTRACTUM, &c. JACOBUS PRYMROIS.

Followis also the tennour of HIS MAIESTEIS Letter and direction to the Lordis of Secret Counsell, anent the premisses.

JAMES R.

RICHT trustie and weilbelouit coungis and counsalouris, and richt trustie and belouit counsalouris, We greit 3ow weill. We war pleased to wryte to 3ow about tuelf 3eiris ago, concerning *Capitane Harie Bruce*, willing that no legall proceeding sould be permitted to be vsed aganis him for pe Slauchter of vni<sup>q</sup><sup>le</sup> *Jo<sup>n</sup> Hamiltoun*, in respect that pe samyn was committed out of oure dominiones ; AND now, being credible informed, that of late some haif gone about to reveive pat perfute, nochtwithstanding of our former commandement, We haif thought guid, by theis presentis, to will and requyre 3ow to discharge o<sup>r</sup> Justice generall, Justice clerk, and pair deputis, and all vperis o<sup>r</sup> Judges and officers quhatsumeuir, to grant ony Summondis or proces againt pe said *Capitane Harie* for pe foirsaid Slauchter, or in ony wayis presume to medle or call him in questioun for pe samyn. And thus, most earnestlie recommending to 3o<sup>r</sup> speciall cair, We bid 3ow fairweill. GEVIN at o<sup>r</sup> manno<sup>r</sup> of Theobaldis, the xiiij of Marche, 1622.

Accoirding to the quhilk Act of Counfall and ordinance thairin contenit, the Justice DESERTIT THE DYET aboue writtin.

APPENDIX TO THE TRIAL OF CAPTAIN HARIE BRUCE.

[SEVERAL Cases have already occurred in the course of this Collection, illustrative of the state of the Law and practice, in Scotland, as to DUELLING, interchanging of CARTELS, and Slaughters committed in SINGLE COMBAT. The preceding Trial is one of much interest ; and the subject led the Editor to make some enquiries into various affairs of

honour, which had happened about the same period of this King's reign. Among others which have hitherto been noticed in this work, none appear to have excited greater interest than the quarrel between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY, which had nearly terminated in the most fatal manner. Although unconnected with the Case of *Captain Harie Bruce*, the following documents throw much light upon the opinions and practices of the Nobility and gentry in feuds and affairs of honour. It has been thought proper to preserve them in this place, as a memorial of transactions which tend to give a complexion and character to the spirit and genius of those times.]

I. LETTER from the Privy Council of Scotland to King James VI., relative to the CHALLENGE, &c. between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY.<sup>1</sup>

PLEAS YOUR MOST EXCELLENT AND SACRED MA<sup>ties</sup>,

AS WE hope that your highnes hath long since vnderstood of sum CHALLENGE OF COMBAT betuix the secound sone of THE LORD CRANSTOUN and SIR GEDEON MURRAY his sone, begun betuix the yowthes, vpon licht cawffis of verie small moment; and of the ordour taken be ws for preventing thame meiting, and calling of thame to there ansuer; and of the cowrse taken for there reconciliatioun, whiche wes done in prefens of the hole COUNSALL, wheirby all probabilitie of forder Challenging betuix the pairteis then, in appeirans, wes removed; so when, vpon privie informatioun maid to ws, sum fear was apprehendit of a new breache betuix the pairteis, by interchangeing of CARTELLIS privilye betuix thame selfis, whowever we wald have bene forye that the foyeis of the childrene, or the hard event which follow suche accidentis, fuld have empairod or diminifched the love and affection which heirtofoir haith bene and doeth still continew betuix there parentis, (bothe of quhome haith the worthelie deferved, and have behaved thame selfis most dewtifullye and saythfullye as thay have bene employed in your Ma<sup>ties</sup> servis,) yit heirin we war so mucche more justlie moved to adverte to suche a noveltye, that efter a reconciliatioun once maid befor your Ma<sup>ties</sup> COUNSELL, ather the keiping of your highnes peace fuld be so lytle regairdit, or the ordour takin by ws for the observeing therof so far contemned, as that any durft presume or attempt any new querrelling. Wheirvpon both the fatheris wer chairged to compeir, and bring with thame and exhibite there fones; whiche being accoirdinglie and dewtifullye obeyit by bothe of thame, efter a verye hard and exact tryall<sup>2</sup> takin, in regaird of the vnwillingnes of either<sup>3</sup> of the yowthes, vpon thair first questioneing, to confes what new maiter haid passid betuix thame; at last, it being found that THE LORD CRANSTOUNIS sone wes the Challenger, by a CARTELL, wrettin efter the reconciliatioun maid; we therwpon committed him cloise prifoner in *the Castle of Blaknes*. The other, whowever, being provoked, yit, in regaird he did obscuire and conceale it, (being some presumptioun that he intendit to keip the meiting, and so to mak a breache of your Ma<sup>ties</sup> peace,) wes adiudget to be committed in *Ed<sup>l</sup> Casfell*, in frie wairde, haveing haid fredome granted vnto him furth thairof within xlvijij houris, and confyned within this Burghe and a myle abowt the same; where as, the said *Lord Cranstounis sone*, thir fourtene dayes past, haveing lyn cloise prifoner in *Blaknes*, and in the mean whyle making suite often by Bill<sup>4</sup> to be releived, confessing, in most humble maner, his offence, and offering all satisfacioun that fuld be injoynd be ws, wes, by directioun, brocht from the place of his imprifonment by the *Lievtennent of your MA<sup>ties</sup> GAIRD*, and presented befor ws; where, in the presence of *Sir Gedeon Murray* and his sone, he did humblye, vpon his knies, craive pardoun of your MA<sup>ties</sup> for the offence done, and did intreat ws to be suiters for the same to your sacred highnes, on his behalf; haveing heirwithe confessed, also, the great wrong he haid done vnto your Ma<sup>ties</sup> COUNSELL, in preswming to renew ony Challenge efter reconciliatiounes maid; and theirwith vttering most apparent signes of inward sorrow for offending of his so loveing father, vnto whome he knew this his bypast behaviour wes so distastefull, as without ony intercessioun he culd expect at his handes no favour. He then to the partie challanged, in pre-

<sup>1</sup> *Dunmylne MSS.*, Advocates' Library, A. 2, 40.  
or 'Supplication' to the Lords of Privy Council.

<sup>2</sup> Enquiry; examination.

<sup>3</sup> Both.

<sup>4</sup> A Bill,

sence of bothe fathers, did there confes the wrong he haid done him, offering him what satisfioun he wald demand ; and did there protest, that howevir, in his yowthfull folye, he haid ascryved the last reconcilioun as a maiter extorted by constraint or command of THE COUNSELL, that yit nottheles this his present aggriment wes of meire affection, whiche he intendit all bypast eylist<sup>1</sup> abolisshed to continew heirefter.

There wes sum jealowsye in this mater takin by SIR GEDEON, as that the LORD CRANSTOUN, whowevir not a direct vrger of his sone to this *Challenge*, haid nottheles intendit to tak some advantage, to the preindice of the credite and honour of him and his sone ; and by the speiches delyvered by SIR GEDEON in our preindice, we did conceave no les : Bot yit, that this impressioun, not being cleirit, might tak no deiper roote, we then did questioun THE LORD CRANSTOUN theirof ; who, in presence of SIR GEDEON, by his great oathe, vnrequyred, did protest that he wes so far from countenaunceing or allowing of his sones action and cariage in this busynes, as on the contrarye, these sevin yeiris past, no incident whatsoever that haid interveyned haid so mucche greivit him ; and that he did assure him self that SIR GEDEON wes no les in conscience perfwadit, since he haid foirwarned him, immediatlie vpon his knowledge of the first Challenge ; and vpon his sones depairtour the last tyme frome him, suspecting the humour of the yowthe, and yit, vpon his conscience, nocht knowing of any thing intendit, did of new certifie SIR GEDEON of his fearis. Whiche declaratioun, being delivered with so great attestations by one not mucche accustomed to sweiring, did not onlye remove all scrupule and jealowsye frome SIR GEDEON, as he then affirmed, but left none of the beholderis vnsatisfyed, and fullie perfwadit of that Noble-mannis innocencye. THE COUNSELL, haveing taken ane verye strict and exact tryall of all circumstanceis whiche might inferre any the least suspitioun of THE LORD CRANSTOUNIS allowance, airte, pairte, or connivence at his sonis action, in the examining wherof, the farder that we did drywe we still fand the father the more cleare of all imputatioun ; and, in our judgement, SIR GEDEON is fullye perfwadit theirof ; lyk as, in our presence he did profess no les. And howevir, that heirvpon all pairteis, bothe eldar and younger, wer reconceiled, yit, becaws of the offence done to your MA<sup>ties</sup> by JAMES CRANSTOUN, in pressing to renew any querrell, ester aggriment ones maid in presence of COUNSELL, we have theiirvpon adiudget the said *James Cranstoun*, that betuix and the first of October nixt, he fall depairt your Ma<sup>ties</sup> dominiones, and remaine furthe of the same, and naway returne bak, vtill that your MA<sup>ties</sup> speciall Licence and Warrant be purchest ; and have takin sovertye and cautoun, bound vnder a great sowme, for that effect. AND becaws there wilbe a necessitye of provisioun to be maid by the father for the sones furneising, in his going beyond See, theiirfore we have committed him prisoner in his father's owin keiping, vtill the tyme of his depairture ; who is to restraine, endureing that space, his sone of all fuche libertye, wheirbye any farder harme might be feared.

AND albeit the reconcilioun and aggriment wes fullye maid, so as in our judgementis there did not remayne the least scruple of any farder grudge amonges the pairteis, yit the noveltye of the caise, and the hairme whiche the impunitye thairof might produce, if vpon this example, others who haif bene formerlye reconceilit, wald now preise to renew and reviuue there olde querrellis, we culd nocht, in our dewtye to your MA<sup>ties</sup>, suffer this to go vnpunished ; whiche moved us, (however earneastlie and humblye entreated by SIR GEDEON MURRAY to recall our Sentence and determinatioun aganis the said *James Craunstoun*.) nottheles, for ane exemplarye punisshment, and efferying<sup>2</sup> of others to commit<sup>3</sup> the lyk insolence, to continew our resolutioun takin in the maiter for his BANISCHEING, as said is. As lykwayis, ather of the two fathers bund and obleist, not onlye for these there sones, betuix whome this CHALLENGE hes past, bot for all others of there sones come to mannis aige, everie ane of thame vnder the payne of Ten Thowland merkis, that thay fall keip your Ma<sup>ties</sup> peace, that no CARTELLIS falbe sent by the one to the other ; and that the pairtye vnto whome any falbe sent, fall

<sup>1</sup> Offence ; from *oculus* and *ledere*. Danish, *overlast*, molestia, incommodum.      <sup>2</sup> Affraying ; terrifying. Fr. *effrayant*.  
<sup>3</sup> A strange form of speech, then in use, to express 'from committing.'

immediatlie, with all possible diligence, acquaint the Counsell with the CHALLENGE sent to him; otherwayes the payne foirfaid to be incurrit. And hoipeing that nothing heirin is left vndone, whichè in sic a caice wes requisite, and fullye expecting your MA<sup>TIES</sup> good allowance and favorable construction of our proceedingis, wischeing thay may prove good mettall when thay come to the tryall of the trew tuitchestone, vnto whome we do most humblye pray for the continuance of all happines, We doe rest

Your sacred Maiesteis most humble and obedyant subiectis and feruitouris,

AL. CANCELL<sup>r</sup>. DUMBAR. WIGTOUN. KILSAYTH. J. PRESTOUN. ALEX<sup>r</sup> HAY. S. T. HAMILTON.  
EDINBURGH, the tent of August, 1610.

TO THE KING, his most sacred and excellent MAIESTIE, &c.

## II. LETTER, *the Privy Council to the King*.<sup>1</sup>

MOST GRATIOUS AND SACRED SOUERANE,

WE ressaunt your MAIESTEIS Letter, twitcheing your MA<sup>TIES</sup> censure<sup>2</sup> of that lait committit ryott be THE ERLL OF LOTHEANE, and anent the fyne whilk your MAIESTIE wold haif to be imposed vpon him for that caus; whairin, as your MAIESTEIS most excellent and rair wisdome in the censuring of that mater so iuditiousslie, by the circomestances sett down in your MAIESTEIS Lettre, and the directioun gevin be your MAIESTIE anent the pvnishching thairof, is verye weeel warrandit with infallible groundis of iustice and reasoun; yitt, becaus sliche heich fynes in ryottis of this qualitey hathe not bene vsuall to be imposed vpon ony personis heir, we wilbe bauld to intreate your MAIESTEIS fauour, for a mitigatioun of the fyne to Thrie Thousand merkis, whiche in all oure opinionis is anfuorable<sup>3</sup> to the qualitey of the offence committed. He is full prissoner, and fall so continew whill the pairtye in some meafour ressaue satisfioun. And howeur this ouersight, by<sup>4</sup> all oure expectationis, hes fallen oute in his persone, we hoip that this your MAIESTEIS censure of him, will mak him moir consideratlie and respectiuelie to looke to his future cariage and behaviour.

AND whereas your MAIESTIE doeth mervell that no tryale hes bene tane be vs of the infolencie committit be THE LORD OF CRANSTONIS sones aganis THE ERLE OF LOTHEANE, it will pleis your MAIESTIE we did nevir heir of ony complaint in that mater, the pairtye being silent, and no informatioun gevin be him thairin: Alwayes,<sup>5</sup> we haif causit demand of him, yf he will persew? He hes promiseit to gif informatioun to your MAIESTEIS Aduocat, and to furneis probatioun; whairin we shall tak sliche exact tryall, and accordinglie inflict such pvnishment as the course of iustice, in sliche a caise, requireth. And so, praying God to blisse your Maiesteie with all contentment and happynes, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and feruitouris,

AL. CANCELL<sup>r</sup>. ARGYLE. MONTROSE. GLENCAIRNE. BALFOUR. GLASGOW.

EDINBURGH, xv May, 1611.

TO THE KING, his most sacred and excellent MAIESTIE.

## 'Forceing'—'Defloiring'—Rape.

Dec. 5.—ANDRO WISCHERT of Mwretoun.

Dilaitit of the schamefull forceing and defloiring of Bessie Leslie, dochter naturall to George Leslie of Auld Craig, aganis hir will, scho being ane young virgane nocht past ellevin yeiris of age; committit in maner and at the tyme specifit in the Letteris.

PERSEWARIS, Bessie Leslie, George Leslie of Auld Craig.

PRELOCUTOURIS in defence, Mr Laurence McGill, Mr Roger Mowat.

<sup>1</sup> *Denmylne MSS. Adv. Library.*

<sup>2</sup> Judgment.

<sup>3</sup> Commensurate; corresponding to.

<sup>4</sup> Contrary

to; against.

<sup>5</sup> Nevertheless; at all events.



The pannell offeris him selff to the tryell of the Law for the cryme contenit in the Letteris; quhairof, as he allegit, he is innocent; and disaffentis fra all maner of continuatioun: And protestis, in respect of his compeirance this day and place, to vnderly the law, and that thair is nocht ane sufficient number of Assyse present, that na Letteris be direct aganis him in tyme cuming; speciallie, in respect this perfute is maliciousslie intendit aganis him, being ane man of thre scoir ten yeiris of age, at the instance of the said George Leslie of AuldCraig, quha compeiris nocht this day to assist this perfute.

THE Justice ordanit the Assyfouris, lauchfullie summoned and nocht compeirand, to be vnlawit.— . . . . Levingstoun of Donypace become caution for the said Andro his entrie, vpone xv dayis wairning, &c.

[CURIA JUSTICIARIE, *s. d. n. Regis, tenta in pretorio de Edinburgh, xx Marcij 1622, per Magistrum Alexandrum Coluile de Blair, Jusliciarium; necnon per Dominum Walterum Stewart de Mynto, ballivum Regalitatiss de Glesgow, virtute cujusdam deliberationis Dominorum Secreti Consilij.*]

ASSESSOURS TO THE JUSTICE, appointit be the Lordis of Secret Counfall:

James Archebifchope of Glesgow,<sup>1</sup> Sir George Erskyne of Innerteill,<sup>2</sup> Mr Jo<sup>n</sup> Weymes of Craigtoun.<sup>3</sup>

**Witchcraft—Sorcery—Charming—Incantation—Soothsaying  
—Abusing the People.**

Mar. 20, 1622.—MARGARET WALLACE, spous of Johnne Dynning, mercheand burges of Glesgow.

Dilaitit, accused, and persewit of the feuerall articles and poyntis of Dittay following. DITTAY *against the pannel*,<sup>4</sup> *Margaret Wallace.*

FORSAMEKILL AS, albeit be the devyne law of Almychtie God, set down in his sacred woird, speciallie in þe 20 chap. of *Leviticus*, and 18 chap. of *Deuteronomie*, aganis þe vsuaris and practizaris of WITCHCRAFT, SORCERIE, CHARMING, and SOTHSAYING, and against the SEIKERIS *of help and respossis of thame*, thraitning and denunceing to þe committeris of sic devillisch practizes the pwneischment of daith. As also, be dyuerse Actis of Parliament, and Municipall lawis of this Kingdome, alsweill publeist and set furth be his Maiestie, in his awin tyme, as in the dayis of his maist noble progenitouris; namelie, be þe 73 Act of the Parliament, haldin be his hienes darrest moþer, Quene Marie, of

<sup>1</sup> James Law, formerly Bishop of Orkney. In the year 1615, he succeeded Archbishop Spottiswood, the well-known author of the Church History published in his name; and died in November, 1632.

<sup>2</sup> Lord Innerteil, one of the Ordinary Lords of Session.

<sup>3</sup> An Ordinary Lord of Session.

<sup>4</sup> This Dittay contains only the four Articles or points of which the Assise convicted this victim of superstition. The nature of the remaining points are clearly defined in the very interesting pleadings, which the Editor has carefully preserved at length, in consequence of their marking, in a striking manner, the prevailing opinions held by the most eminent Scottish lawyers, on the subject of Witchcraft, &c. The subject is so extraordinary, that it was thought advisable to print the pleas and arguments without curtailment.

worthie memorie, it is expresse provydit, statute, and ordanit, that na maner of persone or persones, of quhatfumeuir estait, degrie, or condition thay be of, presume, nor tak vpone hand to vse ony maner of *Witchcraft*, *Sorcerie*, or *Negromancie*, nor gif thame selfis furth to haif ony sic craft or knowlege, thair-by abusing his hienes people and subiectis; and that na persone seik ony help, respons, or consultatioun at ony sic vsuaris or abusuaris foirfaidis, vnder the pane of death, alsweill to be execute vpone the vsuar and abusuar, as to the seiker of the respons or consultatioun; as in the saidis Lawis and Actis of Parliament at mair lenth is contenit. NOCHTWITHSTANDING quhairof, it is of verritie, that the said *Margaret Wallace*, schaiking of all feir of God, reuerence or regaird to our souerane lordis authoritie and lawis, haifing confaueit ane deidlie haitrent and evill will aganis *Cuthbert Greg*, couper, burges of Glesgow, becaus of certane speiches vtterit be him aganis hir and vmq<sup>10</sup> *Cristiane Grahame*, ane notorious Witche, and laitlie execute for Sorcerie and Witchcraft, at Witsonday a thre zeir syne, or pairby, the said *Margaret Wallace*, furth of pe malice of hir heart, promeist and avowit that scho sould mak the said *Cuthbert*, within few dayis pair-estir, nocht of habilitie to work or wyn to him self ane caik of breid; accoirding to the quhilk devillische promeise and damnable vow, the said *Cuthbert* schortlie thaireftir, be the said *Margaret* hir devillische Inchantment, Sorcerie, and Witchcraft practizet be hir vpone him, he was viffeit and grevoullie trubillit with ane strange vnnaturall and vnknawin disseis, maist crewallie and lamentabillie tormentit with continuall sueiting, be the space of fyftene dayis togidder, and pairby wes brocht to sic infirmitie and waiknes, nane expecting his lyfe, that he was nocht hable to steir or move himself: And the said *Margaret*, as ane Witche and Sorcerar, being suspectit as the onlayer and causer of the said grevous and heavie disseis, was sent for by certane of pe said *Cuthbertis* freindis, and requeistit to cum and vizeit him; and estir mony malicious refusallis maid be hir, in end scho come to him; at quhais cuming, scho, to manifest hir skill for his help, tuik him be pe schaikill-bane<sup>1</sup> with the ane hand, and laid hir vther hand vpone his breift, and without ony word-speiking, saif only be moveing of hir lipis, past fra him at that instant; and vpone pe morne paireftir, returning bak agane to the said *Cuthbert*, scho tuik him be pe airme and bad him aryse, quha at that tyme, and fyftene dayis befoir, was nocht abill to lift his legis without help; zit scho, haifing vrget him to ryse, and taking him be the hand, as said is, brocht him out of his bed, and paireftir led him but<sup>2</sup> the hous; quha, immediatlie paireftir, be hir Sorcerie and Charmeing practizet be hir, walkit vp and down pe fluir, without help or suppoirt of ony; and fra that tyme quiklie recoverit and convaleffit of pe former

<sup>1</sup> Wrist.      <sup>2</sup> To another apartment. In small houses, consisting merely of a 'but' and a 'ben,' the 'but' is the outermost room or kitchen; the 'ben' is a better sort of apartment, where, upon great occasions, company is received. The master and mistress usually sleep in the 'ben' or inner room.

grevous difeais : Quhairin þe faid *Margaret* hes committit manifest Sorcerie and Witchcraft, in laying on and taking af feikneffis, be hir devillifche meanis, vset and practizet be hir vpone the faid *Cuthbert*, in maner foirfaid. AND siclyk, about foure zeir fyne, or þairby, the faid *Margaret Wallace*, being within þe duelling hous of *Alexander Vallange*, mercheand burges of Glesgow, and haifing fallin in ane grit and fuddane feiknes within þe faid hous, fcho incontinent þair-efter, as ane confulter and feiker of help and responffis of Witches and Sorceraris, instrumentis of the Devill þair maifter, fend for vmq<sup>le</sup> *Cristiane Grahame*, ane notorious Witche, and quha is laitlie convict and brunt for hir devillerie and Witchcraft, practizet aganis dyuerfe his Maiesteis guid fubiectis, in Glesgow and þairaboutis ; quhilk vmq<sup>le</sup> *Cristiane Grahame*, haifing cum to the faid *Margaret* to þe faid Hous, fcho tuik þe faid *Margaret* furth þairof to hir awin buith,<sup>1</sup> quhair, be the faid *Cristiane* hir devillifche charmes practizet vpone the faid *Margaret*, the faid *Margaret* was curet of hir former fuddane feiknes. And þe faid *Cristiane Grahame*, with the faid *Margaret Wallace*, cuming togidder bak agane to the faid hous, and at þe turnepok-fute þairof, meitting with *Margaret Vallange*, dochter to the faid *Alexander*, thay, at þe leift ane or vther of thame, laid þe faid crewall feiknes, be þair Sorcerie and Witchcraft, vpone the faid *Margaret Vallange*, ane zoung infant bairne, quha immediatlie þaireftir, in grit fuddantie, fell down to þe grund, the haill power of hir body being tane away frome hir ; and with pitiefull fcreiches, fchoutis, and cryis, lying in that horrible payne, nocht hable to arryfe, was tane vp be *Margaret Montgomerie* hir moþer, fpous to þe faid *Alexander*, and brocht in be hir in hir airmes to þe hous, and þair remanit with continuall fchouteing and crying, nocht being of habilitie to move or gang be þe space of xxiiij houris þaireftir, quhill<sup>2</sup> þe faid *Margaret Wallace*, vnsent for, come in to vizeit hir ; lyk as, þe faid *Margaret*, as fone as fcho luikit vpone þe faid bairne, declairit that it was the fuddane tranfe or difeis that fcho had tane the day befoir, and þairfoir willit and defyret the bairnes mother to fend for *Cristiane Grahame* to cure and releif hir þairof : And the faid *Margaret Montgomerie* haifing absolutelie refuifit fa to do, faying to hir, ‘ fcho wad commit hir bairne to God, and nocht mell<sup>3</sup> with the Devill or ony of his instrumentis,’ the faid *Margaret Wallace* maift blasphemouffie and devillifchlie anfuerit agane, that þe faid ‘ *Cristiane Grahame* could do als mekill, in that eirand, in cureing of that difeais, as gif God him felff wald cum out of Hevin and cure hir—and albeit þe deid-ftraik<sup>4</sup> war laid on, fcho could tak it af agane—and without hir help þair could be na remeid to the bairne !’ Lyk as, fchortlie þaireftir, without the motheris knowlege, the faid *Cristiane Grahame* was brocht in be þe faid *Margaret Wallace* to þe faid bairne ; at

<sup>1</sup> Her husband's booth, or shop.

<sup>2</sup> Until.

<sup>3</sup> Fr. *mêler*.

<sup>4</sup> Literally, death-blow.

quhais cuming, the said *Margaret* listit vp þe bairnes heid, and the said *Cristiane* tuik hir be þe schaikill-bane,<sup>1</sup> and brocht þe bairne furth of hir bed, quhair scho was lying bedfast in grit payne of befoir; and þairefter, setting hir doun vpon a ne stuile, with some croces and signes maid vpon hir, and be vttering of dyuersle woirdis, (nocht knawin quhat thay war,) restoirit hir to hir helth. Quhairin, the said *Margaret Wallace* hes planelie declairit hir selff to be ane oppin and manifest confulter with the said *Cristiane Grahame*, ane notorious Witch, and ane seiker of help and responsfis of hir, in her devillisch airt; alsweill for cureing of her selff, as in practizeing with her, be Sorcerie and Witchcraft, to þe cure and help of þe said *Alexander Vallange* bairne, in maner and forme aboue writtin: And þe said *Margaret Wallace* is airt and pairt of þe devillisch practizes abouewrittin, practizet be the said *Cristiane Grahame*, at the time and in maner foirsaid. To the taikin,<sup>2</sup> the said *Cristiane Grahame*, the day of hir accusatioun and persute, being þe xxvj day of October last, 1621, willinglie, of hir awin accoird, in Judgement, befoir hir convictioun, the Assyse being incloset, affirmet, and with oppin speache declairit, that þe said *Margaret Wallace* was airt and pairt with hir in all hir wicket deidis; and ressauit fra hir sum cullourit silk and worsset, for practizeing of Witchcraft against sic perones to quhome þe said *Margaret* buir invy; and quhan willinglie scho wald nocht geve þe said *Margaret* sic materiallis, the said *Margaret*, as scho saw thame in þe said *Cristianes* handis, wald violentlie reif þame from hir: Lyk as, vpon the morne þaireftir, scho being at þe staik befoir hir executioun, ratifeit and renewit the haill premisses to be of verritie.

ITEM, a tua zeir syne, or þairby, *Margaret Mure*, dochter to vmq<sup>10</sup> *Archibald Mure*, burges of Glesgow, being hevelie diseasit with ane strange and vncouth seiknes, and nocht liklie to haif recoverit þairof, the said *Margaret Wallace*, geving out hir selff to haif skill in þe cure of the said seiknes, scho come to the duelling-hous of *David Scheirar*, couper, burges of Glesgow, and þair finding *Marioun Mure*, his spous, faper-sister to the said *Margaret Mure*, lamenting and weiping for the said *Margaretis* seiknes, the said vmq<sup>10</sup> *Cristiane Grahame*, be þe said *Margaret Wallace* hir devyse and directioun, a littill þaireftir, come to þe said hous; and þe said *Margaret Wallace*, being acquaintit with þe caus of þe said *Mariones* greif, desyret þe said *Cristiane Grahame* to help þe bairne; quhais ansuer was to the said *Margaret Wallace*, that the said *Margaret Wallace* and scho behovet to go first to the place aggreit vpon betuix thame, quhilk place was knawin to þe said *Margaret* hir selff: Accoirding to the quhilk appointment, the said *Margaret Wallace*, with the said *Cristiane Grahame*, past, that same nycht, betuix ellevin and tuelf houris, vnder silence and clud of nycht, to the<sup>3</sup> zaird of *James Fynlay*, burges of Glesgow, quhair thay remanet the space

<sup>1</sup> Wrist.<sup>2</sup> In token, testimony, or proof whereof.

of ane hour togidder, practizeing Sorcerie and Witchcraft, for cuiring of þe said bairne, and taking the said seiknes af hir, be vnlauchfull meanis; lyk as, þat samyn nycht, the said seiknes wes tane af þe said bairne, and scho convaleffit pairof. To the taikin, the said *Margaret Wallace*, in hir going to þe zaird þat nycht, tynt hir pantoun;<sup>1</sup> lyk as, þe said *Marioun Mure*, for þe foirfaid cuir, gaif to þe said *Margaret Wallace* and *Cristiane Grahame* ane guise,<sup>2</sup> with ane pynt of wyne, within aucht dayis paireftir. ITEM, a tua zeir syne, or þairby, ane discoird haifing fallin out betuix *Alexander Boig*, smyth in Gorballis, and þe said *Margaret Wallace* and *Johnne Dynning*, hir husband, about the bying of ane irne studie<sup>3</sup> to *Williame Weymes*, mercheand burges of Glesgow, ane complant was maid vpon him be þe said *Margaret* to *Sir George Elphinstoun of Blitheswoid, kny<sup>t</sup>*, his maister; and becaus scho ressauit na amendis at þe said *Sir George* handis, becaus he tryit<sup>4</sup> hir complent to be vniust, and only maid vpon malice, the said *Margaret*, maist impudentlie, in presens of þe said *Sir George* and his *Lady, James Pollok*, and *George Thomefone*, his tennentis, oppinlie thraitnet and avowet to do to þe said *Alexander Boig* ane evill turne: for effectuating quhairof, scho, be hir Devillerie, Sorcerie, and Witchcraft, prepairit and practizet be hir, laid ane crewall and feirfull seiknes vpon . . . . . *Boig*, the said *Alexanderis* bairne, of foure zeir auld, within few dayis paireftir; quhilk bairne, with continuall sueiting and vomeiting, deceifit within tua dayis thaireftir. AND last, þe said *Margaret Wallace* is, and hes bene thir aucht or nyne zeiris bygane, ane cowmoun confulter with Witches, speciallie with the said *Cristiane Grahame, Katharene Blair*, and vther Witches and Sorceraris, and ane seiker of help and responfis of thame, alsweill for hir awin cure and releif of dyuerse seiknesses and diseassis quhairwith scho hes bene viffeit, as for þe cure and help of hir freindis and acquentance in þair seiknesses and diseassis; as also, for þe overthrow and distructioun of dyuerse persones, men, wemen, and bairnes, be Sorcerie, Witchcraft, Charmeing, and Incantatioun, and vperis devillifch and vnlauchfull meanis, expresse prohibeit and forbidden be the Lawis of Almychtie God, and Municipall Lawis of this kingdome; thairby abuseing the people, and puting thame in grit dreddour<sup>5</sup> and feir of hir and of hir devillifch practizes, vset and practizet be hir aganis sic of our souerane lordis peceable subiectes to quhome scho hes borne ony grudge, or vtterit ony malicious thraitningis. BE the committing of þe quhilkis perticular practizes aboue writtin, as also be the hanting, vseing, and frequenting of þe vnhappie socieatie and companie of þe said Witches and Sorceraris, instrumentis of the Devill, fauld and gevin over to him for committing of all maner of mischeif, and in assisting and

<sup>1</sup> Slipper. Fr. *pantoufle*.<sup>2</sup> Goose.<sup>3</sup> Purchasing of a smith's stithy, or anvil.<sup>4</sup> Ascertained upon examination.<sup>5</sup> Dread; terror.

taking pairt with thame in þe practize of all foirt of Witchcraft and Sorcerie, and in the feiking of help and responffis of thame, baith for cureing of vnnaturall and vnknawin feikneffes, and for þe malicious inflicting and laying on of dyuerse feirfull and horrible feikneffes and diseaffis vpone dyuerse perfonas, for þair overthrow and diftructioun, in maner foirfaid, the faid *Margaret Wallace* hes contravenit the tennour of þe faidis Lawis and Actis of Parliament, and incurrit the panes and pwneifchment of daith fet doun þairintill; quhilk aucht and fould be execute vpone hir, with all rigour, to þe terrour and example of vtheris heireftir.

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>; Alexander Boig, smyth in Gorbellis; Johnne Robertoun, querriour, burges of Glesgow, for thame selfis, and as informeris to his Maieftis Aduocat of the haill pointis of Dittay.

PRELOCUTORIS in defence, Johnne Dynning, mercheand in (Glesgow); Mr Alexander Peiblis, Mr Robert Lermonth, Mr Thomas Nicolfone, younger, (Advocates.)

COMPEIRIT Sir Walter Stewart of Mynto, kny<sup>t</sup>, and producet ane delyuerance of the Lordis of Secret Counsell; quhair of the tennour followis.

SUPPLICATION of *Ludouik, Duik of Lennox.*

MY LORDIS OF SECRET COUNSALL, vnto 3our Ll. humlie meanis and fchawis I 3our feruitour, LODOUIK DUIK OF LENNOX, lord and heritabill Bailzie of the Regalitie of Glesgow, and Sir Walter Stewart of Mynto, kny<sup>t</sup>, my depute of þe faid Bailzerie: That quhair, þe tuentie day of Marche infant is appointit to Margaret Wallace to compeir befoir the Justice, in the Tolbuith of Edr, to vnderly the law for sum poyntis of Witchcraft laid to hir charge: And quhair as, scho duellis within þe boundis of my Regalitie, and fua is fubiet to me, my office and Jurisdictione, zit I will nocht contest in that poynt, nor stand out aganis þe courfe tane be 3our Ll. for hir tryell; bot for the preferuatioun of þe liberteis and privileges of my office and Jurisdictione, my humble defyre and Petitione vnto 3our Lo. is, that my faid depute may be admittit to fit with his Maieftis Justice in the tryell of the faid Margaret, and to judge pairin with him accoirdinglie—and 3our Lo. anfuer.

[*Followis the Lordis delyuerance, vpone the bak of the foirfaid Supplicatioun.*]

APUD ED<sup>3</sup>, xix Marcij, I<sup>m</sup>. Vj<sup>o</sup>. xxij. FIAT ut petitur. AL. CANCELL<sup>3</sup>. MAR. MELROIS.

Vpone the productioun of the quhilk delyuerance, the faid Sir Walter askit instrumentis.

THE JUSTICE Ordanit the faid *Sir Walter* to fitt doun with him, with the remanent Affeffouris.

THE Dittay being red, and *the first Article* thair of, concerning hir laying on of ane grevous feiknes vpone Cuthbert Greg, couper, burges of Glesgow, be Sorcerie and Witchcraft, and aff-taking of the faid feiknes be the lyk devillifche and vnlauchfull meanes; as the first Article beiris; quhilk the pannell haillilie denyit.—It is thaireftir allegit be Mr Alexander Peiblis, as prelocutour for the pannell, that the Dittay and first Article thair of can nawayis be put to the knowlege of ane Assyse; becaus it is nocht lybellit, nor fet doun in the Dittay, that the fact lybellit was done be the pannell, or the feiknes inflictit be hir. Nixt, it is nocht lybellit *quibus mediis, quibus modis, et quibus malis artibus*, the samyn was accomplifchet; becaus Witchcraft can nocht be accomplifchet as

Witchcraft, bot<sup>1</sup> be characteris, signes, croces, poysonet watteris, poysonet asches, poysonet oyles, powderis, figures, pictouris, poysonet herbis, ruittis, venneuous oyles, woirdis, speiches, by incalling and invocatioun of the name of Sathan, quha, at the accomplisment quhairof, hes promiseit to geve his prefens to thame; without the quhilkis, or ony of thame, Witchcraft can nocht be accomplischet: Nather is it lybellit, that this fact and deid allegit is committit be the pannell, be ony of thir meanis: And sa, that Article can nocht pas to ane Assyse.—To the quhilk it is anfuerit be my lord Aduocat, that the allegeance aucht to be repellit, in respect of the lybell and haill poyntis thairrof, tane *conjunctim*; be the quhilk it is affirmet *positiue*, that this seiknes was laid on be the pannell vpone *Cuthbert Greg*, be hir Sorcerie and Witchcraft; and he purget, and relevit, and restoirit to his helth be hir Sorcerie and Witchcraft: And sa, the Dittay, as relevant in that poynt, fould pas to ane Assyse.

It is forder allegit be the pannell and hir prelocutouris, that the woirdis 'laying on and taking af' ar altogidder generall, and can nocht pas to ane Assyse, nevir condiscending in speciall quhat was done; as is set doun in the former definitioun of Witchcraft.—To the quhilk it is anfuerit be the persewaris, that thair is no necessitie to condiscend vpone the forme of the on-laying and af-taking of seiknesses, quhidder be woirdis, signes, croces, and vtherwayis, the persewaris nawayis being previe thairto, nather can thai be vrget to condiscend thairupoun, feing the Witches, practizeris of that vnlauchfull and godles meane, ar best acquentit with the poyntis of thair awin craft: And thairfoir, it being lybellit, relevantlie, that, be hir Sorcerie and Witchcraft, the seiknes was baith laid on and tane af be hir, the samyn fould pas to the knowlege of ane Assyse, as relevant.

It is forder allegit be Mr Thomas Nicolfone, as prelocutour for the pannell, that of the Law *multa indicia debilia nunquam faciunt indicium indubitatum, quia nunquam ea que natura sunt dubia possunt facere rem indubitatum; ut multa integra vnum sanum, multa non alba vnum album*. This is the opinioun of *Pharinacius*, and of *Delrio* in his 5 sect. pag. 728; at the leift, except that thair war ane coherence and necessar subordinatioun of *illa multa indicia*. Bot sa it is, in this poynt of dittay, thair is confuset feuerall articles, quhilkis, *per se*, ar *indicia debilia*; and thair is na coherence amangis thame selffis, in sa far as the promiseing to do him ane evill turne, and the subsequent seiknes, ar nawayis coherent, nather can the ane follow vpone the vther. *SECUNDO, circumstantie indictionum sine quibus ad inquisitionem non proceditur sunt quis, quando, ubi, cum quibus, quomodo circumstantia, quomodo est huic vsui, vt quibus instrumentis factum esse dicatur, vt sint pulveres, vnguina determina mortuorum*. And quhair it appeiris to be allegit in the reply, that *de medijs non potest constare*, becaus

<sup>1</sup> Excepting; unless.

they are knawin only to the Witches and thair Maifter, thair is heirin ane manifest equivocatioun, in fa far as be the determinatioun of the haill traiteris *de Veneficijs, hec duo sunt disperata signa media*; it is grantit *sine medijs*, condescending vponne *medijs*, a lybell may stand relevant; becaus *hec SATANA strata-gemata quibus ille naturaliter vtatur medijs sunt plerumque incognita*; bot of all necessitie, to the lybelling of ane deid of Witchcraft, *accedere oportet superstitionem vt dicatur usurpasse res aliquas facta vel verba que sapiant incantationem vel dicatur nominatim exercuisse actum aliquem qui ex communi maleficiorum praxi ad malificium dirigitur*. This is DELRIO'S opinioun, ceitting the haill treiteis *de Veneficijs*, in his thrid sect. pag. 711; et libro 5, sect. 16, pag. 774. And the premisses, fa authorizet be the haill learnet wryteris, ar of infallible verritie; for this reasone, becaus thair can be na deid of Witchcraft lybellit relevantlie, bot man<sup>1</sup> be fa lybellit, as it is possible, *per rerum naturam*, to the Affyse to cognosce thairupovn; bot it is subfumet, that except sum sensible actioun or signe, or vther thing be lybellit, it is impossible to the Affyse to cognosce thairupoun, *quia nihil est in anima quod non sit prius in sensu*.

The persewaris repeittis thair former ansuer, foundit vponne the haill memberis of the Dittay, tane *coniunctim*; quhilkis memberis coheris verrie pertinentlie—a promeis to inflict the seiknes, and laid on—the on-laying of the seiknes, be Inchantment, as the Dittay beiris—and the taking be the hand of the persone vizeit with the seiknes, and releifing him thairof be moveing of hir lipis, &c.: And as for the tryell of the Affyse, the deidis ar verrie publict and knawin; and referris the verritie thairof to the Depositiones of the Witnesses alreddie tane, and to be tane in that matter, and to the Affyse awin knowlege.—The pannell adheris to thair former exceptioun, vncondiscending in speciall, *quibus modis, quibus medijs, et quibus malis artibus* to infer Witchcraft.

The pannell quarrellis that pairt of the lybell be the quhilk it is said, that scho inflicted the seiknes be Witchcraft, nocht condescending quhat maner of Witchcraft was vsed for inflicting thairof. And quhair it is said, that the memberis coheris, becaus of a promise and the effect following, the pannell oppones the authority of *Pharinatius*, confirmet be *Delrio*, in the 718 page of his 3 sect.; quhair it is said, *immo mine<sup>2</sup> delictum subsecutum inimicia non sufficiunt ad penam fortilegij; quia hujusmodi indicia sunt tantum remota*. As lykwayis, a stronger authoritie, pag. 717; quhair it is affirmet, and bakit with reffone,<sup>3</sup> in thir termes, *mine subsecute damno—et si male fame sit minans indicium, sunt insertum ratio potest enim pars offensa alios habere inimicos qui hoc tegmine preter schelus perpetrarunt*: Nather is thair necessitie to affirme *alium fecisse*; becaus the possibilitie of ane instance aganis ane generall reule evinces the incertantie

<sup>1</sup> Must.<sup>2</sup> Threatening expressions.<sup>3</sup> Backed, seconded by argument.



thairof: *Additur, quod in criminalibus nunquam ex presumptionibus proceditur ad condemnationem, sed probationes debent esse luce meridiana clariores.* And as to the vther pairt, concerning the af-taking of the seiknes, thair is na deidlybellit bot ordinarie deidis of vizeiting a patient, be a freind or a phifitioun, to wit, graipping of the pulses or chaikill-bane and breift, quhilk is the steiring of the spreittis-vitall, and is the ordiner behaiour vsæt and practizet be the visittouris of ony patient; and becaus that eftir thais ordiner remedeis the patient arraise, and that scho maid him to ryse, *est elenchus dilirij.* And forder, the pannellis former authorities man<sup>1</sup> be respectit, becaus thair is na contrair practeis producet.—My lord Aduocat repeatit his former anfuer.

THE *Secund Article of Dittay* being red, and the said Margaret being accuset thairby, viz. that vpone a discord fallin out betuix hir and *Johne Robertoun*, querriour, a thre yeir syne, scho thraitnet and avowit to be avengit vpone his flesche; quhairvpone a diseis was inflictit be hir vpone him, quhairin he yit continewis, and that be hir Sorcerie and Witchcraft practizet be hir vpone him.—It is allegit be the pannell, aganis the said secund Article of Dittay, that the samyn is nawayis relevant anent *Johne Robertoun*; being altogidder coincident with the former Article, and cayreing thairwith far les probabilitie nor<sup>2</sup> the former; ffor thair is na member thairof relevant to infer Witchcraft, for sa mekill thairof as consistit in fact, tuiching *Robertoun* his inhabilitie to work this thre yeir bygane, throw the inhabilitie of his seiknes, quhilk is manifest fals in the self: ffor it is evident, be oculer inspectioun, to luik to him presentlie at the bar, that he hes sufficient strenth of body to work: As also, it fall be verifeit, gif neid beis, that he, being an querriour of his craft,<sup>3</sup> hes wrocht, thir dyuerse yeiris bygane, to dyuerse perfonas, namelie, to *Sir George Elphinstoun of Blitheswood*, *George Anderson in Woidsyde*, and to the pannell, be wyning of stanes furth of the querrell;<sup>4</sup> and repeatit the former allegeance maid aganst the first Article. *Igitur, &c.*—To the quhilk it is anfuerit be the persewaris, that the allegeance aucht to be repellit, in respect of the Dittay, quhilk is relevant in it self. And as to that point consistin *in facto*, the persewar referrit the tryell thairof to the Witnesses producet and to be producet, and to the perfonas of Assyse, quha aucht to cognosce vpone the haill poyntis of Dittay, consistin *in facto*.

It is forder allegit be Mr Thomas Nicolfone, that the said secund poynt of Dittay is altogidder irrelevant; becaus of the Law, *indicium minarum et damni subsequuti*, quhilk is the only substance of this point, and is nawayis relevant of the Law, *quoties delictum ex intervallo dicitur subsequutum*; bot sa it is, in this Dittay, it is lybellit, that the thraitning of *Johne Robertoun*, and the inflicting of the diseis, was within this yeir and this half, quhilk is *ex intervallo*; And

<sup>1</sup> Must.<sup>2</sup> Than.<sup>3</sup> To his trade.<sup>4</sup> Stone quarry.

quhair as, it appearis that this feiknes is inflicted immediatlie eftir ane vther thraitning maid to the wyfe of *Johnne Robertoun*, *nullo modo relevat*; becaus *vt mine et damnum subsecutum faciunt indicium, oportet vt fit eadem persona cui mine et damnum dicuntur inferri*; sa that the thraitning to the wyfe, and inflicting feiknes vpon hir husband, is na relevant poynt. *Item, mine et damnum subsecutum nullum omnino faciunt indicium, nisi mine fuerint specificate, seu de eodem quod subsecutum est in specie*; ffor ane general thraitning to do ane evill turne, nocht condiscending vpon the speciall evill turne, can haif na coherence with ane speciall skaith following thairaftir, to mak it *venefice*; becaus *mine et damnum subsecutum* ar comptit *aliquale indicium maxime respectu predictionis*, as ane maner of futhe-saying; and that can be comptit na futhe-saying quhilk ony man could lykwayis foirtell by<sup>1</sup> ane Witche, viz. *predicere de genere et subsecutum esse speciem*.—My lord Aduocat adheris to his former ansuer.

THE *Thrid Article of Dittay*, anent ane discord that fell out betuix the pannell and *Jonet Harper*, and of ane thraitning and vow maid to mak the said *Jonet Harper* in a worfe cais nor<sup>2</sup> hir poysonet swyne; and anent ane feirfull feiknes quhairin scho schortlie thaireftir fell be the pannellis Sorcerie, Incantation, and Witchcraft—It is allegit be the pannell and his prelocutouris, that the thrid Article is nawayis relevant, nevir condiscending quhat maner of Inchantment scho was bewitched with, and be quhat factis and deidis this was done, and quhat was vsed be the pannell for that effect.—It is ansuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay.

THE *ffourth Article of Dittay*, anent the pannell hir being within *Alexander Vallange* hous, quhair scho fell in ane grit and suddane feiknes; and hir sending for vmq<sup>3</sup> *Cristiane Grahame*, ane notorious Witche, and consulting with hir for hir relief of that feiknes; and eftir the said *Cristiane* hir cuming, of the pannellis passing out of the said *Alexander Vallange* hous to hir awin buith, with the said *Cristiane*, quhair scho was charmet and curret; and thaireftir the same feiknes, be devillerie and Witchcraft, cassin vpon *Alexander Vallange* bairne; and anent the said *Cristiane Grahame* hir cuming with the pannell to the bairne, and cureing hir, be taking af agane of the said feiknes; and for airt and pairt of the af-taking and on-laying of feiknes, and of af-taking the samyn agane af the said bairne with the said *Cristiane*; and consulting and practizeing of Witchcraft with hir for that effect, &c. The samyn being red, and the pannell indytit thairof—It is allegit be the pannell and hir prelocutouris, aganis the said fourt Article, that the first pairt thairof is nawayis relevant, beiring that scho contractit ane suddane diseise, and for cureing thairof, send for *Cristiane Grahame*, ane notorious Witche, except it had bene exprellie lybellit, that the tyme the

<sup>1</sup> Besides; *forbye*; independent of.

<sup>2</sup> Than,

pannell fend for hir, scho was ane notorious Witche, of the pannellis knowlege, and that scho fend for hir as ane notorious Witche, *ad hunc effectum*, to cure hir of that diseis: And it is nocht lybellit nather, that quhan *Cristiane* come, the pannell consultit with hir as with ane Witche; ffor, it is supponit<sup>1</sup> that ane Notter<sup>2</sup> war hangit for ane ffals Instrument, and he had gevin the excipient ane Seifing tuentie yeiris afoir, is that Seifing, gevin sa lang befoir, ffalse? Na mair can that be ane poynt of Dittay, the pannellis sending for *Cristiane Grahame*, except scho was knawin to hir at that tyme to be ane Witche. The secund member is nawayis relevant, beiring that scho curet the pannell in the buithe, for that makis ane contradictioun, that scho was deidlie diseaset quhan scho come, and thaireftir raife and past to the buithe, and thair was curet. The thrid member is nawayis relevant, beiring that the pannellis feiknes was cassin on the bairne, being lybellit that the samyn was done be the pannell, or be *Cristiane Grahame*, or be ane or vther of ws (thame). The fourt member is nawayis relevant, becaus it is confessit in the Dittay, that the pannell was curet in the buithe; and thaireftir come out of the buithe to the hous, and cuift it on the bairne: Gif the pannell was curet in the buith, quhair was the feiknes? *Hoc est impossibile*. As to the rest of the poyntis of that Article, that scho come doun to the hous, vsent for, quhair the bairne was; that can be na poynt of Witchcraft. That the pannell declairit it was the feiknes scho had, *non relevat*, except it had bene verifeit and tryit<sup>3</sup> that hir self had bene bewitched. And as for that member thairof, desyreing to fend for *Cristiane Grahame* to help her, *non relevat* to infer Witchcraft, except scho had knawin the said *Cristiane* to be ane notorious Witche. As to the rest of that Article, quhilk the pannell alto-gidder denyis, vpon hir aith and conscience, quhan the judge demandis hir; and albeit it war grantit, yit it is na poynt of Witchcraft, bot rather Blasphemie, and blasphemous speiches, quhilk can nocht coheir with this lybell of Witchcraft; bot is content, quhan evir scho fall be tryit and fund giltie, to vnderly the pwneifchment of the lawis of the cuntrie. That poynt of the Dittay, that *Cristiane Grahame* come at the pannellis desyre and curet the bairne, is nocht relevant to infer the cryme of Witchcraft aganis the pannell, except the samyn had bene done at hir speciall command, *malis artibus et veneficis artibus*, for the hailing of hir. It is nocht lybellit that the samyn was done be the pannell, or at hir command, or be ony Sorcerie or Witchcraft vsent be hir for that effect: And as to *Cristiane Grahame*, quhat scho did, the pannell can nocht be pwneift thairfoir. And as to *Cristiane Grahames* pretendit Confessioun, quhilk is nocht producet, it can nocht be respectit, *quia est dicta socia dicti criminis*; nather is the samyn relevant, albeit it war trew, as it is nocht, ffor hir confessioun can nocht

<sup>1</sup> Supposed, or argued, for the sake of illustration.   <sup>2</sup> Notary public.   <sup>3</sup> Proved; established legally.

work aganis Margaret Wallace, *quia dicit se esse sociam dicti criminis ; et dicente se sociam criminis non creditur, quia ex suo dicto est infamis et sic testimonium perhibere non potest ; precipue, quia malefici, venefici qui ad sortilegos divinosque concurrunt nullatenus ad testimonium sunt admittendi.* And quhair as it may appeir, that *in crimine venefici, vt in casu excepto, etiam infames admittuntur ; hoc verum non est nisi cum dupliciti cautela, vna quod confessio infamis sit jurata non enim ei creditur nisi testi, et non testi nisi jurato :* The secund cautell is, *non fidem facit dictum socij nisi confirmatum sit in tormentis.* Dammoderius, Tit. *de Reprobatione.*

The persewaris allegis, that the haill allegeances proponit aganis the ffourt Article aucht to be repellit, in respect of the Article and haill memberis thairof tane *coniunctim* ; and quhair it is allegit that the Article is nocht relevant, except it war affirmet that *Margaret Wallace* knew *Cristiane Grahame* to be ane Witche, that pairt aucht to be repellit, in respect of the expres woirdis of the Dittay, beiring, ‘ that the said *Margaret Wallace* affirmet that *Cristiane Grahame* had als grit knowlege as God him selff, and as gif God him selff wald cum out of Hevin and cure hir ! Albeit the deid-straik war laid on, scho could tak it af agane !’ As to the argumentis proponit aganis that pairt of the Dittay foundit vpon the Depositiones of *Cristiane Grahame*, that pairt is verrie relevant, and the argument is only proponit aganis the probatioun ; to the quhilkis argumentis sufficient answers fall be maid the tyme of the verificatioun of that poynt of the Dittay ; at quhilk tyme, it fall be maid cleir, baith be Law and practique, that in matteris of Tressone and Witchcraft, and vtheris caices exceptit wemen, *socij criminis*, and infame<sup>1</sup> persones ar admittit Witneffis.

The pannell, adheirand to hir former allegeance, affirms that that member of the Article of Dittay is nawayis relevant, becaus scho is fummond to answere to ane lybell of Witchcraft, and that pairt of the lybell inferrit be the persewaris repeiting thais odious and vnrehairfable speiches, as ane argument of the pannellis knowlege of *Grahame* to haif bene ane Witch, the samyn ar woirdis of Blasphemie : Quhilkis being plane Blasphemie, (nocht granting the speiking thairof,) scho is nocht haldin to answere to that pairt thairof, in this persute ; nather dois the lybell conclude ony thing aganis the pannell, to infer hir to haif knowlege that *Cristiane Grahame* was ane Witche, (vnder protestatioun, the pannell denyis thame altogidder to be of verritie, as ofbefoir,) yit the samyn being bot woirdis, can nocht infer ane cryme of Witchcraft, it nocht being confessit be the pannell to be trew ; nather can it furneise a Dittay of Witchcraft, quhairvpon scho may be accuset, nor repute nor estemit a Confessioun, nocht being maid iudicialle, bot allegit spokin be ane wyfe to ane vther, vpon certane

<sup>1</sup> Persons declared, or considered, infamous by law.

altercationes arryfeing amangis thame. *Igitur, &c.* And to the anfuer *de sociis criminum*, thair is na anfuer maid speciallie to that pairt, quhair it is said, *non creditur socij testimonio, nisi confirmatur tormentis*. As to ony Confessioun maid be *Grahame* eftir hir convictioun, *nihil operatur, et non relevat* to put the pannell to ane Affyse thairfoir.

THE *ffyft Article of Dittay* being red, anent the cureing be Sorcerie and Witchcraft of *Margaret Mure*, dochter to vmq<sup>r</sup> *Archibald Mure*, of ane strange and vnknawin difeafe, be taking af the said feiknes af the said bairne, be the help and affiftance of *Cristiane Grahame*, and confulting with the said *Cristiane* thairanent, being a notorious Witche; the said *Margaret Wallace*, with the said *Cristiane Grahame*, haifing past, vnder filence and clud of nycht, to the zaird of *James Fyndlay*, burges of Glesgow, quhair thay abaid togidder the space of ane hour, practizeing Sorcerie and Witchcraft for cureing the said bairne, and taking the said feiknes af hir; as at lenth is fet down in the said ffyft Article: And the said *Margaret* being accuset thairof—It is allegit be the said *Margaret* and hir prelocutouris, that the said *ffyft Article* is nawayis relevant, nor na pairt thairof; nevir condifcending in speciall quhat scho did, quhat Sorcerie or Inchantment scho vset or applyit, or quhat was practizet be hir for taking af the feiknes af the bairne; nor yit condifcending vpon the meanis of Sorcerie or Witchcraft, quhidder be signes, woirdis, croces, incantatioun, invocatioun of the Devillis name; without the quhilkis, Witchcraft can nocht be accomplifchet.—It is anfuerit be the perfewaris, that the allegeance aucht to be repellit, in respect of the article of Dittay, beirand the feiknes to be tane af the bairne be the pannellis Sorcerie and Witchcraft, practizet be hir and *Cristiane Grahame*, for the bairnes help, and cure thairof be vnlauchfull meanis.

THE *Saxt Article of Dittay* being red, and the said *Margaret* accuset thairof, viz. that scho, haifing confauct ane deidlie haitrent aganis *Robert Mure*, mercheand burges of Glesgow, thraitnet him with mony outrageous speiches, faying to him, ‘Thow fall gang hame to thy hous, and fall bleid at thy noife ane quart of bluid, bot fall nocht die quhill (*until*) thow fend for me and ask me forgivenes;’ quhairvpon schortlie thaireftir, be the said *Margaret* hir Sorcerie and Witchcraft practizet vpon him, he contractit ane grevous and fuddane feiknes, quhairaf he deceiffit; quhilk is confeffit in prefens of Witnesses—It is allegit be the pannell and hir prelocutouris, aganis the *saxt Article*, that the samyn is nocht relevant, for the particuler answeris and argumentis maid to the hail Articles ofbefoir, quhilk the pannell repeittis, and everie ane of thame, as ane fufficient allegeance, *brevitatis causa*, to stay the samyn to pas to ane Affyse: And as to hir pretendit Confessioun, maid in prefens of Witnesses, can nocht be respectit, becaus *est Confessio extra-judicialis que non tenet confitentem nisi in judicio fac-*

*tam* : And albeit it war grantit, as it is nocht, that scho maid ony sic Confessioun, scho may reseill<sup>1</sup> thairfra ; and sa is na relevant poynt to pas to ane Affyse ; quhilk is confirmet be the authoritie of SALICOTUS, L. finali, codice *de Probationibus ; probationem seu Confessionem sponte factam potest reus revocare, et confessus non est condemnandus nisi constet de corpore delicti, id est damnum datum esse malificium facinoris.* Libro 1 de Contraverfiis, cap. 28. *Item*, we haif ane expres text, Lege prima, § Divus, ff. de Questionibus ; *Confessiones reorum pro exploratis facinoribus haberi non oportere, et Confessio extrajudicialis non sufficit ad qualificationem delicti.* JULIUS CLARUS, Lib. 5, § finali, quest. 55, num. 2. *Immo Confessio facta coram Judice non sedente pro tribunali est tanquam facta privata et ex ea reus non potest condemnari.*

It is anfuert be the persewaris, that the saxt Article is verrie relevant, being tane *coniunctim*, becaus it contenis ane promeis to do the deid, the doing of the deid, and the confessioun thaireftir of the doing thairof. And as to the Confessioun, that the samyn is maid extra-judicialle of ane cryme committit, that extra-judiciall Confessioun is lauchfull and valid to condampne the pairtie quaha hes confessit. Dammoderius, cap. 54, num. vltimo.—It is duplyit be the pannell, that the samyn is contrair to the text, and Dammoderius speikis na thing of ane extra-judiciall Confessioun ; and repeatit thair perticuler anfuert maid to the particuler Articles of Dittay ofbefoir.—The persewar also repeatit the hail particuler anfuert maid ofbefoir.

THE *Sevint Article of Dittay* being red, and the pannell accuset thairby, that a fyve or sex yeir fyne, scho being convenit befor the Sessioun of the Kirk of Glasgow, and accuset be *Mr Archibald Glen*, Minister at Carmunnok, ffor rayleing on the said vmq<sup>1</sup> *Robert Mure*, brother-in-law to the said *Mr Archibald*, and raleing on *Elspeth Arbukle*, his mother, and for taking away of the said *Robert Mures* life be Sorcerie and Witchcraft ; and that the said *Margaret*, in revenge thairof, schortlie thaireftir, be hir Sorcerie and Witchcraft, laid ane feirfull and vnknawin seiknes vpon the said *Mr Archibald*, quhairof, be continuall sueitting, he deceiffit ; and sa, was airt and pairt of his daith ; quhilk scho hes confessit, senfyne, in presens of witnesses. It is allegit and anfuert be the pannell, *vt supra*, against the *sevint Article*, baith anent the fact and pretendit Confessioun lybellit, ffor thair is na thing qualifeit of Sorcerie, or Withcraft, or Inchantment, done to the said *Mr Archibald* : for the treuth is, that the man deceiffit of ane consumption of his lichtis ;<sup>2</sup> nather is it lybellit that scho inflictit ony thing vpon him be signes, croces, inchantit herbis, oyles, claithes, or ony vther meanis.—The persewaris anfuert, that the said allegeance aucht to be repellit, in respect of the *sevint Article of Dittay*, relevant in the selff, and anfuert maid ofbefoir.

<sup>1</sup> Withdraw ; retract ; *resile*.

<sup>2</sup> Lungs ; pulmonary consumption.

THE *Aucht Article* being red, and the pannell indytit, fforfamekill as fcho, haifing confauct ane deidlie haitrent aganis *Williame Mure*, fefcheour, a fyve yeir fyne, for calling *Cristiane Grahame* ‘ane rank Witche,’ fcho, in revenge thairof, come to the faid *Williame*, vpone the Hie Streit of Glesgow, and in grit wraithe faid to him, ‘Go thy wayis hame, bludie boutcher that thow art, thow fall nevir fie the callay<sup>1</sup> agane, bot fall fuddantie fchute to deid in thy awin chyre!’<sup>2</sup> Accordring to the quhilk thraitning be the faid *Margaret* hir Sorcerie, Devillerie, and Incantatioun, ane feiknes was laid vpone the faid *Williame*, and vpone the morne thaireftir, in his awin chyre, in grit fuddantie deceiffit: Quhilk fcho hes confeffit to be of verritie, in prefens of Witneffes; and fa is airt and pairt of his death.—It is allegit be the pannell aganis the *Aucht Article*, *ut supra*, with this eik,<sup>3</sup> that thair is nathing qualifeit thairin of Witchcraft done be hir to him, bot that fcho gaif him evill woirdis, and be thais woirdis he deceiffit. As to the pretendit Confessioun thairin contenit, anfueris thairto *ut supra*.—My lord Aduocat repeittis the woirdis of the Dittay, and former anfueris maid be him to the hail former poyntis thairof.

IT is forder allegit be the pannell and hir prelocutouris to the *Nynt Article*, anent the bewitching of *Allane Speiris*, in maner thairin fpecifeit, without offence of my lord Aduocat, that all thais Articles contenit in the Dittay ar meir<sup>4</sup> fabulous, refolveing only vpone ‘he faid and fcho faid.’<sup>5</sup> And forder, oppones to his lordfchip all the autoriteis foirfaidis; and na practiques in the contrar ar producet, bot ane naikit affertioun.—My lord Aduocat repeittis the Dittay, quhilk is verrie relevant, and als relevant a Dittay as ever was maid in Scotland, vpone fic a fubiect; quhilk is mair relevant in everie article nor the Dittayis producet aganis *Barbara Naper*, *Ewfame M’calseane*, and *Agnes Sampfone*, quaha war put to ane Affyfe, and convict, &c.<sup>6</sup>

The pannell addis forder, that *damnum infecutum ex longo intervallo* is nocht relevant; pag. 717, Lib. quinti, fectionis tertij Martij Dalrio.

THE *Tent Article of Dittay* being red, and the pannell thairby accufet, beiring that a tua yeir fyne, or thairby, ane difcord falling out betuix hir and *Alexander Boig*, fmyth in Garboillis, about the bying<sup>7</sup> fra hir and *Johnne Dynning*, hir husband, of ane irne studie to *Williame Wemyes*, fcho thraitnet to do the faid *Alexander* ane evill turne; ffor performeing quhairof, fcho, be hir devillerie and Witchcraft practizet be hir, laid ane crewall feiknes vpone the faid *Alexanderis* bairne, fa that, with continuall fueitting, within tua dayis the bairne deceiffit, &c.—AND ficlyk, the *Last Article of Dittay* being red, and fcho alfo accufet thairof, beiring hir to haif bene thir aucht or nyne yeiris bygane ane cownoun

<sup>1</sup> Causeway, or street.    <sup>2</sup> Chair.    <sup>3</sup> Addition.    <sup>4</sup> Merely.    <sup>5</sup> Mere matter of idle hearsay, without foundation in truth, and not supported by legal evidence—‘says he’ and ‘says she.’  
<sup>6</sup> See their Trials, in this Collection, Vol. II., pp. 230, 242, and 247.    <sup>7</sup> Purchasing.

confulter with Witches, speciallie with *Cristiane Grahame*, *Katharene Blair*, and vther Witches and Sorceraris, and ane seiker of help and responsses of thame, baith for distructioun of dyuerse perfonas, men, wemen, and bairnes, be Sorcerie, Witchcraft, and Incantatioun, and vtheris devillifche meanis, expresse forbidden be the Lawis of Almychtie God, and Municipall Lawis of this Kingdome ; as also for cureing and help of hir self, in dyuerse seiknesses, and of dyuerse hir freindis and acquentance, &c.

It is allegit be the pannell and hir prelocutouris against the *Tent Article*, that the samyn is nawayis relevant, for the argumentis befor proponit, with this additioun, that in accomplifcheing of Witchcraft, practizeing thair of, the maner, forme, and qualitie of Inchanting is necessarilie requyret, quhilk is nocht heir lybellit ; nather that thair was ony Witchcraft vset be the pannell be ony Article of the Dittay, and be woirdis, signes, croces, ruitis, herbis, poyfons, or be inchantit pictouris, speiches, or be invocatioun of the Devillis name, without the quhilkis Witchcraft can nocht be accomplifchet.—As to the *Last member of the Dittay*, it is sa generall, that it mereittis na ansuer. As to that poynt of the Dittay, anent consulting with *Cristiane Grahame* and *Katherene Blair*, that is altogidder generall and irrelevant, nocht condiscending vpon the tyme and place, *quando et ubi*, nor yit condiscending quhairvpon they consultit, quhidder vpon Witchcraft or vthirwayis ; and that the pannell, the tyme of thair meitting, knew thame to be Witches, and consultit vpon Witchcraft with thame as Witches : And quhair as, scho helpit hir freindis, *non relevat*, nocht condiscending thair names, or quhairwith they war helpit. ITEM, it is ansuerit to that pairt of the Lybell, *per totum*, quhair it is said, that the pannell inflictit diseaffis, be Inchantment, and Sorcerie, and Witchcraft, nocht condiscending quhat soirt of Inchantment or Sorcerie ; *quia vt inquisitio sit valida, oportet sit clara, certas delicti qualitates et circumstantias continens, de quibus posset Judex judicare* : Bot, *de incantamentis in genere nemo Judex potest judicare* : Ergo, the species of the Inchantment man<sup>1</sup> be expresse be sum figne or speciall deid ; *et ratio est, quia ne per incertitudinem, generalitatem, et obscuritatem tollatur reo defenso*. DELRIO, Lib. 5, sect. 2, pag. 617. I argu, *a simili*, iff it war lybellit, that a man had burst out ane vther manis guttis with rolling over ane beist vpon him, *non relevat*, except ye say quhat beist, and sic ane beist as mycht haif done it ; ffor ane mous could nocht haif done it ! Ewin sua, it being only lybellit, it was done ‘ be Inchantmentis :’ And gif thay war speciall, I wald contend, that thai war naturall meanis, and na Sorcerie. And thairfoir, the generalitie is altogidder irrelevant, takand away my exceptioun ; for gif thai war speciall, we mycht resson and dispute quhidder thay war Inchantmentis or no Inchantmentis.

<sup>1</sup> Must.



ITEM, *per totum* to the haille lybell, *non relevat* 'vncouth feiknes,' except it war in lyk maner qualifeit, quhat is vncouth;<sup>1</sup> ffor quhat can the Affyse cognosce quhat is vncouth or nocht vncouth, it nocht being condiscendit quhat is 'vncouth feiknes,' quhilk is to be judget be thame quhidder it be vncouth or nocht? And for the sueiting, *nullo modo relevat*, for the proponer fuat<sup>2</sup> in ane feiknes ane haille moneth, and sueitting is ane naturall purgatioun. *Igitur, &c.*

The Aduocat repeitis the haille Articles aboue writtin, quhilkis ar speciall in thame felffis.

THE JUSTICE and ASSESSOURIS continewis thair Interloquitour, vpon the haille allegeances aboue writtin, to the morne; and Ordanis the pannell to be tane bak agane to waird, in the mean tyme. The Affyse wairnet *apud Acta* to compeir agane the morne, the xxj *instantis*, in the hour of caus; ilk persone vnder the pane of tua hundreth merkis.

INTERLOQUITOUR *of the Judges and Assesfouris.*

Mar. 21.—THE JUDGES and Assesfouris, be thair Sentence-Interloquitour,<sup>3</sup> Repellis the haille allegeances aboue writtin, in respect of the Dittay, and anfuert maid be his Maiesteis Aduocat, in fortificatioun thairof. And as to *the last Article*, quhilk is generall, ffindis the samyn relevant, with ony ane of the ten Articles of Dittay, *et non per se*: And thairfoir, Ordanis the samyn to pas to ane Affyse, viz. the haille ten Articles of Dittay, as relevant; and the last general Article, with ony ane of the ten.

ASSISA.

Johnne Lawfoune, mercheand burges of Glesgow,	Robert Bell, wrycht thair, James Mitchell, tailzeour,	Airthour Gilmour, mercheand, James Fallis, mercheand,
Jo <sup>n</sup> Dikfoune, mercheand thair,	Patrik Bell, elder,	Johnne Boyd, mefoune,
Andro Fales, mercheand thair,	Williame Anderfone, cordiner,	Johnne Anderfoun, cordiner,
George Louk, mercheand thair,	Johnne Gilmour, mercheand,	Andro Ker, cordiner, burges of Glesgow.
Williame Neilfoun, maltman thair,		

OBJECTIONS *against Assisers.*

It is allegit be the pannell aganis *Johnne Dikfone*, that he can nocht be admittit vpon hir Affyse, becaus thair is inimitie and evill will betuix *Johnne Dynning*, the pannellis husband and him, vnreconceillit this ten yeir bygane: Lyk as, the said Johnne Dikfone, being dyuerse tymes travellit with to be reconceillit with the said Johnne Dynning, refusit.—It is anfuert, the allegeance aucht to be repellit as nawayis relevant, becaus inimitie is na caus, except he say, that thair was bluid betuix thame.—It is forder allegit, that he can nocht be admittit, becaus he hes behavit him self as pairtie, and hes gevin partiall Counfall, in preiudice of the pannell; in sa far as scho, being tane be the Proveist, Bailleis, and Counfall of Glesgow, without ane Warrant, out of hir awin hous, was put in waird in the Castell be thame: In the quhilk taking and committing of hir to waird, the said Johnne Dikfone wes ane speciall affister of the saidis Proveist and Bailleis.—It is anfuert be the persewaris, that the allegeance merewis nocht ane anfuert, feing he did nothing but the dutie of ane honest citizen and burges, to assist the Magiftrat to apprehend a malefactour, being suspect of sic haynous crymes.—Johnne Dikfone, being

<sup>1</sup> Strange; indescribable.

<sup>2</sup> Sweated.

<sup>3</sup> Interlocutory sentence, or judgment.

solemlie fuorne, and declairing that, to his knowlege, thair was nevir discord nor inimitie betuix Johnne Dynning and him, the Justice thairupoun, and vpon his declaratioun that he had gevin na partiall counfall in this cause, admittis him.

It is allegit aganis *Walter Sterling*, mercheand, that he can (nocht) be vpon this Affyse, becaus he is brother-in-law to vmq<sup>le</sup> *Robert Mure*; thair being ane speciall poynt of Dittay fet down aganis the pannell, for allegit iniurie done to Robert Mure.—Anfuerit, aucht to be repellit, becaus thair is na perfute movet aganis the pannell be the kyn and freindis of Robert Mure, and thairfoir sould be admittit. —It is forder allegit, that *Walter Sterling*, brother-in-law to Robert Mure, can nocht be admittit, becaus ane Dittay being fet down aganis me for ane wrang done to Robert Mure, ilk poynt of Dittay is fund relevant and ordanit to pas to ane Affyse; the said *Walter* can nocht be ane Affysour aganis me, being perfewit vpon my life.—My lord Aduocat anfueris *ut supra*, that nochtwithstanding thairof he sould be admittit, except Robert Mure, or sum of his freindis, war ather perfewaris or defenderis, or vpegevaris of the Dittay, or Informeris to his Maiesteis Aduocat thairin.—THE JUSTICE Ordanis *Walter Sterling* to stand by; and to call ane vther.

It is allegit against *Williame Neilfone*, elder, that he can nocht pas vpon this Affyse, becaus he is brother-in-law to *Johnne Nicoll*, wryter, quha hes behauit him selff as pairtie, in geving informatioun of the Dittay, and is presnt at the bar affisting the perfewaris in this perfute.—Anfueris, the allegiance aucht to be repellit, becaus Johnne Nicoll is nocht a perfewar, nor the Summondis is nocht raifit at his instance.—*Williame Neilfoun*, being fuorne, and purget be his ayth of partiall counfall, is admittit be the Justice.

*Williame Anderfone*, cordiner. It is allegit aganis him, that he can nocht be admittit vpon this Affyse, becaus the pannell, haifing skill in chirurgerie, fauld to him sum drogis, quhilk he haifing post-pouit the pannell in payment, scho thairfoir perfewit him be ordour of Law thairfoir; quhairvpon ane inimitie fell out betuix thame, quhilk is yet vnreconceilit.—The said *Williame*, be his grit (aith) being purget of partiall counfall, is admittit.

#### VERIFICATIOUN of the perticuler poyntis of Dittay.

MY Lord Aduocat takis instrumentis of the fweiring of the Affyse; and, for verificatioun of the perticuler poyntis of Dittay following, vses and produces the probatioun and Witnessis efter specifeit. And first, for Verificatioun of *the first Article (of Dittay)* anent *Cuthbert Greg*, produces *Charles Pollok* and *Margaret Dynning* as Witnessis, desyreing thair Depositiones to be tane.

*Chairlis Pollok*, couper, burges of Glesgow, sworne judiciallie, and examinat in presens of the Judges, pairteis, and Affysouris, and purget of partiall counfall, mareit, of the aige of threttie yeiris, declairis, that a thre yeir fyne, or thairby, ane differ<sup>1</sup> being betuix *Cuthbert Greg* and *Cristiane Grahame*, for ane dog quhilk *Cristiane* desyret fra him, and he refuifet, anfuering to hir agane, ‘ I rather ze and my huffie<sup>2</sup> baith (meaning be *Margaret Wallace*) war brunt or<sup>3</sup> ze get my dog!’ Quhairof *Margaret Wallace* getting knowlege, scho comes to *Cuthbert* and sayis to him, ‘ ffals land-loupper loun that thow art, sayis thow that *Cristiane Grahame* and I fall be brunt for Witches? I vow to God I fall do to ze ane evill turne!’ And declairis, that, within foure or fyve dayis thaireftir, the said *Cuthbert* fell seik. Being inquyret, gif he hard hir say thir woirdis, ‘ that he (*she*)

<sup>1</sup> Quarrel; *difference*; altercation.

<sup>2</sup> *Cummer*; gossip.

<sup>3</sup> Rather than.

fould mak *hir* (*him*), within few dayis, nocht of habilitie to wyn ane caik of breid?' Denyis that he hard sic woirdis—bot only that scho fould 'do him ane evill turne.' Sayis, he saw *Cuthbert Greig*, the tyme of his feiknes, fueitting and brocheing<sup>1</sup> in ane vncouth feiknes, fairlie handillit, quhairby he was nocht able to gang; bot knawis nocht how lang he swat, or abaid in that estait. Demandit, gif he saw Margaret Wallace cum in to Cuthbert, at ony time of his feiknes? Declairis, he saw hir nocht within that hous; and forder, knawis nocht anent that first Article of Dittay.

*Margaret Dynning*, the spous to Andro Lennox, fuorne and examinat vpon the first Article, concerning Cuthbert Greg, and desyret to tell the treuth, sa far as she knawis thairanent; Depones, that the tyme of Cuthbertis feiknes, the deponer and Margaret Montgomerie, with Margaret Wallace, past all thre togidder vp to Cuthbertis hous, to visseit him, the tyme of his feiknes; at thair in-cumming, declairis, scho saw Margaret Montgomerie, with Margaret Wallace, pass to his bed-fyde quhairin he lay, and that the said Margaret Wallace sat down with hir bak to him, the deponer hir self nocht being able to wyn ben the hous, becaus of the thrang of peopill in the hous, at that tyme: And forder knawis nocht.

FOR the *Second poynt of Dittay*, concerning *Johnne Robertoun*, querriour, desyres the said Johnne Robertoun, as persewar, his ayth to be tane, and that poynt of Dittay to be fuorne be him, gif he has just caus to persew the pannell as giltie thairof? Quha, being solemplic fuorne, declairit, that the said Margaret Wallace avowit 'to be avengit vpon his flesche!' And that schortlie thaireftir, conforme to the Dittay, the feiknes was laid vpon him; and thairfoir, hes just caus to persew the said Margaret, for that poynt: And eikis<sup>2</sup> thairto, that sen the making of that vow be hir, he was nevir able to wyn him self fyve s. (shillings.) Quhairvpon my lord Aduocat askit instrumentis.

*Chairles Pollok* being product, and fuorne vpon the secund Article of Dittay, anent the said Johnne Robertoun, querriour; declairis, he knawis na thing thairof, except allanerlie, that he saw him hevelie diseasit.

As to the *Thrid Article of Dittay*, referris the notorietie of the pannellis giltines thairof to the Assyse.

FOR verificatioun of the *ffourt Article*, my lord Aduocat product Cristiane Grahames Depositioun, tane be *my lord Archebischope of Glesgow*. As also, produces *Marioun Mitchell*, the spous of Johnne Hunter, and desyres hir to be examinat, and her Depositioun to be writtin.

*Marioun Mitchell*, the spous of Johnne Hunter, tasker,<sup>3</sup> fuorne, and examinat

<sup>1</sup> Commonly pronounced *broiching*; in the last stage of exhaustion, through profuse perspiration. The English word *sweltering* conveys something of the same meaning.

<sup>2</sup> Adds; subjoins.

<sup>3</sup> Day-labourer.

vpone the ffourte Article of Dittay, in prefens of the Judges, Affyfouris, and parteis, judiciallie, Depones, that four yeir fyne, or thairby, Margaret Wallace and Robert Stewart come to the duelling-hous of Alexander Vallange, in Glesgow, quhair the deponer was fervand for the tyme, and callit for ane choppin of aill; quhilk was brocht be ane boy to thame, namet James Symfone; and in drinking thairof, betuix Robert Stewart his taking the cope and offering it to Margaret Wallace, the said Margaret tuik ane sudden brasche of seiknes, vnknawin to the deponer quhat seiknes it was, quhairin the said Margaret was sa extremelie handillit, that scho was liklie to ryve hir selff:<sup>1</sup> Thaireftir scho cryis, ‘Bring me hither my deir burd!’—And Margaret Montgomerie, the guid-wyfe of the hous, being present, anfueris hir, ‘Quhilk deir burd wald ze haif? I beleif,’ sayis scho, (thinking it had bene *Johnne Dynning*, hir husband,) ‘he is nocht at hame!’ ‘Na,’ anfuerit Margaret Wallace, ‘bring me *Cristiane Grahame*, my deir burd!’ All this quhyle, Margaret Montgomerie was halding hir be the ane hand, and Cristiane M<sup>c</sup>clauchlane be the vther. Thaireftir, at hir desyre, Robert Stewart past, and with grit dilligence brocht Cristiane Grahame to hir, at quhais suddane cuming, Margaret Montgomerie sayis to Robert, ‘Jesús saif ws! I beleif thow hes met her be the way!’ And Cristiane Grahame anfuerit, ‘ffayth, he met me nocht, bot come and brocht me out of my awin chalmer; and fra I hard that my burd was sa diseasit, I sped me hither!’ Sayis, thaireftir, that Cristiane Grahame tuik Margaret Wallace be the schaikill-bane,<sup>2</sup> and kift hir; and in hir airmes cayreit hir doun the stair, saying to hir, ‘Nothing sould aill hir.’ Eftir quhais outgoing, Margaret Vallange, dochter to the said Margaret Montgomerie, ane infant bairne of foure yeir auld, followit thame doun the stair; and in the ganging out at the zet,<sup>3</sup> over the dur-threschold, scho fell doun in a suddane and grevous payne, and grat vehementlie. Incontinent thaireftir, the said Margaret Wallace come bak agane, and declairit that the bairne was greting at the stair-fute; and desyret hir mother to bring her vp. And thaireftir, the bairnes mother cuming to hir and taking her vp, the bairne cryis, ‘Mother, mother, ding me nocht, for thair is ane preyne<sup>4</sup> raschet throw my fute!’ And the bairne, being brocht vp to the hous, grat continuallie all that nycht, and quhill<sup>5</sup> the morne at that same tyme of the day. The Deponer forder declairis, that scho and the bairnes father and mother sat vp all that nycht, and walkit<sup>6</sup> the bairne; and that vpone the morne thaireftir, the said Margaret Wallace come to vissit the bairne, and desyret Margaret Montgomerie, hir mothir, to fend for Cristiane Grahame, making all that tyme ane grit mone<sup>7</sup> for the bairnes seiknes: To quhome Margaret Montgomerie anfuerit, ‘I haif nothing ado with Cristiane Grahame, and

<sup>1</sup> This attack was probably a hysterical affection, or rather a kind of convulsion fit.      <sup>2</sup> Wrist.  
<sup>3</sup> Gate; wicket.      <sup>4</sup> Pin.      <sup>5</sup> Until.      <sup>6</sup> Watched.      <sup>7</sup> Moan; lamentation.

will nocht fend for hir! ffor gif God hes laid on that feiknes on my bairne, he will, at his awin plesour, tak it af agane!' Sayis thairefter, that Margaret Wallace maid anfuere to hir, 'Gif ze knew of Cristiane Grahame skill, and quhat scho can, ze wald nocht refuse to fend for hir; for scho can do alfe mekill as God in the Heavin!' Deponis forder, that schortlie thaireftir, Margaret Wallace, by<sup>1</sup> the said Margaret Montgomeris knowlege, brocht the said Cristiane Grahame in to the hous, the bairne being lying as ane deid stock in the bed, and haifing gevin over greting for the tyme; and at thair incoming, ane heip of grene webbis<sup>2</sup> being lying on the fluir, Margaret Wallace lap over the same, and cumis to the bairne, and takis hir vp out of hir bed, and fettis hir on Cristiane Grahames knie; and declairis, that eftir the bairne had sittin ane schorte space vpon the said Cristianes knie, scho grew better, and eftir that mendit.

FOR verificatioun of *the ffyft poynt*, my lord Aduocat producet certane Depositiones tane befor *the Bischope of Glesgow*;<sup>3</sup> with ane vther Deposition tane befor *the Commissar of Glesgow*; as also, producet certane Depositiones tane be the said *Archebischope*, at command of the Secret Counfall; and thairwith produces Andro Mure, chirurgane, as Witnes; defyring him to be fuorne, and his Deposition to be writtin.

*Andro Mure*, chirurgane, mareit a sevintene yeir fyne, of the age of xlij yeiris, fuorne, and purget of partiall counsell; being inquiryret, quhat he knawis concerning the ffyft Article of Dittay, red in his audience? Depones, he knawis nothing of Margaret Mures feiknes specifeit in the said Article, except that he himself, cuming doun the Brig-gait,<sup>4</sup> he saw Cristiane Grahame cum furth of Marioun Mures hous; quaha thaireftir come to the deponer, and defyret him to gang in to the said Marioun: And the deponer, at hir defyre, haifing past in to the hous, at his incuming ane roffit hen was sett doun on the buird;<sup>5</sup> and the deponer, with Daud Scheirar and the said Marioun Mure, sat doun at the buird togidder; and within ane schorte space thaireftir, Margaret Wallace come in to thame: Declairis, at Margaret Wallace incuming, ane guise<sup>6</sup> was sett doun on the buird: And the deponer, persaveing that sic intertenement wald draw him to charges, he payit his choppine of wyne and come his way, and left the rest of the cumpanie behind him. And forder knawis nocht.

FOR verificatioun of *the Saxt Article, Sevint, and Aucht Articles*, produces the Deposition of Alexander Montgomerie and vtheris, subscryuit be *my Lord of Glesgow*; togidder with ane Testimoniall of the Minister, testifeing Mr Alexander Montgomerie his feiknes, that he was nocht able to travell, without hazard

<sup>1</sup> Without; contrary to.    <sup>2</sup> Webs of newly weaved, or unbleached, linen cloth.    <sup>3</sup> James Law, Archbishop of Glasgow; who had been translated from the See of Orkney, anno 1610.    <sup>4</sup> The Bridge-gate of Glasgow.    <sup>5</sup> A roasted fowl was set upon the table.    <sup>6</sup> Goose.

of his lyfe: And referris the notorietie of the pannellis guiltines of the faidis Articles to the Affyfe.

FOR preveing of *the Nynt Article of Dittay*, produces Robert Dykes, Johnne Pincartoun, Thomas Wilkyne, and Johnne Thomesone, as Witneffes, defyreing thair Depositiones to be tane, for the Affyfe better informatioun.

*Robert Dykis*, maltman in Ruglen, mareit, fuorne and examinat, in prefens of the Judges, Affyfouris, and pairtie, in judgement, vpon the Nynt Article, to declair the verritie, and purget of partiall counfell, Depones, that at command of v<sup>m</sup>q<sup>o</sup> Allane Spens, the deponer come to Johnne Dynning, and defyret ane ficht of his elwand,<sup>1</sup> and, conforme to the Dittay, the ellwand was brokin; and a fyftene dayis thaireftir, or thairby, the faid Allane Spens being in Glesgow, and fleing ane schoure,<sup>2</sup> come befor Johnne Dynningis buthe-dur,<sup>3</sup> quhair the deponer hard Margaret Wallace, Johnne Dynningis wife, fay thir woirdis to Allane; 'Away, deboifchet knave!' Depones, the faid Allane Spens fell feik; bot knawis nocht how fone eftir thais woirdis war spokin this feiknes fell<sup>4</sup> to him. Declairis, he come in to him the tyme of his feiknes, and faw him hevelie difeafit with continuall fueitting.

*Thomas Wilkyne*, burges of Ruthirglene, mareit, fuorne in prefens of pairtie, Judges, and Affyfouris, in judgement, Depones, he knawis nocht Margaret Wallace, befor his cuming to Edinburgh. As to that Article of Dittay concerning Allane Spens feiknes, declairis, he was hevelie difeafit with ane fuddane and grevous feiknes, quhair of he deceiffit; bot knawis nocht quhat or quha war the causeris thairof.

*Johnne Thomesone*, burges of Ruthirglene, mareit, and fuorne vpon the nynt Article of Dittay red to him in judgement, in prefens of the pairteis, Judges, and Affyfouris, is conforme to the faid Thomas Wilkyne.

*Johnne Pincartoun*, fuorne and demandit vpon the nynt Article, quhat he knawis thairintill? Depones, he was narrest dur nychtbour<sup>5</sup> to Allane Spens, and faw Johnne Dynningis elwand brokin, at quhilk tyme the faid Johnne Dynning and Allane Spens war likelie to go by the earis for breking of the faid elwand. Declairis, that he hard Margaret Wallace, scho being prefent with hir husband, fay to him, 'Go your wayis joy, let him allane,' (meaning be Allane Spens,) 'I fall tak ane amendis thairof!' Sayis he knew that Allane Spens fell in ane heavie difeas, bot knawis nocht quhat was the caus thairof.

FOR verificatioun of *the Tent Article* of Dittay, my lord Aduocat vfes the aithe and declaratioun of *Alexander Boig* in Garboillis, perfewar thairof, and defyres that Article to be fuorne be him to the Affyfe, for thair better informa-

<sup>1</sup> Ell-wand, yard measure.

<sup>2</sup> For shelter from the shower.

<sup>3</sup> Shop door.

<sup>4</sup> Happened.

<sup>5</sup> Next-door neighbour.

tioun: Quha being fuorne, declairit that he had just caus to perfew the said Article, as is set down thairintill, aganis the pannell.

Produces also George Thomefone and James Pollok, Witnesfes, desyreing thair Depositiones to be reslavit for preving of the said tent Article of Dittay.

*George Thomefone*, duelland vnder Sir George Elphingstoun of Blitheswoid, kny<sup>t</sup>, fuorne and examinat in judgement, Quhat he knawis anent the said tent Article of Dittay? Depones conforme thairto, that he hard Margaret Wallace and Alexander Boig flyteing with vther; and that scho said to him, in a grit rage and furie of mynd, that scho fould 'do to him ane evill turne,'—or fould 'gar get to him ane evill turne!' And within thre dayis thaireftir, the said Alexander his bairne fell seik, and deceffit of sueitting and vther grevous panes.

*James Pollok*, gairdner to Sir George Elphingstoun, fuorne and examinat vpon the said Article, Depones, he being working at the hedge within the zaird, he hard Margaret Wallace and Alexander Boig flyteing togidder; and that in hir anger scho said to him, scho fould 'do to him ane evill turne!' And schortlie thaireftir, his bairne contractit ane seiknes, and deceffit.

My lord Aduocat takis instrumentis of the Witnes judicial declaratioun aboue writtin; quhilk he repeitis to the Affyse, with the vther Depositiones producet be him.

THE JUSTICE and ASSESSOURIS continewis this dyet to the morne. The Affyse wairnit to be present the morne, at xj houris; ilk persone vnder the pane of iij<sup>s</sup> merkis.

OBJECTIONS *be the Pannell to hir pretendit CONFESSIOUN, and haill Probatoun adduct.*

Mar. 22.—IT IS OBJECTIT be the pannell and hir prelocutouris aganis *hir pretendit Confessioun*, maid be hir befor the Lordis of Secreit Counsell, that the samyn can preve nathing of the haill Dittay, nor na pairt thairof. And as to that pairt of hir allegit Confessioun, quhair as scho confessit 'that scho was content, in caice it fould be provin that scho was in *Cuthbert Gregis* hous, to grant the haill Dittay!' Anfuertis thairto, that is na Confessioun of the Dittay, nor of na pairt thairof; ffor the Dittay is set down vpon Witchcraft, and that the pannell practizet Witchcraft vpon the persones contenit in the Dittay, be Sorcerie and Inchantment; scho hes nocht confessit the samyn be hir Deposition, nor na pairt thairof; sua that hir Deposition can be na probatioun of Witchcraft, nor of practizing thairof; bot only, that gif it fall be provin aganis hir, hir being in Gregis hous, quhilk scho hes denyit, scho hes thairin committit onlie a lie, and being persewit and provin, is content to vnderly the pwneischment appointit aganis Leasing-makeris. *Secundo*, be the Confessioun contenit in hir

Deposition befor the Counsell, scho is only content, gif that hail Article be provin aganis hir, than to confes all the rest to be trew; bot albeit it be provin that scho was in the hous, it is nocht confessit thairby that scho was ane Witche. *Tertio*, it is nawayis provin be the Deposition producet, that scho was within the hous, becaus thair is only ane woman producet as a Witnes to verifie the same. It is forder allegit, that thair can be na probatioun vpon that hir Confessioun maid befor the Counsell, becaus the samyn is na poynt of Dittay.

It is anfuert be the persewaris, as to the obiectioun maid against the Deposition maid be the pannell befor the Counsell, that obiectioun aucht nocht to be respectit, in respect of the Judicial Confessioun maid befor the Lordis of Counsell, quhilk bindis hir; be the quhilk it is manifest, that scho hes denyit the treuth, in respect of the probatioun led be dyuerse of the Witneses producet, verifeing hir to haif bene in Gregis hous the tyme of his seiknes, quhilk the persewaris referris to the Inqueit's knowlege and Witnes Deposition. And desyres it may be rememberit to the Assyse, quhat sentence was gevin aganis *Patrik Cheyne*, vpon the lyk Deposition.

It is forder allegit be the pannell, that the Deposition maid befor my Lord of Glesgow, the samyn can mak na fayth, in respect his Lordschip had na warrant to that effect.—It is anfuert be the persewaris to that obiectioun, that the samyn aucht to be repellit, in respect of my Lord of Glesgow's Judicial Declaration maid be his Lordschip, that he had ane special Letter direct to him be the Lordis of Secret Counsell, for taking of the saidis Depositiones, and of the article subioyned to hir Depositiones subscriuit be the Clerk of Counsell.

It is allegit be the pannell, that nather the first nor secund Deposition of *Cristiane Grahame* can be respectit: *first*, becaus it is nather hir principall Deposition, nor Extract thair of; nocht the principall, becaus it is nocht subscriuit be hir, nocht the Extract, becaus nocht (subscriuit) be ane Clerk of Court: *Secundo*, can preve nathing, becaus it is maid, scho nocht being suorne to that effect: *Tertio*, it is maid be the pairtie being absent aganis quhome it is deponit, quha, gif scho had bene requyret, wald haif compeirit, and offerit to haif bene confrontit with hir; quha, gif scho had bene confrontit, wald haif denyit the samyn: Lyk as, scho cum of set purpois to the Tolbuth, befor hir Convictioun, and offerit hir self to haif bene confrontit, quhilk was denyit. *Last*, hir Deposition can work nathing aganis the pannell, being ane condampnet persone; and the Deposition aucht nawayis to be respectit, except it war instantlie verifeit be the proces, that befor the making of the said Deposition, or the tyme of the making thair of, that the said Cristian Grahame had confessit the hail poyntis of Dittay than laid to hir charge: for as the woirdis ar consauet, thay ar spokin be compariefone, that eftir scho had denyit the poyntis of Dittay laid to hir



charge, and declairit hir self to be altogidder innocent thair of, and the pannell being at that tyme ane honest woman, sua repute and haldin, scho sayis, ' scho was als frie of Witchcraft as scho or ony vther in the toun !' Forder, the Confessioun can nocht be respectit, becaus it is nocht maid befor ane Judge haifing power to tak her Confessioun, thair being na Commissioun producet for taking of the said Confessioun. Nixt, the Deposition beiris nocht that scho was ony wayis interrogat or speirit<sup>1</sup> at, and is nocht maid in judgement, becaus the Assyse was than incloset, being than hir Judges. Last, it beiris nocht that this pannell was airt or pairt of ony Sorcerie, bot of sic deidis as scho did, and confessit to haif done : And referris to the Assyse, hir Confessioun, that scho was innocent of all. And as to the worfettis,<sup>2</sup> thay ar na pairt of Witchcraft, be reveing<sup>3</sup> or drawing thame furth of hir purse.

It is anfuert thairto be the perfewaris, that the obiectiones maid aganis the tua Depositiones producet is nawayis relevant, and is nocht to be respectit be the Assyse, becaus the samyn is subscriuit be *my Lord Archbischope of Glesgow*, as Lord of the Regalitie, and quha was present the hail tyme of Cristiane Grahamea tryell, nocht onlie as Lord of the said Regalitie, bot also as being ane of the Lordis of his Maiesteis Previe Counfall ; and thairby, be vertew of his office and authoritie, haifing sufficient power to tak cognitioun of quhatfumeur ryote or offence committit to ony of his Maiesteis subiectis, be quhatfumeur maner of way, within that pairt of his dyocie,<sup>4</sup> or ony pairt of the kingdome. *Igitur, &c.* — To the quhilk it is anfuert be the pannell, that the Deposition was nocht subscriuit be *my Lord of Kilsythe*, to quhome the Commissioun was grantit, bot is allanerlie subscriuit be the Proueist and Bailleis of Glesgow, quha ar pairteis : Lyk as presentlie, at the dyteing heirof, Gabriell Cunninghame, standing at the bar, hes professit him self to be a pairtie and informer to my lord Aduocat. Last, her Deposition can nocht be respectit, becaus scho alleges hir self to be participant of the same cryme ; and sa hir Deposition, of the Law, can mak na fayth, except scho had confessit scho had maid hir Deposition or Confessioun estir tortour.

To the quhilk it is anfuert be the perfewaris, that the saidis Depositiones ar subscriuit be the Proveist and Bailleis of Glasgou, quha war a pairt of the Commissioneris nominat and appointit to the tryell of the said Cristiane Grahame, as also subscriuit be vther tua men of grit credeit, viz. Mr Johnne Bell and Mr Robert Scott, Ministeris of Glasgou, quhais subscriptiones ar sufficient to geve authoritie to the Depositiones, as evir has bene fund in this judgement, in all matteris of Witchcraft, and speciallie, in the proces of *Euphame Mcalzeane*, *Barbara Naper*, and *Agnes Sampson*. The last pairt aucht nocht to be

..<sup>1</sup> Enquired.    <sup>2</sup> The coloured worsted threads formerly noticed.    <sup>3</sup> Stealing.    <sup>4</sup> Diocese.

respectit, in respect *socij criminis* ar ressaunt and admittit in all crymes of Tressone, Erracie,<sup>1</sup> and Withecraft.

Quhairvnto the pannell and hir prelocutouris anfuers to thais tua memberis of my lord Aduocattis anfuers, that the tua Ministeris befor quhome Cristiane Grahame hir Depositioun was maid, that thai war honest men, it is nocht denyt; bot it followis nocht, becaus thay are honest men, thairfoir thay had power to tak hir Depositioun, in ane matter concerning hir lyfe, without Commiffioun. For anfuers to the proces allegit aganis *Euphame Mcalzeane, Barbara Naper, &c.*, agreis thairto, in regaird thay war examinat be Mr James Carmichell, to quhome speciall Commiffioun was gevin for that effect. Last, it is declairit be the pannell, that evin in the cryme of Erracie or Lese-maieftie, a pairtner of ane cryme<sup>2</sup> is nocht to be credited without tortour; and repeittis the tortouring of *Sprote* in Tressone, becaus he was partiner of the Tressone.

It is objectit be the pannell and hir prelocutouris, aganis the Depositioun maid be *Margaret Grahame*, dochter to Cristiane Grahame, befor the Commiffar of Glesgow, it can nocht be respectit; first, becaus it is not maid judiciallie, befor ane Judge haifing power to that effect: *Secundo*, befor ane Commiffar, without ane Commiffioun, quha had na power in matteris of Witchcraft, and vtheris concerning lyfe and daithe: *Tertio*, was nocht requyret Witnes befor ane Judge haifing Commiffioun, nor sworne to that effect: *Quarto*, hir Depositioun can nocht be respectit, in respect of hir age, scho nocht being past xvij<sup>3</sup> yeiris: *Quinto*, in all hir Depositiones, nevir a word deponet that scho knew Margaret Wallace to be ane Witche, or a practizer of Withecraft; bot only that hir mother and scho past to the zaird togidder, tynt hir pantoun, quhilk was put one agane be Cristiane Grahame, &c.: *And* quhair, it is affirmet in the Depositioun, that scho tuik ane schooe, and pat in sum seidis thairin, that is nocht lybellit, and can nocht be respectit, becaus nathing followit thairupoun: *Last*, na Depositioun can be respectit at all, of ony persone, as Witnes, bot only sic as ar producet in Judgement,<sup>4</sup> to the effect the pannell may object aganis thame, quhidder thay may depone aganis hir or nocht. And thairfoir, of all Law, it is inviolable obseruet, that na faith is gevin to Testimoniallis, bot as Witnesses, in a matter of fourtie schillingis.

It is anfuersit be the persewar, as to the allegiance and objectioun aganis *Margaret Grahame*, the samyn aucht to be repellit, it being tane befor ane Judge-Ordiner, judiciallie, viz. the Commiffar of Glesgow: And as to hir age, scho hes deponet scho is past xiiij yeiris, quhilk is referrit to the Assyse knowlege; and that than scho mycht haif mareit lauchfullie, mekill mair to beir witneffing in

<sup>1</sup> Heresy.

<sup>2</sup> *Particeps criminis*.

<sup>3</sup> *Sic*; xij?

<sup>4</sup> This is the first time that this objection is recorded as having been started by the Counsel for the pannel.

obscure factis, sic as ony thing concerning vmq<sup>o</sup> Cristiane Grahame and Margaret Wallace, quhais companie scho resoirtit daylie. And forder, the persewar referris to the Assyse knowlege, quhat thay knaw of hir Depositione; and speciallie, gif it was grantit befor my Lord of Glesgow, the pannell hir selff, and sum of the Inqueist: And forder, producet the dome and sentence of convictioun to the Assyse, quhair the Proveist and Bailleis of Glesgow war Commiffioneris appointit and set for tryell of Cristiane Grahame, and sa had power to ressaue Cristiane Grahames ayth, for haifing Commiffioun thairto.

It is anfuert be the pannell, as to that pairt of the anfuert anent Margaret Grahames age, the Deposition producet beiris na sic thing.—My lord Aduocat, for anfuert thairto, declairis, he produces ane vther Deposition of hiris of the same dait, beiring hir former age: Quhilk is referrit to the Assyse.

Item, the pannell anfuert to that poynt, anent the production of Cristiane Grahames Sentence of Convictioun, that the pannell acceptis the same; and protestis that the persewaris repetitioun thairto, for instructing of the Assyse, anent that alledgeance proponit be the pannell, that Cristiane Grahames Deposition, beiring Margaret Wallace to be airt and pairt of all confest be hir to haif done, preves nawayis hir to be giltie of Witchcraft; becaus the convictioun producet, beiris hir to haif denyit all the poyntis of the lybell anent Witchcraft; and scho confelles that scho was pairt-taker of sic thingis as scho confelles hir selff to haif done, it man (*must*) be of na deidis impoirting Witchcraft.—The last objectioun proponit be the pannell is nocht to be respectit, in respect of Cristiane Grahames Confessioun and convictioun producet; quhairin scho is convict of tua poyntis, conforme to hir awin Confessioun, viz. the secund and fourt poyntis of Dittay quhairupone scho was indytit.—It is anfuert be the pannell, that the said convictioun proceidis vpon the admitting of the hail Articles thairto to the knowlege of ane Assyse, sua that the finding of hir giltie of ony of the Articles is nocht the grund of the sentence of Convictioun; ffor thais tua Articles, a pairt quhairto scho is convict, was nocht relevant without the hail Articles had bene admittit; and forder, thir tua poyntis quhairto Grahame is convict, is na poynt of our Dittay.

It is objectit be the pannell aganis *Marioun Mures* Deposition, subscryuit be my Lord of Glesgow, the samyn can nocht be respectit, for the ressones foirsaidis; with this additioun, that gif the said Marioun Mure war now producet as Witnes at the bar, scho wald be repellit; for this resson, becaus be the Deposition it is confessit that scho is father-sister to the bairne quha is alleget to haif bene bewitched or curet be the pannell, as being within degreis-defending to the said bairne mentionet in the Dittay. And forder, it is objectit, that scho had gevin partiall counfall in the caus, quhilk defens is tane fra us be production of

ane Testimoniall, and nocht hir selff. And repeittis all the rest of the objectiones aganis the vther Testimoniall.—The last objectioun aucht to be repellit, in respect of the Depositioun of *Marioun Mure*, tane be my Lord of Glesgow, quha had Commissioun of the Counfell, as he hes deponit, and is testifeit be James Prymrois, clerk of the Counfell. Lyk as, the samyn Depositioun is subscriuit be the Laird of Mynto, and the Proveist and Bailleis of Glesgow, Commissioneris for Tryell of the said Cristiane Grahame: And as to the objectioun, that scho was within degreis-defending to the bairne, it is anfuert directlie, that Commissioun be the Counfell for hir examinatioun, the pannell being present, and nathing objectit be pannell in the contrair, is sufficient to elyd<sup>1</sup> that pairt of the said objectioun.

It is objectit be the pannell aganis the Depositioun of *Mr Alexander Montgomerie* producet, that the samyn can mak na fayth, it nocht being maid befor ane Judge, nor he fuorne to that effect; nor nane inquiryeing sic thing of him: And speciallie, aucht to haif bene summond befor ane Judge-Ordiner, and to haif deponit judiciallie; in respect that letteris war direct, summonding him to compeir befor the Justice in this judgement, and hes nocht compeirit, being summond to that effect; and speciallie, his Depositioun could nocht haif bene ressauid gif he had compeirit, becaus it wald haif bene objectit contrair him, that he and Margaret Montgomerie are brother-bairnes of the hous of Hefil-heid,<sup>2</sup> quhais dochter is allegit to haif bene witchet, be ane speciall poynt of Dittay gevin in aganis this pannell; and sa, his extra-judiciall Confessioun out of all judgement, subscriuet be him without Witnes, could nocht be respectit.—To the quhilk the persewaris anfuert, that this last objectioun aucht to be repellit, in respect of the Testimoniall producet, beiring Mr Alexander to be seik, subscriuit be ane Minister, quhilk excuises his absence: Quhilk Depositioun is referrit to the tryell of the Assyse.

IN respect of the quhilkis Depositiones and Verificationes producet to the perfones of Inqueist, for thair forder informatioun of the pannellis giltines of the perticular poyntis of Dittay aboue written, Protestis for Wilfull Errour aganis thame, gif thay acquit.

VERDICT. The Assyse, for the maist pairt, FYLES *Margaret Wallace* of the *first* Article of Dittay,<sup>3</sup> anent Cuthbert Greg, couper, and haill circumstances thair of: AND siclyk, all in ane voce, ffyles hir of the *fourth* poynt of Dittay, and haill circumstances mentionet thairintill, anent the consulting with vmq<sup>10</sup> Crif-

<sup>1</sup> Cut off, &c. Lat. *elidere*.    <sup>2</sup> The Montgomeries of Hazelhead, a respectable family in Ayrshire.  
<sup>3</sup> The Articles of Dittay of which the pannel is found guilty, are rehearsed at length at the commencement of the Trial, being the only part of the Dittay preserved at full length in the Record. The remainder of the points are pretty largely recapitulated in the preceding arguments, which are of great importance, as they completely illustrate the state of the Law and practice on this extraordinary subject. More freedom of discussion was permitted in this Trial, than in any of the previous cases of a similar nature.

tiane Grahame, ane notorious Witche, for cureing of hir selff of ane suddane diseafe, be taking the samyn of hir, and laying it vpon Alexander Vallange bairne; and thaireftir cureing the said bairne of the said diseafe, in forme and maner specifeit in the Dittay: AND lykwayis, for the maist pairt,<sup>1</sup> ffyles hir of the *fyft* poynt, anent the cureing of Margaret Mure of the seiknes quhairwith scho was visseit, be Sorcerie and Witchecraft, and consulting with Cristiane Grahame for that effect, in maner contenit in the said *fyft* Article: AND in lyk maner, all in ane voce, ffyles hir of the *tent* Article of Dittay, and haill circumstances thair of, anent the seiknes laid vpon Alexander Boig his bairne, be Sorcerie and Witchcraft, in maner specifeit in that Article: AND last, all in ane voce, ffyles hir of the generall poynt, as ane cownoun consulter with Witches, thir aucht or nyne yeiris, namelie with vmq<sup>k</sup> Cristiane Grahame, laitlie convict and brunt for ane notorious Witche, and with Katharene Blair, and vther Witches, and seiken<sup>2</sup> of help and responffis of thame, alsweill for cureing of hir selff of dyuerse seiknesses, and cureing of hir ffreindis and acquaintance, as for inflicting of dyuerse crewall diseiffis vpon dyuerse perfones to quhome scho buir ony haitrent; and distructione of thame thairby, be devillrie, Incantatioun, and Witchcraft, expresse forbidden be the Lawis of Almychtie God, and municipall Lawis of this realme. AND CLANGES hir of the haill remanent poyntis of Dittay, and crymes thairin contenit.<sup>3</sup>

SENTENCE. The Justice, be the mouth of James M'cairtour,<sup>4</sup> dempster of Court, Ordanit the said Margaret Wallace to be tane to the Castell-hill of Ed', and thair to be wirreit<sup>5</sup> at ane staik to the deid; and hir body thaireftir to be brunt in asches: And all hir moveabill guidis to be escheit, &c.

### Slaughter.

Mar. 27.—MR JOHNNE STEWART of Dowellie, and Thomas Stewart, his brother.

Dilaitit of airt and pairt of the Slaucher of vmq<sup>l</sup> Johnne Low in Gairnetullie; committit vpon the xvij of Januar, 1614 yeiris.

PERSEWARIS, James Low, as brother; Andro Low, burges of Perthe, neir kynfman; Sir W. Oliphant. PRELOCUTORIS in defence, Mr Lucis Stewart, Mr Robert Lermonth.

It is allegit that this matter can nocht pas to ane Assyse, in respect thai haif obtenit his Maiesteis Remiffioun, vnder his hienes Greit Seil, quhilk thay vie and produce, daitit the xxiiij day of Marche, 1618 yeiris.—The Justice ordanis the pannell to find cautioun to satisfie the pairties; quha, togidder with James Soutter of the Mylnetoun of Fornocht, band and obleist thame, &c.

<sup>1</sup> 'By a plurality of voices,' as it was more recently expressed. <sup>2</sup> Seeking. <sup>3</sup> 'Johnne Lawfoune, chancellor.' <sup>4</sup> Who appears for the first time in this office. <sup>5</sup> Strangled.

**Intercommuning with the MacGregors—Slaughter—Theft—  
Fire-raising, &c.**

Apr. 23.—JOHNNE MOIR M<sup>c</sup>EANE CHERE<sup>1</sup> CHAMRONE (Cameron), and  
Duncane (Moir) M<sup>c</sup>eane Chamrone, his brother.

Dilaitit of the crymes following, viz. The said *Johnne Moir*, ffor being in cumpanie with vmq<sup>10</sup> Allaster M<sup>c</sup>Gregour of Glenstra, Johnne Dow M<sup>c</sup>Gregour, his brother, and vtheris thair kyn and freindis, togidder with the Clan-Chamrone and Clan-Anveroche, and vtheris brokin men and foirneris, to the number of ffoure hundreth perfonas, convocat in battell array, vpon the landis of *Glenfrune*,<sup>2</sup> pertening to the Laird of Lufe,<sup>3</sup> in ffebruar, 1603 yeiris; quhair vmquhile Alexander Colquhoun of Lufe, accompaneit with certane his freindis, war convenit, at that tyme, be vertew of oure fouerane lordis Commiffioun, to refist the faidis M<sup>c</sup>GREGOURIS cruell interpryfes and intentiones. AND for airt and pairt of the steilling and away-taking of sex hundreth ky and oxin, aucht hundreth fcheip and gait, fourtene scoir horfe and meiris, with the hail pleniffing, guidis and geir of the four-pund-land of Lufe, pertening to the inhabitantis thairrof. AND ficlyk, the said *Duncane Moir M<sup>c</sup>eane Chamrone*, ffor being in companie with Robert Abroche,<sup>4</sup> Johnne Dow M<sup>c</sup>allaster,<sup>5</sup> and vtheris thair complices, ane aucht yeir fyne, or thairby,<sup>6</sup> at the Slauchter of vmq<sup>10</sup> James Menzies, brother to the Barrone of Comerie, and Burning of his hous;<sup>7</sup> and fa was airt and pairt of the faid slauchter, and burning of the faid hous. TO THE TAIKIN,<sup>8</sup> he hes confessit that he paid thre hundreth merkis to the Barrone of Comerie and his freindis, in Assythement<sup>9</sup> of the Slauchter and Burning; as at lenth is contenit in the Dittay.<sup>10</sup>

PERSEWAR, Sir Williame Oliphant; Johnne Colquhoun, indueller in Leyth, as informer.

The perfonas on pannell, being enterit, declairit that nane of the freindis of the Barone of Comerie could perfw thame for the Slauchter of James Menzeis; becaus thai had reffaut satisfiounne for the Slauchter and Burning, fra Duncane. And the said Johnne Moir confessit his being at the ffeild of Glenfrune, bot denyis that he did ony fskayth thairat.

<sup>1</sup> John 'the large,' the son of John of 'the mouse colour.'      <sup>2</sup> See this Collection, II. 430, for an account of the Battle of Glenfruin, &c.      <sup>3</sup> Luss, on the banks of Loch-Lomond.      <sup>4</sup> M<sup>c</sup>Gregor. Named *Abroche* after his father Duncane, viz, 'of Lochaber.'      <sup>5</sup> It appears from the Records of the Privy Council, that he was killed in February, 1611.      <sup>6</sup> Robert Abroche received the Royal pardon, previous to December, 1612.      <sup>7</sup> As the Menzieses were both interested and most zealously active in furthering the cruel persecutions directed against the Clan-Gregor, so they were particularly obnoxious to the vengeance of that Clan.      <sup>8</sup> In testimony or *token* whereof.

<sup>9</sup> That compensation shall thee nought avail,  
Which erst necessity, not Justice gave;  
Howe'er in others it be held sustainable—  
But shall be quoted as sound proof of guilt,  
And practical confession of thy crime.

Anon.

<sup>10</sup> The Dittay is not preserved on record.

The Justice Ordanis the Dittay to pas to the knowlege of ane Affyse, &c.

ASSISA.

Johnne Naper of Kilmahew,	George Nicoll, cuik in Edr,	Vmphra Colquhoun, iadueller in
Johnne Darleith of that Ilk,	James Mitchell in Chapelton,	the Cannogait,
Johnne Danielftoun of Dal-	Johnne Williamfoun, thair,	Williame Buchannane, thair,
quberne,	Williame Gow in Drymmene,	Adame Clerk, litster in Edinburgh,
Mungo Buchannane in Tillie-	Robert Moriefoun, burges of	Patrik Colquhoun, alias Cowane,
chevin,	Dumbartane,	tailzeour in Edinburgh,
W <sup>m</sup> Buntene in Auchinfoule,		George Mitchel, staibler thair.

VERDICT. The Affyse, all in ane voce, ffand, pronuncet, and declairit the saidis Johnne and Duncane to be ffylet, culpable, and convict of the crymes *respectiue* aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edr, and thair, thair heidis to be strukin fra thair bodeyis; and thair guidis to be escheit and inbrocht to his Maiesteis vse, &c.

**Suborning of Witnesses—Perjury.**

Jun. 22.—ANDRO TRUMBLE in Belfches, Robert Ker in Bewlie, James Young in Belfches, and Daud Trumble in Luftruthir.

Dilaitit of Suborning of Witneffes, and for beiring of ffalfe-witneffing.

My lord Aduocat producet the Dittay, with ane Warrant direct to the Justice be the Lordis of Sessioun, for putting the pannell to the tryell of ane Affyse, for the crymes specifreit in thair Dittay.<sup>1</sup>

ASSISA.

Gilbert Ker of Lochtour, Williame Ker of Lyntoun, Johnne Glendonyng of Drumrasche, George Kincaid, mercheand in Edinburgh, Mr Thomas Ker, sone to the Guidman of Yair.<sup>2</sup>

My lord Aduocat takis instrumentis of the sueiring of the Affyse; and for verificatioun of the Dittay, producet the Depositiones maid in prefens of the Lordis of Sessioun, subscryuit be my Lord of Melrois,<sup>3</sup> *in presentia Dominorum*; And also, producet ane Decreit of the saidis Lordis, vnder the subscription of Mr Thomas Hay, clerk, daitit the xxij of Junij instant, ffinding and declairing the said Andro Trumble to be a periured and ffals man, and ane corrupter and seducer of Witneffes to deponne ffalflie; and also, ffinding the saidis Robert Ker, James Young, and Daud Trumble, Witneffes foirsaidis, seducet be the said Andro, to be in lyk maner perjuret and ffalfe Witneffes; in respect, thay first declairit be thair solemne aithes, that thai war nawayis seducet, be the said Andro Trumble, to beir ffals witnes in his caufe of Spuilzie, persewit be him aganis Williame and Walter Mydilmestis; and thaireftir, being mair straitlie and narro wlie examinat, confessit the verritie of the said seduction, and the ffalset of thair Depositiones. And vpon the production thairof, askit instrumentis, and

<sup>1</sup> The Dittays are so extremely prolix and uninteresting, that it has not been deemed necessary to insert them here. <sup>2</sup> The rest burgesses. <sup>3</sup> Sir Thomas Hammilton of Binning, &c. afterwards Earl of Hadington, Lord President of the College of Justice, &c. one of the greatest men of his time.

protestit for Wilfull Errour aganis the saidis perfones of Assyse, gif thay acquit; specialie, in respect of the pannellis offering thame in his Maiesteis will for the said crymes.

VERDICT. The Assyse, all in ane voce, be the repoint of Nicoll Edzer, mercheand burges of Edinburghe, Chancellor, ffand, pronuncet, and declairit the saidis Andro, Robert, James and David, to be ffylet, culpable, and convict.—

SENTENCE. The saidis *Andro Trumble*, *Robert Ker*, and *James Young*, to be tane to the Castell-hill of Edinburgh, and thair to be Hangit quhill thai be deid; and thair haill moveabill guidis to be escheit to his Maiesteis vse.—And the said *David Trumble* to be tane to the Mercat-croce of Edinburghe, and thair his tounge to be pearcet with ane hett boitkyn; and thaireftir Banischet this realme, and nocht (thaireftir) to be fund thairintill, vnder the pane of deid.

ASSISORS *fined for being absent.*

SIR WILLIAME McDOUGALL of M'cairstoun, Sir Johnne Scott of Newburgh, Raulf Ker, bailzie of Lauder, Sir Robert Scott of Thirlstane, Williame Johnnestoun of Lockerbie, Williame Borthuik, elder of Johnnstoun-burne, Sir Archibald Murray of Blakbarrony, Mr Johnne Home of Swanscheill, James Fairbairne of West Gordoune, Johnne Elphingstoun of Schank, Alexander Cranstoun of Moriestoun, Johnne Cranstoun of Thornydykis, Sir Robert Scott of Hayneing, David Vaufe of Blaufe, Williame Home of Hardeismylne, Williame Bennet, seruitour to the Erle of Roxburgh, Johnne Symontoun, younger, of that ilk, Gilbert Ellote of Stobis, Robert Logane, ffear of Bonnytoun, Mr Johnne Ker, clerk of Selkirk, Adame Gairdin, mercheand,—and twelve others, mercheands,—'ilk ane of thame, for thair nocht compeirance, to pas vpon the said Assyse, war vnlawit in the pane of ane hundreth merkis.'

### Taking captiue—Scourging—Slaughter, &c.

Jun. 26.—SIR WILLIAME KEYTH of Ludquhairne, kny<sup>t</sup>, and Hew Charteris, his seruand.

Dilaitit for allegit airt and pairt of the Taking and Apprehending of Alexander Pedder, myller at the mylne of Feachfeild, vnder nycht, furth of his duelling hous, mother-naikit as he was borne; and for cayreing him, as ane captiue and prifsoner, to the Place of Feachfeild, and breking vp of the zettis and durris of the said place; scourgeing him with suord-beltis and horse-brydillis vp and down the hall thairof, to the effusioun of his bluid. AND siclyk, for allegit airt and pairt of the daith and Slauchter of vmq<sup>le</sup> Andro Frafer, ane young infant bairne, sone to Andro Frafer, younger of Mukallis: AND for contraveining the Actis of Parliament, in beiring and weiring of hagbutis and pistolettis PERSEWARIS, Andro Frafer, younger of Mukallis, as father; Alexander Pedder, myller; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes entreis.

PRELOCUTORIS in defence, Mr Thomas Hoip, Mr Roger Mowat.

Compeirit the said Sir Williame and his seruand, togidder with the said prelocutouris, and exponet and declairit, that thai war informet, Criminall Letteris



war direct out aganis thame, vpon threfoir dayis wairning, at the instance of Andro Frafer, &c. chargeing thame and certane vtheris<sup>1</sup> to find caution for thair personall compeirance this day and place, in the hour of caus, to vnderly the law for the above allegit crymes: For obedience of the quhilk charge of Hoirning, and tryell of thair innocencie of the saidis allegit crymes, the said Sir Williame Keyth, and Hew Charteris, compeirit and offerit thame felfis of the Law, as altogidder innocent thairof. And in respect na pairtie compeiris to infist in thair perfute, being oft tymes callit to that effect, protestit for thair cautioneris relief, and that thai, na nane of thame on nawayis fould be callit or perfewit for the saidis allegit crymes, in ony tyme cuming; and thairupoun akit instrumentis.

Johnne Forbes, eldest sone and appeirand air to Mr Duncane Forbes of Bannagask, as cautioner and fouertie, for repoirting the above Letteris, deulie execute and indorfate, and perfute thairof, &c., vnlawit vnder the panes following, viz. vpon the said Sir Williame Keyth, and Nathaniell Keyth of Coklaw, ilk ane of thame vnder the pane of v<sup>c</sup> merkis; and vpon ilk ane of the remanent defenderis, in the pane of ane hundreth merkis.

#### House-breaking—Theft.

Jul. 3.—ANDRO RUTHERFURD, sumtyme servand to Mr James M'Gill of Cranftoun.

Dilaitit of airt and pairt of the breking of the said Mr James M'gillis Place of Cranftoun, and breking vp of ane kist,<sup>2</sup> within the Woman-hous<sup>3</sup> thairof, pertening to Malie Newlandis, and steilling xxx li. furth thairof; committit in Maij last.

The pannell offerit him selff in the Kingis Maiestie and the Laird of Cranftones will, for the said cryme: Quhairvpon, the Justice ordanit him, of his awin consent, to be Banischet the parochin of Cranftoune; and at na tyme heirefter to be fund thairintill, vnder the pane of deid. And ordanit him to find caution for his compeirance vpon fyftene dayis wairning, to vnderly the law for the said cryme, gif in ony tyme cuming he beis fund within the said parochin; quha fund Thomas Rutherford in Borthiuk-manes caution for that effect.

#### Fire-raising—Slaughter.

Jul. 24.—DONALD M'ANGUS of Glengarie.

<sup>1</sup> There were ' Nathaniell Keyth of Coklaw, Williame Keyth, sone to Alex. Keyth of Bodome, Robert Marschell, Gilbert Wairdene, Gilbert Huchoon, and Alexander Forbes, all seruitouris to the said Sir Williame; Johnne Keyth, sone to Alex. Keyth, vnclie to the said Sir Williame, George Keyth, callit *Caitnes*, George Johnne Dow M'farlane, Alexander Fordyce, and Thomas Murray, seruitouris to the said Nathaniell Keyth, vnclie to the said Sir Williame.' <sup>2</sup> Chest. <sup>3</sup> Probably that part of the Offices of Cranstoun, where the female domestics resided.

Dilaitit of the treffonable Raifing of ffyre, Burning of xxvij Houffes, with the inficht being thairin, pertening to Mr Johnne M<sup>c</sup>Kenzie, Archedene of Rofs; and Slauchter of dyuerfe his tennentis.

PERSEWAR, Mr Johnne M<sup>c</sup>Kenzie, Archedene of Rofs.

The perfewar paffis fra the pannellis perfute *pro loco et tempore*, for the crymes contenit in the Letteris.

The pannell offeris him felff to the tryell of the law for the faidis crymes, as altogidder innocent; and difaffentis to the faid continuatioun. And for obedience of the Justice ordinance, ffand Sir Donald Gorme of Slait, kny<sup>t</sup>, perfonallie present, cautione for his entrie, to the effect foirfaid.

### Resetting of a Jesuit-Priest.

Aug. 6.—ANDRO HATHOWIE, burges of Glesgow, and Jonet Pollok, his spous.

Dilaitit of the treffonabill Receipt of George Mortimer, ane Jesuite Preift, &c.<sup>1</sup>

VERDICT. The Affyse, be pluralitie of voittis, be the repoir and declaratioun of George Moore of Powmadie, chancellor, ffand the faidis Andro and Jonet to be ffylet, culpable, and convict, &c.—SENTENCE. The Justice, conforme to ane Warrant of the Lordis of his Maieftis Secreit Counfall, decernis and ordanis the faidis *Andro* and *Jonet* to be Banifchet furth of this kingdome of Scotland, during all the dayis of thair lyftymes: And to be committit to waird, thairin to remane, quhill caution be fund to the Proveift and Bailleis of Glesgow, for obedience of the faid dome, and thair nocht returning agane; vnder sic panes, as fall be fet down be the faidis Proveift and Bailleis, in thair Act to be maid thairupoun.

[*Mr Robert Fairlie, Justice-Depute.*]

### Theft.

Sep. 20.—HENRIE KYNLOCHE, fumtyme post-maister, indueller in the Cannogait.

Dilaitit of the thiftious steilling of ane blak cloik, lynet throw with blak veluet, ane grograne taffitie cloik, lynet with figuret fatene, and tua pair filk schankis, pertening to Alexander Lord of Kildrymmie, furth of his Place, at the bak of the Palice of Halyruidhous; committit in November 1621 lastbypast.

The pannell confessis the cryme specifeit in his Dittay, with all humilitie: Seing the guidis stowin ar restorit to the rychteous owner thairof, offeris him felff in the Kingis Maieftie and his hienes Counfellis will, for the faid cryme.

WARRANT of the Lordis of Secreit Counfall.

APUD HALYRUDHOUS, *decimo quinto mensis Maij*, 1622. FORSAMEKILL AS Henrie Kinloche, fumtyme post-maister in the Cannogait, being tane and put in waird, within the Tolbuthe of the Cannogait.

<sup>1</sup> The Dittay, which is recorded at length, is similar to those already reported.

gait, quhairin he presentlie remanis, ffor certane poyntis of Thift committit be him: Off the quhilkis, necessar it is that he be tryed, and that some pweischment be inflictit vpon him, to the terrour of vtheris to offend in the lyk heireftir. Thairfoir, the Lordis of Secreit Counfall Ordanis his Maiesteis Justice, Justice-clark, and thair deputis, to appoint ane Justice Court to be haldin in the Tolbuthe of Edinburge, at suche ane day as thay fall think expedient; and to caus the said Henrie to be exhibeit and producet befoir thame; and thair to accuse him of the said cryme of Thift, according to the per-ticuler Dittay, that fall be gevin in aganis him. And Ordanis his Maiesteis Aduocat to insist in the persute of him; and gif the said Henrie fall confes the said cryme, and become in his Maiesteis will for the fame, that than thay pronunce dome and sentence aganis him, ordaning him to be Baniff the realmes of Scotland and Ingland, and nevir to returne agane within the samyn during his lyftyme, vnder the pane of deid.

Extractum, &amp;c.

JACOBUS PRYMOIS.

SENTENCE was pronounced in conformity to this Warrant.

### 'Rapt and Ravishing'—(Forcible Abduction)—Adultery.

[THE following brief notice of an ancient *Crim. con.* Case, affords a specimen of the mode in which affairs of gallantry were managed in the Western Islands and Highlands of Scotland. Sir LAUCHLAN M'FINGANE (MACKINNON) of Strathardill, having fallen in fancy with *Mary M'Connell (MacDonald)*, the wife of *Ranald of Benbecula*, makes the best use of his winning arts, and carries off the lady, by violence, from her husband. It would appear, from the charge of Adultery being also preferred against this knight errant, that the consent of the lady had in all probability been previously obtained to the arrangement. *Ranald M'Allan V'Ean*, the injured husband, was brother to *Donald M'Allan M'Ean*, CAPTAIN OF CLANRANALD, and grandfather of *Donald MacDonald of Benbecula*, who became Captain of Clanranald, anno 1725. This gay and *captivating* deceiver, Sir Lauchlan, was one of several Hebridian Chiefs, who had been knighted by KING JAMES VI, in the latter part of his reign, to ensure their more ready acquiescence in the schemes so zealously projected by him, for the civilization of their semi-barbarous tribes. A Gift of his Escheat was granted by the King, Dec. 12, 1622.<sup>1</sup>

The Editor begs to refer the reader to the forthcoming work of Mr GREGORY, already alluded to, for more copious illustrations of matters connected with the Hebrides and West Highlands.]

Nov. 8.—SIR LAUHLANE M'FINGANE of Strathardill, kny<sup>t</sup>.

Dilaitit of the Rapt and Raveisheing of Marie M'conneill, sifter to Sir Donald M'conneill of Slait, and spouse to Rannald M'allane V'eane of Castelwirrie;<sup>2</sup> committing Adulterie with hir, and remanent crymes contenit in the Letteris.

James Logie, wryter, producet the Letteris deulie execute, indorsate, and regiftrat; quhairby the said Sir Lauchlane is denuncet rebell, and put to the horne, for nocht finding of caution, to haif compeirit to haif vnderlyne the law.

### Slaughter.

Mar. 12, 1623.—WILLIAME OLIPHANT of Gask, and Alexander Flemyng of Monnefs.<sup>3</sup>

Dilaitit of airt and pairt of the Slauchter of vmquhile Daid Tofcheoch of Monyvaird.<sup>4</sup>

<sup>1</sup> See Record of the *Privy Seal* and *History of the Macdonalds*. <sup>2</sup> Castletirrim. <sup>3</sup> Peter Oliphant of Rescobie, and Johnne Erle of Wigtoun, cautioners for the pannels' entry. <sup>4</sup> See Jul. 29, 1618, &c.

Compeirit Mr James Campbell, sone to the Laird of Laweris, for him self, and in name and behalf of the remanent kyn and freindis<sup>1</sup> of the said vmq<sup>le</sup> David, and in name of Annas Grahame, Lady Monyvaird, and past fra the said Williame Oliphant of Gask his persute, *pro loco et tempore*.

Compeirit personallie, Mr Johnne Oliphant, as procuratour for Williame Oliphant of Gask, and producet ane Warrant and delyuerance of the Lordis of Secreit Counsall, commanding the Justice to desert the dyet appointit this day for the said Williame Oliphant; quhairof the tennour followis.

WARRANT of the Secreit Counsell, concerning Williame Oliphant of Gask, for Monyvairdis Slauchter.

MY LORDIS OF SECREIT COUNSALL, vnto your ll.<sup>2</sup> humble meanis and schawis, I, your seruitour, Williame Oliphant of Gask: That quhair, I am chargit to compeir befor his Maiesteis Justice, in the Tolbuth of Edinburghe, vpon the xij day of Marche instant, to vnderly the Law for the Slauchter of vmq<sup>le</sup> David Toscheoche of Monyvaird, and vtheris crymes specifeit in the Letteris raised thairupoun. Lyk as, the Justice intendis to proceed aganis me in that matter, albeit it be of verritie that HIS MAIESTIE, being treulie informet of the forme and maner how that vnhappie Slauchter fell out, and how that dyuerse come to the ffayr quho war bothe ignorant and innocent of the Slauchter, and wald haif bene lothe to haif bene actoris thairin, or to haif medlit thairwith; HIS MAIESTIE was pairupoun gracioullie pleisit, by his Letteris writtin and direct to your Lo., to recommend to your Lo. the settling of that ffeid<sup>3</sup> by some amicabill and freindlie dresse, and by making of suche Assythement<sup>4</sup> and satisfioun, as convenientlie may be performed: AND in the meane tyme, it was his Maiesteis expres will, and speciall command, and directioun vnto your ll., that all proces Criminall and Ciuill aganis me, for that caus, sould rest and ceis, till some generall course war concludit vpon and tane in that matter: As his Maiesteis Letter, exhibeit vnto your ll. in the sex hundreth and nyntene zeir of God beiris, ACCOIRING quhairvnto, your Lo. hes nocht onlie gevin Warrant to desert findrie dyettis, quhilke formerlie war appointit for my tryell in this matter, bot with that your ll. tooke verrie grit panes, in tua or thre ffeuerall dyettis, to haif fetled this ffeid, and causid wairne ane grit number of Monyvairdis speciall freindis to that effect: And at the dyettis your ll. causit satisfioun to be maid to *Duncane Campbell* and *David Malloche*, who war bothe deidlie hurte and woundit at the slauchter of *Monyvaird*, the on haiveing his hand cut aff, and the vther being deidlie woundit in the heid; bot anent the satisfioun for *Monyvairdis* Slauchter, whairin thair was verrie honorable Offeris maid; the same was cassin af, be refone of *Young Monyvairdis* minoritie, his ffreindis in the mean tyme refusuing to medle thairin, or to tak burding for him; sua that the nocht fetling of this buffines proceedis nocht frome the default or vnwillingnes of the offenderis, quho in heart and affectioun wold do mair nor goodlie thay may in pat matter, bot frome the refusall of *Monyvairdis* freindis to deale thairin, during his minoritie. IN consideratioun quhairof, I man<sup>5</sup> maist humlie besaik your ll. to geve command to the Justice, Justice clerk, and pair deputtis to desert the said dyet, and to desist and ceise fra all proceeding aganis me or my cautioneris pairintill; dischargeing thame pairrof, and of pair offices in that part, till some generall course be takin for the finall settling of that ffeid. And your ll. anfuer. (ffollowis the delyuerance on the bak pairrof.)

APUD EDINBURGHE, xj Marcij, 1623. FIAT ut petitur,

GEO. CANCELL<sup>s</sup>. MAR. MOIRTOUN. WIGTOUN. ROXBURGH. MELROIS.

LAUDERDAILL. R. COKBURNE. ALL. HAMMILTOUN. J. PRYMROIS.

THE Justice, for obedience of the said Warrant, and command thairin, Ordanit

<sup>1</sup> Blood-relations. <sup>2</sup> Lordships. <sup>3</sup> Feud. <sup>4</sup> Compensation or *solatium* paid to the deceased's nearest of kin, on account of being deprived of their relation. <sup>5</sup> Must.

the said dyet to DESERT aganis the said *Williame Oliphant*: AND of consent of the said Mr James Campbell, continewis the dyet aganis *Alexander Flemyng of Monnes*, to ane fyftene dayis wairning; and caution to be fund be him for his entrie to that effect.

Johnne Erle of Wigtoun of new becomes caution for the said Alexander, to enter him befor his Maiesteis Justice or his deputis, the thrid day of the next Justice-air of the scheref dome quhair he duellis, (Perthe,) or foner, vpon xv dayis wairning, &c.

### Slaughter.

Jun. 4.—THOMAS GOWDIE, mercheand, burges of Dumfreis.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Harbert M<sup>le</sup>kie, younger, in Dumfreis; committit vpon the last day of December lastbypast; be geving to the said vmq<sup>le</sup> Harbert M<sup>le</sup>kie, at the Brig-end of Dumfreis, of ane grit and deidlie straik, with his fute, in the said vmq<sup>le</sup> Harbert his secreit pairtis; ane vther, at the left pape, vpon the heart; and ane thrid, on his left schoulder, quhairby his schoulder-bayne was strukin out of joynt: Off the quhilkis straikis he nevir convalesset, bot being instantlie borne hame to his hous, tuik bed; quhairin he lay bedfast, in grit dollour and payne, of the saidis hurtis, vnder the cure of chirurganes, be the space of tuentie dayis thaireftir; and, in end, vpon the xxvj of Januar thaireftir, now bypast, he deceiffit of the saidis hurtis and woundis.

PERSEWARIS.	PRELOCOUTOUR	PRELOCOUTOURIS
Katharene Edzer, relict;	for the persewaris.	in defence.
Agnes Maxwell, mother;	Johnne Maxwell of	Mr Lueis Stewart,
Eduard and Johnne M <sup>le</sup> kie, his	Conhaithe.	Mr Thomas Nicolfoun,
tna brether.		younger, Advocattis.

The pannell, eftir reiding of the Dittay, to informe the Justice of the secreit proceedingis of thir persewaris, and how maliciousslie thai proceed aganis him, declairis, that thair was nevir querrell nor discoird betuix him and vmq<sup>le</sup> Harbert M<sup>le</sup>kie, for quhais slauchter he is wrangusslie and injustlie persewit; bot as the treuth is, ane contraverfie falling out betuix ane Thomas Craik and the pannell, in craveing of ane sowe of money addetit be Craik to him, and sum woirdis and dry cuffis<sup>1</sup> being gevin be ather of thame to vther, the Bailzie of the Regalitie of Lyncluden, viz. Johnne Maxwell, brother to Kirkconnell, within quhais Regalitie the contraverfie fell out, for putting the pairteis to quyetnes, commandit thame to waird, quhill caution war fund for keiping his Maiesteis peace; quhairvpon, the said vmq<sup>le</sup> Harbert M<sup>le</sup>kie, with ane number that assistit him, laid handis vpon the pannell, brocht him, with grit violence, to the Waird-

<sup>1</sup> Dry blows, i. e. upon which no blood had followed; fisty-cuffs.

hous, pat him in the stokis; and becaus the buittis that was than vpone his legis wald nocht, convenientlie, be stowit and placet within the hoillis of the stokis, thai maist insolentlie strak him vpone his bak, dung down the over<sup>1</sup> bar of the stokis, and dancet thairupoun with thair feit and kneysis, as also vpone his breift and bellie, quhairthrow he was almost confoundit in that painful agony. And quhair, in the Dittay, it is allegit, that thair wes s<sup>t</sup>raikis gevin to the said v<sup>m</sup>q<sup>1e</sup> Harbert, quhair of he deceiffit; the verritie thairof is, that ane yeir or thairby, of befoir, he being strukin in at the left pape be ane Ahannay, with ane durk, a fevin inches or thairby, with grit difficultie was than curet, bot never fullilie convalesfit; sua that the corruptioun<sup>2</sup> gadding within the wound, raifit vpone him ane new fever, quhair of he deceiffit; as is sufficientlie knawin to the haill cuntry. Lyk as, it was declairit be the said v<sup>m</sup>q<sup>1e</sup> Harbert to dyuerse inhabitantis of the said burgh of Dumfreis, that, lang befoir that contraverfie of the pannellis, he was strukin in the secreit pairtis, quhilk he ever declairit would be his deid. And sa, the premisses being confidderit, the said perfute is maist wrangulie inventit, and vpone greid of geir to be obtenit of this pannell be thir schameles persewaris; and, vnder cullour of justice, thay haif followit furth this perfute aganis him, albeit the defunct him self, in presens of his chirurgane and vtheris, cleirlye absolut and fred the pannell of all perfute done to him.— Quhilk being premitit,<sup>3</sup> for informatioun, it is allegit be the pannell and his prelocutouris, that this Dittay can nocht pas to ane Assyse, becaus the said v<sup>m</sup>q<sup>1e</sup> Harbert M<sup>k</sup>ie, the persone allegit slane, the tyme lybellit of his slauchter, was rebell and at his Maiesteis horne, for ane criminall cause, viz. ffor nocht compeirance befoir his Maiesteis Commiffioneris within the Tolbuthe of Jedburgh, vpone the tuentie sevint day of Apryle, I<sup>m</sup>.Vj<sup>c</sup>. and nyntene yeiris, in ane Justice court, haldin be thame the saidis day and place, to haif vnderlyne the law for beiring and weiring of hagbuttis and pistolettis, and contravening the Actis of Parliament maid thairanent. And for verificatioun thairof, producet the Letteris of Hoirning, &c.

Continued to the thrid day of the nixt Justice-air of Dumfreis, &c.—The said Thomas Goudie, defender, be his aithe gevin, declairit that he dred<sup>4</sup> bodelie harme of the said Eduard M<sup>k</sup>ie, ane of his persewaris; and thairfoir desyret cautioun and lauborreis of him, conforme to the ordour, vnder sic pane as his lordschip sould pleis modifie. Johnne Maxwell of Conhaithe become fouertie, &c., vnder the pane of ffyve hundreth merkis money, *toties quoties*.

**Slaughter of two MacFarlanes—Barbarous Torture and savage Murder of a Buchanan by some of the Clan MacFarlane.**

[In the whole range of the Criminal Records of this country, remarkable though they unquestion-

<sup>1</sup> Upper.

<sup>2</sup> Purulent or corrupted matter.

<sup>3</sup> Premised.

<sup>4</sup> Dreaded.

ably are, the Editor believes it would be difficult to point out a Case possessing incidents of such varied and frightful interest, as those brought forward, so prominently, in the following Trial. It is not his intention, in this place, to recapitulate the leading facts of the present truly horrible Case. He has not been able to throw much additional light upon the facts recorded in the Books of Adjournal from contemporary documents. All that he at present deems worthy of remark is, that *tradition* has preserved pretty accurate outlines of the general features of this 'Romance of real life' in the district where they occurred—an additional proof, were such requisite, of the fidelity with which historical and extraordinary events are handed down, from father to son, in THE HIGHLANDS OF SCOTLAND.

The only Paper which the Editor has discovered, illustrative of the other side of the question, is the 'SUPPLICATION,' preserved among the Warrants of PRIVY COUNCIL, which is appended to this Trial. That document is given here as an act of common fairness to the CLAN MACFARLANE. The reader is left to draw his own conclusions as to the relative demerits and guilt of the several parties.]

JUN. 6.—GEORGE BUCHANANE, in Gartincaber; Johnne B., his sone; Patrik B., sone to George B. of Archinar (Auchmar); Patrik M<sup>c</sup>wreift, his fervand; Johnne Beg Buchannane, in Ballindewar; Johnne B., his sone; Johnne Keir, in Gartnahinch;<sup>1</sup> Thomas Buchannane, in Drongie; and Archibald B., his brother.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Duncane M<sup>c</sup>farlane, sone to Andro Moir M<sup>c</sup>farlane, in Voneffene; committit vpon the saxt day of Apryle laft, within the toun of Kippienoche, in Drummond, in the Lennox.

PERSEWARIS.	PRELOCUTOURIS	PRELOCUTOURIS
Robert and Thomas M <sup>c</sup> farlane, as brether;	for the perfewaris.	for the pannell.
Sir Williame Oliphant, kny <sup>t</sup> .	The Young Laird of M <sup>c</sup> farlane; Mr David Prymrois.	Alexander Douglas of Maynes; Mr Robert Nairne.

Compeirit the said Robert M<sup>c</sup>farlane, &c., and producet the criminal letteris, deulie execute and indorfate, vpon the hail perfonis defenderis aboue writtin; and offerit thame selffis reddie to perfew the defenderis for the said cryme, and defyret proces.

The said Alexander Douglas of Maynes, cautioner for the entrie of the hail defenderis, with Mr Robert Nairne, Aduocat, producet ane WARRANT and command to the Justice, proceeding vpon the following

SUPPLICATION, *gevin into the Lordis of Secret Counfall, be the foirsaidis hail defenderis, and in thair names.*

MY LORDIS OF SECRET COUNSALL, vnto your Lo. humlie meanis and schawis WE, your feruitouris, PATRIK BUCHANNANE, appeirand of Auchmar; George Buchannane, in Gartincabir; Johnne Buchannane, his sone; Johnne Buchannane, in Ballindorne; Johnne Buchannane, his sone; Thomas Buchannane, sone to vmq<sup>le</sup> Williame Buchannane, in Blairneborg; Archibald Buchannane, his broper; Donald Keir, in Gartnahinche; and . . . . M<sup>c</sup>caula, ferui-

<sup>1</sup> Perhaps for Gartranich, or Gartrahnich.

tour to the said Patrik Buchannane: THAT quhair, the saxt day of Junij instant is appointit vnto ws for our compeirance befor the Justice or his deputtis, in the Tolbuth of Edin<sup>r</sup>, to vnderly the law for the Slauchter of vmq<sup>le</sup> Duncane M<sup>c</sup>farlane, sone to vmq<sup>le</sup> Andro Moir M<sup>c</sup>farlane, in Kipnoche: Lyk as, the Justice intendis to proceid aganis ws in the said matter, althocht it be of verritie, that gif your ll. war informed of pe certane treuth of this buffines, how and vpone quhat grund and occasioun the Slauchter fell out, and quhat just caus of wraith and displeasour was gevin to vs thairin, we persuaid our selffis that your lo., in honnour and justice, wald nocht think this perfute to mereit ony fauour: FOR the treuth is, that pe said vmq<sup>le</sup> *Andro Moir M<sup>c</sup>farlane*, quho, during the whole course of his vnhappie lyfe, was knowin to be ane notorious theif and lymmer, haifing stowin sum goodis frome certane of his Maiesteis guid subiectis in THE LENNOX, some foure or fyve zeiris since, or pairby; and pe said vmq<sup>le</sup> *Williame Buchannane*, out of his trew haitrent and detestatioun of fuche thevische doingis, haifing maid some inquierie, and having tane panes and travell to speir out and try the goodis, in end, he tryed the goodis to be stowin be the said vmq<sup>le</sup> *Andro Moir M<sup>c</sup>farlane*, who, by course of Justice, was constraed to mak redres and satisfioun for the same: AND the said vmq<sup>le</sup> *Andro*, haifing consauet ane deidlie haitrent and malice aganis pe said vmq<sup>le</sup> *Williame* for speiring<sup>1</sup> of thir goodis, he resolued, out of the pryde and malice of his wikked heart, to be revenged vpone him, eftir pe most detestable and crewall maner that the heart of him could devyse: And knowing that the Gentilman was accustomed at some tymes, for his recreatioun and pastyme, to go to pe hunting, in pe Mure aboute the Ducher, he maid chose and took hold of that occasioun to do his turne; and haueing, be some previe moyane, bene maid acquaintit with pe Gentilmanis dyet for his pastyme, he, accompaneit with his tuo sones, and sewin or aucht vtheris lawles lymmaris,<sup>2</sup> come to the said Mure, and lay at await for the Gentilman; and howsone he come pair, about aucht of pe cloke in pe moirning, without ony company bot foure hunting doggis, thay layed handis vpone him and band him fast, that he mycht not steir; and haifing consultit amang thame selfis, eftir quhat forme and maner thay fould dispathe him, thay resolued, in end, that his presumptioun and malapeartnes to speir out pe saidis goodis deserued ane extraordiner deathe, by torture; quhilk thay maid him to vnderly, the space of ten houris, in maner following, to wit: Thay band him fast to ane trie, at the said hour of aucht in the moirning; and everie hour thaireftir, till sax at nicht, quhilk maid vp ten houris, thay gaif him thre crewall straikis with ane durk, in fuche partis of his body as war nocht to bring present daithe; and haifing this way maggillit him with threttie straikis, till pe full number of

<sup>1</sup> Enquiring; searching after.

<sup>2</sup> Thieves; worthless characters.



ten houris war outrwn, thay than gaif him þe laft deidlie ftraik, at the heart; quhairwith he fell deid to the ground! And haifing tirred<sup>1</sup> him naiked, becaus his towng was the instrument quhairby, as thay alleged, he offendit, in fpeiring out of þe former ftowin goodis, thay cuttit his throte, tooke his toung out of his heid, flew his foure dogis, cuttit ane of thair toungis out, and pat it in the Gentilman his mouthe; and pat his toung in the dogis mouthe: And nocht content heirwith, bot the forther to fatisfie þair inhuman and barbarous crewaltie vpon the naked corpis, thay flitt vp his bellie, tooke out his whole intrallis, and pat thame in ane of the dogis belleis, eftir thay had opnit the dogis bellie and tane out his intrallis, quhilkis thay pat in þe Gentilmannis bellie: And fo left him lyand naked, and the foure deid dogis aboue him; quhair he lay aboue the eard the fpace of aucht dayis thaireftir, or<sup>2</sup> he was found: FOR the quhilk deteftabill boutcherie and Murthour, thir lymmeris being callit to thair tryell, befoir his Maiefteis Juftice, thay tuik the cryme vpon thame, and pafte to the horne; quhairat the faid *Andro* remainit till þe hour of his deathe, and the reft of his complices remanis þairat as zit: Aganis quhome your Lo. pafte ane ampill Com-miffioun, for þe perfute of thame with fyre and fuord. AND quhair as, this deteftable and moir than barbarous Murthour fould haif bred, in the heart and confcience of thois lymmeris, fome remorse and fealling of this fyn, and ane abftinance and forbearance frome all forder impietie, zit þe faid *Andro* continewit in his accustomet thevifche trade of Thift, Reaffe, and Oppreffion, and could nevir be reclaimed þairfra, till the hour of his deathe: AND, for his laft Thift, he, a littill befoir his deathe, ftaw an ox fra me, the faid *George Buchannane*, and cayreid the famyn to ane Houfe in . . . .,<sup>3</sup> quhair he and his wyfe hes thair ordiner reffett; and how-fone we vnderftuid of the ftelling of the ox, we followed the tred<sup>4</sup> directlie toward the faid houfe; and haifing fend for the *Erle of Pearth*<sup>5</sup> his Officer, to affift ws in rypeing<sup>6</sup> of the Houffes þairabout, the lymmar and his faid fone, being in the Houfe foirfaid, and þair guiltie confcience ftanding vp aganis thame, as ane burreaw<sup>7</sup> to tak vengeance of thame, thay difguifet þame felffis in weamenis apparell, and preift<sup>8</sup> to flie away; whilk being perfaued be ws, and we thinking that thay keipit nocht þe ordiner paife of wemen, and zitt nawayis fufpecting that thay war the lymmaris, we followit, in a foft pace, to remark quhat courfe thay held; and the faid *Duncane M'farlane*, luiking over his fchoulder, and feing ws follow, he turnes about, and prentit ane lang hagbute at ws; quhilk being fyred, by the Prouidence of God, mifgaue: And with that, he and his father drew þair fuordis, and come dryveand

<sup>1</sup> Violently stripped, by tearing off the clothes.    <sup>2</sup> Ere; before.    <sup>3</sup> Left blank.    <sup>4</sup> Tread; foot-marks—probably by means of the *steuth-hound*, or blood-hound.    <sup>5</sup> As Lord of the Regality, whose Bailie would, upon application, grant warrant to search, &c.    <sup>6</sup> Searching.    <sup>7</sup> Fr. *bourreau*, a hangman; an executioner.    <sup>8</sup> *Pressed*; made every effort.

vpone ws with all pair force; and or evir we preift to perfew thame, thay gaif me, the said *George*, ane deidlie ftraik, whairat thay ftrak me deid<sup>1</sup> to the grund, and in the opinioun of the rest of my companie I was a deid man; and thay hurt and woundit vther thre of ws: And sua, we finding no longer tyme, with suretie, to be beholdaris and sufferaris, we tuik ws to our just and lauchfull defence, quhairin the vnhappie lymmer was worthielie flane, and his sone, who vnhappielie was in companie with him, and who maid the first onfet with his hacquebut or euir we knew quhat he was, was lykwayis killed; the fader being rebell and at the horne for þe Murthour foirsaid, and he and his quhole bairnis being þe most notorious lymmeris of that Clan. AND howeuir it may be obiectit, for þe pairt of þe young man, that he was nocht accessour to þe Murthour foirsaid, and that he fould nocht be pwneift for his fatheris deid, it is of treuth that continewallie sen þe fader was rebell for the Murthour foirsaid, the said Duncane, his sone, remanit and attendit vpone him, was airt and pairt with him in all his thevische and wicked deidis; and in affisting and taking pairt with his fader aganis ws, in our just and lauchfull defence, was flane: At quhose lyke-walk, that nycht, the ox foirsaid, stowin be þe fader and þe sone, was flane and eittin.

THIS being the trew and simple discourse of all that hes past in this buffines, We humblie present the samyn to your Lo. confideratioun, quhairby your Lo. may perfaue how mischantlie<sup>2</sup> and barbaruslie the innocent and hermeles Gentilman was mordreift and flane, and quhilk was þe ground and occasioun of the succeding slauchteris; quhairin, becaus pair is grit appeirance of disorder to arryse, to the disturbance and brek of þe peace of þe countrey, feing THE CLAN-FARLANE gois about pair privat revenge, and our freindis [THE BUCHANANS] on þe vper pairt, will be cairfull of pair awin defence: We will humlie beseik your Lo. to tak siche course and ordour heiranent, as your Lo. fall think fitteft for the peace of þe Countrey; and we, for our pairtis, will be willing to vnderly quhateuir your Lo., in honour and justice, fall prescryve to ws. And becaus this can nocht be done vpone the suddane, bot will requyre some tyme and lafour to be tane ordour with and satled; We most humlie beseik your Lordschipis to geve command to þe Justice, Justice-Clerk, and pair deputis, to DESERT þe said dyet, and to desist and ceis fra all proceeding aganis ws thairin, or calling of our cautioneris for our entrie; dischargeing thame pairof, and of pair offices in that pairt: Quhairanent þir presentis fall be pair Warrant.

AND your Lordschipis humlie I beseik.

ORDINANCE of the Lordis of Secret Counsell, on the above Supplication.

APUD Halyrudhous, quinto Junij, 1623. THE LORDIS Ordanis and commandis the Justice, Justice Clerk, and pair deputis, to continew the dyet within writtin to þe xiiij day of Junij instant:

<sup>1</sup> Insensible; in a dead swoon.

<sup>2</sup> Old Fr. *meschantement*, wickedly.

And Ordanis thir complineris to mak OFFERIS to the pairtie, and to present the Offeris to þe YOUNG LAIRD of M<sup>c</sup>FARLANE, yf he be in the toun, and to þe special freindis attending this dyet, quhome the saidis Lordis Ordanis to remane in this toun of Edinburghe till some ordour be tane for fating of the matter within writtin, and for the peace and quyetnes of þe Countrey. And Ordanis the Justice to dispens with the personall compeirance of þe pairtie, vpon new caution, conforme to þe ordour.

GEO. CANCELL<sup>s</sup>, I. P. D.

And thairwith also producet OFFERIS, in writt, conforme to the Ordinance aboue writtin; quhilk was presentit be *the Young Laird of Buchannane* to the Justice, to be delyuerit to *the Young Laird of M<sup>c</sup>Farlane*, also personallie present.

THE JUSTICE, for obedience of the Counfallis ordinance, Continewis the dyet to the xiiij *instantis*: And Ordanit the persewaris to confidder vpon the Offeris in the meane tyme: And siclyk Ordanis caution to be fund for the hail defend-eris re-entrie that day, vnder the panes contenit in the Actis of Parliament.

Mr David Prymrois protestit, that this Warrant, and Offeris presentit this day, nawayis prejudge the persewaris of thair lauchfull perfute, for the slauchter of thair freind and kinsman.

The Laird of Maynes become caution for re-entrie of the hail defenderis, contant in the Letteris, the day foirlaid, &c.

JUN. 14.—COMPEIRIT personallie, THE LAIRD OF M<sup>c</sup>FARLANE, ELDER, as CHEIFF to the persewaris, and desyret proces on the ane pairt; and on the vther pairt, Compeirit Alexander Douglas of Maynes, as cautioner for the defenderis entrie this day, and producet,

WARRANT of the Lordis of Secret Counsell, &c.

MY Lordis of Secret Counsell, vnto your Lordschipis humlie meanis<sup>2</sup> and schawis I, your seruitour, George Buchannane, appeirand of that ilk: That quhair, for obedience of your Lordschipis ordinance, I, in name of my freindis quho war callit for the slauchter of vmq<sup>le</sup> Duncane M<sup>c</sup>Farlane, haif maid Offeris to the pairtie; quhairin I haif offerit, that thay, or I, in pair names, fall submit thame selffis to þe ERLES of MAR, MENTEITH, WIGTOUN, and LINLITHGOW: As þe coppie of my Offeris, heirwith producet, beiris. Whairanent, as zitt, thay haif returnet no ansuer; sua that it appeiris my Offeris ar reiectit. And gif your Lordschipis fall nocht find thir Offeris to be sufficient, I, in pair names, offeris to caus thame submit all thair differences to your lordschipis, and to do thairin as your lordschipis fall think meitt. Heirfoir, I befeik your ll. to confidder of thir Offeris, and to do thairin as your ll. fall think meit for þe peace of þe cuntrey. And becaus the matter can nocht be presentlie settled and put to ane poynt, that your lps. will geve a new Warrant to the Justice, Justice-clerk, and pair deputis, to continew þe dyet appointit to my freindis for pair tryell befoir thame, vnto suche resonabill day as your lps. pleiffis. And your lps. ansuer.

APUD Halyrudhous, *duodecimo Junij*, 1623. THE LORDIS OF SECRET COUNSALL Ordanis and Commandis the Justice, Justice-clerk, and pair deputis, to proceid and minister justice in þe matter within written, aganis Johnne Buchannane, sone to *Johnne Beg*, and *Archibald Buchannane*, sone to vmq<sup>le</sup> *Williame Dow*. And to Desert þe dyet for þe remanent perfones charget to compeir to vnderly þe Law for þe Slauchter within writtin: Quhairanent þir presentis fall be vnto þe said Justice, Justice-clerk, and pair deputis, a sufficient Warrant.

GEO. CANCELL.

<sup>1</sup> In presentia dominorum (Secreti Consilij.)

<sup>2</sup> Complains; literally, moans, or bemoans.

THE Justice Ordanis THE DYET TO DESERT vpon the hail defenderis insert in the Letteris, except as above; and justice to be profecute and followit furth aganis thame, conforme to the ordour. And Ordanit the said Alexander Douglas, as cautioner foirsaid, to be vnlawit for nocht entrie of the saidis Johnne and Archibald Buchannanes, in the pane of ane hundreth merkis for ather of thame. And siclyke, that the saidis Johnne and Archibald fall be denuncet our fouerane lordis rebellis, and put to the horne; and all thair moveable guidis to be efcheit, &c.

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APPENDIX TO THE PRECEDING TRIAL.

SUPPLICATION *by the Kin and Friends of vmq<sup>h</sup> Duncane M<sup>c</sup>Farlane to*  
THE LORDS OF PRIVY COUNCIL.<sup>1</sup>

MY LORDIS OF SECREIT COUNSELL, vnto yo<sup>r</sup> lo<sup>ps</sup> humelie menis and schawis we, yo<sup>r</sup> feruitouris, the KIN and FREINDIS<sup>2</sup> of vmquhile DUNCANE M<sup>c</sup>FARLANE, sone to vmquhile *Andro M<sup>c</sup>Farlane*, in Kipnoche: THAT quhair, the said vmquhile *Duncane*, a young boy of the aige of xvj yeiris, or thairby, being most shamefullie and cruellie slayne be certane of THE NAME OF BUQUHANNANE, vpon sett purpois, pronisoun, and foirthocht fellouny; we, foirbearring to atone priuie revenge, and in most submissiue obedience to HIS MAIESTIE and his Lawis, haueing resolued, be the ordinar course of iustice, to follow out the tryall of that slauchter; we, for this effect, raised Letteris, and charged the Criminallis to thair tryall befoir HIS MAIESTIES Justice, vpoun the fact of this instant: At the quhilk day, we, lookeing that the course of iustice sould haif had place, conforme to the Lawis of the Kingdome, notwithstanding, it is trewth, that yo<sup>r</sup> lo<sup>ps</sup>, vpoun the finifter and wrong informatioun of the pairtie, concerning the slauchter of vmquhile WILLIAME DOW BUQUHANNANE, w<sup>lk</sup> thay aggreit<sup>3</sup> with fuche circumstances, and after fuche a detestable maner, as might mak we, who ar innocent, to seame odious.

AND towcheing the occasioun of the slauchter of the young boy and of his fader, and of the forme and maner thairof, grantit ane WARRANT for continewatioun of our dyet, till the xiiij of this instant; by the quhilk, not onlie we, bot the Gentlemen of the Cuntrie, who ar summoned vpoun the Affise, ar verie far preiudgen and troublit, and the course of iustice is interruptit and hinderit; and we persuade oure selfis that yo<sup>r</sup> lo<sup>ps</sup> in yo<sup>r</sup> awne honourable regaird and dispositioun to iustice, wald neur haue grantit fuche ane Warrant, yf yo<sup>r</sup> lo<sup>ps</sup> had bene treulie informed anent the slaughtair of the innocent and harmles young boy; ffor althocht we will not prease to extenuat the slauchter of vmquhile *William Dow*, who, to our regrait, wes mischeantlie<sup>4</sup> and vnworthelie slayne, yitt we may treulie afferme vnto yo<sup>r</sup> lo<sup>ps</sup>, that anent the forme, maner, and circumstanceis of the slauchter, as is punctuallie sett down in THE PETITION givin in to yo<sup>r</sup> lo<sup>ps</sup>; and anent the forme, maner, and occasioun of the slauchter of the young boy and his fader, as is lykwayes sett down in the Petitioun, and q<sup>lk</sup> wes the ground whervpoun yo<sup>r</sup> lo<sup>ps</sup> wer moved to grant the said continewatioun, the pairty hes verie far ouersene thame selfis, and past the boundis of modestie; and hes abused yo<sup>r</sup> lo<sup>ps</sup> with thair finifter and wrong informatioun; quhilk, yf thay be able to iustifie and mak good, as thay haif sett down in the Petitioun, first, anent the maner of the slaughtair of *William Dow*, and how that the slaughtair of the boy proceidit vpoun occasioun of thair following of ane stollin ox, quhilk thay alledgeit in thair BILL<sup>5</sup> wes stollin be the said Andro, and eattin at his lykewalk,<sup>6</sup> and that the boy, affisting his fader, presentit ane hagbute, w<sup>lk</sup> misgaif, and thairefter concurring w<sup>t</sup> his fader in persute of the *Buquhannanis* wes slayne;

<sup>1</sup> From the Original, preserved among the *Warrants of Secret Council*, General Register House, Edinburgh.  
<sup>2</sup> Blood-relations.      <sup>3</sup> Aggravated.      <sup>4</sup> Wickedly; O. Fr. *meschantement*.      <sup>5</sup> Bill of Supplication.  
<sup>6</sup> See this Trial, p. 549.

we ar content, without forder ceremonie, to tak the pairtie be the hand,<sup>1</sup> and to renunce o<sup>r</sup> Criminall perfute againes thame : ffor the treuthe is, that thay come to the boyis houfe, quhairof he wes tennent to the Erle of Perth, vpoun fett purpos and provifioun ; and the boy, apprehending his danger, after he hard the fhoute raifed be thame, he fled for faultie of his lyffe ; whome thay followit ane lang way ; and haueing ouertane him, and he being thair prifoner, thay broght him bak half ane myle, and in cauld bloode, cruellie and barbaroullie flew and mauglit him, but<sup>2</sup> pitie or compaffioun, with xvij deadlie woundis, with durkis ; and haueing caffin him on his bellie, quhair he lay deade vpoun the ground, thay, the forder to fatisfie thair raige vpoun the poore corps,<sup>3</sup> cuttit his bak in tua with fwerdis.

This is the fimple treuthe of the buffynes, w<sup>lk</sup> we will stand to : And thairfoir, we will humblie befeike y<sup>r</sup> lo<sup>ps</sup> to caus thair Petitioun to be exhibite be the faidis perfonis befoir yo<sup>r</sup> lo<sup>ps</sup>, to the intent the treuthe of the circumfanceis of the slaughteris, as thay ar fett down in the faid Petitioun, may be examined be yo<sup>r</sup> lo<sup>ps</sup>, and ordour tane thairin accordinglie. AND feeing, we haif, in all modestie, and w<sup>t</sup> grite patience, as humble and deutifull fubiectis [to HIS MA<sup>TY</sup>] focht the benefeit of his Lawis, We humelie befeike yo<sup>r</sup> lo<sup>ps</sup> that the fame may be grantit vnto ws, and that no forder continewation be grantit to o<sup>r</sup><sup>4</sup> pairty : And yo<sup>r</sup> lo<sup>ps</sup> anfuer.

DELIVERANCE by the Lords of Privy Council. [On the back of the foregoing Petition.]

APUD Halyrudhoufe, decimo Junij, 1623. THE LORDIS Ordanis a Maiffer to pas and warne both the pairtyis, the Barone of Achyll, David Drummond of Innermaith, and Mr Alex<sup>r</sup> Seatoun of Gargonnok, to compeir befor the Lordis, vpoun Thurifday nixt, to heir and fie ordour tane in the mater within-writtin, as accordis.

GEO. CANCELL<sup>r</sup>.

### Usurpation of the King's authority—Taking captibe, &c.

Jun. 18.—ALEXANDER GORDOUN, appeirand of Erlestoun, and James Gordoun, meffinger.

Dilaitit of the Vfurpatioun of our fouerane lordis authoritie, in taking and apprehending of Johnne Glendoning of Drumrafche, and keiping him captiue and priffoner be the fpace of thre houris, *in privato carcere*, he being his Majesteis frie lege, and thai haifing na power nor commiffioun for that effect ; committit in Februar, or thairby, laft.

The perfewar paffis *fimpliciter* frae the pannellis perfute : Quhairvpoun thay askit instrumentis.

THE JUSTICE ordanis cautioun to be ffund be the faid Alexander, for his entrie, vpoun xv dayis (wairning) for the Kingis pairt ; quha fund Vthreid M<sup>c</sup>-Dowell of Mondurk, fouertie, &c.

### Resetting of a stolen Purse, &c.

Jun. 18.—JOHNNE DOUGLAS in St Leonardis, and Agnes Mustard his fpous.

Dilaitit of the Thiftious Resetting of ane ftowin purfe, with fyve hundreth pundis of gold ; and tua jewellis being thairin, worth thre thowfeand pundis ; pertening to Sir Johnne Scott of Newburgh ; ftowin fra him be Margaret Ahannay.

<sup>1</sup> To be reconciled. <sup>2</sup> Without. <sup>3</sup> By way of retaliation, no doubt, for the horrible butchery committed upon the person of *Buchanan*, before referred to. <sup>4</sup> Probably for *outher*, i. e. either party.

PERSEWARIS, Sir Johnne Scott of Newburgh, Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCOUTOURIS in defence, The Laird of Maynes, Mr Laurence M<sup>c</sup>Gill, James King.

Eftir the reiding of the Dittay, and accusatioun of the pannell of the crymes thairin contenit; it was allegit be the pannell and thair prelocoutouris, that the first pairt of the Dittay is nawayis relevant, anent the reffett of the stowin purse and jewellis thairin; vnles the principall steiller war first callit, and ather convict and pwneift for the cryme, or ellis declarit fugitiue thairfoir: For, gif the principall steiller thairof, viz. Margaret Ahannay, war accuset in this judgement, for the said allegit cryme, it wald be allegit and verifeit be hir, that gif ony purse was apprehendit or gottin be hir fra the persewar, that it was *precium pudicitie*, gevin be him to hir. And thairfoir, quhill first scho be callit, na proces.

THE JUSTICE, in respect na dilligence is vset aganis the said Margaret Ahannay; Ordanis the pannell to find caution for thair re-entrie, vpoun xv dayis wairning: Quha fand James Douglas, portioner of Lugtoun, and Williame Douglas, hatmaker, burges of Edinburghe.<sup>1</sup>

### Slaughter.

Jun. 27.—COILL M<sup>c</sup>GILLESPIK M<sup>c</sup>DONALD in Collonfay, Archibald M<sup>c</sup>Donald, his sone, and four others, 'feruitouris to the said Coill.'

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq<sup>le</sup> Malcolme M<sup>c</sup>phie of Collonfay, Donald Oig M<sup>c</sup>phie, Dougall M<sup>c</sup>phie, Johnne M<sup>c</sup>quhirrie, and Ewir Bayne, alias Quhyte; committit in Februar last.

PERSEWARIS, Marie M<sup>c</sup>donald, the relict; Donald Oig M<sup>c</sup>phie, as sone; Katharene, Anne, and Fynwall M<sup>c</sup>phies, as dochteris to vmq<sup>le</sup> Malcolme; Murdoche M<sup>c</sup>phie in Ilay, as brother to vmq<sup>le</sup> Donald Oig, and Dougall M<sup>c</sup>phie, and as nerrest of kyn to vmq<sup>le</sup> Johnne and Ewir.

Johnne Quhyte, wryter, producet the Letteris duellie executed, &c. and protestit for releif of Archibald Campbell, brother to the Laird of Caddell, cautioner for repoirting thairof.—Coll M<sup>c</sup>allaster, ffear of Dounskey, as cautioner for the said Coill, &c. vnlawit, for nocht entrie of ilk ane of the saidis perfonas, in the pane of ane hundreth merkis. And ficlyk, the Justice Ordanis that the saidis Coill, &c. fall be denuncet our souerane lordis rebellis, and all thair moveabill guidis to be escheit, &c.

### Taking Captive and Strangling, &c.

Jul. 2.—JOHNNE GRANT of Glenmoreiftoun, Finlay M<sup>c</sup>ean Roy in Invermoreiftoun, and Alexander Dow M<sup>c</sup>ean Roy, his brother.

Dilaitit for Vfurpatioun of our souerane lordis autoritie, in taking of vmq<sup>le</sup> Donald M<sup>c</sup>ffindlay V<sup>c</sup>norofiche, mercheand, vpone the landis of Glenmoreiftoun, binding his handis behind his bak, and cayreing him, as ane malefactour, to ane

<sup>1</sup> It is likely that this pursuit was abandoned. At least no farther notices occur in the Record.

woid neir to the landis of Glenmoreiftoun; quhair thay, as hangmen, hang him vp vpon ane trie of the said woid, and wirreit him to deid;<sup>1</sup> and thaireftir cuttit him doun, and, with thair durkis, gaif him dyuerse straikis in the breift and bellie, to the effiounne of his bluid in grit quantitie; and thaireftir, cayreit him to ane burne-bra,<sup>2</sup> vnder the quhilk they bureit him, be casting the said bray vpon him; committit in the moneth of September, 1602 yeiris.

PERSEWARIS, Fynlay Vik-finlay V<sup>c</sup>norofyche, in Kintail, as brother; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord.

James Logy, wryter, producet the Letteris, duellie execute, &c., and proteffit for releif of Mr Alexander M<sup>c</sup>kenzie of Culcovie of his cautionrie.—Patrik Grant of Carroun, as cautioner for the pannell, Ordanit be the Justice to be in ane amerciament, for nocht entrie of the said Johnne Grant, in the vnlaw of V<sup>c</sup> merkis; and of ather of the saidis Fynlay and Duncane, in the pane of ane hundredreth merkis.

[*Mr Alexander Coluile, Justice-Depute.*]

### Slaughter.

Jul. 9.—JAMES STEWART, Stewart-depute of Menteith; Duncane Stewart, his brother-germane, and others.<sup>3</sup>

Dilaitit of the Slauchter of vmq<sup>le</sup> Robert M<sup>c</sup>phatrik Campbell, and vmq<sup>le</sup> Malcolme M<sup>c</sup>call; committit in Apryle last, vpon the landis of Dochallie, on Lochow-fyde.

INTRAN. *similiter.*

ALLASTER M<sup>c</sup>PHATRIK V<sup>c</sup>ALLASTER, in Balquhidder; Robert Dow M<sup>c</sup>condochie V<sup>c</sup>James, thair; Duncane Oure Stewart M<sup>c</sup>inrie, thair; Archibald Stewart, thair; and Williame M<sup>c</sup>phatrik Stewart, thair.

Dilaittit for the crymes aboue writtin.

PERSEWAR, Patrik Campbell, in Kenderoche, brother to vmq<sup>le</sup> Robert.

The Laird of Keir takis instrumentis of the entrie of the fourtene on pannell (Stewarts), and proteftis, in that respect, for his awin releif, as cautioner, &c.; and as to Duncane Stewart, declairis he hes fallin feik, fen his cuming to Edinburghe, and thairfoir could nocht compeir.—Sir Mungo Murray proteftis for his releif, as cautioner for the others, 'the fyve men of Balquhidder.'

THE JUSTICE, with consent of the persewar, continewis this matter to ane xv dayis wairning; and Ordanis the pannell to find caution for thair entrie.—The Laird of Keir, and Sir Mungo Murray, of new become cautioneris.

<sup>1</sup> Strangled him to death.   <sup>2</sup> Burn-brae, a sloping bank, along the foot of which a *burn* or rivalet runs.   <sup>3</sup> Their names are, Alexander Stewart, *alias* M<sup>c</sup>ean, in Glenfinglas; Johnne, Archibald, and Andro Stewartis, his thre sones; Patrik Stewart of Stragartnay; Johnne Stewart, his brother; Robert Stewart, sone to Andro Stewart of Blairgarrie; Patrik M<sup>c</sup>Kyndlay Gill, in Glenfinglas; Walter M<sup>c</sup>eandowie, *alias* Stewart; Johnne M<sup>c</sup>intyre, seruitour to James Stewart; Gilliechreift Dewar, Duncane M<sup>c</sup>ean Vail, and Donald Reoch, seruant to the said James Stewart.

My Lord of Murray, present, obleist him to Warrant and releif the Laird of Keir of his former cautionerie, &c.

### Breaking Gardens—Theft, &c.

Jul. 23.—**JOHNNE RATE**, and Alexander Deane, cramer.<sup>1</sup>

Dilaitit for the breking of the yairdis<sup>2</sup> of Barnetoun, Piltoun, Barnebougall, Craikcruik, Cragyhall, Langhirdmestoun, Carlowrie, and Libbertoun, and dyuerse vtheris yairdis, within Eist and West Louthiane: Steilling and away-taking furth thairof, off dyuerse herbis, bie-skeppis,<sup>3</sup> fyboes,<sup>4</sup> plantis, kaill-feid, arte-choiffis,<sup>5</sup> distilled watteris, plaittis and trunfcheouris,<sup>6</sup> with ane tyn-ftoupe,<sup>7</sup> furth of the place of Langhirdmeiftoune; committit at dyuerse tymes, within this moneth bygane.

The perfonen on pannell confessis the Dittay, and crymes thairin contenit.

**VERDICT.** Fand the saidis Johnne and Alexander, conforme to thair awin Judiciall Confessioun, to be ffylet, culpable, and convict, &c.

**THE JUSTICE** Ordanit thame to be tane bak to waird, thair to remane quhill he be advyset with the Lordis of Secreit Counfall, anent the Dome to be pronuncet aganis thame, for the saidis crymes.

Jul. 25.—**SENTENCE.** The Justice Ordanit the saidis Johnne Rait and Alexander Deane to be tane to the Burrow-mure of Edinburghe, and thair to be Hangit quhill thay be deid; and thair haill moveable guidis to be escheit, &c. And that by virtue of the following **WARRANT** of the Lordis of Secreit Counfall.

**JUSTICE**, Justice clark and 3our deputis. 3ow fall pronounce Sentence of daith againt Johnne Rait and Alex<sup>r</sup> Deane, cramer, who was convict of befor in Muffilburghe, for the breking of 3airdis and steilling of findrie bie-skep<sup>s</sup> furth of the same; and who, since thair apprehensioun, haif of lait bene convict befor 3ow of the same crymes; committit be thame since thair last convictioun and pwneisment following thairupoun. And that 3ow cause the Sentence of daith be execute vpone thame: Quhair-anent theise presentis fall be vnto 3ow ane sufficient Warrant. Gevin at Halyrudhous, the xxiiij day of July, 1623.

GEO. CANCELL<sup>r</sup>. GLENCARNE. NITHSDAILL. OLIPHANT. HAMILTON.

### Sorcery—Witchcraft.

Aug. 1.—**THOMAS GREAVE.**

Dilaitit of dyuerse poyntis of Sorcerie and Witchcraft following, viz.: For cureing of the perfonen following, be Sorcerie and Witchcraft, to wit: **ANE** sone of Archibald Arnote in the Wayne, of ane heavie and vncouth<sup>8</sup> feiknes: **ANE** sone of Andro Geddis in Freuchie, also hevilie disseifit: **ANE** bairne of Thomas Kilgoures in Falkland, visseit with ane grevous feiknes. **ITEM**, ffor cureing, be

<sup>1</sup> Huxter; one who keeps a petty booth for the sale of small wares.      <sup>2</sup> Gardens.      <sup>3</sup> Bee-hives.  
<sup>4</sup> A young or small sort of onion.      <sup>5</sup> Artichokes.      <sup>6</sup> Trenchers.      <sup>7</sup> Tin flagon.  
<sup>8</sup> Strange; unusual; unaccountable.



Sorcerie and Witchcraft, and making of certane croces and finges,<sup>1</sup> off Daid Chalmer in Lethame, and be causeing wasche his fark<sup>2</sup> in ane South-rynnand watter, and thairefter putting it vpon him ; quhairby he reffaut his helthe. ITEM, ffor cureing of ane woman in Ingrid, besyde Leslie, of ane grevous seiknes, be taking the seiknes af hir and puting it vpon ane kow ; quhilk kow thaireftir ran woid,<sup>4</sup> and deit. ITEM, ffor cureing off Alexander Laufones bairne, in Falkland, of grit seiknes, be Sorcerie, and making of certane signes, and vttering of dyuerse vnknawin woirdis. ITEM, ffor cureing of ane woman, duelland besyde Margaret Douglas, of ane grit and panefull seiknes, be drawing hir nyne tymes bakward and forward be the leg. ITEM, ffor cureing of Michael Glassies wyfe, in the Mylnes of Forthe, of ane grevous seiknes, be cauffing brek ane hoill in the wall, vpon the North fyde of the chymnay, and putting ane help<sup>4</sup> of yairne thre several tymes furth at the said hoill, and taking it bak at the dur ; and thaireftir, causeing the said Michaelis wyfe ix tymes pass throw the said help of yairne, and thairby to procure hir help. ITEM, ffor cureing, be devillerie and Witchcraft, of Williame Kirkis bairne, in Tulliebule, of the seiknes callit *Morbis caducus*,<sup>5</sup> be fraiking bak the hair of his heid, taking ane lang claith, with certane vnguent and vther inchantit matter, furth of ane buist,<sup>6</sup> and rowing<sup>7</sup> the bairne nyne tymes within the said claith, vttering, at ilk tyme of the putting about of the claith, dyuerse wordes and croces and vther signes ; and be that meanis pat the bairne asleip ; and thairby, throw his devillerie and Witchcraft, curet the said bairne of the said seiknes. ITEM, vnderstanding that Johnne Fischer, in Achalanckay, was hevielie diseasit of a grevous and vnknawin fever, vpon aduerteisment gevin to him thairof, he causit bring the said Johnne Fischeris fark to him ; quhilk fark being brocht, the said Thomas, turning it over, cryit out at that instant, ' Allace ! the Witchcraft appointit for ane vther hes lichtet upone him ! ' And, luiking at the breist of the fark, he tauld ' that the seiknes was nocht cum as zit to his heart.' And eftir some croces and signes maid be the said Thomas vpon the fark, delyuerit the fark to Jonet Patoun, the said Johnne Fischeris mother, commanding hir, with all speid to ryn to him thairwith ; and declairit to hir that ' Gif scho come thairwith, befoir his heart was assaulted, he fould convalesce ; At quhais cuming to him with the said fark, the said Johnne hir sone was deid. ' ITEM, ffor practizeing of dyuerse poyntis of Sorcerie vpon Williame Beveridge, in Drumkippie, in Salen, and cureing him thairby of ane grevous seiknes, be causeing him pas throw ane help of yairne thre feuerall tymes ; and thairefter burning the said help of yairne in ane

<sup>1</sup> Crosses and signs.      <sup>2</sup> Shirt.      <sup>3</sup> Mad.      <sup>4</sup> A hasp of yarn is equal to twelve ' cuts,' or six ' heer.' Each ' cut' goes six score times round the reel.      <sup>5</sup> Epilepsy, or the falling sickness. Perhaps it may refer to consumption, ' decay' or ' decline.'      <sup>6</sup> Out of a small box or chest.      <sup>7</sup> Wrapping ; rolling.

grit ffyre, quhilk turnet haillilie blew. ITEM, ffor cureing of Margaret Gibfones ky,<sup>1</sup> in Balgonie, be putting thame thryfe throw ane hespe of yairne, and casting of certane inchantit watter, inchantit be him, athort<sup>2</sup> the byre; and thairby making thair milk to cum to thame agane, quhilk thay gaif nocht ane moneth ofbefoir.<sup>3</sup> ITEM, at Martimes, 1621, Elspeth Thomesone, sifter to Johnne Thomesone, portioner of Pitwar, being viffetit with ane grevous feiknes, the said Thomas com to hir hous in Corachie, quhair, eftir fichting and gripping of hir, he promeist to cure hir thairof; and fo this effect callit for hir fark, and desyret tua of hir nerrest freindis<sup>4</sup> to go with him: Lykas, Johnne and Williame Thomesones, hir brether, being sent for, past with the said Thomas, in the nicht seafone, fra Corachie towardis Burley, be the space of tuelff myles; and inioynet the tua brethir nocht to speik ane woird all the way; and quhat euir thay hard or saw, nawayis to be effrayed, faying to thame, 'it mycht be that thai wald heir grit rumbling, and sic vncouth and feirfull apparitiones, bot nathing fould annoy thame!' And at the ffurde be-eift Burley, in ane South-ryunning watter, he thair wufche the fark; during the tyme of the quhilk wafching of the fark, thair was ane grit noyse maid be ffoullis,<sup>5</sup> or the lyll beiftis,<sup>6</sup> that arraife and flichtered in the water. And cuming hame with the fark, pat the samyn vpone hir, and curet hir of hir feikens: And thairby committit manifest Sorcerie and Witchcraft. ITEM, ffor cureing of Williame Coufines wyfe, be Sorcerie and Witchcraft, be caufing hir husband heit the coulter of his pleuch, and cule the samyn in watter brocht from Haly Well of Hillfyde; and thaireftir, making certane coniurationes, croces, and signes vpone the watter, causet hir drink thairof for hir helth; and thairby, be Sorcerie, curet hir of hir feiknes. ITEM, ffor cureing, be Sorcerie and Witchcraft, of James Mwdie, with his wyfe and childrene, of the fever; and namelie, in cureing of his wyfe, be caufeing ane grit ffyre to be put on, and ane hoill to be maid in the North fyde of the hous,<sup>7</sup> and ane quik hen<sup>8</sup> to be put furth thairat, at thre feuerall tymes, and tane in at the hous-dur, widderfchynnes;<sup>9</sup> and thaireftir, taking the hen and puting it vnder the feik womanis okftar,<sup>10</sup> or airme; and thairfra, cayreing it to the ffyre, quhair it was haldin doun and brunt quik thairin; and be that devillifch maner, practizet be him, curet hir of hir feiknes: ffor the quhilk, the said Thomas reffault xx lib. fra hir husband. AND last, ffor commoun Sorcerie and Witchcraft, practizet be him, and abufeing the people thairby; expres aganis Godis devyne Law, and Actis of Parliament maid aganis Sorceraris.

VERDICT. The Affyse, being ryplie advyset thairwith, togidder with certane

<sup>1</sup> Kine; cattle.      <sup>2</sup> Athwart; across.      <sup>3</sup> Which they had not yielded for the space of a month.      <sup>4</sup> Kinsmen; relations.      <sup>5</sup> Water-fowl.      <sup>6</sup> Little 'beasts'; *Scottice*, for some sort of small birds or fowls, such as snipes, &c.      <sup>7</sup> A hole to be made in the north wall of the house.      <sup>8</sup> A live fowl.      <sup>9</sup> Backwards; contrary to the course of the sun.      <sup>10</sup> Arm-pit.

Depositiones producet be Mr Johnne Cowdoun, Minister at Kynrois, Mr Edmond Myles, Minister at Cleische, Mr Robert Coluile, Minister at Cleische, ffor verification thair of; thay, be the declaratioun of Williame Dempstartoun, chancellor, ffand, pronuncet, and declairit the said Thomas Greave to be ffylet, culpable, and convict of the haill poyntis of Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be Wirreit at ane staik, quhill he be deid; and his body thaireftir to be Brunt in asches, as culpable and convict of the saidis crymes of Sorcerie and Witchcraft.

**Offices of the Clerkship of Justiciary-general and Master of the Ceremonies, &c.**

Nov. 28.—SIR ARCHIBALD NAPER of Merchinstoun, kny<sup>t</sup>, Thesaurer-depute to our souerane lord of this Kingdome, producet his Maiesteis Gift, grantit to him, vnder his hienes Previe seall, of the Offices of the CLERKSCHIP OF JUSTICIARIE-GENERALL, and MAISTER OF THE CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther solemne Assembleis, quhair honourable ceremoneis ar accustomat and necessarie to be vsed, within the kingdome of Scotland; with all richtis, privileges, liberteis, feyis, casualteis, proffeitis, and deuteis quhatfumeuir, pertaining and belonging thairto; during all the dayis of the said Sir Archibaldis lyftyme: Vacand in his Maiesteis handis, be dimiffioun of Sir Johnne Cokburne of Ormestoun, kny<sup>t</sup>, last Justice Clerk, and Maister of the said Ceremoneis. Dated at Roystoun, the sext day of November, 1623.—Which Gift was ordanit to be infert in the Registeris of Adiornall, *ad futuram memoriam*,

**Commission of Justiciary,**

IN FAVOUR OF SIR GEORGE ERSKINE OF INNERTEILL.

Jan. 23, 1624.—MY Lord of Innerteill, as Justice to our souerane Lord, producet his Maiesteis Commiffioun of Justiciarie; and desyret the samyn to be infert in the Register of Adjournal, *ad futuram memoriam*.

JAMES R.

JAMES, by the grace of God, King of Grite Britane, France, and Ireland, defender of the ffaithe: To all and findrie our leigis and subiectis whome it effeiris, to whose knowledge thir our Letteris fall come, greating. FORSAMEKILL AS, the place and Office of the JUSTICE of this our Kingdome is now voyde, and the administratioun of Justice, in matteris proper to that judgement, ceasses by the absence of those who formarlie suppleit that place: AND whear as, the frequent occasioun, daylie occurring within this our kingdome, requyres a present choise to be maid of some sufficient and qualifeit persone to exerce the said place and office: And We, vnderstanding the goode affection of our trustie and weilbelouit counsalour, *Sir George Erskine* of Innerteill, to do ws seruice, and that he is a persone of sound and vpricht judgement, and vtherwayis accomplischet and furneift with giftis anfuerable to the

<sup>1</sup> From the peculiarity of this document, it has been thought right to preserve it entire, without abridgement.

dignitie of fuche ane employment : Thairfoir, We haif maid and constitute, and be the tennour heirof makis and constitutis, the said Sir George our JUSTICE, and geves to him the Office thairof, with all honnouris, digniteis, prevelegis, and prerogatiues belonging thairto ; to be possesst, bruiet, vsed, and exerced be him als frelie and amplie, in all respectis and conditiones, as ony vtheris his prediceffouris in the said Office formerlie bruiet the same ; with power to him to fense and hald Justice-Courtis within the Tolbuith of our burghes of Edinburghe, and vtheris pairtis of our Kingdome, accoirding as the necessitie of oure seruice schall requyre, and to proceed and minister justice in all and findrie materis occurring in that judgment, and vpon all perfones of quatsomeuir qualitie, that fall be presentit in judgement befoir him, to abyde thair tryell ; and accoirding as thay fall be fund Guiltie or Innocent of the crymes to be obietit vnto thame, and to be laid to thair charge, to caus justice be miniftrat vpon thame, conforme to the lawis of our realme : Affyffes neidfull, to this effect, vnder the vsuale and accustomed panes, to summond, wairne, choose, and caus be suorne ; and to creat officiaris and memberis of Court neidfull ; and all vther thingis neidfull towardis the executioun of this our Commiffioun to do and vse, whiche laughfullie, in such caises, may be done ; fferme and stable halding, and for to hald all and quatsomeuir thingis fall be laughfullie done heirin. CHARGEING heirfoir yow, all our said leiges and subiectis, to reuerence, acknowledge, and obey our said Justice, in all and everie thing tending to the executioun of this our Commiffioun : As yow and everie ane of yow will anfwair to us vpon the contrair, at your perrell. This our Commiffioun, dureing our will and pleasour, and ay and quhill we discharg the same, to indure. GEVIN vnder our signet, AT ED<sup>n</sup>, the tuentie day of Januare, and of oure reigne the lvij and xxj yearis, 1624.

GEO. CANCELL<sup>r</sup>. MELROS. LAUDERDAILL. R. COKBURNE. KILSAYTH.  
W. OLIPHANT. A. HAY. AR. NAPER. J. HAMILTON.

[*Sir George Erskyne of Innerteill, knycht, Justice.*]

**Egyptians — Vagabonds — Sorneris, &c.**

Jan. 23.—CAPITANE JOHNNE FAA, Robert Faa, Samuell Faa, Johnne Faa younger, Andro Faa, Williame Faa, Robert Broun, Gawin Trotter, all Egiptianis, Vagaboundis, and commoun Thevis, &c.

Being enterit vpon pannell be the Magistratis of Ed<sup>r</sup>, dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, of the cryme vnderwrittin, viz. FORSAMEKILL AS, firft, be Act of Secreit Counfall, maid in the moneth of Junij, or thairby, in the yeir of God 1603, and Proclamatioun following thairupoun, commanding and chargeing the Vagaboundis, Soirneris, and commoun Thevis, commonlie callit EGIPTIANES, to pas furth of this Kingdome, and to remane perpetuallie furth thairof, and nevir to returne agane within the samyn, vnder the pane of daithe ; quhilk Act of Secreit Counfall, and Proclamatioun following thairupoun, be the 13 Act of our fouerane lordis 20 Parliament, haldin at Edinburgh vpon the 24 of Junij, the yeir of God 1609 yeiris, is ratifeit, approvin, and confirmet be his Maieftie and Estaitis of Parliament than convenit ; and the same Act ordanit to haif force and executioun, eftir the first day of Auguft nixt thaireftir following, in the foirlaid yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and nyne yeiris ; eftir the quhilk tyme, gif ony of the saidis Vagaboundis callit EGIP-

TIANES, alsweill wemen as men, fall be fund within this kingdome, or ony pairt thairof, it fall be leafum to all his Maieftes goode fubiectis, or ony of thame, to caus tak, apprehend, impriffone, and execute to death, the faidis Egiptianes, ather men or wemen, as commoun, notorious, and condempned Theves, by ane Affyfe, only to be tryed<sup>1</sup> that thay ar callit, knawin, and repute and haldin Egiptians: In the quhilk caice, quhatfoeur of the Affyfe hapins to clange ony of the foir-faidis perfones, Egiptianes, pannelled as faid is, falbe perfewit, handillit, and cenfuret as committeris of Wilfull Errour. As the faidis Actis of Secreit Counfall, Proclamatioun following thairupoun, and Act of Parliament aboue writtin, deulie publeift, in the felf proportis. Nochtwithftanding quhairof, it is of verritie, that the foirnamet aucht perfones impannelled, and ilk ane of thame, being Vagaboundis, Soirneris, cownoun Thevis, callit, knawin, repute, and haldin EGIPTIANES, in plane contempt of his Maieftes lawis and Actis of Parliament, hes proudlie repairit to this kingdome, remanit and abiddin within the famyn, and nawayis depairtit nor pafit furth thairof, fen the faid firft day of Auguft, 1609 yeiris, appointit for thair away-paffing; incurring thairthrow the pane and pwneifchment aboue writtin, mentionet in the faid Act of Parliament.

## ASSISA.

James Lokhart, elder of Lie, . . . . Leith of Hairthill,      Williame Sydferff of Ruchelaw.<sup>2</sup>

VERDICT. The Affyfe, for the maift pairt, be the declaratioun of the faid James Lokhart of Lie, chancellor, ffand, pronuncet, and declairit the faidis perfones (being all Vagaboundis, and repute and haldin for EGIPTIANIS) to be Giltie, culpable, and convict of contravening the tennour of the faid Act of Parliament, &c.

THE JUSTICE continewis the pronunceation of Dome, vpon the former<sup>3</sup> convictioun, to the morne; that in the meane tyme he may advyfe with the Lordis of Secreit Counfall thairanent: And ordanit the pannell to be tane bak to waird, in the meane tyme.

Jan. 24.—SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and thair haill moveabill guidis, gif thay ony haif, to be efcheit to his Maieftes vfe, &c.<sup>4</sup>

## Egiptians—Sorners, &amp;c. (Females.)

Jan. 29.—HELENE FAA, the relict of vmq<sup>10</sup> Capitane Johnne Faa; Lucrece Faa, spous to James Broun; Elspeth Faa, brether-dochter to the Capitane; Katharene Faa, relict of vmq<sup>10</sup> Eduard Faa;

<sup>1</sup> Proved; established.

<sup>2</sup> The remainder are burgesses of Edinburgh. James Hopper of Bourhouffis, the Laird of Coulter-Cuming, . . . . Ogilvie of Boyne, . . . . Maxwell of Cowhill, and six others, ('mercheandis,') are 'vnlawit 100 merkis ilk ane of thame.'

<sup>3</sup> Preceding.

<sup>4</sup> See the following article, Jan. 29, and Mar. 22, where the proceedings against their helpless widows are recorded.

Meriore Faa, spous to James Faa; Jeane Faa, the relict of vmq<sup>le</sup> Andro Faa; Helene Faa, the relict of vmq<sup>le</sup> Robert Campbell; Margaret Faa, dochter to vmq<sup>le</sup> Eduard Faa; Ifsobel Faa, the relict of vmq<sup>le</sup> Robert Broun; Margaret Valantyne, relict of Johnne Wilfoun; Elspeth Faa, dochter to vmq<sup>le</sup> Henrie Faa.

Dilaitit for contravening the 13 Act of his Maiesteis tuentie Parliament, haldin at Edinburgh, the 24 of Junij, 1609 yeiris, maid aganis EGIPTIANIS, chargeing thame, alsweill wemen as men, to pas furth of this kingdome, and to remane perpetuallie furth thair of; and nevir to be fundin within the samyn, eftir the first day of August thaireftir, in the said yeir of God 1609, vnder the pane of deid: And the foirnamet perfonnes, being all Theves, Vagaboundis, and Egiptianis, sa repute and haldin, and tane as people of that vnhappie race and societie, hes, be thair remaning within this kingdome eftir the tyme foirfaid, appointit for thair away-passing furth thair of, contravenit the tennour of the said Act of Parliament, and incurrit the pwneischment aboue writtin, mentionet thairintill.

VERDICT. Giltie, culpable, and convict of the contravening of the foirfaid Act of Parliament.—SENTENCE. To be tane to the place of thair executioun, in some convenient pairt, and thair to be DROWNED quhill thay be deid; and all thair moveabill guidis, gif thay ony haif, to be confiscat to his Maiesteis vse, &c.

(Mar. 22.)—THE above persons, together with ALEXANDER FAA, sone to Eduard Faa, JOHNNE FAA and FRANCIE FAA, sones to vmq<sup>le</sup> Capitane Johnne Faa, and HARIE BROUN, brother to vmq<sup>le</sup> Robert Broun, being brocht furth of waird, and presentit of new agane vpone pannell, as thay that war convict of EGIPTIANES, and the Dome of daith pronuncet aganis ellevin of thame, vpone the xxix day of Januar last, the executioun quhair of was superceidit, be the Lordis of Secreit Counfallis Warrant and directioun, vnto the tyme our fouerane Lordis will and pleasour war knawin thairanent.

HIS MAIESTEIS *Letter and Directioun sent to the Counfall.*

To our right trustie and right weilbelouit counsalour, SIR GEORGE HAY of Kynfawnes, knyht, our Chancellor, and to our right trustie and right weilbelouit coufinges and counsalouris, and vtheris our trustie and weilbelouit counsalouris, THE ERLS, LORDIS, and vtheris of our PREVIE COUNSELL, in our kingdome of SCOTLAND.

JAMES R.

RIGHT trustie and right weilbelouit counsalour, right trustie and right weilbelouit coufens and counsalouris, and vtheris our trustie and weilbelouit counsalouris, We greete yow well. WE haue vnderstood, by your Letter of the 29 of Januar last, that a number of these Theeves and counterfooted Vagabondis, commonlie callit EGIPTIANIS, being apprehendit be your directioun, war thereftir put to a Criminall tryell, and being lawfullie convicted, that eight of the men wer executed, and that the rest, being aither childrene and of lesse-age, and wemen with chyld, or geving sucke to childrene, 3e haue therefore committed thair perfonnes to priffone, superceiding the executione of the Sentence pronounced

aganis thame, till yee should acquaynte ws, and know oure further pleafoure thairanent. IN whiche regaird, these are to certefie to yow, that as We allow well of the courfe taiken for executeing of the men, so now, in colde bloode, (these children and weemen haueing beene soe long kepte prisoneris,) and chesie in respect of that which yee wryte to be the present estaite of most part of these weemen, We can not bot inclyne to pittie and compassion of them. WHEREFORE, as We ar willing that their lynes be spared, soe that nather thame selues, nor any others of that kynd may be therby emboldned to presume vpon our clemencie, yee fall caus thame act them selues to depairt, with thair childrene, furth of that our kingdome, between and such a competent day as yee shall think fitting; for that effect, to prescribe; vnder the payne of death, to be inflicted (without any forder proces or dome) vpon them, wherfoever they can be apprehendit within our said kingdome, efter the said day. AND for your putting them to libertie, (nochtwithstanding the Sentence pronounced againt them,) vpon condition foirfaid, these shalbe vnto yow a Warrant sufficient. And soe We bid yow farewell. FROM our Honour of HAMPTON, the 13 of Merche, 1624.

THE JUSTICE, conforme to his Maiesteis Letter and directioun, caufit the hail Egyptianis aboue writtin, presented vpon pannell, act thame selffis, lyk as thay and ilk ane of thame, of there awin frie motiue, and with the blessing of God to his Maiestie and Counfall, become actit and obleift to depairt and pas away with thair childrene furth of this realme; and nevir to be fund thairintill, eftir the tuentie-tua day of Apryle nixtocum, vnder the payne and pwneifchment of daith, without any forther proces or doome, to be inflicted but fauour<sup>1</sup> vpon them, quhaireuir thay fall befund or apprehendit, within this kingdome, eftir the said day.

### Treasonable and Masterful Theft and Stouthreif.

Mar. 3.—[DAME MARGARET OGILVIE, COUNTESS OF MARSCHELL,<sup>2</sup>

SIR ALEXANDER STRAUCHANE of Thornetoun, kny<sup>t</sup>, (hir spouse,) and Mr Robert Strauchane, Doctour in Phisik.

Dilaitit of the Maisterfull Thift and Stouth-reiff, ffurth of the Place of Benholme, pertening to vmq<sup>te</sup> GEORGE ERLE MARSHALL, of certane his Lordschapis jouellis, filuer-plait, houshold-stuff, gold, filuer, eidentis, writtis, and vtheris guidis, at lenth expreffit in the criminall Letteris direct thairupoun, at the instance of our fouerane lordis Aduocat; committit in October 1622, a littill befor the said Erles deceife.<sup>3</sup>

PERSEWAR.

Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOURIS in defence.

Mr Thomas Hoip, Mr Lueis Stewart.

The perfonen enterit on pannell takes instrumentis of thair entrie, and proteftis for releif of Sir George Afflek of Balmanno of his cautionerie. There was presented the following

### WARRANT of the Lordis of Secreit Counfall.

APUD ED<sup>B</sup>, *secundo die mensis Marcij*, 1624. THE Lordis of Secreit Counfall, ffor some speciall

<sup>1</sup> Without fauour or mercy.

<sup>2</sup> Daughter of James, sixth Lord Ogilvy of Airly. She was the second wife of George, fifth Earl Marischal.

<sup>3</sup> He died at Dunottar Castle, Apr. 2, 1623, in the seventieth year of his age. He had studied at several foreign Universities, and was an accomplished and learned individual. Besides his Embassy, he had filled the high office of Lord High Commisloner to the Parliament of Scotland, by Commission under the Great Seal, Jun. 6, 1609.

considerationes moveing thame, Ordanes and commandis the Justice, Justice-clerk, and thair deputis, to continew the dyet appointit to DAME MARGARET OGILVIE, COUNTES OF MARSCHELL, Sir Alexander Strauchane of Thornetoun, hir spous, and vtheris perfonas specifeit in the Criminall Letteris raisit pairupoun, ffor pair compeirance befoir pe Justice, vpon the thrid day of Marche instant, to vnderly the Law for the crymes of Thift and Stouthe-reiff of the houfhald stuff, insight pleniffing, filuer plait, and vtheris goodis pertening to the lait Erle of Merscbell, and at lenth specifeit in the saidis criminall letteris raisit at pe instance of his Maieftis Aduocat, vntill the secund day of Julij nixtocum; takand new cautioun of pe defenderis, for pair compeirance that day, conforme to the ordour. Quhairnent pe Extract of pis Act fall be vnto pe said Justice, Justice-clerk, and thair deputis, ane sufficient Warrant.

EXTRACTUM de Libris Actorum Secreti Conflij, f. d. n. Regis, &c. JACOBUS PRYMOIS.

Sir George Afflek of new becomes cautioner for the saidis Dame Margaret, &c., vnder the panes contenit in the Actis of Parliament.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

(Jul. 2.)—ANOTHER Warrant, dated 'at Halyrudhous, the first day of July'—and signed by 'Geo. Cancell'. Mar. Morton. Linlithgow. Melros. Lauderdale. Aw. Carnegie'—directs the case to be continued 'vntill the xxvij of July instant, vpon new cautioun:'—'And that yow dispens with the personall compeirance of the Lady Marschell and Doctour Strauchane.'

(Jul. 27.)—A THIRD Warrant, dated 'at Halyrudhous, the xxij of July,' and subscribed, 'Geo. Cancell'. Mar. Melros. Lauderdale. J. Kokburne. Kilsyth.'—David Levingstoun of Donypace becomes cautioner for their entry on the aucht day of December nixt.

(Dec. 8.)—No procedure is entered in the Record of this date.

[*Sir George Erskine of Innerteill, kny', Justice.*]

**Treasonable and Masterful Theft, &c.**

Mar. 3.—JAMES KEITH of Benholme.

Dilaitit of airt and pairt of the tressonabill<sup>1</sup> and theftious steilling, be way of Maisterfull-thift and Stouthe-reiff, in the moneth of October, 1622 yeiris, ffurth of the Place of Benholme, off ane grene coffer, pertening to vmq<sup>le</sup> GEORGE ERLE MARSCHELL, with the jowellis and vtheris vnder writtin being thairintill, als pertening to his lordschip, viz. of Portugall ducattis, and vtheris spases<sup>2</sup> of foreigne gold, to the avail<sup>3</sup> of tuentie thowland pundis, or thairby; threttie-sax duffane of gold buttones; ane ritche jowell, all fet with dyamontis, quhilk the said vmq<sup>le</sup> Erle ressaunt as ane gift gevin to him the tyme he was Ambassadour in Denmark, worth sex thowseand merkis; the Quene of Denmarkis pictour in gold, fet about with ritche dyamontis, estimat to fyve thowseand merkis; ane jasp stane for

<sup>1</sup> *Treasonable*, as being committed by a landed Gentleman, in terms of an Act of Jac. VI.    <sup>2</sup> *Species*.  
<sup>3</sup> Worth; value.



steming of bluid,<sup>1</sup> estimat to fyve hundreth French crownes; ane chenzie<sup>2</sup> of equall perle, quhairin was foure hundreth perles gritt and small; tua chenzeis of gold, of tuentie-foure vnce wecht; ane vther jowall of dyamontis set in gold, worth thre thousand merkis; ane grit pair of bracelettis, all sett with dyamondis, pryce thair of fyve hundreth crownes; the vther pair of gold bracelettis, at sex hundreth pundis the pair; ane turcas<sup>3</sup> ring, worth ten French crownes; ane dyamond set in ane ring, price xxvij French crownes; with ane number of vther small ringis, set with dyamondis and vtheris ritche stanes in gold, worth thre hundreth Frenche crownes; mair, sextene thousand merkis of siluer and gold, reddie cunzeit,<sup>4</sup> quhilk was within the said grene coffer; togidder with the haill Tapestry, siluer-work, bedding, and vther guidis, geir, and pleniffing, being within the said Place, particulierlie specificit and set down in the Criminall Letteris direct aganis the said James Keyth of Benholme and his complices.<sup>5</sup> AS ALSO, for airt and part of the thiftious steilling and away-taking, be way of maisterfull Thift and Stouthe-reiff, in the moneth and yeir of God foirsaid, furth of the said Place, of ane grit clothe bag, with the said vmq<sup>6</sup> Erle his haill eidentis<sup>6</sup> and writtis of his landis and leving of Benholme, and vtheris his landis and barroneis, being thairintill; and remanent capital crymes contenit in the saidis Criminall Letteris, &c.

Andro Barclay of Vnthank, as cautioner, is decernit and ordanit to be in ane americiament, viz. for nocht entrie of the said James Keyth, in the pane and vnlaw of ane thousand merkis: And siclyk, that the said James be denunciit our souerane lordis rebell, and put to his hienes horne; and his haill moveabill guidis to be escheit and inbrocht to his Maiesteis vse, as fugitiue fra his hienes lawis for the saidis crymes.

### Stealing Corn, &c.

Mar. 24.—HARIE MENTEITH of Pansteid; James and Williame, his tua sones; Andro Menteith, sone-naturall to the said Harie; Johnne Menteith, callit of Balderstoun; and six others.

Dilaitit of the thiftious steilling and away-taking, furth of Thomas Kincaid of Warieftoun his barnes of Saltcoittis, in the Eist-Kerfe, lyand in the barrony

<sup>1</sup> Various virtues were anciently attributed to certain precious stones, such as the present, (*stemming* of blood,) as antidotes against poison, &c. The following curious entry occurs in the Books of the *Lord High Treasurer of Scotland*, Feb. 9, 1504.—‘ITEM, to the said Williame [Foular, potingary,] for ANE BLUDESTANE, and thre vnce vpir stuf, for THE QUENE, for bleding of þe nefe; eftir ane li. (recipe) of Maister Robert Schaw, xxij s.’ <sup>2</sup> Chain, or string. <sup>3</sup> Turquois. <sup>4</sup> Ready coined. <sup>5</sup> The above highly interesting detail shows, in a very striking point of view, the immense wealth which was accumulated and enjoyed by many of the Scottish Nobility at this period. Other portions of this Collection prove that considerable riches were possessed by some of the smaller Gentry, where such a display might not have been expected. <sup>6</sup> Title-deeds.

thairof, and scherefdome of Sterling, off threttie bollis of aittis, faxtene bollis of peis, and tuentie bollis beir, pertening to the said Thomas Kincaid.

The persewar producet our souerane lordis Letteris, be vertew quhairof the saidis persones, and ilk ane of thame, ar denuncet rebellis, and put to the horne, for nocht finding of cautioun to haif compeirit, &c.; and protestit for relief of Johnne Kincaid portioner of Gogar, his cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

**Murder.**

Jun. 5.—JAMES GALBRAITH, in Lekkie.

Dilaitit of the Murthour and Slauchter of vmq<sup>le</sup> James Broke in Kirkpatrik, his brother-in-law; committit vnder nycht, betuix Kirklistoun and Corstorphin, in thair cuming furth the hie-way togidder towardis Edinburgh, in the moneth of Apryle last, in the begynning thairof.

ASSISA.

James Tennent of Lynhous,  
Johnne M<sup>c</sup>Farlane of Arrochar,

James Burnet of Barnes,  
Alexander Lokhart of Braidfchaw.<sup>1</sup>

The pannell confessis, in presens and audience of the Assyse, the Murthour and Slauchter contenit in his Dittay.

VERDICT. The Assyse being ryplie and at lenth advyset with the Dittay, togidder with the said James Galbraith his awin Confessioun maid in judgement; with his Depositioun maid be him, vpon the thrid day of Junij instant, in presens of the haill lordis of Counsell and Sessioun, confessing the Murthour aboué writtin, thay all in ane voce ffand, pronuncet, and declairit the said James to be ffylet, culpable, and convict.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body; and his haill guidis and geir to be escheit, &c.

**Theft—Slaughter—Fire-raising—Intercommuning with the MacGregors, &c.**

Jul. 17.—JOHNNE ROY M<sup>c</sup>FARLANE, sone to Andro of Gortane, and others.<sup>2</sup>

Dilaitit of the feuerall crymes of Thift and Slauchter following, viz. The said *Johnne Roy M<sup>c</sup>Farlane*, ffor airt and pairt of the Slauchter of vmq<sup>le</sup> Williame M<sup>c</sup>clane in Blairvak, servand to vmq<sup>le</sup> Duncane M<sup>c</sup>farlane of Blairvak, for the tyme; committit vpon the thrid day of October lastbypast, 1623 yeiris: And

<sup>1</sup> The rest of the Assise were tradesmen. James Tennent, chancellor. <sup>2</sup> The remainder of the pannels were, 'Johnne Beg M<sup>c</sup>cauife M<sup>c</sup>farlane (in Stukewa), Duncane M<sup>c</sup>corrie M<sup>c</sup>ewin (M<sup>c</sup>farlane in Ardlowie), Johnne M<sup>c</sup>innair M<sup>c</sup>farlane in Garboyle, Thomas Moir M<sup>c</sup>farlane, (sone to Duncane Dow M<sup>c</sup>farlane in Morlagane,) Allaster Blair (in Brachairne), Johnne (Dow) Blair, his sone, Johnne Gar M<sup>c</sup>gillimichell, (seruitour to Robert Abroche M<sup>c</sup>Gregour,) Duncane Bayne M<sup>c</sup>cartnay, (seruand to Robert Abroche M<sup>c</sup>Gregour.)'

ficlyk, for airt and pairt of the treflonable Raifing of ffyre, and Burning of the houfe of Abervrchill, pertening to vmq<sup>16</sup> Colene Campbell of Abervrchill, being in company with Johnne Dow M<sup>c</sup>Condochie Bayne, his maifter, and vtheris his complices, at the faid Burning; committit a ten yeir fyne, or thairby. **ITEM**, the faid *Johnne Beg M<sup>c</sup>Cauife M<sup>c</sup>farlane*, ffor the thiftious refsetting of ane blak kow, quhilk was ftowin be Johnne Roy M<sup>c</sup>Williame M<sup>c</sup>farlane, furth of the landis of Balliemoir, fra Andro M<sup>c</sup>Williame M<sup>c</sup>farlane, in the moneth of December laft: And ficlyk, for airt and pairt of the fteilling of tua ky furth of the landis of Clofwrak, pertening to Callum M<sup>c</sup>farlane, indueller thair: And alfe, for airt and pairt of the thiftious fteilling, at the leift refsetting, of ane blak horfe, ftowin be Duncane M<sup>c</sup>corriche M<sup>c</sup>eane M<sup>c</sup>farlane, furth of the cuntrie of Argyle; committit in Marche laft. **ITEM**, the faid *Duncane M<sup>c</sup>corrie M<sup>c</sup>eane M<sup>c</sup>farlane*, ffor airt, pairt, and being in company with Johnne Roy M<sup>c</sup>Williame M<sup>c</sup>farlane, at the fteilling of ane broun kow, a four yeir fyne, or thairby: And for airt and pairt of the fteilling of nyne lambes, pertening to Johnne M<sup>c</sup>corrie M<sup>c</sup>farlane and Patrik M<sup>c</sup>corrie M<sup>c</sup>farlane in Ardmulrig, furth of the Mure of Ben-Mourlig, in the moneth of Junij I<sup>m</sup>.Vj<sup>c</sup>.xxiiij yeiris: And alfo, for airt and pairt of the fteilling of ane gait<sup>1</sup> furth of the landis of Glencroe, in the moneth of October, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. tuentie tua yeiris: And in lyk maner, for airt and pairt of the fteilling of ane blak horfe out of Argyle, in the moneth of Merche laftbypaft: And for thiftious fteilling of ane fcheip fra vmq<sup>16</sup> Malcolme M<sup>c</sup>farlane, in Innerfmet,<sup>2</sup> in the moneth of Julij, 1616 yeiris. **ITEM**, the faid *Johnne M<sup>c</sup>Innair M<sup>c</sup>farlane*, ffor airt and pairt of the fteilling of ane broun kow furth of the landis of Glencroe, furth of ane grit number of vther ky, in dryveing thame to the Mercat, to be fauld; committit a fevin yeir fyne, or thairby: And ffor airt and pairt of the fteilling of ane blak kow, a four yeir fyne, furth of the faidis landis of Glencroe. **ITEM**, the faid *Thomas Moir M<sup>c</sup>farlane*, fone to Duncane Dow, ffor airt and pairt of the fteilling of fyve ky, pertening to George Maidlanes in Letter, and vtheris, the Laird of Kilfythes tennentis: And ffor airt and pairt of the fteilling of nyne lambes, furth of Craigcoftane,<sup>3</sup> pertening to Patrik Glas M<sup>c</sup>farlane thair, in the moneth of Junij, 1623 yeiris: And ffor airt and pairt of the thiftious refsetting of ane ftowin kow, quhilk was ftowin be Callum M<sup>c</sup>cauife in Clakbowie, fra Colene Campbell of Ardkinglas, in the moneth of November, 1622 yeiris: And ffor ane commoun foirner<sup>4</sup> and oppreffour, vpone dyuerfe his Maiefteis fubjectis: And for common Thift and Refset of thift. **ITEM**, the faidis *Allaſter Blair* in Bracherie, and *Johnne Blair*, his fone, ffor airt and pairt of the fteilling of foure ky, furth of the landis of Difcher, in Menteith, a

<sup>1</sup> Goat.      <sup>2</sup> Invernaid?

<sup>3</sup> Afterwards the residence of Rob Roy M<sup>c</sup>Gregor, who acquired this property in anno 1705.

<sup>4</sup> One who oppressively takes free quarters, &c. by violence.

the foirheid, and fellit and flew him thairwith; and sa, the said Duncane was airt and pairt of the Slauchter of the said vmq<sup>le</sup> Donald M<sup>c</sup>Intyre: ITEM, ffor cuming to the said Neill M<sup>c</sup>clarens hous, vnder nycht, and steilling furth thairof of his haill inficht pleniffing, guidis, and geir, to the availl of fourtie pundis money.

The foirnamet haill perfones, dilaitit and accuset of the crymes *respectiue* above writtin, haifing denyit the samyn to be of verritie, war put be the Justice to the knowlege of the perfones following.

## ASSISA.

Johnne M <sup>c</sup> farlane of Arrochar,	Duncane M <sup>c</sup> Innoyer in Gortane,	Parlane M <sup>c</sup> Corrie in Ardleifch,
James Garbraithe in Garbell,	Patrik Roy M <sup>c</sup> Innoyer,	Patrik M <sup>c</sup> farlane in Pullochre,
Dougall M <sup>c</sup> farlane in Tullichin- taill,	Andro M <sup>c</sup> farlane in Drumfad,	Johnne Dow M <sup>c</sup> farlane,
Thomas M <sup>c</sup> farlane,	Malcolme M <sup>c</sup> Williame in Downe,	Donald Dow M <sup>c</sup> farlane,
Johnne M <sup>c</sup> farlane in Kenmore,	Duncane M <sup>c</sup> farlane in Port- Chapell,	Harie Dow, seruitour to Johnne Erl of Mar, &c.
Duncane M <sup>c</sup> farlane, thair,	Johnne M <sup>c</sup> Innoyer,	

VERDICT. The Affyfe, all in ane voce, be the repoint and declaratioun of the said Andro M<sup>c</sup>farlane in Drumfad, chancellor, ffind the saidis perfones on pannell, and ilk ane of thame, to be ffylet, culpable, and convict of the feuerall crymes aboue writtin.—SENTENCE. To be tane to the Burrow-mure of the burgh of Edinburgh, and thair to be Hangit quhill thay be deid; and all thair moveable guidis to be escheit to his Maiesteis vse, as giltie of the saidis crymes.

**Sheep and Cattle Stealing, &c.**

Jul. 21.—ADIE VSCHER, borne in Birkinhauch, in Liddifdail, servand to Robert Ellote of Reidheuche.

Dilaitit of airt and pairt of the steilling of sex ky (*cattle*) furth of Schewingscheill-Castell, pertening to Williame Heroun of Chipchese, in the moneth of November last: ITEM, ffor airt and pairt of the steilling of sextene gaitis (*goats*) furth of Emmetifhauch, pertening to Will Charletoun of Emmetifhaugh; Will Vfcher, his sone, being in cumpany with him at the steilling thairof; committit in September last: ITEM, ffor airt and pairt of the steilling of tua ky furth of Hafilsyde, in Ingland, the ane blak, the vther broun, pertening to Williame Chairletoun of Hafilsyde; committit be him and the said Will Vfcher, his sone, in October last: ITEM, ffor airt and pairt of the steilling of an yellow brandit ox, furth of the landis of Heifilefyde, in the said moneth of October last, pertening to the said Will Chairletoun; the said Will Vfcher, his sone, being in companie with him at the committing thairof: ITEM, ffor airt and pairt of the steilling of sextene gaittis furth of the landis of Leipieleifche, in October last; quhilk pertenit to Mathew Robfoun of Leipieleifche; the said Will, his sone, being with him at the steilling thairof: ITEM, ffor steilling and away-taking, about Hallowmes last, of tua fcheip

furth of Richartoun-fute, pertening to Archie Henderfoun, and Johnne Robiefoun, thair; committit be him and the said Will, his sone: ITEM, ffor airt and pairt of the steilling, furth of Burnemouth, of fyve schein, pertening to Johnne Nixyne, thair; the said Will Vicher being at the steilling thair: LAST, ffor airt and pairt of the steilling of ffyve schein, about St Thomas-Evin laft, fra Johnne Ellote, callit *the Dod*, and Johnne Elliot, callit *the Gyde*: AND ffor commoun Thift and Refset of Thift.

PERSEWARIS, Mr (Williame) Heroun of Chipchefe, Will Chairletoun of Hifliefyde, Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat.

## ASSISA.

The Laird of Riddell,	Ragnell (Reginald?) Bennell,	Johnne Govane of Cardrono,
Williame Middlemeft of Chapell,	The Laird of Mertoun,	James Douglas of Cowthroppill.
George Ker of Newhall,	Andro Ker of Brounlandis,	Patrik Cranftoun of Corbie,
Andro Douglas of Prieltoun,	W <sup>m</sup> Trumble of Phillopehauche,	Robert Edger of Wodderlie,
Williame Bennet,	James Nayfmyth of Poffo,	Robert Lauder of that ilk.

VERDICT. The Affyfe, all in ane voce, in respect of the said Adie his Judicial Confessioun of the crymes foirlaidis to be of verritie, be the mouth of the said Laird of Riddell, chancellor, ffand, pronuncet, and declairit the said Adie Vicher to be ffylet, culpable, and convict of the crymes foirlaidis.—SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be Hangit quhill he be deid; and all his moveabill guidis to be efcheit, &c.

**Sheep and Cattle Stealing, &c.**

Jul. 21.—WILL VSCHER, sone to the said Adie Vicher.

Being presentit vpon pannell, in prefens of my Lord Justice, Confessit him self to be Giltie and culpable of the particular Thiftis contenit in his ffatheris convictioun: And offerit him self in his Maiestie and Counfallis will for the samyn.—SENTENCE. The Justice, in regaird of the said Will Vicher his minoritie, nocht being past fextene yeiris of age, with advyse of the Lordis of Secret Counfall, ordanit the said Will to be Baneifchet his Maieftis haill dominions, and nocht to be ffund thairintill in ony tyme cuming, without his Maieftis Licence, vnder the pane of deid, &c.

[*Sir George Erskine of Innerteill, kny<sup>t</sup>, Justice.*]

**Murder under trust—Stouthreif—Piracy, &c.**

Nov. 3.—JOHNNE BROUN, skipper in Brunteilland; Robert Broun, mariner, his sone, thair; David Dowie, burges and awner thair; and Robert Duff, in South Quenis-fferrie.

Dilaitit and accufet of airt and pairt of the schamefull, crewall, and vnmerciefull Murthour vnder trust of thre Spanische mercheand young men; and steilling

and appropriating to thame selffis, be way of Maisterfull Thift, Southe-reiff, and Peiracie, off the guidis and mercheandice being within thair schipis-boddome, pertening to the saidis Mercheandis ; committit a thre yeir syne, or thairby, in thair cuming fra the Poirt of S<sup>t</sup> Johnnes, in Spayne, to Callife, be casting the saidis thre Spanische Mercheandis over-burde, and thaireftir appropriating of thair guidis and mercheandice to thame selffis, and making money thairof, to thair awin vse.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat.

*DITAY against the persons on pannell.*

JOHNNE BROUN, skipper in Bruntieland, maister and owner of ane quarter of the schip vnderwritten, ROBERT BROUN, your sone, awner of ane vther quarter thairof ; DAVID DOWIE, mariner, burges of Bruntieland, awner of the half thairof ; and ROBERT DUFF, indueller and mariner in South Quenifferris, YE ar indytit and accuset, FORSAMEKILL AS the traffique and commerce betuix mercheand and mercheand, in exपोर्टing of commoditeis frome ane cuntrie to ane vther, hea, in all weill-governet Kingdomes and Commoun welthis, bene estimat the ground and fundamentall caus, nocht only of grit welth and ritches to the inhabitantis, but also ane grit help and furtherance to intertene freindschip and correspondence betuix Princes ; quhairthrow mony loveabill Lawis, vpon guid advyse and deliberatioun, hes bene publeift and fet furth be thame and thair estaitis, for advancement of thair tred, and reiking out of schipis and veschellis for the better vphald and continuance thairof ; and thairupoun, the art of Nauigatioun, with the perfones expert thairintill, alswell for thair skill and dexteritie in failling, as fidelitie in that tred, be the faif convoying of the merchandis and passangeris, with thair merchandice and guidis, committit to thair trust, hes becum famous and of goode estimatioun throw the haill world : LYK AS, the failleris of this Kingdome, being, for thair skill and fidelitie in that tred, nathing inferiour to ony vther cuntrie, people, or natioun, haif commonlie, in regaird thairof, bene sa respectit be strangeris in forayne partis, that thay, with thair schipis, hes bene preferrit in seruice to ony vther people quhatfumeur. Nochtwithstanding quhairrof, it is of verritie, that ye and ilk ane of yow, schaiking of all feir of the Omnipotent and Almychtie God, regaird to the ancient goode fame of this cuntrie and kingdome of Scotland, quhairrof ye ar namet maift vnworthlie to be inhabitantis and natiue borne people ; as also, to the grit obloquy, schame and reproche, and oppin discredeit of the haill failleris of this kingdome resoirting to forayne partis, prejudice and disapointing of all lauchfull commerce and tred with ony of the Mercheandis of the samyn, and imployment of the haill seafairing men with thair schipis and barkis in tyme cuming, a thre yeir syne or thairby, ye being in S<sup>t</sup> Johnnes, a Sie-poirt within the Kingdome and dominioun of Spayne, togidder with the schip callit . . . . ., quhairrof ye, the said Johnne Broun, was maister and awner of ane quarter, and ye, the said David Dowie, awner of ane half, and ye, the said Robert Broun, awner of the fourt quarter ; and being fraughted be ane Gilzeane Thasktone, a Spanzaird, to pas fra the said Poirt of S<sup>t</sup> Johnnes to the Poirt of Caillife, with ane laiding of Walnuttis, chestanis,<sup>1</sup> and certane Spanische irne ; and accoirding thairto, haifing tane in the said laiding, togidder with thre Spanische young men, quha war directed be the said Mercheand to await vpon the discharge of the said Merchandice, and to make mony thairof at the said schipis arryvell at hir appointit Poirt aboue writtin,<sup>2</sup> ye, befor your cuming abuird of the said schip in S<sup>t</sup> Johnnes, plottit, contryvet, and devyset the crewall and barbarous Murthour of the saidis thre strangeris, and the appropriating to your selffis of the haill guidis and merchandice imput within the said schip ; and drew vp ane Band to that effect, quhairvnto ilk ane of yow, with the remanent equippage of the said schip put to your handis ; and thaireftir, cuming all aboird, heafit vp sail, and past to the Sea : And being in the middis of Sea, far frae ony land, ye, vpon schamefull and damnable greid and covetoufnes, vpon fet

<sup>1</sup> Chestnuts.

<sup>2</sup> As supercargoes.

purpois, deliberatioun, and ffoirthocht fellony; fulifchilie apprehending that the al-feing eie of the Almychtie did nocht luik down, nor wald bring to licht your maift horrible and deteftable Murthour and Pirracie, ye being alfo fecundit, aidit, and affittit be James Hall in Kirkculdbrycht, Johnne Gibfoun in the Erles-fferrie, James Carrane in Tradache, in Ireland, Robert Kincavill, cuik of the fchip, with ane Irifche boy, namet Thomas Cur; all of yow, being nyne in number, within fchip-buird, ye maift crewallie and vnnaturallic, aganis the Lawis of Nationes, haifing the faidis thre strangeris in your power, and for the vnlauchfull acqyreing and appropriating to your felffis of the faidis guidis and merchandice, violentlie, and but<sup>1</sup> pitie or commiferatioun, threw them all thre ouerbuid, ane eftir vther, in the rageing feas; and thairby crewallie and vnmerciefullie, vnder truft, credeit, and affurance, Murdreift and bereft thame of thair naturall lyves; thay haifing na refudge nor bak-dur to efchew your crewaltie: Quhilk being done, ye, in plane mokage,<sup>2</sup> and fkorne of the Almychtie, as gif his devyne Maieftie had approvin that your horrible fact, maid ane Prayer, and fang vp ane Pfalme: And thaireftir, as Thevis and maifterfull Sea-robberis, divertit your curfe fra Callife,<sup>3</sup> and paft with your faid fchip and laiding thairof to Myddilburgh in Zeilland, quhair the faidis walnuttis and cheftanes war fauld and maid money of, be ane or vther of yow, in name and to the behuif of the haill company and equippage;<sup>4</sup> and the famyn money, thaireftir, was pairtit amangis yow: Lyk as, the irne was brocht hame to Brvntieland, quhair the famyn was fauld, for reddie money.—Committing thairby maift horrible Murthour and Slauchter vnder truft and credeit, the faidis thre strangeris being vnder your power and command, within your fchip; and lykwayis Maifterfull Thift, Stouthe-reiff and Pirracie, in appropriating of thair guidis and mercheandice to your felffis: Off the quhilkis, ye, and ilk ane of yow, ar and war speciall actouris, airt and pairt; and thairfoir, aucht and fould, in maift exemplarie maner, be pwneift, to the terrour of vtheris.

My lord Aduocat, eftir reiding of the Dittay, and the pannellis accufatioun of the faidis crymes, at length fet down thairintill; and that in refpect na obiectioun was maid be the pannell or ony vtheris in thair names, aganis the relevancie thairof, defyret my lord Justice to put the famyn to the tryell of ane Affyfe of the perfones fummond to that effect.

My lord Aduocat takis instrumentis of the fweiring and admiffioun of the Affyfe, and that na obiectioun is maid aganis thame be the pannell. And for Verificatioun of the poyntis of Dittay and crymes thairin mentionet, producef the Depofitioun maid be the foure perfones on pannell, viz. the faid Johnne Broun, Robert Broun, and Daud Doweis Depofitiones, maid be thame in prefens of the Laird of Bombie, the Commiffar of Kirkculdbrycht, and the Bailleis thairof, vpone the xxviiij day of Auguft laft, confeffing the Murthour and thiftious taking and appropriating of the guidis and mercheandice to thame felffis. Togidder with the faid Johnne Broun and Daud Doweis Depofitioun, tane in prefence of the Erle of Melrois, vpone the xv of September laft. Produces alfo the Depofitiones of Robert Duff, tane in prefens of the faid Erle of Melrois, on the vij day October laft, beirand the faid Johnne Broun, and Daud Dowie, to be cafters of the firft Mercheand overburd. Produces the pannellis haill Depofitiones maid be thame in prefens of my Lord of Melrois, vpone the nynt day of October laft: Togidder with the Depofitioun of Robert Kincavill, cuik of the fchip, and ane of

<sup>1</sup> Without.      <sup>2</sup> Mockery.      <sup>3</sup> Calais.      <sup>4</sup> Crew.

the equippage thair of in that veadge,<sup>1</sup> tane in prefens of James Weymes of Bogy, Vice-Admirall at Kirkcaldie, vpon the 28 of Junij laft. With the Depofitioun of the faid Robert Duff, maid in prefens of my lord Aduocat him felff, vpon the 27 of October laft. And laft, vfes and produces the Declaratioun of Robert Meluill and Robert Cellok, vnder thair hand-writt and mark put thairto, detecting and oppening vp the pannellis giltienes of the hail poyntis contenit in thair Indytement. And vpon the productioun of the verifications aboue writtin, askit instrumentis: And protestit for Wilfull-Errour aganis the perfones of Affyse, gif thay acquit the pannell of the detestable crymes aboue written.

VERDICT. The Affyse, all in ane voce, be the repoir and declaratioun of Stewin Philp, elder, mercheand in Dyfert, chancellor, ffand, pronuncet, and declairit the hail foure perfones on pannell to be Giltie, culpable, and convict of the crymes aboue specifit.—SENTENCE. To be tane to the Mercat-Croce of Edinburgh, and thair to be Hangit vpon ane gibbet, quhill thay be deid: And thaireftir, thair heidis to be strukin fra thair bodeyis: And tua of them to be fet vp vpon prikis of irne at *Leith*; and the vther tua to be sent to *Brunteiland*, to be fet vp vpon prikis thair: And thair hail moveabill guidis to be efcheit to his Maieftis vse.

[*Mr Alexander Coluile, Justice-Depute.*]

**Murder, &c.**

Nov. 13.—HARIE LISTOUN, indueller in the bak of Plesance (of Edinburgh), callit the Bak-Raw.

Dilaitit, fforfamekill as the faid Harie, haifing, without ony iust caus, confauct ane deidlie haitrent and evill will againft vmq<sup>16</sup> James Mayne, feruitour to Robirt Young, maltman, burges of Edinburghe, with ane fettillit purpois and refolutioun to bareiff him of his lyffe, be on meine or vther; laitlie, vpon the laft day of Auguft laftbypaft, come in the twielicht, eftir setting of the sone, betuix fevin and aucht houris at evin or thairby, to the faid Robert Young, his peife-land, besyde the Seanis,<sup>2</sup> near to the Burrow-mure of the faid burgh, quhair the faid vmq<sup>16</sup> James was in sober and quyet maner for the tyme, keiping his faid maifteris peife, and vtheris his coirnes, than growand and standing stoukit<sup>3</sup> vpon the ground of the saidis landis; and thair, the faid Harie, being bodin with ane grit rung or battone in his hand, and with knyves and vtheris invasiue wappones, first vpbraidit the faid James Mayne with woirdis, alledging that he was ane commoun Theiff, and had stowin ane grit number of the faid Harie his beanes and peife, growand neir to the faid Robert Youngis land, and lyand contigue

<sup>1</sup> One of the crew in that voyage.

<sup>2</sup> Sciennes, so called from a religious house dedicated to St Katherine of Sienna, in the immediate vicinity of Edinburgh.

<sup>3</sup> Cut down and put up in stouks, ricks, or shocks.



man (*must*) be discuffit feuerallie. The Aduocat declairis that he conjoynes the haill crymes togidder, and devydis na pairt of the Dittay; and sayis, that the samyn is verrie relevant, as it is set down, to pas to the knowlege of ane Assyse.

It is allegit be the pannell, that the samyn can nocht pas to ane Assyse, becaus he offeris him to prove, be sufficient Witnesses present at the bar, that the said James Mayne deceiffit be hanging himself within ane laiche volt in the Grange, eftir he was committit thairin for steilling of certane beanis and peife, and eftir he had remanit thairin the space of tua or thre houris; quha was brocht thairto, frie of ony hurt or woundis, in ony pairt of his body.—It is anfuerit, aucht to be repellit, in respect the allegeance consistin*g in facto*; and gif ony probatioun be tane, it man be proponit to the Assyse, quha, for thair informatioun, may tak the Witnesses declaratioun, gif thay fall think it expedient, or reject the samyn.<sup>1</sup>

THE JUSTICE Ordanis the Dittay to pas to the knowlege of ane Assyse: And the exceptioun proponit be the pannell, anent the defunctis putting handis in him selff, feing it consistis *in facto*, REMITTIS THE TRYELL THAIROF TO THE ASSYSE; AND THE PROBATION TO BE VSET BEFOIR THAME.

## ASSISA.

Mr Johnne Cant of the Grange,	Johnne Stevinfoun, maltman,	Robert Wilfoun, beltmaker,
Johnne Marschell, burges of Edr,	Johnne Lowrie, maltman,	James Johaneftoun, maltman,
Adame Marschell, maltman thair,	Adame Bar, tailzeour,	Frances Stevinfoun, chirurgane,
Johnne Campbell, staibler thair,	Robert Moubray, suordflipper,	Johnne Fluiker, chirurgane,
Johnne Bordland, lister,	Johnne Ahannay, baxter,	Johnne Clarkfoun, smyth.

It is allegit be the pannell aganis ffrances Stevinfoun and Johnne fluiker, chirurganes, that nather of thame can be admittit vpon this Assyse, becaus thay haif behavet thame selfis as pairteis, in passing, at the desyre of the persewaris, and for guid deid gevin to thame, to the defunctis graiff, sevin dayis eftir his buriall, and taking him vp and fichting the deid corpis, ffor ane pre-

<sup>1</sup> This Case is most important, as being the first on Record, where the Lord Advocate voluntarily admits of WITNESSES being examined before THE ASSISE, in relation to facts arising out of the assertions contained in the Dittay. The practice formerly was for the Advocate, as public prosecutor, previous to framing the Dittay, to examine the pannell and such witnesses as could be obtained, immediately after the commission of the crime, before the Lords of Privy Council, or a Commissioner; and the Declarations, Confessions, and other evidence so produced, were founded upon in Court. They were there held as conclusive, and not liable to be redargued by leading of fresh evidence at the time of the Trial. The want of attention to this circumstance, or rather the ignorance of the ancient mode of procedure in matters Criminal, would induce any one, at first sight, to form a very erroneous estimate of the policy, and more particularly of the administration of our Laws. The notion seems anciently to have been, that it was an act of flagrant contempt in a pannel to dispute the validity of the evidence led before so high a tribunal as that of the Privy Council, and probably in the face of his own repeated Confessions or Declarations, on being examined, previous to trial. The Justice, therefore, repelled any attempt on the part of Counsel for the pannel bringing forward Witnesses in proof of his innocence; until, at length, the voice of the country prevailed, and THE ASSISE WERE MADE JUDGES OF THE LAW AS WELL AS OF THE FACT. It is not a little singular to observe here, that one of the Assise (the very Justice of the Peace in the vault of whose house the alleged suicide took place, and who was afterwards chosen Chancellor of the Assise) is brought forward as the principal evidence, along with three of his servants!

cognitioun in fauouris of this perfewar, anent the tryell of this mater.—It is anfuertit be the Aduocat, the allegiance is nawayis relevant to stay thame to be admittit vpon this Affyse; becaus, quatevir was done be thame in raifeing and fighting of the corpis, was done be command of the Bailleis of Edinburghe.

*Robert Young*, perfewar, being suorne, gif he has just cause to perfew this Dittay as it is sett doun, declairit, that he has just caus to perfew, vpon this reafone only, becaus he, haifing gottin knowlege of James Maynes daith, and cuming to the Grange to vnderstand the forme thairof, and haifing feare the deid corpis, desyret Mr Johnne Cant to keip him vnbureit quhill the morne at nyne houris, that his wyfe and freindis (nicht) come to sie him; quhilk the said Mr Johnne promeist fould be done; and nochtwithstanding thairof, he was bureit, be the pannellis servandis, lang befor sex houris in the moirning: And thairfoir, in respect of his buriall, secretly, by<sup>1</sup> promeis, he had just caus to perfew the pannell, as giltie of the said James Maynes daithe.

The Aduocat takis instrumentis of the sueiring of the Affyse, and of the production of the defunctis claithes be the relict, all cuttit be the pannell, the tyme contenit in the Dittay: And protestis, in caice thay acquit, for Wilfull Errour.—The pannell protestis in the contrair, gif thay ffyle; and that the Witneses may be tryit for preving that the only cause of the defunct his daithe proceedit fra his putting violent handis in his awin persone, be his feirfull and crewall hanging him self, and thairby devoiring him self to daith, within ane laich volt of the Grange, pertening to Mr Johnne Cant, ane of the Affyse, eftir the pannell had apprehendit him in his peise, and tane him with tua grit wallat-full of scheillit beanis, stowin be him af his peise-rig, and brocht him to the said Mr Johnne Cant, as Justice of Peace, to haif remanit with him vnto the tyme he had bene tryit and pwneist for the said Thift. And for cleiring of the veritie of the foirsaid allegiance to the said Affyse, desyret the Witneses following, all present at the bar, viz. the said Mr Johnne Cant, ane of the Affyse; Robert Stark, James Scott, and James Wallace, his thre servandis; James Borthuik, indueller in Edinburghe; James M<sup>c</sup>Corne, in the Seanis; Williame Mure, servand to Robert Young, ane of the perfewaris, and Johnne Girdwoid, also his servand, to be callit vpon and examinat be the said Affysouris, eftir thair incloifeing.<sup>2</sup>

VERDICT. The saidis persones of Affyse thaireftir remouet altogidder furth of Court to the Affyse-house, quhair, be pluralitie of voittis, thay electit and chuifet the said Mr Johnne Cant in chancellor: And thaireftir, the saidis hail

<sup>1</sup> Contrary to.    <sup>2</sup> This seems an extraordinary step. The Assise, *after they are enclosed* in the Assise-house, call before them and examine the Witnesses offered, without the direction of the Judge, or the interrogation of Counsel for either party.

WITNESSES being fuorne and examinat be thame, thay all, but<sup>1</sup> discrepance, cleir-  
lie verifeit be thair declarationes, that the said James Mayne come vpon his feit,  
without ony hurt, as appeirit, in ony pairt of his body, to the Grange, a littill  
afoir sex houris at evin, the day contenit in the Dittay, being brocht thairto be  
the pannell, for the cause contenit in his exceptioun; and being put in the laich  
volt, at the defyre of the pannell, to be keipit thairin be the said Mr Johnne  
Cant, as Justice of Peace, vnto the tyme he war tryit, and that Robert Young,  
his master, war brocht to that effect; he, within tua houris thaireftir, the volt  
dur being lokit vpon him, was fund hingand in tua horse girthes or coirdes,  
deid, and his mouth fameand;<sup>2</sup> and thairby, that he had devoiret<sup>3</sup> him self. Eftir  
quhais tryell and examinatioun, the saidis personis of Assyse reffonit and voittit  
vpon the poyntis of the said Dittay, and being ryplie and at lenth advyset thair-  
with, togidder with the DEPOSITIONES aboue writtin, maid be the saidis WIT-  
NESSES, thay re-enterit agane in court, quhair thay all, in ane voce, be the repoir  
and declaratioun of the said Mr Johnne Cant, chancellor, ffand, pronuncet, and  
declairit the said Harie Liftoun to be Cleane, innocent, and acquit of the slauchter  
and murthour of the said James Mayne; and of airt and pairt thairof.

Quhairvpoun the said Harie Liftoun and his prelocutouris askit instrumentis.

### Incest.

Nov. 19.—JAFFRAY IRWING of Robgill.

Dilaitit of the filthie and detestable cryme of Incest; committit be him with  
Agnes Cairletoun, spous to vmq<sup>10</sup> George Irwing of Bonfchaw, his brotheris  
wyfe; quha buir to him, in that filthie copulatioun, thre sones, namet Frances,  
George, and Edward Irwingis, and ane dochter; quhilkis war all baptizet in  
Ingland; contrair the tennour of the Actis of Parliament.

My lord Aduocat takis instrumentis of the pannellis Confessioun; and pro-  
testis for Wilfull Errour, gif thay acquit.

VERDICT. The Assyse, all in ane voce, in respect of the said Jaffra his Judi-  
ciall Confessioun, ffand, pronuncet, and declairit, be the repoir and declaratioun  
of Raulff Ker, burges of Lauder, chancellor, the said Jaffra to be ffylet, culpable,  
and convict of the said cryme of Incest, contenit in his Dittay.—SENTENCE.  
To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin  
from his body; and all his moveabill guidis to be escheit, &c.

<sup>1</sup> Without difference in their testimony.  
*devorare.*

<sup>2</sup> Foaming, or frothing.

<sup>3</sup> Destroyed. Lat.

# GENERAL APPENDIX.

VOL. III.

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## APPENDIX.

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\* \* \* SINCE the preceding Volumes were sent to Press, various important PAPERS having been discovered by the Editor, illustrative of facts narrated in the Trials, it has been thought proper to preserve a selection from them in this APPENDIX.

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### No. I.

#### PAPERS RELATIVE TO THE DEADLY FEUD BETWEEN THE EARLS OF EGLINTON AND GLENCAIRN, &c.

I. LETTER, *the King to the Privy Council, 'for tryall of the authouris of the Conflict betuix Erle of Glencairne and the Maister of Wintoun, at St Johnestoun.'*<sup>1</sup> August 6, 1606.

RIGHT trustie and welbelouit Cousins and Counselloris, We greet 3ow well. The report of that broyle whiche did fall furth in THE TOWN OF PERTH, betuix THE ERLL OF GLENCAIRNE and THE MAISTER OF WINTOUN, immediatlie befor the last sessioun of Parliament keipit thair, did offend ws muche; speciallie, in respect of pe circumstances of pe tyme and place, quhen as, (beside the greit hazard in bringing many of THE NOBILITIE then present in the town, to have enterit in blood with vperis, and thairby to haue revived that new mortified monstres of DEIDLIE FEED,) it wes a reddie way to haue stayit the progres of pat sessioun of Parliament, to pe greit preiudice and hurt of pe Estait, and to pe hinderances of all our services thair. Quhairvpoun, We ar moved the moir earnestlie to desire the knowlege of pe beginning of pe misdemeanour, and quhairvpoun the samin proceedit, and whiche partie wes first author thairof. And thairfoir, have thocht meet, heirby, to will 3ow to tak particuler tryell befor 3ow of pe first beginning of that truble, how the samin fell furth, and whiche of the tuo pairteis began the invasioun; and thairwith to try, whidder it wes vpoun a precogitat or foirthocht intentioun, or if pe same fell furthe be mere accident, or *chaud mêle*, vnintendit be ony of the tuo pairteis against the vper? And heirof, willing 3ow to certifie ws, particularlie, of the whole treuth of that matter, in all the circumstances of the samin, oure plesour is, that, in the mein tyme, specialle directioun be gevin be 3ow to OUR JUSTICE GENERALL, HEICHE CONSTABLE, or thair deputies, or to ony vper Judges appointed by Commiffioun to proceed criminallie in the tryall of that matter, to

<sup>1</sup> From *M.S. Collection of State Papers*, by Sir Thomas Hamilton, afterwards Earl of Melrose and Haddington.

desert all dayis, and to suspend and continew all proccesses intendit befor thame be ony of these pairteis againt vper, ay and quhill our forder plesour be signifieit vnto thame, efter We haue dewlie considerit the tryall taikin be zow in that matter. And so We bid zow richt hairtly fairwell. FROM our Manowr of GREINWICHE, pe 6 of August, 1606. [JAMES R.]

To our trustie and welbelouit confins and counsellouris, THE ERLL OF DUMFERMLING, our Chancellour, and remanent Lordis and vperis of our COUNSALL OF ESTAIT, in oure kingdome of Scotland.

II. LETTER, *the Privy Council to the King, as to Deadly Feud between the Earls of Eglinton and Glencairn, and Lord Sempill, &c.*<sup>1</sup> Aug. 27, 1606.

MOST SACRED SOUERANE,

ACCORDING to your hienes directionn, signified vnto vs by your MA<sup>TIES</sup> faithfull counsellour THE ERLL OF DUMBAR, we did call and conuene befor the Counsell the ERLIS EGLINTOUN and GLENCAIRNE, and THE LORD SEMPILL, with a nwner of thair freindis, whome we knew to haue cheifest interes in the present FEED standing betuix thame, and efter that we had declairit vnto thame the greit paines and travellis whiche your sacred MAIESTIE took in your awin persone, for extinguisheing of the name and memorie of DEIDLIE FEEDIS, what good succes had followed vpoun your MAIESTIES travellis, in sum of the greittest FEEDIS of this kingdome, and how that your MA<sup>TIES</sup> had now recommendit vnto THE COUNSELL the removing this FEED, whiche hes bene of so long continuance, and be resoun of pe minoritie of THE ERLL OF EGLINTOUN could not whill now tak effect, we burdinit thame with a Submissioun, conforme to the Act of Parliament. The ERLL OF GLENCAIRNE pretendit that thair wes a quarrell betuix him and EGLINTOUN, and that a Submissioun wes vnecessar; and, in end, he directlie refuist to submitt, becaus the Submissioun imported aganis him of the Slauchter of v<sup>m</sup>q<sup>le</sup> THE ERLL OF EGLINTOUN, which he wald never tak vpoun him; bot offeris him redy to tak tryall of the lawis for that Slauchter; whiche tryall, in his pairt, aucht to preceid the Submissioun. We rememberit him of ane Submissioun subscryvit be himself in this sam matter, agreeable, in evrie word, to that whiche wes now desirrit when this matter wes laft in handis afor THE COUNSELL, in Februar 1604. Bot he, standing vpoun his innocencie of that Slauchter, refuist to submitt. EGLINTOUN maid no refuifall, bot pretending some excuse vpoun the schortnes of the wairning, he only craved a continuatioun to be advifit with his freindis, becaus this wes the first tyme that ever he wes chairgit in this matter, for his MAIESTIE; and THE LORD SEMPILL verry frelie, for your MA<sup>TIES</sup> satisfacioun and obedience, without ony ceremonie, offerit to submitt. We have grauntit vnto EGLINTOUN, with his awin consent, the 20 day of November nixt, to be advyfit with his freindis, and to come prouydit in this matter. We have no assurance of THE ERLL OF GLENCAIRNES obedience, bot we hope that he will conforme himself to your MA<sup>TIES</sup> plesour: And THE LORD SEMPILL will be obedient.

We had lykwayis in hand the proces of GLASGOW, whairin we haue fund verrye greit infolence and ryatt committit be MYNTO and a number of the commonis of the toun; and hes committit the personnes guiltie to waird within the burghes of Linlithgow, whill your MA<sup>TIES</sup> plesour be knawin.

This is all we haue done at this meiting, wherof we haue thocht meet to mak your sacred MA<sup>TIES</sup> acquainted; to the effect your hienes may give directionn thairin, as your MA<sup>TIES</sup> fall think good; which we fall prosequete and follow out. And sua, praying God to blifs your sacred MAIESTIE with a long, happy, and prosperous reigne, We rest

Your Ma<sup>TIES</sup> maist humble and obedient subiectis and servandis.<sup>2</sup>

LYNLITHGOW, 27 of August, 1606.

<sup>1</sup> From the same MS. Coll. as the preceding. *Hamilton*, in his transcript.

<sup>2</sup> The subscriptions have not been transcribed by *Sir Thomas*

## No. II.

## SOCIETIE AND COMPANIE OF THE BOYES.

LETTER *from the Privy Council to the Marquis of Huntly*.<sup>1</sup> Jan. 20, 1607.

EFTER our verry hairtty commendationis to 3our good lordschipis, We ar informed of a verry greit infolencye begvn and lyk to grow to a greiter heicht within the boundis of 3our ll. office be JOHNNIE GORDOUN, *callit of Geyche*, . . . . FORBES of *Corfindae*, PATRIK M<sup>c</sup>INNEIR, and sum vperis, quho, having affociat vnto thame feluis ane number of dobofchet and lawles lymmerris, calling thame feluis YE SOCIETIE AND COMPANY OF BOYES, thay haue most vnlauffullie and feditioufflie bund thame feluis in ane fellowfchip, with aithis, vowis, and protestationis of mutuall defence and perfute; and pat every one of pair quarrellis falbe comoun to all; and that the purpose and interpryse of ony one of thame falbe profequeted, bakkit, and followed out, be the hale SOCIETIE, againft all and quhatfumeuir, without respect of perfouns. Lykas, thir same lymmaris keipis thame selffis togidder, committing oppin and avowed reiffis, heir-fchippis, and vperis enormities, in all partis, quhair thay may be maifteris and commaunderis. QUHILK proud and detestable attempt, as it is odious to be hard of in a peceable estait, subiect to a PRINCE whome GOD hes airmit with power and force able to suppres the same; so the same caryes with it no lytill sclander and preiudice to your ll. honour and creddit, that within 3our boundis, quhair 3our ll. may commaund, such ane handfull of lymmaris dar presume to attempt fuche interpryses; and We ar certane pat the knowledge heirof being broght to HIS MA<sup>TIE</sup>, will mak his hienes wonderfullie till admeir 3our ll. long patience and connivance, in not apprehending, punischeing, and suppreffing of thir lymmaris; and quhat constructionis may be maid heirvpoune to HIS MA<sup>TIE</sup> against 3our ll., we remitt to 3our ll. confideratioun. Alwayes,<sup>2</sup> we ar heirby to requieft and desire 3our ll. that, with all convenient speed, 3ow tak ordour for apprehending of the saidis perfones, and some vperis THE CHYFTANES of that laules SOCIETIE, and put thame heir befoir THE COUNSELL; and that 3our ll. profequete *with fyre and sword* the hail rest of thair followaris, and never leue of pe perfute of thame whill they be apprehendit, pvnist, and altogidder supprest; as 3ow respect HIS MA<sup>TIES</sup> seruice, the peace of pe cuntry, and 3our awin credite, honour, and reputatioun, and as 3our ll. wald eschew that hard censure and construction which HIS MA<sup>TIE</sup> man<sup>3</sup> mak of 3our behaviour, in this point. Sua we commit 3ow to God. FROM EDINBURGHE, pe 20 of Januar, 1607.

To our verry honourable good Lord, THE MARQUISE OF HUNTLY.<sup>4</sup>

## No. III.

TRIAL OF THE MURES OF AUCHINDRANE.<sup>5</sup>

LETTER, *the Earl of Cassillis to the King*.<sup>6</sup> Dec. 3, 1608.

MAIST SACRED SOUERANE,

It may pleis 3our gracious MA<sup>TIE</sup>, I haue taikin this bauldnes, vpone the farder tryall of the

<sup>1</sup> From *Haddington's MS. Coll.*    <sup>2</sup> Nevertheless; at all events.    <sup>3</sup> Must.    <sup>4</sup> A Letter from the Privy Council, 9th Feb. 1608, directs him, by HIS MAJESTY'S command, between and Mar. 10 next, to prepare to depart out of the kingdom; and to give assurance for discharge of his offices, during his absence.    <sup>5</sup> See this Collection, III. 124, &c.    <sup>6</sup> From *Denmyhe MSS.* Adv. Library.



trechrous MURTHOURIS of my vnclie THE LAIRD OF CULZEAIN, and of the boy<sup>1</sup> quha careit the Lettir of his dyett, committet be THE LAIRD OF AUCHINDRAINE and his sonne; and now farder cleirit, be the greit paine and cayr of MY LORD CHANCELARE, quha hes broicht them to fik contrarietie in thair DEPOSITIONIS, that all indifferent men may be perswadit off thair guyltines of bayth thais Murthouris. Nochtwithstanding quhairof, thai still continew in ane denyall. I wald maift humelie beseik your MA<sup>TIES</sup> that it micht be your MA<sup>TIES</sup> gracious plefoure to graunt ane WARRANT to THE CHANCELLER and COUNSALL OF SCOTLAND to PUTT thame to YE BUITTIS,<sup>2</sup> quhairthrow thai may be broicht to þe mair evident Confessoun. So, maift hartlie vyffing your MA<sup>TIES</sup> lang profertie and happines for euer, I remane,

Your MA. maift humbill seruant and subiect,  
EDINBURGHE, the thrid of December, 1608.  
To THE KING his maift excellent MAIESTIE.

CASSILLIS.

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No. IV.

PAPERS IN FARTHER ILLUSTRATION OF THE TRIAL OF MR THOMAS ROSS.  
(See Vol. III., p. 445.)

[THE circumstances attending the Case of MR THOMAS ROSS are so very remarkable in their nature, that it was deemed proper to institute a still more rigorous search after the grounds and Warrants upon which his almost unexampled Trial was founded. After having carefully examined the Acts of the Privy Council, and many other authentic sources, the Editor has the satisfaction of having at length discovered the identical copy of his Trial, which had been transmitted to Court, for the information of KING JAMES VI. Besides the proceedings which have already been printed, it contains a translation of the offensive THESIS and ANNEXA, which, as has already been seen, were ordered to be taken up by the public prosecutor, and upon no account to enter the Records. Annexed to it are the DEPOSITIONS of the unhappy man, which, in expectation of a free pardon, he voluntarily emitted before the Privy Council of Scotland. The original draught of the KING's Letter to the Secret Council, to bring him to Trial and execution; and, in compliance with the King's known wish, their cruel recommendation, that Ross should suffer an ignominious death, have also been obtained. These interesting documents were found in a Volume of *Sir James Balfour's* invaluable *M.S. Collections*, in the Advocates' Library, which had accidentally been mislaid when the Editor conducted the former enquiry.

The reader has here the painful satisfaction of finding, that the conduct of KING JAMES and his COUNCILLORS was still more inexcusable than had at first been conjectured. It is now clearly proved, beyond the shadow of a doubt, that the PASQUILL, or THESIS in question, had not been *printed* or industriously *disseminated* by its unhappy author; but that it had merely been affixed on the door of the College,—that, *de facto*, no person had read it, excepting the Vice-Chancellor of Oxford, to whom it had been brought by a student,—that this student, instantly on the Thesis having been hung up, had only perused a few lines of the Paper, and brought it, without delay, to his superior,—and that, after the examination, confession, and imprisonment of Ross, the Vice-Chancellor had transmitted the THESIS to Court, requesting instructions how the poor man should be disposed of.

<sup>1</sup> William Dalrymple.

<sup>2</sup> The torture of the boots. The younger Auchindrane was put to the torture, which he bore with remarkable fortitude.

That Ross was *insane*, as well as in the most abject poverty, there can now be no doubt. Altogether, indeed, his Case is one of the most pitiable on record.

It only remains to the Editor to state, that he is indebted to GEORGE SMYTHE, Esquire, Advocate, for the following authentic information, regarding THE FAMILY OF ROSS of Craigie, at and shortly previous to the period of Mr Thomas Ross's execution, Sep. 10, 1618. Such additional notices and evidence as have fallen under the Editor's observation are inserted in the foot-notes, along with the verifications of Mr Smythe's memoranda.

I. JOHN ROSS OF CRAIGIE appears to have been the father of (1.) *John Ross* of Craigie. (2.) *James Ross of Creytoun*, who acquired certain lands at the East end of Forgundenny from Walter Oliphant of Newton, in Feb. 1539:<sup>1</sup> He married *Marjory Stewart*; by whom he left a daughter, *Janet*,<sup>2</sup> who married Patrick Lyndsfay of Dowhill.<sup>3</sup> (3.) *Thomas Ross of Maitlands*, who was killed at the battle of Pinkie.<sup>4</sup> *Grissell Duncanson*, his relict, afterwards married Alexander Crichton of Forgound.<sup>5</sup> His son, *James*, was killed in an affray with the Oliphants, Nov. 12, 1571.<sup>6</sup>

II. JOHN ROSS OF CRAIGIE was infest in the Lands of Hilton Malar, Sep. 17, 1539.<sup>7</sup> He was served Tutor-at-law to *Janet Ross*, his niece, Mar. 17, 1543.<sup>8</sup> He is mentioned by KNOX, in his History of the Reformation,<sup>9</sup> along with "the pensionars of the Prelates, Oliver Sinclair, and utheris, who were faithful to them in all things," and informed them of all proceedings at Court. He married *Isobel Liddell*,<sup>10</sup> who had previously borne a number of children to Patrick Hepburn, Bishop of Moray, so notorious for his gallantries. He was killed at Pinkie, and left four sons and three daughters.<sup>11</sup> (1.) *Thomas*. (2.) *John*. (3.) *James*, who had a Charter of the Lands of Pithevels to him and *Catharine McGie*, relict of umq<sup>l</sup> Alexander Menzies of that Ilk, his spouse, Apr. 7, 1566.<sup>12</sup> He afterwards married *Janet Robertson*, relict of umq<sup>l</sup> Thomas Fowlis, burges of Perth.<sup>13</sup> He left no issue; for his brother, *John*, was served heir to him, Nov. 3, 1582.<sup>14</sup> (4.) *William*. (5.) *Barbara*. (6.) *Alison*. (7.) *Grissell*.

III. THOMAS ROSS of Craigie married *Jean Hepburn*; by whom he had one daughter, *Margaret*,<sup>15</sup> who married John Seytoun, apparent of Lathrisk. Jean Hepburn was infest in the lands of Hilton Malar, in liferent. After the death of Thomas Ross, she married Peter Oliphant of Turings.<sup>16</sup>

IV. JOHN ROSS of Craigie succeeded, as heir of entail, to the lands of Craigie, upon the death of Thomas. He married *Agnes Hepburn*; and had by her, (1.) *Patrick*, who married *Beatrix Charterhouse* (*Charteris*). She was infest in the lands of Hilton Malar, in liferent, Apr. 9, 1575.<sup>17</sup> After his death, which took place before that of his father, his relict married Robert Leckie, apparent of Kypdarroch.<sup>18</sup> (2.) *Mr Robert Ross*,<sup>19</sup> who was infest in the estate of Craigie, and was designed "fiar of Craigie" before his father's death, which took place about 1601.<sup>20</sup> He married *Margaret Eviot*. He seems to have sold the lands of Craigie to Mr David Moncreif, son of William Moncreif of that Ilk, before 1620. (3.) *Mr Thomas Ross*, the unfortunate subject of the preceding Trial. (4.) *Andrew*.<sup>21</sup>

<sup>1</sup> *Sheriff Records of Perthshire*, Jan. 12, 1573.      <sup>2</sup> May 20, 1588, James Lindsay, apparent of Dowhill, was served heir to *Janet Ros*, his mother, in a piece of land and orchard in the barony of Forgundennie; and fishing in the Water of Earn.—*Inquisit. Return*. Perth, (1055.)      <sup>3</sup> *Sh. Rec.*, Jan. 12, 1573.      <sup>4</sup> *Ibid.* Apr. 22, 1573.      <sup>5</sup> *Ibid.* Jan. 12, 1573.      <sup>6</sup> See this Collection, I. 25.      <sup>7</sup> *Sh. Rec.*, Nov. 3, 1591.      <sup>8</sup> *Ibid.*      <sup>9</sup> Knox's Hist. of Ref., p. 28.      <sup>10</sup> *Sh. Rec.*, Mar. 14, 1550.      <sup>11</sup> *Ibid.* Jan. 5, 1549.      <sup>12</sup> *Ibid.* Apr. 28, 1573.      <sup>13</sup> *Ibid.* Jun. 12, 1577.      <sup>14</sup> *Ibid.*      <sup>15</sup> She was retoured heir to her father, in the lands of Mayler, lying within the barony of Craigy, Feb. 19, 1574.—*Inquisit. Return*. Perth, (36.)      <sup>16</sup> *Sh. Rec.*, Jan. 15, 1574, and Apr. 20, 1575.      <sup>17</sup> Apr. 16, 1600, *Peter Oliphant of Turings*, having acquired an annual-rent of 150 merks out of the Maynis of Malar, Barclay's-hauch, &c., in the barony of Craigy, from *John Ros of Cragy*, and *Agnes Hepburn*, his spouse, under reversion of 1400 merks, with their joint consent, sells his right to Mr John Moncreif of Easter Moncreiff, and Jane Spens, his spouse. This was confirmed by Charter under the Great Seal, Jun. 28, 1602.—*Reg. Mag. Sig.*, XLIII., 262.      <sup>18</sup> *Sh. Rec.*, Jun. 9, 1596.      <sup>19</sup> *Ibid. eod. loco.*      <sup>20</sup> It appears, by the Great Seal Register, that, on May 21, 1602, *Robert Ross of Cragy*, in consideration of the price of 4150 merks, sold to Christian Moncreif, eldest daughter of William Moncreif of that Ilk, the Mill of Craigy, with the Mill-lands, and three quarters of the town of Craigy, lying in the Barony of Craigy and Sheriffdom of Perth. This Charter of Sale was confirmed by King James VI, Jun. 28, 1602.—*Reg. Mag. Sig.*, XLIII., 261.      <sup>21</sup> *Sh. Rec.*, Oct. 13, 1598, and Jan 13, 1601.      <sup>22</sup> *Ibid.*, Oct. 9, 1591.

To these notices, the following additional information may be annexed.

V. MR ROBERT ROSS of Craigie, above mentioned, seems, from entries in the Kirk Session Records of Perth, to have been reduced to a state of the utmost poverty and destitution. Mr James Scott, in his Extracts from these Records, has the following melancholy entry:—‘ On the 21st of November, 1620, *Andrew Ross*, in name of *Mr Robert Ross*, sometime of *Craigie*, his brother, produced before the Session the said *Mr Robert's* Supplication, showing his present misery, and divers diseases wherewith he is vexed, craving support. Three pounds were taken out of the Thesaurie and delivered to the said *Andrew*, to give this brother.’<sup>1</sup>

The Editor has not been fortunate enough to obtain any material information regarding the personal history of *Mr Thomas Ross*. From his own DEPOSITIONS,<sup>2</sup> however, it is abundantly clear, that he must have endured great privations while in England. In that document he actually asserts, in the most solemn manner, that he was driven, by his desperate circumstances, to adopt the unhappy step which ultimately proved the cause of his destruction, in the vain hope, that the wit and talent he had thus exhibited in so bad a cause, would not only plead his apology with the King and Court, but become the means of his future advancement. *Mr Scott* merely remarks, as in reference to this matter, that ‘ it appears, from a Supplication to the [Kirk] Session, a considerable time before, that *Mr Thomas Ross* had been a long time in the Prison of Edinburgh.’

In conclusion of the disagreeable subject, it is only necessary to add one other entry, from the Kirk Session Records of Perth. It is pleasant to remark, that that charitable body had all along acted in the kindest manner towards this truly unfortunate family; and farther, that they appear to have been actuated by the same pious feelings, in numerous other cases of a similarly distressing description.—‘ Jan. 9, 1621. Mr John Guthry, Minister, reported, that he had given *thirty shillings*, which he had received from the Thesaurie, to *Andrew Ross*, to bear his expenses, when he passed to the visitation of [*his brother*] umquhil *Mr Thomas Ross*, before his execution.’<sup>3</sup>

The Editor has failed in tracing the period when Ross was admitted a Master of Arts, and at what University, although he was politely assisted in his enquiries by the REVEREND DR LEE, who gave him access to the Rolls of the Universities of St Andrews and Glasgow. He fears he has already encroached too much on the limits of this work, and now leaves the reader to draw his conclusions as to the usage and cruel fate of the unfortunate Mr Thomas Ross.]

#### I. LETTER, *the King to the Privy Council of Scotland, with instructions as to Mr Thomas Rofs.*<sup>4</sup> [*Sine data.*]

RIGHTE trustie and righte welbeloued cofen and counsellour, and trustie and welbeloued counsellour, WEE greete yow well. WEE sende yow here enclosed, a LIBELLE, (written by a villanous caytiffe, or rather monfter, of our owne contrie,) whiche, in time of Disputations at OXFORDE, was affixed vpon a gate of one of the Colleges, as THESES to haue bene disputed: And a scholler, hauing taken doune and red the first six lines, (not daring to be conscious to him felse of reading furdur of such purpos,) presentlie caried to the VICE CHANCELOUR; who, suspecting who mighte be the penner, sente for him; and hauing gotten his CONFESSION, that not onlie he was the author, but likewise, that he wolde maintayne all to be trew which he had fette doune therein, the Vice Chancellour discretelie and dewtifullie committed him cloffe prifoner to the Castle of Oxforde, and sente the Libelle to vs, that WEE mighte declare oure pleasour, bothe concerning it and the author. Whiche, his discrete cariage, hath, in our iugement, deferued to be, by a Letter of thankes frome our wholle COUNSELLE,

<sup>1</sup> *Mr James Scott*, Minister at Perth's Extracts from the *Kirk Session Records of Perth*, II., 8, &c.

<sup>2</sup> See this Appendix, p. 588, &c. <sup>3</sup> *Scott's* Extracts from *Kirk Session Records of Perth*, II., 8.

<sup>4</sup> From the Original draught, preserved amongst the *Denmylne Papers*, Adv. Library. It is carefully corrected, and interlined in many places.

there acknowledged. WEE likewise sende yow the person of the man, to be censured by yow, willing yow firste to examine him, and thereafter aduise of the forme of punishment whiche yee shall thinke fitte to be inflicted vpon him. For, although by the Lawes of this our kingdome, it be not permitted for to vse extraordinarie punishments, yat hath it euer bene lawfull for the KINGES there, to deuise and inflict punishments, according to the qualitie and nature of the offence, which in this particulare can be no lesse then Treason[!] For if no man make question but that the writing of an inuectiue<sup>1</sup> againste THE KING and his progenie is Treason, in the highest degree, and in our opinion it is a greuous faulte, (and WEE could more easilie forgiue the writeing againste our selfe,) then<sup>2</sup> againste the wholle Nation frome whence WEE are sprunge. And if it wer a mater capitall in Germanie for STARCOIUS<sup>3</sup> (being a German, a mere stranger to Scotland, and one who, perchance, had bene hardlie vsed by some particulare person there) to haue written against that wholle Kingdome, how much more muste it be capitall to this fellow, who, being Scottes borne, hath so villanouslie, filthilie, yea, and fallie, defamed his owne contrie, by writing in such forte againste his contriemen, the specialler of our seruantes, [and persuaded a course to be taken against them, which possiblie could not be performed, without manifest danger and manifest violence against our selfe,<sup>4</sup>] and so much the more is his offence greuous, as that, by the space of two monethes before, he continuallie vaunted that he wolde do such a feate. It is therefor our pleafour, that yee aduise vpon his punishment, and hauing resolved, that yee aduertise vs with all expedition. So fare yee well.

## II. LETTER, *the Privy Council of Scotland to the King.* Jul. 30, 1616.

MOST SACRED SOUERANE,

WE reffaued youre MAIESTEIS Letter, with the infamous LIBELL writtin be that wretched and vnhappy fellow ROSSE, and we imparted the same to youre MAIESTEIS COUNSELL; who, with all dew reuerence and most humble thankis, doe acknowledge youre MAIESTEIS singulair cair and prudent direction, allweill in this, as in all otheris thingis importing the credite and reputatioun of this youre MAIESTEIS Kingdome; and thay haif writtin thair awne thankis to *The Vice Chancelaire of Oxfoorde*, for his wyfe and kynd resolution and proceidingis, in that mater.

We haif aduised with THE LIBELL, and with the Lawis and Constitutionis of this Kingdome, maid aganis the writtaris and fettaris oute of suche infamous Libellis; and we find the same to be capitall, and pvnishable in the heighest degree. This fellow is not as yitt come heir; and becaus of the approitcheing vacance,<sup>5</sup> and dissolueing of THE COUNSELL, we haif gevin direction to THE MAGISTRATIS OF EDINBURGH, howsoone he shall aryve, to committ him cloise prisounair in thair *Irne-Houfe*,<sup>6</sup> and to lay him in irnis; and vpoun thair aduerteisment, we shall conueene and examine him; and accordinglie, we shall gif direction for his tryall and conviction, and shall superceid the pronouncing of Doome, till we vnderstand youre MAIESTEIS forder pleafour, anent the forme of his pvnishment. Oure opinioun is that he shall be HANGED at *the Mercat-Croce of Edinburghe*, and his heade affixt on one of *the Portis*. But in this we submit oure selfis to your MAIESTEIS direction; quhairunto we shall conforme our selfis. And so, praying God to blisse your MAIESTIE with a lang and happy reigne, we rest

Your Maiesteis most humble and obedyent subiectis and seruitouris,

AL. CANCELL<sup>r</sup>. BINNING. S. W. OLIPHANT.

HALYRUDHOUS, penult July, 1616.

TO THE KING his most sacred and excellent MAIESTIE, &c.

<sup>1</sup> The original words had been 'such an execrable inuectiue.' <sup>2</sup> On the margin, 'that one should write against his own countrie.' <sup>3</sup> See the Introduction to *Ross's Trial*, III., p. 445, &c. <sup>4</sup> The words within brackets are added on the margin. <sup>5</sup> 'Vacance;' vacation. <sup>6</sup> Their strong iron room, or 'cage,' as it was afterwards called, in which desperate criminals were confined previous to their execution.

III. *Followis* THE THESE, with THE APPENDICES adionet thairto, translated.<sup>1</sup>

THAT all SCOTTISMEN aucht to be throwin furthe and expellit out of THE COURT OF ENGLAND, (excepting his gracious MA<sup>TIE</sup>, his sone, and few vtheris,) and that þe INGLISCHMEN ar nichtielie blindit, deceavit, and fyllet, albeit thay be vtherwayis ane Natioun full of eyis, and quick-fichtit, that sufferis fo vnprofittable and pernicious a multitude and pudle of raskallis to rage and bear dominion within thair entrallis and bowellis. Off quihkis blasphemis (3e haif writtin) that 3e wald rander and follow out the maist just reafones, by Godis grace, at ane vther occasioun, moir lairglie and accuratlie, bothe by profe and verfe. Bot now 3ow put furth 3our finger to schaw only the fontanes, and theafe in few number, be reffone 3e inlaikit lafer<sup>2</sup> and helpis to performe the samyn.

I. SANCT JEROME, AUGUSTIN, and STRABO wryttis, that SCOTTISMEN of auld war men-eitteris, or eatteris of menis flesche; and trewlie, (as 3e beleve,) for as 3it the flesche whilk the ancient Scottis swallowed stikis in the javis and teith of the Courtiours, quhairby thay ar provoikit to fuche ane insatiable avarice and intollerable pryde.

II. JOSEPHUS wryttis, in his booke against Appion, that, in the tyme of Amenophis, King of Ægypt, thair raget and rauaget vp and doun tua hundreth thousand lipperis in Ægypt, quha, by vnlauchfull meanis, and by mervellous craftines and subtiltie, emptied and pilleid<sup>3</sup> all þe substance and riches of Ægypt; whilk wald haif bene haillille vndone, gif this vnhallowit menzie<sup>4</sup> had nocht, by the wifdome of the King and Nobillis, bene cassin out and expellit: Sua, peace and peace,<sup>5</sup> THE KING and COUNSALL OF ENGLAND fall be vndone, and go doun, iff this companie or band that robbis Kingdome and landis be nocht sent bak to thair wounted feattis and stallis.

III. THE seaven leane ky<sup>6</sup> of Pharao confwmet and distroyit the sevin fatt and weill fed ky, and 3it war nocht satisfait; and the sevin deaff and toome<sup>7</sup> earis of corne, blasted with the East wind, swallowed vp the sevin big and fatt eares, and war nocht filled: Swa, these Courtiours, by thair begynning, and offspring, and first estait, being most miserable, thay distroy, overturnes, and consumes ENGLAND, ane maist plentiefull cuntrie; and ar nocht 3it filled with so grit and evill conqueiffit<sup>8</sup> ritchee, acqyret by the schipwrak of þe haill Kingdome of England.

IV. THAY quha, in pair 3outh-heid,<sup>9</sup> war trwbillit with famine and hunger, can nocht, quhan thay ar cum to thair full growne aige, by no plentie, be fatiat:<sup>10</sup> Sua, it befallis vnto these, quha of maist sklender begynning, by mad mirriement and sport of Fortoun, ar cayreid vp to the heichest top: Zea, gif pair war gevin vnto his maist bountiefull and liberall MAIESTIE ane thousand philosophik stoness, quhairby the haill Oceanus micht be convertit in gold: 3itt, these wald nocht be filled, gif the Cantabrik or Biskay Sea of Spayne, war gevin vnto thame to drink; thay wald nocht suffer ane thristie bird to drink ane drope thairof.

V. THAY spend more in pair gairtanes, and ribbens<sup>11</sup> in the latchettis of thair schooes, than pair fateris bestowis in þe intertenement of pair haill famelie. O quhat tymes ar these! O quhat maneris be these! O the infamy of the world and reproche of the earthe! Now pair is mony Smerde Magiens, but thay vaunt thame selffis sa to be.

VI. THESE Scottis Courtiours (verrie few exceptit) haif the disloyaltie or vnfaithfulnes of the Carthaginianis; the menfworne aithes of the Phrygianis or Trojanis; the luxurie of the Persians; the avarice of Mydas, King of Phygia; the crewaltie of the Effedonis, ane people of Sythia; (quihlk people fingis at pair parentis funerallis, and drinkis in 3air skullis, and eattis pair flesche mingled with vther beiftis;) the prophanitie of Epicurus; the deceat of Synon; mair wyld than a carian, a bettill, or klok vnder the wingis of ane Eagle; thay vse the spuillzeis<sup>12</sup> of Spartacus, (this Spartacus was a Thra-

<sup>1</sup> From the identical copy of the Dittay, which had been transmitted for THE KING's inspection, preserved among Sir James Balfour's MS. Collections, Adv. Library, Edinburgh. <sup>2</sup> Wanted leisure. <sup>3</sup> Pillaged; plundered. <sup>4</sup> Train; company; gang. <sup>5</sup> So, or in like maner, piece-meal. <sup>6</sup> Seven lean kine. <sup>7</sup> Empty. <sup>8</sup> Ill-gotten, or acquired. <sup>9</sup> Youth; minority; less-age. <sup>10</sup> Satiated. <sup>11</sup> Garters and ribbands. <sup>12</sup> Spoils.

cian fenfer' quha with Chyfus and Oenomaus brak out of the Fence-Scole of Lentulus, and drestit ane army of fervandis, and overcame Clodius Glaber his army, and spuilzeit all Campania, and overthrew Lentulus army and Caffius troupes, bot was defeat by Craffus,) and the fearcenes of Virratus (the Portugall Lusitanius, quha frome pastor become ane hunter, and pairestir the chiftane of ane army, trublet the Romaynes, and defeat thame in Spayne, and at lenth was slayne be treaffone, procureit be Cœpio), and the leasngis of the Candians or Cretes.

VII. VNTO his schyneing and royall MA<sup>TIK</sup>, be vntrublet health and increse of glorie ! Bot God, frome the heavnes, perfew these Courtiours with blak fyre and brimstone ! I shall, so long as I leave, for thair distructioun, schaw my self Coriolanus, and nocht Themistocles ; that is to say, ane oppin ennymie, and nocht ane secreit freind.

VIII. O INGLISCHE ! Inglishe ! The most expert and wyfest Natioun in weir,<sup>1</sup> the terrour of the Spanzaird, triumpharis over France and Guyene by so long a tyme, in quhat benumbnes or droufines ar ze fallin ? Ze, quha in weir and battell ar intometable,<sup>2</sup> now ze fall go doune quiklie by diffait, at vayne appeirances of imaginarie matteris, and by the toyis of fals accusaris and delatouris, in quhome thair is nocht so muche fauorines or witt as in the quhyte of ane egge ! Zitt all the wealth and commodities of your most flurischeing kingdome, is cayreit away in boittis and crearis,<sup>3</sup> thiftiounlie, to Scotland ; and incontinent, being helpit with your awin commoditeis, thay will vterlie trampill vnder fute your Natioun and countrie, and will cut your throttis with your awin suorde, befoir ze be awar ! Quhat a patient Socrates will indure thease iniureis ! Quha may nocht snuff or smell gritter schortlie to follow ?

IX. ZE haue gottin out of Scotland ane most worthie PRINCE ; nocht ane thowseand Kingis, counterfute Stage-playeris, quhytted tombes !<sup>4</sup> Thair is hingand aboue your heidis, or lying vpon your schoulderis, ane moir hard fervitude and schearpar captiuitie than over Naciones quhilkis ar subdewid and overcum by weir ! For, estir the Romanes had overthrawin, in weir, the Syrianis and the Ægyptianes, thay gave thame to be governet be thair awin cuntriemen ! Thay exactit only tribute dew frome the vanquished ! Sall, thairfoir, those barbarous people possess and injoy the first places, in Courte, in Counsale, in Kirk, in Nobilitie, in Landis, offices, functiones, and giftis of England ? Thair surlie, the libertie and glorie of England is evanished ! Now, England is hailyly<sup>5</sup> delyuerit over in the handis of Scottis Courtiouris, and the Judges haif enterit pair nekis vnder the zoke of theiffis ! O, the World is turned vp syde down ! We ar now overturned vnto the auld mas and chaos of confu-sion ! Lett sum revengde spring out of my bones, that may chestize with fyre and suord the Scottis Court and her possessoures. Geve thankis, ze Scottis Courtiours, vnto my povertie, and nocht vnto the barrannes and penurie of my ingyne, gif I airme nocht all England to cut your throttis. Bot the Lord preserve ever more his awin annoynted, both weilbelouit and electit !

X. REMOVE this stinking pompe, paddle, and trifles of the Scottis Court, and pride of this hautie, fekles,<sup>7</sup> and impotent commontie. Thane, sall thair be few in your boundis that fall be beggeris, nidie,<sup>8</sup> ragget—than, the treyis, gibbettis, and gallouffis of all the cuntrie fall nocht be laiden with the wecht of the hangit vp carcadges !<sup>9</sup> The Scottisfmen, as loch-leitches, and wormes in coirnes, drinkis out the sap of your cuntrie, and foukis out your merche,<sup>10</sup> by inlaik quhair of so many ar led and drawin to thift and robbie ! Those Courtiours draw out gritter welthe furth of your bowellis, by your knowlege,<sup>11</sup> than France, Germany, and Spayne, is able to affoid ; quhilkis guidis, whan thay ar thus pullet<sup>12</sup> away, quhat fall pe maisterfull and niedie cowmontie<sup>13</sup> of England do or vndertak, bot to cast thame

<sup>1</sup> Fencer ; gladiator.    <sup>2</sup> War ; the art military.    <sup>3</sup> Indomitable.    <sup>4</sup> Boats and *cr. ars*.    <sup>5</sup> Crears were a sort of vessel much in use in the Western Islands, to which they appear to have been peculiar.  
<sup>6</sup> Wholly ; entirely.    <sup>7</sup> Weakly ; feeble, &c.    <sup>8</sup> Needy.    <sup>9</sup> Carcasses.    <sup>10</sup> Sucks out your marrow.  
<sup>11</sup> Without your knowledge ; secretly ; by stealth.    <sup>12</sup> Perhaps, for ' *pillet* ; pillaged ; plundered.    <sup>13</sup> Destitute and needy ' commonalty,' or common people.

felfis heidlong in ane golff,<sup>1</sup> quhilk mycht leave<sup>2</sup> sufficientlie, without manis hearne, gif thofe howlattie and ftymeis<sup>3</sup> war fchote<sup>4</sup> away.

O, worthiest Inglifchmen ! Wey the force and reafones of this my Counfall, quhair of I haif skairce recited the tent pairt ; and ze fall perfave that I am come to your cuntrey as ane helthfull ftarr, quhilk thir Courtiours haif drowned with the fea wallis, as the Lycaonian Starr, or Vrfia Maior, to quhome it war ane villanie to have fo drowned fuche ane ftarr.

Bot we fall nocht all die to day vnrevendget !

#### IV. *Followis the tennour of THE DEPOSITIONES of Mr Thomas Roifs.*

AT EDINBURGH, the ellevint day of Auguft, 1618. In prefens of Sir Williame Olyphant of Newtown, his Maiefties Aduocat.

MR THOMAS ROISS, humblet on his kneis, and deiplic fuorne vpon his folempne oathe, fays, that he will declair the treuthe in all and everie thing that fall be demandit of him. Demandit, yf THE THESES, and APPENDICES pair of, producet and fchawin vnto him, and writtin on thre fydis of paper, be his awin hand-writt ? Depones and grantis, that thay ar his awin hand-writt—and that na vther perfone wrait ane word or Lettir pair of.

Demandit, quhat moved him to wryte them ? Depones, that he, being ane gentilman borne, deprieved of all benifeit that he micht expect of his fateris eftait, and being reducet to the extreme point of miferie and povertie, and haveing reffauet mony infupportable iniureis of his cuntrie men, at Courte ; he, being efchamed to beg, and difdaneing to steill, and haveing no meanis quhairby to intertene<sup>5</sup> him felff, finding no comfote nor releif of his contriemen at Courte, he pairfoir, being in difpair and mad, out of his diftemperat humour and frenyfie, and fair aganis his heart, without ony fetled refolution, and without ony purpois to do evill, bot to fchaw the greif of his heart, and to move pitie and compaffioun towardis him, wrait thir THESES ; thinking, that the wryting pair of, in this his mad humour and difpofitioun, wald raper procure pitie nor<sup>6</sup> wraithe, at HIS MA<sup>TIES</sup> handis ; and that God ; peradventure, wald moue HIS MA<sup>TIES</sup> heart, who is a prudent and wyfe Prince, to think that the deponer was drevin, vpon plane miferie and neceffitie, to wryte thame ; and pat pairfoir HIS MA<sup>TIES</sup> wald pitie his diftres and miferie, and help him : And he apprehendit that some weill-myndit Courtiours wald interceid for him, and fchow HIS MA<sup>TIES</sup> that he quho had done fo weill vpon a evill fubiect, wald do far better vpon a goode fubiect, gif he war employed ; bot, yf it fould pleis God to move HIS MA<sup>TIES</sup> to think vtherwayis of this matter, and to tak it in evill pairt, it behooved the deponer to abyde Godis will and THE KINGIS MA<sup>TIES</sup>.

Demandit, quhat he did with thir THESES, eftir the wryting thairof ? Deponis, that he affixt thame on a dur of the Kirk, callit ST MARIES KIRK, at OXFURDE, vpon Twifday, being a preiching day, in the moneth of July laft, immediatlie as the people war diffolueing frome the Sermone, and as DOCTOR GODWENE, VICE-CHANCELOUR of THE VNIUERSITIE OF OXFURD, was cuming out of the Kirk. And depones, that immediatlie eftir pai war affixt, ane man, quhome the deponer knowis nocht, tooke thame down, and cayreid thame to be Vice-Chancellour. And grantis, that THE THESES now producet and fchowne vnto him ar pe fame verrie Thefes, and that fame Paper quhilk he wrait and affixt, as faid is.

Demandit, yf at any tyme afoir pe wryting of THE THESES he was in conference with ony perfones pairanent ? Depones, that ane moneth afoir the affixeing of THE THESES, he was in conference with pe Vice-Chancellour ; and regrated vnto him his hard eftait and conditioun, and the vnthankfulnes of his cuntrie men, the Courtiours, quho wer his gritt vnfreindis.<sup>7</sup> And he fchew the Vice-Chancellour that he had a purpois to go to France, and intreited him that he mycht haif a *viaticum*<sup>8</sup> to transf-

<sup>1</sup> Gulf.    <sup>2</sup> Who might live, &c.    <sup>3</sup> Owls and bats.    <sup>4</sup> Thrust ; driven.    <sup>5</sup> Support ; maintain.  
<sup>6</sup> Than.    <sup>7</sup> Enemies.    <sup>8</sup> In this sense, *viaticum* seems to have been a term employed to denote a charitable contribution raised by authority, within the Universities, for enabling poor students to undertake journeys to foreign parts, &c.

poirt him. Qubairvnto the Vice-Chancellour zeildit. Bot the deponer being eschamed to go through the Colledges to collect the same, he ressaunt only foure or fyve pund Sterling, and spendit it as he gat it; qubairas, gif he had ressaunt all that wald haif beene gevin, in caice he had tane panes to go throuche the Colledges to haif collectit it; or yf he had gottin ony *viaticum* frome HIS MA<sup>TIES</sup>, he wald nocht haif writtin thir THESES, bot wold haif gone to France.

Grantis also, that he regraited the vnkynd deilling of the Scottis Courtiouris towardis him, to Sir Harie Schaveill, Principall of Eittin Colledge, befyde Wyndfoir; bot denyis, vpon his gritt aithe, that he imparted his purposis to wryte THE THESES, outh<sup>r</sup> to the Vice-Chancellour or to him.

Demandit, be whose advyse he wrait thir THESES? Or, yf he had conference with ony persone thairanent? Depones, vpon his grit oathe, that he had no advyse, counfall, nor informatioun gevia to him in that matter; bot being at Greenwitche, a littill estir he went to Oxford, he adressit him selff to one of THE KINGIS Chaipaines, quho is a heiche<sup>2</sup> tall man, and was walking in Grenewitche Hall for pe tyme. His name he knowis nocht. And he intreited the Chaipaine to tell THE KINGIS MA<sup>TIES</sup>, that he was borne away; and that he had long waited on, without ony help or suppoirt; and that he was now drevin to grit povertie; and that he wald pray God for the weilfair of HIS MA<sup>TIES</sup> and his childrene—bot, for his cuntriemen, the Courtiouris, quha had bene so vnthankful vnto him, he fould rather be lyk Martius Coriolanus vnto tham, nor<sup>3</sup> Themistocles.

Grantis also, that afoir his passing to Oxford, he forgaderit with on Johnne Line, Scottifman, a taillour, duelland in Titler streit; and that he tauld him, that wer not for pe respect and reuerance that he cayreid to HIS MA<sup>TIES</sup>, he was halffingis myndit (yf he gat nocht some suppoirt to carye him to France) to sett vp some THESES, either in Oxfurde or in France, aganst the Scottis Courtiours, and that it was goode for THE KING to fend some of thame away. And the deponer desyret Johnne Line to acquent THE KINGIS MA<sup>TIES</sup> heirwith, be Petitioun; and he craved Johnne Lynes advyce, how he might eschew the wryting of these THESES; bot Johnne Lyn had no advyce in the matter. And sayis, vpon his grit oathe, that he nevir reveillit forder of this matter to ony persone, bot so far as he hes confest, concerning the Chaipaine and Johnne Lyn. And denyis, vpon his oathe, that evir he gave out or disperfit ony coppeis of thir THESES.

Demandit, yf at ony tyme estir he had meditat vpon the wryting of THE THESES, and afoir his affixing of the same, he communicat the matter to ony perfones, or schew pe THESES vnto thame? Depones, that he only reveillit the matter to his oist<sup>4</sup> in Oxford, callit Johnne Ewing, taillour, and to his wyffe, in this maner, to wit, that he was going to wryte something quhairof the haill scolleris of Oxford wald schortlie get knowlege, and wald heir of it; thairfoir, let me be quyet a quhyle, and lett no man truble me. And this was xxiiij houres afoir pe affixing of the THESES.

Demandit, how it was knowne that he had writtin and affixt the THESES? Depones, that the Vice-Chancellour knew his hand-writt, and fend for the deponer within a quarter of ane hour estir the affixing of the same, and askit of the deponer, 'Gif he had writtin thame?' Quhilk the deponer grantit. Qubairvpon the Vice-Chancellour fend him prisouer to the Castell of Oxfurde; quhair he was straitlie keipit ten dayis; till thre Scottifsmenne of the Gaird war fend to bringe him to Courte. Denyis that, during his abode in Oxfurde Castell, he had speiche with ony perfones anent this matter, bot<sup>5</sup> with his keipparis and vtheris priffoneris; quho askit of him, the caufe quhairfoir he was wairdit? To quhome he ansuerit, becaus he had writtin some littill thing aganis his cuntrie-men, the Courtiours, advyseing THE KING to fend some of thame hame.

Depones, that quhen he come to Courte, he was putt in a Inne, befyde Charing Croce, quhair he stayd thre nychtis and two dayis; and that he was examinat be the Duke of Lennox,<sup>6</sup> the Marqueis

<sup>1</sup> Either. <sup>2</sup> High. <sup>3</sup> Than. <sup>4</sup> Host; landlord. <sup>5</sup> Unless; except. <sup>6</sup> Ludovick, second Duke of Lennox, who had held some of the highest honours in Scotland. He was Great Chamberlain, Lord High Admiral, and Lord High Commissioner to the Parliament of Scotland, 1607. The Duke of Lennox was successively created Earl of Richmond, (Oct. 6, 1613,) Earl of Newcastle and Duke of Richmond, (May 17, 1623,) Master of the Household, first Gentleman of the King's Bedchamber, and one of the Knights Companions of the Order of the Garter. He died Feb. 16, 1624, *ætat* 50, without being survived by any of the issue of either of his three marriages.



of Hammiltoun,<sup>1</sup> the Vicount Fentoun,<sup>2</sup> the Lord Hay,<sup>3</sup> and Sir Williame Alexander.<sup>4</sup> And *pat pair-*  
*ester* he was convoyed to (a) schip of Prestoun, lyand at Southwark, be Mr Johnne Broun and Patrik  
 Logane, Scottismenne, and be ane Inglichman of the Gaird. M. T. Ros,<sup>5</sup> with my hand.

T. W. OLIPHANT.

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No. V.

DOCUMENTS RELATIVE TO THE 'EGYPTIANIS,' OR GIPSIES.

[IN many parts of the preceding Volumes, TRIALS have been inserted, from time to time, regarding the remarkable Asiatic people, commonly known in early times, in Scotland, by the name of EGYPTIANS. It seemed to the Editor to be desirable to afford to the enquiring reader some traces of their wanderings in Scotland, during the fifteenth and sixteenth centuries; and for that purpose, he has examined as many of the earlier Records as his opportunities have, at present, permitted.

It is sufficient, for the purposes of this Collection, to remind the reader, that, from whatever country that singular race took their origin, (which, though there be much room for difference of opinion on the general question, was assuredly Oriental,) and whatever the causes may have been which prompted their emigration, or occasioned their expulsion, from their native soil, this wandering people first made their appearance in Europe early in the fifteenth century. They succeeded, in spite of numerous decrees of expulsion and persecution, in making good their settlement in various kingdoms, and especially in the countries of Poland, Germany, Hungary, France, Spain, Italy, England, and Scotland. It is very remarkable, that, although they have now been resident in Christendom for nearly *four hundred years*, they have preserved themselves as a separate and peculiar race, in *all* the countries where they have sojourned; and have all along been characterised by their distinctive manners, customs, language, and superstitions, which have been kept almost pure and unimpaired, from the date of their first emigration. Indeed, few instances have occurred, in any country, where any considerable portion of them have steadily settled in towns, or followed any

<sup>1</sup> James, *second* Marquis of Hamilton, a great favourite of King James VI. He was created an English Peer, by the titles of Baron of Ennerdale, in Cumberland, and Earl of Cambridge, June 16, 1619; was a Gentleman of the Bedchamber, Steward of the Household, and Lord High Commissioner to the Scottish Parliament, 1621; and Knight of the Garter, Jul. 7, 1623. Died Mar. 2, 1624-5, *ætat* 36.

<sup>2</sup> Alexander, Viscount of Fentoun, eldest son of Sir Thomas Erskine of Gogar, created Earl of Kellie, Mar. 12, 1619; and father of Thomas, *second* Earl of Kellie. Obiit, Feb. 1633.

<sup>3</sup> John, *eighth* Lord Hay of Yester, created *first* Earl of Tweeddale, Dec. 1, 1646.

<sup>4</sup> Of Menstrie, the celebrated Peet, who obtained a Grant of Nova Scotia, in America, by Charter, Sep. 10, 1620. He was created Viscount of Stirling, &c., Sep. 4, 1630; and Earl of Stirling, Viscount of Canada, and Lord Alexander of Tullibody, June 14, 1623; and died at London, Feb. 1640, but was buried at Stirling, Apr. 12, 1641.

<sup>5</sup> 'MR THOMAS ROSS, present Minifter at *Cargill*, obtained a GIFT, under the Privy Seal, of THE VICARAGE OF CARGILL, with the fruits, rents, teinds, &c., and 'with the Manse and gleib thairof,' lying within the diocese of Dunkeld, and sheriffdom of Perth; 'during all the dayis of his lyftyme.—*Register of Presentations to Benefices*, Vol. III, Jul. 26, 1606,

sedentary or useful handicraft. On the contrary, they have literally wandered from place to place, seldom remaining above a few days in one spot, "living in tents," and subsisting by plunder or knavery.

In those kingdoms, where they have effected a steady footing, they have all along been distinguished by the name of BOHEMIANS, GITANOS, ZINGARI or CINGARI, ZIGEUNERS, TZINGANYS, GIPSIERS, and EGYPTIANS.

As so much has been written regarding the origin and history of the Gipsies, by *Hoyland, Grellmann, &c.*<sup>1</sup> it is only necessary to premise these facts, in the briefest manner. The reader will find several very curious and interesting essays on the history of the Scottish Gipsies, written in a popular and entertaining form, in the two first volumes of *Blackwood's Magazine*, and also in the *Encyclopædias*. The Editor has just been informed, that a work is at present preparing for publication, which professes to embrace all that is known regarding the history of these wanderers, especially in the various districts of Scotland, which renders it still less necessary to enlarge in this place.

It may be remarked, that in the fifteenth century, THE EGYPTIANS uniformly, in the numerous countries to which they migrated, gave themselves out to be *Christian Pilgrims*—and their leaders assumed the titles of KINGS, DUKES, COUNTS, or LORDS of LITTLE EGYPT; from which country they always pretended they had been expelled by the *Saracens*, on account of their RELIGION. Certain it is, that at present they appear to profess *no religious belief whatever*, and they lead the most immoral lives, and herd together like hordes of savages, in a promiscuous state, wholly unknown to any other race now extant in Europe, living "without God and without hope in the world." With their characteristic cunning, it is likely that this assumption of the appearance of *Pilgrims* was only in accordance with the superstitious and prevailing customs of the times. Under this character they had the address to impose upon almost all the Sovereigns of Europe, and obtained passports and privileges from them; and even THE POPE himself was not protected from their artifices, by his boasted *infallibility*.

In examining the Books of *the Lord High Treasurer* of Scotland, the following entries occur. They are here laid before the reader, without further comment.

' Jul. 17, 1492. Item, to Peter Ker to passe to THE KING<sup>2</sup> to the Hwnthall,<sup>3</sup> to get the Letteris subscrivit to THE KING OF ROWMAIS, iiij f.

' Jul. 19. Item, to THE KING OF ROWMAIS meffinger, at the Kingis command, xx li.

' Maij 2, 1501. Item, to *Peter the Moryene*,<sup>4</sup> quhen he passit his way to France, iij li. x f.

<sup>1</sup> *Hoyland's Survey of the Gipsies*—Grellman. *Hume on Crimes*. *Mackenzie's Obs. on the Statutes, &c.* See also *Acta Parl.*; *Burnet's Hist. of Reformation, &c.* <sup>2</sup> JAMES IV. <sup>3</sup> Of Glenfynlas, or Glenartnay, where the King was in use to resort at that season of the year. <sup>4</sup> It appears by other entries in the Records, that this person, and certain '*More laffes*, were minstrels and servants to the Queen.

‘ Maij 10, 1502. Item, to THE ERLE OF GRECE, be the Kingis command, xiiij f.

‘ Jun. 28. Item, to ANE KNYCHT OF GRECE, be the Kingis commande, vij lib.

‘ Item, for ane ring of gold, fet with ane dyamant, and tua rubyis, in maner of *flour de lice*, iiij lib.

‘ Feb. 24, 1503. Item, in Drumfreife, to *Peter the Moriene*, ix f.

‘ Dec. 11, 1504. Item, quhen *the More las*<sup>1</sup> wes cristinit, giffin to put in the caudill, ix f.

‘ Apr. 22, 1505. Item, to THE EGYPTIANIS, be THE KINGIS command, vij lib.

‘ 1530. Item, to THE EGIPTIANIS that danfit before THE KING, in Halyrudhous, xl. f.’

These are the only early notices the Editor has hitherto met with, in that valuable Record. It is very probable, however, that some of them have no reference to Egyptians. A variety of other documents have been obtained from the Records of the Privy Seal, &c., which follow this brief and imperfect notice.]

I. LETTER *from King James IV. to the King of Denmark, in favour of Anthony Gawin, Earl of Little Egypt, &c. Anno 1506.*<sup>2</sup>

ILLUSTRUSSIME, &c. ANTHONIUS GAWINO, EX PARVA EGYPTO COMES, et cætera ejus comitatus, gens afflicta et miseranda, dum Christianam orbem peregrinationes studio Apostolicæ Sedis (ut refert) jussu, suorum more peregrinans fines nostri regni dudum advenerat, atque in fortis sue et miseriarum hujus populi, refugium, Nos pro humanitate imploraverat ut nostros limites sibi impune adire, res cunctas, et quam habet societatem libere circumagere liceret. Impetrat facile quæ postulat miserorum hominum dura fortuna. Ita aliquot menses bene et catholice, (sic accepimus,) hic versatus, ad te, REX et Avuncule, in DACIAM transitum parat. Sed Oceanum transmissurus nostras Literas exoravit, quibus celsitudinem tuam horum certiore redderemus, simul et calamitatem ejus gentis Regiæ tuæ munificentiae commendaremus. Ceterum errandæ EGYPTI fata, moresque et genus eo tibi quam nobis credius notiora quo EGYPTUS tuo regno vicinior, et major hujusmodi hominum frequentia tuo diversatur imperio. Illustrissime, &c.

II. LETTER, *under the Privy Seal, by King JAMES V. in favour of ‘ Johnne Faw, Lord and Erle of Little Egypt.’*<sup>3</sup> Feb. 15, 1540.

JAMES, be ye grace of God, King of Scottis: To oure Schereffis of Edinburghe, principall, and within the constabularie of Hadingtoun, Berwik, Roxburghe, Selkirk, Perth, Forfar, Fife, Clakman-nane, Kinrose, Kincardin, Abirdene, Banf, Elgin and Fores, Narne, Innernefe, Linlithq<sup>w</sup>, Peblis, Striviling, Lanark, Renfrew, Dunbertane, Air, Drumfreis, Bute, and Wigtoun; Stewartis of Annanderdale, Kirkcudbrycht, Menteithe, and Stratherne; Baillies of Kile, Carrik, and Cunynghame; and paire deputis; Provestis, aldermen, and baillies of oure burrowis and cieteis of Edinburgh, Hadingtoun, Lawder, Jedburgh, Selkirk, Peblis, Perth, Forfar, Cowper, Sanctandros, Kincardin, Abirdene, Banf,

<sup>1</sup> Dec. 2, 1512, she is styled the ‘*Quenis blak madin*,’ and on Feb. 1612-13, ‘*Blak Elene*.’ And on Jul. 19, 1513, ‘*Blak Margaret*’ gets a payment of xlvij s. They do not appear to have been Egyptians, but Negroes. The notices, however, are so curious that they are given along with the rest. <sup>2</sup> *MS. Reg.* 13. B. II. Taken from *Pinkerton’s Hist. of Scotland*, quarto, Lond. 1797, vol. ii. p. 444. <sup>3</sup> *Reg. Secr. Sig.* xiv., 59. A very unfaithful transcript of this document had formerly been published in the Appendix to *Maclaurin’s Criminal Trials*.

Elgin and Fores, Narne, Innernefe, Linlithq<sup>w</sup>, Struiling, Lanark, Glasg<sup>w</sup>, Ruthirglenne, Renfrew, Dunbertane, Air, Drumfreis, Wigtoun, Irwyne, Kirkcudbright, Qubitterne; and to all vperis Schereffis, Stewartis, proveffis, aldermenne, and bailleis within oure realme, greting. FORSAMEKILL as it is huimlie menit and schewin to ws be oure louit, **JOHNE FAW, LORD AND ERLE OF LITILL EGIPT**; That quhair he obtenit oure Lettres vnder oure grete feile, direct to 3ow, all and findry oure saidis Schereffis, stewartis, baillies, proueffis, aldermen, and baillies of burrois, and to all and findry vpiris havand autorité within oure realme, to assist to him in executionne of justice vpoun his cumpany and folkis, conforme to pe lawis of EGIPT, and in puniffing of all paim pat rebellis aganis him: **NEUIR-PELES**, as we ar informyt, **SEBASTIANE LALOW**, Egipciane, ane of pe said Johnnis cumpany, with his complices and pairt-takaris vnder-writtin, pat is to say, **ANTEANE DONEA, SATONA FANGO, NONA FINCO, PHILLIP HATFEYGGOW, TOWLA BAIL3OW, GRASTA NEYN, GELEYR BAIL3OW, BERNARD BEIGE, DEMER MATSKALLA, NOTFAW LAWLOWR, MARTYNE FEMINE**, rebellis and conspiris aganis pe said **JOHNE FAW**, and hes removit pame alluterly out of his cumpany, and takin fra him diuerse sovmes of money, jowellis, claithis, and vpris gudis, to pe quantité of ane grete sovme of money, and on na wyse will pass hame with him, howbeit he has biddin and remanit of lang tyme vpoun pame, and is bunding and oblist to bring hame with him all pame of his company pat ar on live, and ane testimoniaie of pame pat ar deid: And als, pe said **JOHNE** hes the said **SEBASTIANE** Obligatioune, maid in Dunfermling, befor our Maister houffald, pat he and his cumpany suld remane with him, and on na wyse depart fra him, as the samin beiris. In contrar pe tenour of pe quhilk, pe said **SEBASTIANE**, be sinifter and wrang informatiounne, fals relatioune, and circumventioun of ws, hes purchest our writingis, discharginge him and pe remanent of pe personis aboue writtin, his complices and pairt-takaris of the said **JOHNNIS** cumpany, and with his gudis takin be pame fra him, caussis certane our liegis assist to pame and pair opinionis, and to fortify and tak pair pairt aganis pe said **JOHNE**, pair lord and maister; sua pat he on na wyse can apprehend nor get pame to haue pame hame agane within paire awin cuntré, estir pe tenour of his said Band, to his hevy dampnage and skaithe, and in grete perell of tynfall of his heretage, and expres aganis justice. **OUR WILL IS HEIRFOR**, and we charge 3ow straitlie, and commandis, pat, incontynent pir our Letteres sene, 3e and ilk ane of 3ow, within pe boundis of 3our Offices, command and charge all our liegis pat nane of paim tak vpoune hand to resset, assist, fortify, supplé, manteine, defend or tak pairt with pe said **SEBASTIANE** and his complices aboue writtin, for na buddis nor vper way, aganis the said **JOHNE FAW**, pair lord and maister; bot pat pai, and 3e, inlikwise tak and lay handis vpoune pame quhareuir pai may be apprehendit, and bring paim to him to be pvniff for pair demeritis, conforme to his lawis: And help and fortify him to pvnis and do justice vpoune pame for pair trespassis: And to pat effect, len to him 3oure presonis, stokis, fetteris, and all vper thingis necessar pairto, as 3e and ilk ane of 3ow, and all vperis oure liegis, will ansuer to ws pairupoune, and vnder all hieaft pane and charge pat estir may follow; swa pat pe said **JOHNE** have na caus of complaynt heirupoune in tyme cuming, nor to resort agane to ws to pat effect, nochtwithstanding ony oure writings sinifterly purchest, or to be purchest, be pe said **SEBASTIANE**, in pe contrar. **AND ALS**, charge all oure liegis, pat nane of paim molest, vex, inquiet, or trouble pe said **Johnne Faw** and his cumpany, in doing of pair lesfull befynes, or vperwayis, within our realme, and in pair passing, remanyng, or away-ganging furth of pe samyne, vnder pe pane aboue writtin: And siclike, pat 3e command and charge all skippars, maisteris, and marinaris of all schippis within oure realme, at all Portis and Havynnis quhair pe said **JOHNE** and his cumpany salhappin to resort and cum, to resauie him and pame pairin, upoune pair expenses, for furing of pame furth of oure realme to pe partis bezond sey: As pai and ilk ane of pame siclike will ansuer to ws pairupoune, and undir pe pane forsaid. **SUBSCRUIIT** with oure hand, and under oure Priue Seile, **AT FALKLAND**, pe fiveteine day of Februar, and of oure reigne the xxvij 3eir.

*Subscript. per Regem.*

[JAMES R.<sup>1</sup>]

<sup>1</sup> *Reg. Sec. Sig. XIV. f. 59.*—Vide also Apr. 25, 1553, and Apr. 8, 1554, Remission of Andro Faw, &c., for murder of Ninian Smalls.

III. PRECEPT *to the Earl and Lord of Little Egypt; granting power to him to hang and punish all Egyptians within the Kingdome of Scotland. Dated, May 26, 1540.*

PRECEPTUM Litere JOHANNIS WANNE, filii et heredis quondam JOHANNIS FALL, MINORIS EGIPTI COMITIS ac DOMINI, et MAGISTRI EGIPTIORUM, infra REGNUM SCOTIE existen.—DAN. sibi potestatem predictos EGIPTIOS ad sibi obediend. et parend. plectere et punire, &c. APUD ST ANDROS, Maii 26, 1540.<sup>1</sup>

IV. ACT *of the Lords of Council, relative to JOHN FAW,<sup>2</sup> &c. Jun. 6, 1541.*

THE quhilk day, anentis the complaintis gevin in be JHONE FAW, and his brether, and SEBASTIANE LOWLAW, EGIPTIANIS, to THE KING'S Grace, ilkane pleinzeand vpoun vther of diverse faltis and iniuris: And that it is aggreit amang thame to passe hame, and to haue the same decydit before THE DUKE OF EGYPT: The Lordis of Counsale, being avisit with the pointis of the saidis complaintis, and vnderstanding perfutlie the gret thiftis and scathis done be the saidis EGIPTIANIS vpoun our soverane lordis liegis, quhaireuer thai cum or resortis: ORDANIS Lettres to be direct to the Provestis and Ballies of Edinburgh, Sanct Jhonstoun, Dundee, Monrofe, Aberdene, Sanct-androis, Elgin, Forrefe, and Inuernese; and to the Schirefis of Edinburgh, Fif, Perth, Forfair, Kincardin, Aberdene, Elgyn, and Forese, Banf, Crummarty, Inuernese, and all vtheris Schirefis, stewartis, provestis, and ballies, quhair it happinnis the saidis EGIPTIANIS to resort,—to command and charge thame, be oppin proclamatioun at the mercat croces of the heid Burgh of the Scherefdomes, to depairt furth of this realme, with their wisis, barnis, and companeis, within xxx dayis efter thai be chargit therto, vnder the pane of deid: Notwithstanding ony vtheris Lettres or privilegis grantit to thame be the Kingis grace: Becaus his Grace, with avise of the Lordis, hes dischargit the samin, for the causis foirfuidis; with certificatioun, and<sup>3</sup> thai be fundin in this realme, the saidis xxx dayis being past, thai salbe tane and put to deid.

V. RESPITE, *granted to the Captain of the Egyptians and his three sons, for the Slaughter of Ninian Smaill.<sup>4</sup>*

ANE RESPITT maid to ANDRO FAW, CAPITANE OF THE EGIPTIANIS, GEORGE FAW, ROBERT FAW, and ANTHONY FAW, his sons; for airt and part of the Slauchter of umquhile NINIANE SMAILL, servand to John Lard, Smith; committit and done in the moneth of Marche, the yeir of God I<sup>o</sup>.V<sup>o</sup>. liij yeiris, upon suddantie: and for all action and cryme that may follow thairupoun: And for the space of xix yeiris to indure. AT LYNLYTHGOW, the xxij day of March, 1553.

VI. RESPITE *to John Faw, and other Egyptians, for the above-mentioned Slaughter. Apr. 8, 1554.<sup>5</sup>*

ANE RESPITT maid to JOHNN FAW, EGIPTIANE, ANDRO GEORGE, NICHOLAH GEORGE, SEBASTIANE COLYM, GEORGE COLYM, and uthers EGIPTIANIS, now being within this realme; for arte and parte of the Slauchter of umquhile Niniane Small; committit within the toun of Lintoun—19 years. AT LINLYTHGW, Apr. 8, 1554.

VII. ACT *of Privy Council, 'anent some Egyptianis.' Nov. 10, 1636.<sup>6</sup>*

APUD ED<sup>o</sup>, 10 Novembris, 1636. FORSAMEIKLE AS SIR ARTHURE DOUGLAS of Quhittinghame haveing latelie tane and apprehendit some of the vagabound and counterfut theives and limmars, callit EGYPTIANIS, he presentit and delyverit thame to the Shereff-principall of the shirefdome of Edinburgh, within the constabularie of Hadington, quhair they have remained this month, or thairby; And

<sup>1</sup> This short entry is all that occurs in *Reg. Secr. Sig.*, under the above date. <sup>2</sup> *Acta Dom. Con.*, XV., 155.  
<sup>3</sup> If; an. <sup>4</sup> *Reg. Secr. Sig.*, XXVII., 3. <sup>5</sup> *Reg. Secr. Sig.*, XXVII., 36. <sup>6</sup> *Reg. Secr. Concilia*

quhairas, the keeping of thame longer within the said Tolboith, is troublefome and burdenable to *the town of Hadington*, and fosters the saids theives in ane opinion of impunitie, to the incourageing of the rest of that infamous byke<sup>1</sup> of lawles limmars to continow in thair theivish trade: THAIRFOIR, *the Lords of Secret Counsell* ORDANS *the Shireff of Hadinton* or his deputs to pronounce DOOME and SENTENCE OF DEATH aganis so manie counterfoot Theives as ar men, and aganis so manie of the weomen as wants children, ORDANING the men to be HANGIT, and the weomen to be DROWNED: and that sache of the weomen as hes children to be SCOURGIT throw the burgh of Hadinton and *Brunt in the cheeke*: And Ordanis and commandis the Proveft and Baillies of Hadinton to caus this doome be execute vpon the saidis perfons accordinglie.

## No. VI.

## OFFICES OF THE CLERKSHIP OF JUSTICIARY-GENERAL AND MASTER OF THE CEREMONIES, &amp;c.

(See *Vol. III.*, p. 558.)

[IN reference to the preceding entry in the Record, it may be interesting to insert the following singular Letter from Mr Alexander Colville, Justice-Depute, to Viscount Annan, which has been recovered from *Sir James Balfour's MS. Collections*, on account of its throwing some farther light on those important appointments; and besides, it is a curious document, and is highly characteristic of the parties concerned, and of the spirit of those times. It has also been thought proper to present to the reader a notice which occurs in the Books of Adjournal, containing the appointment of Sir George Elphinstoun of Blytheswood, knight, as Sir Archibald Napier's successor, in the first year of the reign of KING CHARLES I.]

I. LETTER,<sup>2</sup> *Mr Alexander Coluile, Justice-Depute, to Viscount Annan.*<sup>3</sup>  
Dec. 20, 1622.

RIGHT HONORABLE,

YOUR Lo. shall be advertiffed that he who is presentlie JUSTICE CLERC, (*the Lard of Ormeftoun*), is so afflicted with extreame aage, blindnes, and vther infirmitie, that he is altogether disinabled ather to walk abroad, or discharge his place; and by all appearance, is not long to survive. And because it concernes me so neir, that serves HIS MA<sup>TIES</sup> as Justice depute, to be veil or ewill yoked,<sup>4</sup> in case it pleis God that I live, I have adventured thir few lynis, being confident of your lo. goodnes, that HIS MA<sup>TIES</sup>, by your lo. informatioun, might be the better prepared aganis the importunitie of vnfit futurs<sup>5</sup> for that place (of Justice clerk), quhilk aucht nocht to be<sup>6</sup> giwen to thois that futt<sup>6</sup> it, bot to thois that

<sup>1</sup> Usually applied to denote a hive or nest of wasps, wild bees, or hornets. <sup>2</sup> *Denmyne MSS.* Adv. Library.  
<sup>3</sup> Sir JOHN MURRAY, a *protégée* of the Earl of Morton, and a distinguished favourite at Court, was successively Gentleman of the Bedchamber, and Master of the Horse, &c. to James VI. He acquired great wealth and estates; and was created VISCOUNT OF ANNAND, and Lord Murray of Lochmaben; and afterwards EARL OF ANNANDALE, Mar. 13, 1624-5. <sup>4</sup> Well or ill yoked; having a good or bad partner, or coadjutor. <sup>5</sup> Suitors; applicants. <sup>6</sup> Petition for.

air vorthie of it. And as the lywis of men ar mor pretious then their goods, so lett the vorthines of him be respected, to quhome the lywis of men ar to be trusted; for if he quho is to be inclosed with Assysors, (quha for the most ar rud and ignorant,) depending much vpon THE (Lord Justice) CLERC his informatioun; if he, I say, be not a found conscientious man, and frie of baife bribrie, he may prove a pernicious instrument, and be the cawse that iniquitie may be committed; as wee haue zit in memorie, of on THOMAS SCOT of *Abotjhall*, quho was Justice Clerk to KING JAMES THE FYFT, of happie memorie, quho being strukin with a terror of conscience, at the hour of his death, for his ewill cariage in that place, dyed in disperatioun, crying, 'I am damned! I am damned!' Zit among all vperis, 3oung men, and men of great CLANNIS ar most dangerous for that place. Ceacing farther to fasche 3our lo. earis, and referring all to 3our lo. prudence; vishing, that, by a happie election of such ane Officiar, God may gett glorie, HIS MA<sup>TIE</sup> contentment, and the people securitie, by getting right quhen thair lywes shall be in question, and 3our lo. praise and thankis for being a good instrument. Thus, resting confident that 3our lo. will tak my boldnes in good part, I rest,

Your lo. affectioned and humble seruitour,

ED<sup>R</sup>, 20 Dec. 1622.

A. COLVILLE.

To the right honorable his special good lord, MY LORD VICOUNT OF ANNAN.

## II. EXTRACT from the Books of Adjournal, Dec. 2, 1625.

(Dec. 2, 1625.)—SIR GEORGE ELPHINSTOUN of Blythfwoid, kny<sup>t</sup>, ane of the Lordis of his Maiesteis Previe Counfall, producet ane Gift, grantit to him be our lait fouerane lord, James the saxt, of most happie memorie, vnder his hienes Previe Seill, off THE OFFICES of 'CLERK of OUR JUSTICIARIE GENERALL, AND MAISTER OF CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther soleme Assembleis, quhair honourable Ceremoneis ar accustomet and necessar to be vsed, within this our said Kingdome of Scotland.—Qubilkis Offices ar now vacand in our handis and at our gift and dispositioun, be dimissiou maid thair of in our handis be SIR ARCHIBALD NAPER of Merchistoun, kny<sup>t</sup>, thefaurer deput of our said kingdome of Scotland.' Dated 'AT BISSAME, the nyne and tuentie day of August, the 3eir of God 1624, and of our regne the 58 and 22 3eiris.'

The said Sir George gair his aithe *de fidei administratione* in the said Clerkship of Justiciarie, in presence of the said Justice depute.

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## No. VII.

### REMARKABLE EXAMINATIONS AND CONFESSIONS OF PERSONS ACCUSED OF WITCHCRAFT, SORCERY, &c.

[AMONG the circumstances which peculiarly characterize the earlier Criminal proceedings of SCOTLAND, as well as those of ENGLAND, FRANCE, and GERMANY, &c., none are more prominent than the unmitigated rigour with which the profession as well as the practice of Witchcraft, Sorcery, and Necromancy, were punished. The hecatombs of innocent victims, whose lives were sacrificed to satisfy the gloomy superstitions of Nations termed Christian and civilized, but

who, in reality, were only emerging from a state of semi-barbarism, sufficiently attest the justice of this observation.

After the period of the Reformation from Popery, the Legislators of those countries which had embraced the new Religion, seemed to vie with each other in the zeal which they manifested in 'rooting out from the land' every vestige of the professors of these 'works of darkness.' In Scotland, as the reader has already had sufficient opportunity of remarking, great exertions were made during the reign of KING JAMES VI, when hundreds of helpless creatures were destroyed, under form of law,—for those who were tried before THE HIGH COURT OF JUSTICIARY bore a very small proportion to the very great numbers who were tried and condemned by the LORDS OF REGALITIES, BARON BAILIES, and by the ROYAL COMMISSIONERS. A very striking fact, mentioned by *Baron Hume* in his valuable Commentaries,<sup>1</sup> may be here briefly noted, that 'no fewer than *fourteen* Commissions<sup>2</sup> for Trial of Witches were granted, for different quarters of the country, *in one sederunt*, of the 7th of November, 1661; which year seems to have been the most fertile period of this sort of accusation!' It is proper to remark, that such Commissioners had very ample powers granted to them; for their Commissions were expressly conceived for the examination and trial, &c. of so many persons, *nominatim*, and a large blank was commonly left for the insertion of such other persons as might be 'de-laited,' or accused, during their sittings. Besides this, their jurisdiction extended over considerable districts of country. As one unhappy creature was almost universally induced to accuse *several others* of the same crime for which he or she was to suffer, and as the evidence taken in one Trial was held to be conclusive in other cases, where the pannels were thus proved to be 'notour Witches,' it was competent for these Commissioners to try any number of persons, and to 'justify them to the death;' a practice which they were by no means slack of performing.

Many very painful Trials for Witchcraft, &c. have already been laid before the reader; but perhaps there cannot be adduced a more touching proof of the nefarious wickedness which must have been perpetrated in Scotland, during the reign of KING JAMES VI, than the following memorandum, which is preserved by *Thomas, Earl of Haddington*, (a noted instrument of the King in all cases, of whatever description,) in his Minutes of Privy Council proceedings.<sup>3</sup> He relates, under date December 1, 1608,—'THE ERLE OF MAR declairit to THE COUNSALL, that fum wemen wer tane in *Broichtoun*, as WITCHES; and being

<sup>1</sup> HUME on *Punishment* for Crimes, II., 559.

<sup>2</sup> Granted by the Lords of Privy Council.

<sup>3</sup> *Haddington MSS.*, A. 4, 22. Adv. Library. While *Sir Thomas Hamilton*, he held the great Offices of *Secretary of State*, *Lord Advocate*, *President of the College of Justice*, &c.; and in all of those stations forwarded his master's views with unremitting zeal and ability.



put to ane Afflyse,<sup>1</sup> and convict, albeit thay perseverit constant in thair denyell to the end, zit *thay wer BURNIT QUICK,*<sup>2</sup> *eftir sic ane crewell maner, that sum of thame deit in despair, renunceand<sup>3</sup> and blasphemand; and vtheris, HALF BRUNT, brak out of the fyre, and wes cast in QUICK in it agane, quhill<sup>4</sup> thay wer brunt to be deid.*<sup>5</sup>

It is hardly necessary to remind the reader, that matters were no better in ENGLAND; where, as he must perfectly recollect, the most shocking atrocities were perpetrated, during the reigns of CHARLES I and CHARLES II, and also under the Puritans of OLIVER CROMWELL'S time. The infamous proceedings, publicly authorized, of HOPKINS *the Witch-finder*, and other worthless impostors, who pretended to be able, by certain cruel means practised by them, to detect real and counterfeit Witches, are also well known, and are highly calculated to bring discredit on the judicial proceedings of any country. Upon the evidence of these wretches, added to that of the ignorant and superstitious peasantry, and of the equally superstitious Clergy of those times, the lives of hundreds were wantonly sacrificed, to satisfy their diseased appetite for the marvellous; while other misguided individuals, conscientiously no doubt, thought, that by acting thus, they were 'doing God service.'

SIR WALTER SCOTT having so largely discussed this extraordinary subject in his recent work on Demonology and Witchcraft,<sup>5</sup> it would be as presumptuous as it is unnecessary for the Editor to enter farther into the matter. In that curious and able work, the learned author, in his usual felicitous style, notices numerous Examinations and Confessions of persons accused of Witchcraft, in Scotland, in the sixteenth and seventeenth centuries. Of these, the most remarkable documents unquestionably are the Confessions of ISSOBELL GOWDIE and of JANET BREADHEAD; which, indeed, may safely be pronounced to be by far the most *unique* and wonderful, in the Records of this, and perhaps of any other country. The Editor has been induced, in compliance with the repeated desire of literary friends, contrary to his own private opinion, to annex to this work the CONFESSIONS of these unhappy women, and a few other similar EXAMINATIONS. Such declarations were commonly taken before Presbyteries, or certain Special Commissioners, who usually ranked among their number the leading Clergy of those districts where their hapless victims resided. The details of all such cases, and, in particular, those which are now annexed, are repulsive and shocking to every well-regulated mind; but, as recording the superstitions and crimes common at the period in question to all the civilized

<sup>1</sup> Before the Baron Bailie of the Regality of BROUGHTON, near Edinburgh; one of the most extensive jurisdictions, of that description, in Scotland. <sup>2</sup> ALIVE; i. e. without having been previously 'wirreit,' or strangled. <sup>3</sup> Renouncing their baptism. <sup>4</sup> Until. <sup>5</sup> LETTERS on Demonology and Witchcraft, by Sir Walter Scott, Bart. Lond. 1830.

nations of Europe, they will by many be deemed, in some measure at least, of historical importance ; although at same time, it must be confessed, they afford a lamentable exhibition of the human mind, at its lowest ebb of degradation.]

I. DEPOSITION of *John Kincaid (Witch-finder)*,<sup>1</sup> relative to the *Devil's mark found on Patrik Watson and Manie Haliburton*.<sup>2</sup>

AT DIRLTON,<sup>3</sup> . . . . . of . . . . . zeiris. The quhilk day, in prence of All(exan)der Levingtone of (Salt)coitis, James Borthuik, Chalmerlane of Dirlton, Johne Stalker, bailzie thair, James Foirman, Drem, Mr James Achefoun, in North Beruik, and Williame Daliell, notar, PATRIK (WAT)SON, in West Fentoun, and MENIE HALLYBURTON, his spous, bruided and long suspect (of) Witchcraft, of thair awne fre-will, vncompellit, heiring that I, *Johne Kincaid*, vnder subscryvand, wes in the toune of *Dirltone*, and had some skill and dexteritie in trying of THE DIVELLI'S marke, in the perfonis of such as wer suspect to be WITCHES, came to *the Broadhall, in the Castell of Dirlton*, and defyrit me, the said *Jo. Kincaid*, to vse my tryall of thame, as I had done on vtheris ; whilk when I had done, I fand *the Divellis marke* vpon the bakfyde of þe said PATRIK WATSON, a little wnder the point of his left shoulder, and vpon the left fyde of the said MENIE HALLIBURTON hir neck, a little aboue hir left shoulder ; whairof thay war not sensible, nether came furth pairof any bloode, efter I had tryed the famen als exactlie as euer I did any vthers. This I testifie to be of veritie, vpon my credite and conscience. IN witness quhairof, I have subscryvit thir presentis with my hand, day and place foirlaid, befor thir witnessis aboue specifeit.

(Sic subscribitur.) J. K. ALEX. LEVINGTON, witness. JA. BORTHUIKE, witness.  
JOHNE STALKER, witness. JAMES FORMAN, witness. M. J.  
ACHESONE, witness. W. DALIELL, witness.

(Indorsed.) Testificat of J(ohnne Kincaid,) finding the witches mark vpon Manie Haliburtonne.

II. CONFESSION of *Manie Haliburton*.<sup>4</sup>

AT DIRLTOUN, the <sup>5</sup>. . . . . of . . . . ., 1649. In prence of Johne (Stalker) bailzie of Dirlton, James Levington, thair, Jo<sup>n</sup> . . . . . in Lawhill, thair, James Speir, Richard Fergusson, Wa. Hanady, and Wa. Daliell. Compeirit MANIE HALLIBURTON, prisoner within the *Castell of Dirlton*, suspect of the cryme of Witchcraft, dilaited guiltie be AGNES CLERKSON, lait sufferrar for the said cryme, as also be PATRIK WATSONE, spous to the said Menie, who lykevys sufferit thairfoir ; and confessit, that auchtein yeir syne, or thairby, hir dochtir being seik, scho first sent for *Patrik Crystifone in Abirladie*, to cum and cure hir dochter, and he refusing, went hirself for him, who refused to cure hir ; and within <sup>6</sup>. . . . . dayis thairefter came the DEVILL, in licknes of a man, to hir hous, calling himself a phistion, and said to hir, that he had goode salves (and namelie oylispek<sup>7</sup>) whairwith he wold cure hir dochtir ; and aggrieing with him for some of his salves, quhilk he gave hir, tho gave him tuo Inglis shillingis : He than departed, and promised to come agane within eight dayes, whilk accordinglie he did ; bot or <sup>8</sup> he went away the first tyme, she gave him milk and breade ; and *Patrik Watfone* comeing in, he sent for a pynt of Ale : Bot at the second comeing, he stayit all night, and vpon the morne airlie (*Patrik* being furth) in came the DIVELL and lay down with hir, (scho being git in bed,) and had carnall copulation with hir, his nature being cold : He defyreit hir to renunce Christ and hir baptisme, and become his servand ; quhilk scho did : And sayes, that hir dochter had

<sup>1</sup> From Original, in General Register House, Edinburgh.    <sup>2</sup> He is elsewhere designed 'the commoun pricker.'  
<sup>3</sup> Obliterated in Orig.    <sup>4</sup> From Orig. Gen. Register House.    <sup>5</sup> Obliterated.    <sup>6</sup> Left blank in Orig.  
<sup>7</sup> Oil of spike or spikenard.    <sup>8</sup> Ere ; before.

the wyte<sup>1</sup> of all hir wicid(nefs);<sup>2</sup> wiffing sho had nevir bene borne.—THIS Deposition was renewed, in all the particulars, by the said *Manie*, in the forsaide place, on Sunday the first of Julij, 1649, before Alex<sup>r</sup> Levingtoun of Saltcottis, James<sup>3</sup> . . . . ., Johne Stalker, . . . . ., W<sup>m</sup> Daliell, and Mr Jo<sup>n</sup> M<sup>c</sup>Ghill, minister at Dirltoun.

M. J. MAKGHILL, ALEX. LEVINGTON, witness; J. BORTHUIK, JAMES LAUDER, JOHNNE STALKER, W. DALIEL, WILLIAME DALIELL, WALTER MARSHALL.

Jul. 2, AT HADINTOUN. Whilk day, THE PRESBITERIE, having red and considered the former DEPOSITIONS and CONFESSION of *Manie Haliburton*, find the samyne a sufficient ground for suting<sup>4</sup> the Judge competent to grant a Commission for trying and judging her according to Law.

J. STIRLING, Cl<sup>k</sup>.

### III. ACT OF PRIVY COUNCIL *anent Geillis Johnnstoun, suspected of the crime of Witchcraft.*<sup>5</sup>

ANENT our souerane lordis Letteris, reasit at the instance of GELIS JOHNNSTOUN, relict of vmquhill Johnne Duncane in Muffilburgh, makand mentioun, That quhair some malicious personis, hir vnfreindis, haueing dilaitit her to THE PRESBITERIE OF DALKEITH, as a person suspect of WITCHCRAFT, the said Prsbiterie hes thairvpone conuenit hir before thame, and hes haldin hir in proces before them, thir sevin oulkis<sup>6</sup> bigane; albeit it be of veritie, that the said complenair is ane honnest woman, who hes leuit thir threttie yeiris in the toun of Muffilburgh, in gude fame, credeit, and reputatioun; and wes nevir suspected nor bruted<sup>7</sup> with ony sliche deuelisfche and detestabill doingis; and scho hes at all tymes presentit hir self before the said PRISBITERIE, quhan thay callit for her self to thair tryall-examinationis, and quhatsumeuir forme of procedoure thay pleasit vse aganis hir: And althocht the cryme of Witchcraft be ane of the heich pointis of the Croune, proper to be tryit before his Maiesteis Justice and his deputis, and quhairin the said PRISBITERIE can haue no warrand, auctoritie, nor jurisdiction to cognosce or determine, neuirtheles, thay continewalie fasche<sup>8</sup> the said complenair with citationis and summondis to compeir before thame, purpoissie, as appeiris, to bring hir fame, credite, and reputatioun in questioun, and to lay vpoun hir this foull and haviie sclander of sa detestable a cryme, quhair of scho is most innocent; and gif thay had ony presumptionis aganis the complenair of hir guiltynes of the said cryme, thay sould haue gevin informatioun thairof, outhir<sup>9</sup> to THE LORD OF REGALITIE quhair scho duellis, before quhome the said complenair hes fund cautionn to be ansuerable for this same deid, quhanevir scho falbe callit; or then, to his heynes JUSTICE GENERALL and his deputis; and sould haue concurrit, be thair informatioun, to the persute of hir, and sould not haue vsit sliche a preposterous forme of proceeding before thame selfis, quhich can produce na kynd of sentence nor determinatioun. IN respect quhair of, THE MINISTERIS of the said PRISBITERIE sucht and sould be dischargit of all proceeding aganis the said complenair, in the mater above writtin, for the cauffis foirfaidis. AND anent the charge gevin to Mr Andro Blakhall, Minister at Inneresk; Mr Patrik Turnour, Minister at Borthuik; Mr William Penman, Minister at Creichtoun; Nathaniell Harlaw, Minister at Ormestoun; Mr Alexander Ambroise, Minister at Newbotle; Mr Johne Nymbill, Minister at Cranstoun; and Mr George Ramsay, Minister at Leffwaid; all MINISTERIS of THE PRESBITERIE OF DALKEITH, being conuenit for the tyme within the Kirk of Dalkeith, to haue compeirit be ane or tua of thair number, sufficientlie instructit, for the rest, before THE LORDIS OF SECRITE COUNSALE, this present day, to haue hard and sene thame dischairgit of all proceeding aganis the said complenair in the mater foirfaid, and of thair officeis in that pairt: Lyke as, at mair lenth is contenit in the saidis Letteris, executiounis, and indorfationis thairof. QUHILKIS being callit, and the said persewar com-

<sup>1</sup> Blame.      <sup>2</sup> Wickedness.      <sup>3</sup> Obliterated.      <sup>4</sup> Suting; petitioning.      <sup>5</sup> *Acta Secreti Consilii*,  
General Register House, Edinburgh.      <sup>6</sup> Weeks.      <sup>7</sup> Reported.      <sup>8</sup> Trouble.      *O. Fr. fascher.*      <sup>9</sup> Either.



peirand, be William Duncane hir sone, and Mr George Ramsay, Moderatour of the Presbiterie of Dalkeith; Nathaniell Harlaw, Minister at Ormestoun; Mr Patrik Turnour, Minister at Borthuik; and Mr William Penman, Minister at Creichtoun; with some vtheris of the said Presbiterie being personallie present, the reassignis and allegationis of the pairteis present being hard and confiderit be the Lordis of Secrite Counsaile, and thay ryplie aduifit thairwith, the Lordis of Secrite Counsaile DISCHAIRGEIS the Ministeris of the said Presbiterie of all proceeding aganis the said Gelis Johnnstoun, in the mater foirsaid, and of all thair officeis in that pairt; and REMITTIS the said Geillis to be perfewit and tryit, outhir before the Justice-Generall and his deputis, or before the Lord of the Regalitie of Dunfermling, as accordis of the Law; but<sup>1</sup> preiudice alwyse to the said Presbiterie to vse all ordinar and lauchfull meanis, quhairby thay may get tryall, be vtheris, of the said Gelis Johnnstoun hir practiceis and dealing in the said cryme of Witchcraft; and to gif informatioun thairof to the said Justice Generall and his deputis, or to the Lord of the Regalitie of Dunfermling and his deputis, before quhome justice falbe ministrat, conforme to the lawis of this realme.

#### IV. CONFESSION of Jonet Watstone; and Notices relative to Christiane Wilstone and Jonet Paisloun, all accused of Witchcraft, June 1661.<sup>2</sup>

JONET WATSTONE confessed, that in Apryle last bypast, or thairby, shoo being at the buriell of the *Lady Dalhousie*,<sup>3</sup> ther was ane rix-dollar given to *Jean Bughane*, to be pairted among a certain number of poore folks, wherof shoo was one. And the said *Jean Bughane* did run away with the said money, so that schoe gott no pairt of it. And schoe come home to hir awne house, being verrie grieved and angrie at it, wished to have a mendse of *Jean Bughane*. Vpone the which THE DEIVILL apeired vnto her, in the liknes of *ane prettie boy, in grein clothes*; and asked, 'What aild her? And what amendse shoo wold have, he should give her.' And at that tyme THE DEIVILL gaive hir his markis; and went away from her in the liknes of *ane blak doug*:—And constantlie, for three dayis thairefter, ther was a *great bee* come to her; and vpon ane morning, when shoo was cheinging her schirt, it did fit down vpon her shoulder, (shoo being naked,) wher shoo had one of the markis.

As also, about the tyme of the last Baille-ffyre night, shoo was at a Meitting in *Newtoun-dein* with THE DEAVILL, who had *grein clothes* vpon him, and ane blak hatt vpon his head; wher schoe denyd Christ, and took her self to be the servant of THE DEIVILL. Wherfor shoo acknowledged that schoe was, from her heart, sorrowfull for the doeing of it. And likewise, he then gave her a new name, and called her 'WEILL-DANCING JENOT'—and promised her money at the nixt Meitting.

And also, that vpon ane vther night, THE DEIVILL was verie heavie vpon her in her bed. As also, schoe confessed that *Bessie Moffit, Elspeth Grahame, and Jenot Mikeljohn* come to her house, and tooke her away to that Meating; when they all danced together: At which tyme, when schoe renunced her baptifme, THE DEIVILL laid his hand vpon her head, and bad her 'give all ower to him that was vnder his hand,' and shoo did so. Quhilk hailt premiffes shoo confessed, in presens of the vnder subscribers, without compulsione.

W. CALDERWOOD, (Minister of Dalkeith,) WILLIAME SCOTT, (Baillie of Dalkeith.)

AND. MACMILLONE, witness. ROB<sup>t</sup> HARDIE, witness. JOHNE FOORD, witness.

HENRIE WILSONE, witness. JA. CALDERWOOD, witness. ALEX. A: D DICKSONES mark.

WILLIAM BRYSON, witness. JA. VTERSIDE, witness.

<sup>1</sup> Without. <sup>2</sup> Original in *MS. Coll. of Soci-ty of Antiquaries of Scotland*. This Proof was led under a Commission, June 6, 1661, 'direct be THE KINGIS MAIESTIE, with consent of the Estaitis of Parliament,' to Sir William Murray of Newtoun, Sir James Richardson of Smelton, Patrick Scott of Langschaw, Major John Biggar of Woolmot, &c.; who examined a great variety of WITCHES. Their CONFESSIONS, however, are uninteresting and commonplace, with the exception of this and the other Extracts which follow. <sup>3</sup> LADY MARGARET CARNEGIE, daughter of David, Earl of Southesk, spouse of *William, Lord Ramsay*, created *Earl of Dalhousie*, June 29, 1633.

V. DEPOSITION *as to the Devil carrying off a Witch in a Whirlwind, &c.*

AT DALKEITH, the 10 of Junii, 1661.—THE quhilk day, WILLIAM SCOTT, Bailiffe, having ordained some of the neighbours in the toune of Dalkeith to be in redines, the morrow eftir, for gardeing of CHRISTIANE WILSONE, a Witch, to Nidrie, to be confronted their by ane vther Witche; and Johne Steivin, being one of the number ordained to be in redines, said to JENNOT COOKE,<sup>1</sup> that he wes 'goeing the morrow to convoy the said CHRISTIANE to Nidrie,' as afoirfaid, and that he wold goe and mak his gun cleane, for that purpose; to the which Jennot anfwieired, 'Will not yow think it a sport, if THE DEIVILL raise a whirrell of wind, and tak her away from among yow by the gette<sup>2</sup> the morrow!' And it fell out, that in passing a burne,<sup>3</sup> when they wer nigh Nidrie, their arose futch a sudden tempest of wind, which was like to blow the compaignie off their foot—and it did blow the said Christiane Wilfone down in the water . . . , so that for a long tyme they could not gett her vp againe—it being a faire and calme day, both befor and efter. WITNESSES, Johne Steivin, James Wilfone, candill maker, Thomas Richardfone, wright, Bessie Waker, Jonett Bruntoun, and James Blaikie, baxter.<sup>5</sup>

JOHNE STIWENE, witnes. James I. W. Wilfones mark.

VI. DEPOSITION *of John Kincaid, in Tranent, 'the comon pricker,' as to finding the Devil's mark on Jonet Paistoun.*

DALKEITH, 17 Junij, 1661.—THE quhilk day, JONET PAISTOUN, being dilaitit, as is afoirfaid, THE MAGISTRAT and MINISTER caufed *Johne Kincaid*,<sup>6</sup> in Tranent, *the comon pricker*, to prik her—and found tuo marks wpon hir, which he called THE DEVILL his markis, which apeared indeid to be so, for shoe did nather find the prein<sup>7</sup> when it was put into any of the said markis, nor did they blood when they were takin out again. And quban shoe was asked, 'Qubair shoe thocht the preins wer put in?' Shoe pointed at a pairt of hir body distant from the place qubair the preins wer put in—they being preins of *thrie inches*, or pairabout, in lenth. Qubilk *Johne Kincaid* declairis upon his oath, and verifies by his subscription to be true. WITNESSES pairto, Mr W<sup>m</sup> Calderwood, Minister at Dalkeith, and Williame Scott, Bailze: Martin Stevinsone and Thomas Calderwood, Elders; Major Archibald Waddell, Johne Hunter, David Douglas.

I. K. W. CALDERWOOD, Minister. WILLIAME SCOTT, Bailzie.

MARTIN STEVENSON, Elder. THOMAS CALDERWOOD, Elder.

VII. CONFESSIONS *of Issobell Gowdie, spous to John Gilbert, in Lochloy.*

(1.) ISSOBELL GOWDIE'S FIRST CONFESSION.

AT AULDERNE,<sup>8</sup> the thretein day of Aprill, 1662 yeiris. IN PRESENCE OF MASTER HARIE FORBES, Minister of the Gospell at Alderne; WILLIAM DALLAS of Cantrey, Shereffe deput of the shereffdom of Nairne; THOMAS DUNBAR of Graing; ALEXANDER BRODIE, Y<sup>r</sup> of Leathin; ALEXANDER DUNBAR of Boath; JAMES DUNBAR, appeirant therof; HENRIE HAY of Brightmanney; HEW HAY of Newtowne; WILLIAM DUNBAR of Clune; and DAVID SMITH, and JOHNE WEIR, in Aldern; WITNESSES to THE CONFESSION efter specifeit, spokin furth of the mouth of ISSOBELL GOWDIE, *spous to Johne Gilbert, in Lochloy.*

THE quhilk day, in prefence of me, JOHNE INNES, *Notar Publict*, and Witneffes abownamet, all vnder subfcrywand, the said ISSOBELL GOWDIE, appeiring penitent for hir haynows finnes of Witch-

<sup>1</sup> Another Confessing Witch.      <sup>2</sup> By the way.      <sup>3</sup> Rivulet.      <sup>4</sup> Obliterated—but it looks like 'streyne.'  
<sup>5</sup> Baker.      <sup>6</sup> The counterpart of the English *Mathew Hopkins*, the Witch-Finder, whose villainous impostures deprived many poor creatures of their wretched existence.      <sup>7</sup> A long pin, or bodkin, which this fellow used for pricking.      <sup>8</sup> A Parish and Burgh of Barony in the Shire of NAIRN, on the Murray Frith.

craft, and that tho haid bein ower lang in that service ; without ony compulfitouris,<sup>1</sup> proceidit in hir CONFESIONE, in maner efter following, to wit. As I was goeing betuix the townes<sup>2</sup> of *Drumdewin* and *the Headis*, I met with THE DIVELL, and ther covenanted, in a maner, with him ; and I promeifit to meit him, in the night time, in *the Kirk of Alderne* ; quhilk I did. And the first thing I did ther that night, I denyed my baptifme, and did put the on of my handis to the crowne of my head and the vther to the sole of my foot, and then renuncet all betuixt my two handis, ower to *the Divell*. He wes in the Readeris dask, and a blak book in his hand.<sup>3</sup> *Margret Brodie*, in *Aulderne*, held me vp to *the Divell* to be baptifed be him ; and he marked me in the fhowlder, and fuked owt my blood at that mark, and spowted it in his hand, and, sprinking it on my head, said, ‘ *I baptisè thé, JANET, in my awin name !* ’ And within a quhill we all remoowed. The nixt tym that I met with him ves in *the New Wardis of Inshoch*, and haid carnall cowpulation and dealling with me. He wes a meikle, blak, roch<sup>4</sup> man, werie cold ; and I found his nature als cold within me as spring-wall-water. Somtymes he haid butis and sometymes shoes on his foot ;<sup>5</sup> but still his foot ar forked and cloven. He vold be somtymes with ws lyk a dear, or a rae. *Johne Taylor* and *Janet Breadhead*, his vyff,<sup>6</sup> in *Belmaketh*, . . . . *Douglas*, and I my self, met in *the Kirk-yaird of Nairne*, and ve raifed an vnchristened child owt of its greaff ; and at the end of *Bradleyis* corn-field-land, just opposit to *the Milne of Nairne*, we took the faid child, with the naillis<sup>7</sup> of our fingeris and toes, pikles of all fortis of grain, and blaidis of keall,<sup>8</sup> and haked<sup>9</sup> thaim all verie small, mixed altogether ; and did put a pairt therof among the muk-heapes<sup>10</sup> of *Bradleyes* landis, and therby took away the fruit of his cornes, &c. ; and we pairted it among two of our COEVENS.<sup>11</sup> When we tak cornes at *Lambes*,<sup>12</sup> we tak bot abowt two sheawes, whan the cornes ar full ; or two stokis of keall, or therby, and that giwes ws the fruit of the corn-land, or keall-yaird, whair they grew :<sup>13</sup> And it may be, we will keip yt while *Yewoll* or *Pace*,<sup>14</sup> and than devyde it amongst ws. Ther ar threttein perfones in my COVEN.<sup>15</sup>

The laft tyme that ovr COVEN met, we, and an vther COVEN, wer dauncing at *the Hill of Earlseat* ; and befor that, betwixt *Moynes* and *Bowgholl* ; and befor that we ves beyond *the Meikle-burne* ; and the vther COVEN being at *the Downie-hillis*, we went from beyond *the Meikle-burne*, and went befyd them, to the howffis at *the Wood-end of Inshoch* ; and within a qwhyll went hom to our howffis. Befor *Candlmas*, we went be-eaft *Kinloffe*, and ther we yoaked an plewghe of paddokis.<sup>16</sup> THE DIVELL held the plewgh, and *Johne Younge* in *Mebestowne*, our Officer, did drywe the plewgh. Paddokis did draw the plewgh, as oxen ; quwickens wer sownes,<sup>17</sup> a riglen's horne wes a cowter,<sup>18</sup> and an piece of an riglen's horne wes an fok. We went two feuerall tymes abowt ; and all we of the COEVEN went still wp and downe with the plewgh, prayeing to THE DIVELL for the fruit of that land, and that thiffles and brieris might grow ther.

When we goe to any hous,<sup>19</sup> we tak meat and drink ; and we fill wp the barrellis with ovr oven<sup>20</sup>

<sup>1</sup> Indicating, in the outset, that no TORTURE or compulsion had been resorted to, for the purpose of extorting Confession ; but that she came forward, and voluntarily made her Declaration, bewailing her former offences. <sup>2</sup> Farmsteadings.

<sup>3</sup> It is a singular circumstance, that in almost all the CONFESIONS of Witches, their initiation, and many of their meetings, are said to have taken place within CHURCHES, Churchyards, and consecrated ground ; and a certain ritual, in imitation, or mockery, of the forms of the Church, is uniformly said to have been gone through.

<sup>4</sup> Rough ; hairy ; *hirsute*. <sup>5</sup> Throughout this Confession, *foot* is used for *feet*. <sup>6</sup> See her Confession, which follows this, (No. VIII.) <sup>7</sup> Parings of the nails. In such incantations, the nails and joints, &c. of dead men were commonly made use of. <sup>8</sup> *Kail-blades* ; the leaves of colewort. <sup>9</sup> *Hacked* ; chopped. <sup>10</sup> Dung-heaps ; middens.

<sup>11</sup> Companies ; Witches' Conventicles. Perhaps from Lat. *convenire*. The word *cove* is still in use (in the Gipsy, flash, or slang Vocabulary) as an associate, *chum*, or companion, &c. <sup>12</sup> Lammas : 1st August.

<sup>13</sup> This symbolical mode of taking the fruit, crop, or produce of land, &c., is frequently alluded to in Witch-Trials. The soil apparently bore only straw and empty ears ; but the real produce was, in due season, conveyed to the barns of the enchanter. The milk of a dairy was taken by means of a hair *tether*, rope, or halter, passing under the door, and attached to one of the stalls where the cattle stood, &c. The Witch procured the entire produce by ‘ *milking the tether* ! ’ Another method is afterwards recited in this CONFESION. <sup>14</sup> Until Christmas or Easter.

<sup>15</sup> The number *thirteen* is still proverbially called ‘ *the Devil's dozen*, ’ in Scotland. <sup>16</sup> Yoked a plough of frogs. <sup>17</sup> Dog-grass, or *quick-grass*, served for *sownes* or *soams* ; being the traces, chains, or iron links, by which, of old, the oxen were yoked to the plough. The *sowme* (*soyme*) was fastened by a hook to the *soule* or *sole* (swivel.) <sup>18</sup> The coulter of the plough was formed of the horn of a half-castrated ram, called a *riglen* ; q. d. a *ridgel-ram*. <sup>19</sup> Enter by stealth. <sup>20</sup> *Awin* ; *own*.

pish again; and we put boosomes<sup>1</sup> in our beds with our husbandis, till ve return again to them. We wer in *the Earle of Murreyes*<sup>2</sup> hous in *Dernvay*, and ve gott anewgh ther, and did eat and drink of the best, and browght pairt with ws. We went in at the windowes. I haid a little horfe, and wold fay, 'HORSE AND HATTOCK, IN THE DIVELLIS NAME !'<sup>3</sup> And than ve vold flie away, quhair ve vold, be ewin<sup>4</sup> as strawes wold flie wpon an hie-way. We will flie lyk strawes quhan we pleas; wild-strawes and corne-strawes wilbe horfes to ws, an<sup>5</sup> ve put thaim betwixt our foot, and fay, 'HORSE AND HATTOCK, IN THE DIVELLIS nam !' An quhan any fies thes strawes in a whirlwind, and doe not fancitifie them selues,<sup>6</sup> we may fhoot them dead at owr pleafour. Any that ar shot be vs, their fowell will goe to Hevin, bot ther bodies remains with ws, and will flie as horfis to ws, als small as strawes.<sup>7</sup>

I was in *the Downie-hillis*, and got meat ther from THE QWEIN OF FEARRIE, mor than I could eat. *The Qwein of Fearrie* is brawlie clothed in whyt linens, and in whyt and browne cloathes, &c.; and THE KING OF FEARRIE is a braw man, weill favoured, and broad faced, &c.<sup>8</sup> Ther wes elf-bullis rowtting and skoylling wp and downe thair, and affrighted me.<sup>9</sup>

<sup>1</sup> *Besoms*; brooms.      <sup>2</sup> Alexander Stewart, fourth Earl of Moray.      <sup>3</sup> THE following remarkable circumstances were communicated to the ingenious *John Aubrey, Esq., F.R.S.*, by one *Stewart*, a tutor in the family of JAMES, second LORD DUFFUS; from whose recital, *Stewart* states, he had it, and that his lordship had it from his father, *Alexander*, first Lord Duffus, who had, in like manner, heard the tradition from *William Sutherland of Duffus*, grandfather of *James, Lord Duffus*, who died about the year 1626. It closely corresponds with the particulars contained in the Depositions of *Isobel Gowdie* and *Janet Breadhead*, in reference to this branch of FAIRY SUPERSTITION. As *Aubrey's* work is now exceedingly scarce, little apology is required for quoting the interesting communication, which he has, fortunately, preserved at length:—

'As soon as I read your letter of May 24, (1694,) I called to mind a story which I heard long ago, concerning one of the LORD DUFFUS (in the shire of Murray) his predecessors; of whom it is reported that, upon a time, when he was walking abroad in the fields, near to his own house, he was suddenly carried away, and found the next day at Paris, in THE FRENCH KING's cellar, with a silver cup in his hand. That, being brought into THE KING's presence, and questioned by him, "Who he was?"—and "how he came thither?" He told his name, his country, and the place of his residence; and that on such a day of the month (which proved to be the day immediately preceding), being in the fields, he heard the noise of a whirlwind, and of voices crying "HORSE AND HATTOCK!" (this is the word which THE FAIRIES are said to use when they remove from any place;) whereupon he cried "HORSE AND HATTOCK!" also; and was immediately caught up and transported through the air, by THE FAIRIES, to that place: Where, after he had drank heartily, he fell asleep, and before he awoke, the rest of the company were gone, and had left him in the posture wherein he was found. It is said THE KING gave him the cup which was found in his hand, and dismissed him.

'This story (if it could be sufficiently attested) would be a noble instance for your purpose; for which cause I was at some pains to enquire into the truth of it, and found the means to get the present *Lord Duffus's* opinion thereof; which shortly is, that there has been and is such a tradition; but he thinks it fabulous. This account of it his Lordship had from his father, who told him that he had it from his father, the present Lord's grandfather. *There is yet an old silver cup in his lordship's possession still, which is called "THE FAIRY CUP,"*—but has nothing engraven upon it except the arms of the Family.

'The gentleman by whose means I came to know the *Lord Duffus's* sentiment of the foregoing story, being tutor to his lordship's eldest son, told me another little passage of the same nature, whereof he was an eye-witness. He reports, that when he was a boy at school, in the town of FORRES, yet not so young but that he had years and capacity both to observe and remember that which fell out, he and his school-fellows were, upon a time, whipping their tops in the Churchyard, before the door of the Church. Though the day was calm, they heard a noise of a wind, and, at some distance, saw the small dust begin to arise and turn round; which motion continued advancing till it came to the place where they were: Whereupon they began to bless themselves. But one of their number (being, it seems, a little more bold and confident than his companions) said, "HORSE AND HATTOCK WITH MY TOP!" And immediately they saw the top lifted up from the ground, but could not see what way it was carried, by reason of a cloud of dust which was raised at the same time. They sought for the top all about the place where it was taken up, but in vain; and it was found afterwards in the Churchyard, on the other side of the Church. *Mr Stewart* (so is the gentleman called) declared to me that he had a perfect remembrance of this matter.—*Aubrey's Miscellanies*, p. 209.

<sup>4</sup> Like; even as; in like manner as.      <sup>5</sup> And; if.      <sup>6</sup> The children in the kirkyard of Forres (see the preceding Note on HORSE AND HATTOCK) appear to have been adepts in this branch of the Fairy creed; which was, no doubt, familiar to all classes of the peasantry of Scotland, as numerous traces of it are to be found in various districts, at the remotest distance from each other.      <sup>7</sup> The above details are, perhaps, in all respects, the most extraordinary in the history of WITCHCRAFT of this or of any other country. Any comment would only weaken the effect of such very remarkable descriptions.      <sup>8</sup> It is a thousand pities that the learned Examinators have so piously declined indulging the world with the detailed description of these illustrious personages. Under the singularly descriptive powers of *Isobel Gowdie*, much might have been learned of FAIRY-LAND and its Mythology.      <sup>9</sup> It is evident that *Isobel's* gossiping had again been cut short here, as irrelevant. Not so the more objectionable parts of her Confession, which were obviously drawn out of her, and listened to with the utmost complacency by her reverend inquisitors.

When we tak away any cowes milk, we pull the tow, and twyn it and plaitt it in the vrong way, in *the Divellis* name; and we draw the tedder (sua maid) in betuixt the cowes hinder foot,<sup>1</sup> and owt betuixt the cowes forder foot, in *the Divellis* name; and therby tak with ws the kowes milk. We tak sheips milk ewin fo. The way to tak or giev bak the milk again, is to cut that tedder. Whan we tak away the strenth of anie perfonas eall,<sup>2</sup> and giwes it to an vther, we tak a litle qwantitie owt of each barrell or stand of eall, and puts it in a stowp, in *the Divellis* nam; and, in his nam, with owr awin handis, puttis it amongft an vtheris eall, and giwes her the strenth and substance and heall of hir neightbouris eall. And to keip the eall from ws, that we haue no power of it, is to sanctifie it veill. We get all this power from *the Divell*; and when ve seik it from him, ve call him 'OWT LORD I'

*Johne Taylor* and *Janet Breadhead*, his wyff, in Bellnakeith, *Bessie Wilfone*, in Alderne, and *Margret Wilfone*, spows to *Donald Callam* in Alderne, and I, maid an pictur of clay, to distroy *the Laird of Parkis* meall<sup>3</sup> children. *Johne Taylor* browght hom the clay, in his plaid newk;<sup>4</sup> his wyff brak it verie small, lyk meall,<sup>5</sup> and sifted it with a fiew,<sup>6</sup> and powred in water among it, in *the Divellis* nam, and vrought it werie fore, lyk rye-bowt;<sup>7</sup> and maid of it a pictur of *the Lairdis* fones. It haid all the pairtis and merkis of a child, such as heid, eyes, nose, handis, foot, mowth, and litle lippes. It wanted no mark of a child; and the handis of it folded down by its fydes. It was lyk a pow,<sup>8</sup> or a flain gryce.<sup>9</sup> We laid the face of it to the fyre, till it strakned;<sup>10</sup> and a cleir fyre round abowt it, till it ves read lyk a cole.<sup>11</sup> After that, we wold roft it now and then; each other day<sup>12</sup> ther wold be an piece of it weill rosten. *The Laird of Parkis* heall maill children by it ar to suffer, if it be not gotten and brokin, als weill as thes that ar borne and dead aheadie. It ves still putt in and taken out of the fyre, in *the Divellis* name. It wes hung wp wpon an knag. It is yet in *Johne Taylor's* hows, and it hes a cradle of clay abowt it. Onlie *Johne Taylor* and his wyff, *Janet Breadhead*, *Bessie* and *Margret Wilfones* in Alderne, and *Margret Brodie*, thair, and I, wer onlie at the making of it. All the multitud of our number of WITCHES, of all the COEVENS, kent<sup>13</sup> all of it, at owr nixt meitting after it was maid. And *the Witches* yet that ar vntaken, haw thair awin poweris, and owr poweris quhilk we haid befor we wer takin, both.<sup>14</sup> Bot now I haw no power at all.

*Margret Kyllie*, in . . . . ., is on of the vther COVEN, *Messie Hirdall*, spows to *Alexander Ross*, in Lonheid, is on of thaim; hir skin is fyrie. *Iffobell Nicoll*, in Lochley, is on of my COEVEN. *Alexander Elder*, in Earleseat, and *Janet Finlay*, his spows, ar of my COEVENS. *Margret Haibein*, in Moynes, is on; *Margrat Brodie*, in Alderne, *Bessie* and *Margrat Wilfones*, thair, and *Jean Marten*, ther, and *Elspet Nishie*, spows to *Johne Mathow*, ther, ar of my COVEN. The said *Jean Mairten* is MAIDEN<sup>15</sup> of OWT COVEN. *Johne Young*, in Mebestowne, is OFFICER to owt COEVEN.

*Elspet Chifsholme* and *Iffobell More*, in Alderne, *Magie Brodie*, . . . . ., and I, went in to *Alexander Cumings* litt-hows,<sup>16</sup> in Alderne. I went in, in the likenes of a kea,<sup>17</sup> the said *Elspet Chifsolm* wes in the shape of a catt. *Iffobell Mor* wes a hair, and *Magie Brodie* a catt, and . . . . .<sup>18</sup> We took a threid of each cullor of yairne that wes in the said *Alexander Cuming* his litt-fatt,<sup>19</sup> and did cast thrie knots on each threid, in *the Divellis* name; and did put the thriedis in the fatt, wither-fones<sup>20</sup> abowt in the fatt, in *the Divellis* name; and thairby took the heall strenth of the fatt away,

<sup>1</sup> Feet.      <sup>2</sup> Strong ale.      <sup>3</sup> Male.      <sup>4</sup> In the nook, or corner, of his plaid.      <sup>5</sup> Pounded, or powdered it, like meal.      <sup>6</sup> To make the plaster fine, and free from earthy particles.      <sup>7</sup> Probably a sort of stir-about, or hasty-pudding, made of rye-flour.      <sup>8</sup> In another Deposition it is thus expressed, 'lyk a pow or feadge.' A feadge was a sort of scone, or roll, of a pretty large size. Perhaps this term signifies, as large as the quantity of dough or paste necessary for making this kind of bread.      <sup>9</sup> A flayed sucking pig, after being scalded and scraped.      <sup>10</sup> Shrivelled with the heat.      <sup>11</sup> Red like a coal.      <sup>12</sup> Each alternate day.      <sup>13</sup> Knew.      <sup>14</sup> This is something new in Witch stories, and lets in additional light on these charms.      <sup>15</sup> Each Coven appears to have had an OFFICER for the men, and a MAIDEN for the women; but whether the province of these personages was to preside over them, or to act as messengers, to call them together, does not seem so certain.      <sup>16</sup> Dye-house.      <sup>17</sup> Jackdaw.      <sup>18</sup> This and the preceding spaces are left blank in the Deposition.      <sup>19</sup> Dying-vat.      <sup>20</sup> Withershins, contrary to the direction and ordinary course of the sun.



that it could litt nothing bot onlie blak, according to the culor of *the Divell*, in quhoes nam we took away the strenth of the rycht culouris that wes in the fatt!

ALL quhilkis of the premisses, swa spokin and willinglie Confest and declairit furth of the mowth of the said *Iffobell*, in all and be all thingis as is abow fet downe, I, the said *Johne Innes*, Notar Publict, haw writtine thir presenttis; and with the saidis Witnesfes abow namet, in farder testimonie and witnessing of the premisses to be of weritie, We haw subscrywit the samen with our handis, day, yeir, and place aboue specifreit.

JOANNES INNES, Notarius Publicus.<sup>1</sup>

MR HARY FORBES, Minister at Auld Earn, Attestis.

W. DOLLAS of Cantray, Shereff-deput, Attestis.

A. BRODIE, witnes to the said Confessione.

HEN. ROSE, Minister at Nairne, Attestis the forsaide

HEW HAY of Newtown, Attestes.

Declaratione, as to the principal substantialis.

W. SUTHERLAND of Kinsterie, Attestis these Confessionis.

GEORGE PHINNIE, in Kirkmichael, Attestis.

JO. WEIR, in Alderne, Attestis.

(2.) ISSOBELL GOWDIES SECOND CONFESSION.

ATT AULDERNE, the third day of May, 1662 yeiris, abowt the howris of two or thrie in the efternoode, or therby: IN presence of MASTER HARIE FORBES, &c.<sup>2</sup>

THE quhilk day, in presence of me, Johne Innes, Notar Publict, and Witnesfes, all vnder-subscrywand, the said ISSOBELL GOWDIE, professing repentance, &c.<sup>3</sup> Efter that tym ther vold meit bot somtymes a COVEN, somtymes mor, somtymes les; bot a Grand Meitting vold be about the end of ilk Quarter. Ther is thretein perfones<sup>4</sup> in ilk Coeven; and ilk on of vs has an SPRIT to wait wpon ws, quhan ve pleas to call wpon him. I remember not all the Spritis names; bot thair is on called 'SWEIN,' quhilk waitis wpon the said Margret Wilfon in Alderne; he is still<sup>5</sup> clothed in grafs-grein; and the said Margret Wilfon hes an niknam called, 'PIKLE NEIREST THE WIND.' The nixt Sprit is called 'RORIE,' who waitis wpon Bessie Wilfone, in Alderne; he is still clothed in yallow; and hir nikname is 'THROW THE CORNE YAIRD,' [. . . . .].<sup>6</sup> The third Sprit is called 'THE RORING LYON,' who waitis wpon Iffobell Nicoll, in Lochlow; and [he is still clothed] in sea-grein; her niknam is 'BESSIE RULE.' The fowrth Sprit is called 'MAK HECTOR,' qwho [waitis wpon Jean] Martein, dawghter to the said Marget Wilfon; he is a yowng-lyk Devill, clothed still in grafs-[green. Jean Martein is] MAIDEN to the Coven that I am of; and hir nikname is 'OVER THE DYKE WITH IT,' becaus THE DIVILL [alwayis takis the] Maiden in his hand nix him, quhan ve daunce Gillatrypes;<sup>7</sup> and quhan he vold lowp from . . . . . he and she will say, 'Ower the dyk with it!' The nam of the fyft Sprit is 'ROBERT THE [RULE,' and he is still clothed in] fadd-dun, and seimis to be a Comander of the rest of the Spritis; and he waitis wpon Margret Brodie, in Alderne. [The name of the saxt Sprit] is called 'THEIFF OF HELL WAIT WPON HIR SELFE,' and he waitis also on the said Bessie Wilfon. The name of the sevynth [Sprit is called] 'THE READ REIVER;' and he is my owin Spirit, that waitis on my felfe, and is still clothed in blak. The aucht Spirit [is called] 'ROBERT THE JACKIS,' still clothed in dune, and seimes to be aiged. He is ane glaiked gowked Spirit! The woman's [nikname] that he waitis on, is 'ABLE AND STOWT!'<sup>8</sup> The nyynth Spirit is called 'LAING;' and the woman's nikname that he waitis wpon is 'BESSIE BAULD.'<sup>9</sup> The tenth Spirit is named 'THOMAS A FEARIE,' &c.<sup>10</sup>—Ther wilbe many vther Divellis, waiting wpon [our] MAISTER DIVELL; bot he is bigger and mor awfull than the rest of the Divellis, and they all reverence him. I will ken them all, on by on, from vtheris, quhan they appeir lyk a man.

<sup>1</sup> His Latin *docquet*, with his motto, '*Amor meus cruci fixus*. 1661,' are affixed. It is unnecessary to preserve this, as it is in common form. <sup>2</sup> As in preceding Deposition. <sup>3</sup> The same preamble is repeated, with the account of her baptism and carnal dealing, &c., in similar terms as in her preceding Confession. <sup>4</sup> The DEIL's dozen. <sup>5</sup> Ever; always. <sup>6</sup> This paper is unluckily very much mutilated at the ends of the lines; which mutilation commences here. Where the sense can be made out, the words are conjecturally supplied, within brackets; if not, a small blank is left in this transcript. <sup>7</sup> Probably a dance then popular among the vulgar. <sup>8</sup> Viz. Bessie Hay. <sup>9</sup> Viz. Elspet Nishie. <sup>10</sup> Issobell, as usual, appears to have been stopped short here by her interrogators, when she touched on such matters.

Quhen we reafe the wind, we tak a rag of cloth, and weitts<sup>1</sup> it in water; and we tak a beetle<sup>2</sup> and knokis the rage<sup>3</sup> on a stone, and we fay thryfe ower,

‘ I KNOK this ragg wpon this flane,  
To raife the wind, in THE DIVELLIS name;  
It fall not lye<sup>4</sup> vntill I please againe !’

[Whan] we wold lay the wind, we dry the ragg, and fay (thryfe ower,)

‘ WE lay the wind in THE DIVELLIS name,  
[It fall not] ryfe quhill we (or I) lyk to reafe it again !’

And if the wind will not lye instantlie [after we fay this,] we call wpon ovr Spirit, and fay to him,

‘ THIEFFE! THIEFFE! conjure the wind, and caws it to [lye . . . . .].’

We haw no power of rain, bot ve will reafe the wind quhan ve pleas.—He maid vs believ [. . . . .] that ther wes no GOD befyd him.

As for Elf-arrow-heidis, THE DIVELL shapes them with his awin hand, [and syne deliueris thame] to Elf-boyes, who whyttis and dightis<sup>5</sup> them with a sharp thing lyk a paking neidle; bot [quhan I wes in Elf-land?] I saw them whytting and dighting them. Quhan I wes in the Elfes howffis, they will haw werie . . . . . them whytting and dighting; and THE DIVELL giwes them to ws, each of ws so many, quhen . . . . . Thes that dightis thaim ar litle ones, hollow, and bofs-baked !<sup>6</sup> They speak gowftie<sup>7</sup> lyk. Quhen THE DIVELL giwes them to ws, he sayes,

‘ SHOOT thes in my name,  
And they fall not goe heall hame !’

And quhan ve fhoot these arrowes (we fay)—

‘ I SHOOT yon<sup>8</sup> man in THE DIVELLIS name,  
He fall nott win heall hame !  
And this falbe alſwa trw ;  
Thair fall not be an bitt of him on lieiw !’<sup>9</sup>

We haw no bow to fhoot with, but spang<sup>10</sup> them from of the naillis of our thowmbes. Som tymes we will misse; bot if thay twitch,<sup>11</sup> be it beaft, or man, or woman, it will kill, tho’ they haid an jack<sup>12</sup> wpon them. Qwhen we goe in the shape of an haire, we fay thryfe ovr :

‘ I SALL goe intill ane haire,  
With forrow, and fych, and meikle caire ;  
And I fall goe in THE DIVELLIS nam,  
Ay whill I com hom [againe !]’

And instantlie we start in an hair. And when we wold be owt of that shape, we will fay :

‘ HAIRE, [haire, God fend thé caire !]  
I am in an hairis liknes just now,  
Bot I falbe in a womanis liknes ewin [now.]’

When we vold goe in the liknes of an cat, we fay thryfe ower,

‘ I SALL goe [in till ane catt,]  
[With forrow, and fych, and a blak] [hot !  
And I fall goe in THE DIVELLIS nam,  
Ay quhill I com hom again !’

<sup>1</sup> Wet. <sup>2</sup> A piece of flattened wood, somewhat resembling a cricket-bat, which washerwomen use for knocking clothes, in cleansing them. <sup>3</sup> Rag. <sup>4</sup> Be allayed. <sup>5</sup> Shapes and trims them as a carpenter, with edged-tools. <sup>6</sup> Boos also signifies hollow, or empty. Perhaps this expresses that these Elves were diminutive and *hump-backed* creatures resembling the *trows* or *trolls* of FAIRY SUPERSTITION; whose propensities are uniformly described as being malignant, and hostile to mankind. <sup>7</sup> Roughly; crossly; gruffly. <sup>8</sup> Yonder. The preceding and following rhymes are probably *unique*, even in the history of TRIALS for WITCHCRAFT, and show, in a very forcible manner, the criminality of the bigoted, though learned and well-intentioned, individuals who dragged forward such wretches to public trial and an ignominious death. <sup>9</sup> On life; *alive*. <sup>10</sup> Jerk. <sup>11</sup> Touch. <sup>12</sup> A coat of mail; defensive armour.

And if ve [wold goe in ane craw, then] we fay thryfe ower :

‘ I SALL goe intill a craw,  
With forrow, and fych, and a blak [thraw !  
And I fall goe in the Divellis nam,]  
Ay quhill I com home again !’

And quhen ve vold be owt of thes shapes, we fay :

‘ CATT, catt, (or craw, craw,) [God] fend thé a blak shott ! (or blak thraw !)  
I wes a catt (or craw) just now,  
Bot I falbe [in a woman’s liknes evin now.]

Catt, catt, (or craw, craw,) God fend the a blak shot ! (or a blak thraw !)

Giff we, in the [shape of an catt, an craw, an] haire, or ony vther liknes, &c., go to any of our neighbouris howffis, being Witches, we will [fay,]

[‘ I (or we) CONJURE ] thé Goe with ws (or me) !’

And presentlie they becom as we ar, either cats, hearis, crowes, &c., and goe [with ws whither we wold. Quhan] we wold ryd,<sup>1</sup> we tak windle-frawes, or been-stakes,<sup>2</sup> and put them betwixt owr foot,<sup>3</sup> and fay thryfe,

‘ [HORSE] and hattok, horfe and goe,  
Horfe and pellattis, ho ! ho !’<sup>4</sup>

And immediatlie we flie away whair [euir we wold] ; and leaft our husbandis fould misf vs owt of owr beddis, we put in a boofom, or a thrie [leggitt floole befye thame,] and fay thryfe ower,

‘ I LAY down this boofom (or flooll,) In THE DIVELLIS name,  
Let it not steir . . . . . [Quhill I] com again !’

And immediatlie it feimis a voman, befye owr husbandis.

Ve can not turn in the lik[n<sup>5</sup> of . . . . .] Quhen my husband fold beeff, I vfed to put a fwallowes feather in the hyd of the beaft, and [fay thryfe,]

‘ [I] PUTT owt this beeff in THE DIVELLIS nam,  
That meikle silver and good pryce com hame !’

I did ewin fo [quheneuir I putt] furth either horfe, noat,<sup>6</sup> vebs,<sup>7</sup> or any vther thing to be fold, and still<sup>8</sup> put in this feather, and said the [famin wordis thryfe] ower, to caws the comodities sell weill, &c. . . . . thryfe ower,

OWR Lord to hunting he [is gone]  
. . . . . marble stone,

He sent vord to Saint Knitt . . . . .<sup>9</sup>

[Quhan we vold heall ony for, or brokin limb, we fay thryfe ower,]

. . . . .  
. . . . .

He pat the blood to the blood, Till all vp stood ;

The lith to the lith, Till all took with ;

Owr Ladie charmed hir deirlie Sone, With hir tooth and hir townge,

And hir ten fingeris—

In the name of THE FATHER, THE SON, and THE HALIE GAIST !<sup>10</sup>

<sup>1</sup> Ride.    <sup>2</sup> Bean-stalks.    <sup>3</sup> For feet.    <sup>4</sup> See Note to ‘ Horse and hattock,’ p. 604.    <sup>5</sup> There is a tradition in MORAYSHIRE, that Witches could not appear in the shape of a dove or a lamb ; the one being emblematical of THE HOLY SPIRIT, the other being the emblem of the AGNUS DEI. Perhaps the *hiatus* might not improperly have been so supplied.    <sup>6</sup> Nolt, cattle.    <sup>7</sup> Webs of cloth.    <sup>8</sup> Uniformly ; constantly ; always.    <sup>9</sup> After this fragment, a considerable portion of the MS. is unfortunately torn off. It is probable that the two first lines of the next Charm are mutilated.    <sup>10</sup> It has been often remarked by the Editor, in the course of the numerous WITCH TRIALS which occur in this Collection, that a great proportion of the charms, in use to be repeated by these unhappy women, were actually paraphrases of portions of the *Mass-Book*—and in some cases, such as in the Case of ANNIE SAMSON, there appears to have been used doggerel versions of THE CREED, &c. ! Others were taken from ancient popular rhymes and songs, such as the above fragment, ‘ Our Lord to hunting he is gone,’ &c., which, unfortunately, is mutilated.

And this we say thryse over, straiking<sup>1</sup> the for, and it becomes heall. 2<sup>di</sup>, For the BEAN-SHAW,<sup>2</sup> or pain in the heance,<sup>3</sup>—‘WEE ar heir thrie *Maidens* charming for the bean-staw; þe man of the Middle-earth, blew beaver, land-feaver, maneris of stooris, the Lord fleigged<sup>4</sup> the Feind with his holy candles and yeird foot stone!—Thair she fittis, and heir she is gon!—Let hir nevir com heir again!’—3<sup>di</sup>, For THE FEAVERIS, we say thryse over, ‘I FORBID the qwaking-feavers, the sea-feaveris, the land-feaveris, and all the feaveris that ewir God ordained, owt of the head, owt of the heart, owt of the bak, owt of the fydis, owt of the kneysis, owt of the thieghes, fra the pointis of the fingeris to the nebes<sup>5</sup> of the toes; owt fall the feaveris goe, [fom] to the hill, fom to the hap, fom to the stone, fome to the stok. In Saint Peiteris nam, Saint Paullis nam, and all the Saintis of Hevin: In the nam of THE FATHER, THE SONE, and of THE HALIE GOST!’<sup>6</sup>—AND when we took the frowt of the fishes from [the] fisheris, we went to the shore, befor the boat wold com to it; and we wold say, on the shore-fyd, thrie feuerall tymes ower,

‘THE fisheris ar gon to the sea,  
And they vill bring hom fishe to me;  
They will bring them hom intill the boat,  
Bot they fall get of thaim bot the smaller fort!’

So we either steall a fish, or buy a fish, or get a fish from them [for nowght,] an or ma.<sup>7</sup> And with that we haw all the fruit of the heall<sup>8</sup> fishes in the boat; and the fishes that the fishermen tham selnes will haw, will be bot froath, &c.

The first woyag that ewer I went with the rest of owr COVENS wes [to] Plewghlandis; and thair we shot an man betuixt the plewgh-stiltis, and he presentlie fell to the ground, wpon his neife<sup>9</sup> and his mowth; and than THE DIVELL gaw me an arrow, and cawfed me shoot an voman in that feildis; quhilk I did, and she fell down dead.<sup>10</sup> In Winter 1660, quhen Mr Harie Forbes, Minister at Aulderne, wes feik, we maid an bagg of the gallis, flesh, and guttis of toadis, pickles of bear,<sup>11</sup> pairingis of the naillis of fingeris and toes, the liewer of ane hair, and bittis of clowtis. We steipit this all together, all night among watter, all haked<sup>12</sup> throw vther. And whan we did put it among the water, SATAN wes with ws, and learned ws the wordis following, to say thryse ower. They ar thus,

‘HE is lying in his bed,—he is lyeing feik and fair;  
Let him lye intill his bed two monethis and [thrie] dayes mair!  
2<sup>di</sup>, Let him lye intill his bed,—let him lye intill it feik and fore;  
Let him lyne untill his bed monthis two [and] thrie dayes mor!  
3<sup>di</sup>, He fall lye intill his bed, he fall lye in it feik and fore;  
He fall lye intill his bed [two monethis and] thrie dayes mor!’

Quhan we haid learned all thes wordis from THE DIVELL, as said is, we fell all down [wpon owr] kneis, with owr hear down ower owr showlderis and eyes, and owr handis lifted wp, and owr eyes

<sup>1</sup> Stroking; gently rubbing.    <sup>2</sup> The *boneshave* or *boneshaw*, signifies the SCIATICA. From an amusing, published specimen of THE EXMOOR DIALECT, Devonshire, it appears, that the term is also known in England. The peasantry of that district use a singular *Charm* for its cure. ‘The patient must lie upon his back, on the bank of the river or brook of water, with a straight staff by his side, between him and the water; and must have the following words repeated over him, viz.

“Boneshave right—Boneshave straight—  
As the water runs by the stave—Good for Boneshave!”

They are not to be persuaded but that this ridiculous form of words seldom fails to give them a perfect cure.’ *Exmoor Scolding*. P. 8. *Note*.    <sup>3</sup> Haunch.    <sup>4</sup> Affrighted; terrified.    <sup>5</sup> Nibs; extremities.    <sup>6</sup> It appears very singular to us who live in the Nineteenth Century, that SATAN should have taught his servants to invoke THE SAINTS, and even THE HOLY TRINITY. The charms recited by his disciples are usually fragments of ancient Monkish rhymes; and most of them were such as many good Roman Catholics of the lower orders, even in these times, would not scruple to use, for the supposed cure of their bodily ailments.    <sup>7</sup> One or more.    <sup>8</sup> Whole.    <sup>9</sup> Nose.    <sup>10</sup> Isobell previously explained, that these poaching excursions took place, when the Witches were careering in mid-air, mounted on windle-straws and bean-stalks, &c. The DEVIL usually made them pick up such of the Elf-arrows as fell short of or missed their mark.    <sup>11</sup> Grains of barley, or bear.    <sup>12</sup> Hacked; minced into small pieces.

[stedfastlie fixed wpon] THE DIVELL; and said the forsaids wordis thryfe ower to THE DIVELL, striktlie, against Maister Harie Forbes [his recowering from the said feiknes.] In the night tym we cam in to Mr Harie Forbes chalmer, quhair he lay, with owr handis all smeared [ . . . . . out] of the bagg to swing it wpon Mr Harie, quhair he wes feik in his bed; and in the day tyme [ . . . . . ane of owr] nwumber, quho wes most familiar and intimat with him, to wring or swing the bagg [wpon the said Mr Harie, as we could] not prevaill in the night tym against him; quhilk wes accordinglie done. Any of [ . . . . . ] comes in to your howffes, or ar fet to doo yow evill, they will look vncowth lyk, thrawn [ . . . . . ] hurlie lyk, and thair clothes standing owt. The Maiden of owr Coven, Jean Mairten, wes [ . . . . . We] doe no great mater without owr Maiden.

And if a child be forspoken,<sup>1</sup> we tak the cradle [ . . . . . ] throw it thryfe,<sup>2</sup> and than a dowg<sup>3</sup> throw it; and then shakis the belt abow the fyre [ . . . . . and then cast it] downe on the ground, till a dowg or catt goe ower it, that the feiknes may com [ . . . . . wpon the dowg or] catt.

ALL quhilkis wer swa spokin furth of the mouth of the said ISSOBELL GOWDIE, &c.<sup>4</sup>

[Indorfed] ED<sup>a</sup>, 10 July, 1662. Considered and found relevant be THE JUSTICE DEPUTE.

'Tak cair of this peaper. See the Justice deputis judgement of it. Show this to the Commiffioneris.'

HAVEING read and considered THE CONFESSIONS of ISOBEL GOWDIE, within contened, as particularlie SATHAN, Renunciation of Baptism, with divers malefices, I find that a Commiffion may be verie justlie pafs, for hir last Tryall. (Sic subscribiter) A. COLVILLE, (Justice-depute.)

### (3.) ISSOBELL GOWDIES THIRD CONFESSION.

AT AULDERNE, the fyftein day of May, 1662 yeiris, IN prefence of Maister HARIE FORBES, Minister of the Gospell at Aulderne, Mr HEW ROSSE, Minister at Nairn; JOHNE INNES of Edingeith; HEW HAY of Newtown; Mr ALEX DUNBAR, Schoolmaster and Seffion Clerk of Aulderne; GEORGE PHINNEY, in Kirkmichaell; and Johne Weir, and Androw Eafie in Aulderne; and many vtheris, WITNESSIS to THE CONFESSION efter fett down, spoken furth of the mouth of ISSOBELL GOWDIE, spous to Johne Gilbert in Lochloy.

THE quhilk day, in prefence of me, JOHNE INNES, Notar Publict, and Witnesfes all vnder subfcrywand, the said ISSOBELL GOWDIE, appeiring to be most penitent for hir abominable finnes of Witchcraft, most ingenwollie procedit in hir CONFESSION therof, in maner efter following; to witt. First, as I wes going betwixt the townis of *Drumdewin* and *the Headis*, THE DIVELL met with me, and thair I covenanted with him, and promeifit to meit him, in the night tym, in *the Kirk of Aulderne*; quhilk I did. He flood in the Readeris dask, and an blak book in his hand; quhair I cam befor him, and renuncet JESUS CHRIST and my baptifme; and all betuixt the soale of my foot and the croun of my head, I gaw frielie wp and ower to THE DIVELL. *Margaret Brodie*, in Aulderne, held me wp to THE DIVELL, wntill he re-baptifed me, and marked me in the shoulder, and with his mouth sucked out my blood at that place, and spowted it in his hand, and sprinkling it wpon my head and face, he said, 'I baptife ye, JANET, to my self, in my own nam!' Within a whyll thereafter we all removed. And within few dayes he cam to me, in *the New Wardis of Inshoch*, and ther haid carnall cowpulation with me. He wes a verie meikle blak roch man. He will lye als hewie wpon ws, quhan he hes carnall dealling with ws, lyk an malt-secke. His memberis ar exceiding great and long; no mans memberis ar so long and bigg as they ar. He wold be amongft ws lyk a weath horse amongft mears. He wold lye with ws in prefence of all the multitud; neither haid we nor he any kynd of shame; bot

<sup>1</sup> Bewitched.      <sup>2</sup> This seems to allude to passing the child, &c., through an enchanted hoop, ring, or belt, a very common popular *charm* in those days.      <sup>3</sup> Dog.      <sup>4</sup> The same form and subscriptions as in the preceding Confession, with the Notarial Attestation, &c. of JOHN INNES.

especiallie *he* hes no shame with him at all. He wold lye and hawe carnall dealling with all, at euerie tym, as he pleafed. He wold haw carnall dealling with ws in the shap of a deir or any vther shap that he wold be in. We wold never refuse him. He wold com to my hows-top in the shap of a crow, or lyk a deir, or in any vther shap, now and then. I wold ken his woice, at the first heiring of it, and wold goe furth to him and haw carnall cowpulation with him. The youngest and lwftiest women will haw werie great pleafour in their carnall cowpulation with him, yea much mor than with their awin husbandis; and they will haw a exceiding great desir of it with him, als much as he can haw to them, and mor; and never think shame of it. He is abler for ws that way than any man can be (Alace! that I fould compair him to ane man!) onlie he ves heaue lyk a malt-seck; a hudg nature, verie cold, as yce.

He wold fend me now and then to *Aulderne* fom earandis to my neightbouris, in the shap of ane hair. I wes on morning, abowt the break of day, going to *Aulderne* in the shap of ane hair, and *Patrik Papleyis* serwandis, in *Kilhill*, being going to ther labouring, his houndis being with them, ran efter me, being in the shap of an haire. I ran werie long, bot wes forcet, being wearie, at laft to take my own hous. The dore being left open, I ran in behind an chift, and the houndis followed in; bot they went to the vther fyd of the chift; and I was forcet to run furth agane, and wan into an vther hows, and thair took leafour to fay,

‘ HAIR, hair, God fend thé cair!  
I am in a hearis liknes now,  
Bot I fall be an voman ewin now!  
Hair, hair, God fend thé cair!’

And so I returned to my owin shap, as I am at this instant, again. The dowgis will fom tymes get fom byttis<sup>1</sup> of vs, quhan ve ar in hairis,<sup>2</sup> bot will not get ws killed. Quhan ve turn owt of a hairis liknes to owr awin shap, we will haw the byttis, and rywis, and scattis<sup>3</sup> in owr bodies. Quhan we vold be in the shap of cattis, we did nothing but cry and wraw,<sup>4</sup> and rywing, and as it ver, wirrieng on an vther; and quhan ve com to owr awin shapes again, ve will find the scattis and rywes on our skins, werie for. Quhan on of vs or mor ar in the shap of catis, and meitt with ony vtheris owr neightbouris, we will fay,

‘ DIVELL SPEID THÉ—GOE THOW WITH ME!’

And immediatlie they will turne in the shap of an catt, and goe with ws. Quhen we wilbe in the shap of crowes, we will be larger than ordinar crowes, and will fitt wpon brenches of treis. We went in the shap of rewkis<sup>5</sup> to *Mr Robert Donaldsones* hows, THE DIVELL, and *Johne Taylor*, and his wyff, went in at the kitchen chimney, and went down wpon the crowk.<sup>6</sup> It wes about *Lambes*,<sup>7</sup> in anne 1659; they opened an vindow, and (we) went all in to the hows, and gott beiffe and drink thair; bot did no more harme.—We went in to *the Downie-hillis*; the hill opened, and we cam to an fair and lairge browme, in the day tym. Thair ar great bullis rowtting and skoylling ther, at the entrie, quhilk feared me.<sup>8</sup>

Bot that quich troubles my confcience most, is the killing of severall perfones, with the arrowes quhich I gott from THE DIVELL. The first woman that I killed wes at *the Plewogh-landis*; also I killed an<sup>9</sup> in the East of *Murrey*, at *Candlmas*<sup>10</sup> laft. At that tyme *Bessie Wilson*, in *Alderne*, killed on thair; and *Margaret Wilson*, ther, killed an vther; I killed also *James Dick* in *Canniecavill*: Bot the death that I am most of all sorrie for, is the killing of *William Bower*, in *the Milltowne of Moynes*; *Margaret Brodie* killed an voman, washing, at *the Burne of Tarres*; *Bessie Wilson* killed an man at *the Bushe of Strutheris*; *Bessie Hay* in *Aulderne* killed an prettie man called *Dunbar*, at the Eift

<sup>1</sup> Bites.      <sup>2</sup> In the shap of hares.      <sup>3</sup> Tears and scratches.      <sup>4</sup> *Caterwaul*, like cats.      <sup>5</sup> Rooks.  
<sup>6</sup> The *crook*, on which the ‘kail-pot’ hangs, over the fire.      <sup>7</sup> *Lammas*, the 1st day of August.      <sup>8</sup> Alarmed, frightened me. See her CONFESSION, Apr. 13, 1662, page 604.      <sup>9</sup> Ane; one.      <sup>10</sup> The purification of the blessed Virgin Mary, Feb. 2d.

end of *the Towne of Forres*, as he wes coming owt at an gaitt; *Margaret Brodie* in Alderne killed on *David Blak*, in Darnvay. *Janet Breadhead*, spows to *Johne Taylor*, told me, a litle befor she wes apprehendit, that *Margaret Wilfone* in Alderne shot *Alexander Hucheon*, in Alderne; *Janet Breadheid* shot *Johne Falconer*, in the Park. The most of ws all wer ther, at that tyme. *Bessie Wilfone* killed on *William Man*, at Burgie; *Margaret Wilfone* killed on *Johne Lee*, and *Janet Breadheid* killed a fuy<sup>1</sup> at Burgie; *Bessie Wilfone* in Alderne, on an first Monday of the Reath, took a bagg maid of hairis lieweris,<sup>2</sup> the fleth, guttis and gallis of toadis, naillis of fingeris and toes, and swinged it on an young man called *Thomas Reid*, and he died. *Bessie* and *Margaret Wilfones* in Alderne, *Johne Taylor* and his wyff, *Margrat Brodie* and I, and THE DIVELL, wer together, and *Mr Harie Forbes*, Minister at Alderne, goeing to *Moynes*. THE DIVELL gaw *Margret Brodie* an arrow to shoot at him, quhilk she did; bot it cam short; and *the Divell* cawfed tak it wp again. We defiret to shoot again, bot *the Divell* said, 'No; we wold not gett his lyff at that tyme!' *The Divell* cawfed me to shoot at *the Laird of Park*,<sup>3</sup> as he was croceing *the Burne of the Boath*; bot I missed him.

We wold goe to feuerall howffis, in the night tym. We wer at *Candlmas* last in *Graingehill*,<sup>4</sup> qubair we got meat and drink anewgh. THE DIVELL sat at the heid of the table, and all the COVEN about. That night he defirit *Alexander Elder*, in Earlefeat, to say the grace befor meat, quhilk he did; and is thus:

' WE eat this meat in THE DIVELLIS nam,  
With sorrow, and fych,<sup>5</sup> and meikle fhame;  
We sall deftroy hows and hald;  
Both sheip and noat in till the fald.  
Litle good fall come to the fore  
Of all the rest of the litle store!'

And than ve began to eatt. And quhan ve haid endit eattin, we looked steadfastlie to THE DIVELL, and bowing owrfelwes to him, we said to *the Divell*,

' WE thank thé owr Lord for this!' &c.

The wordis which we spak, quhan we maid the pictur, for distroyeing of *the Laird of Parkis* meall-children, wer thus:

' IN THE DIVELLIS nam, we powr in this water among this mowld (meall),<sup>7</sup>  
For lang dayning and ill heall;  
We putt it into the fyre,  
That it may be brunt both stik and stowre.  
It falbe brunt, with owr will,  
As any stikle<sup>8</sup> wpon a kill.'

THE DIVELL taught ws the wordis; and quhan ve haid learned them, we all fell downe wpon owr bare kneysis, and owr hair aboutw owr eyes, and owr handis lifted wp, looking steadfast wpon THE DIVELL, still saying the wordis thryse ower, till it wes maid. And then, in THE DIVELLIS nam, we did put it in, in the midft of the fyre. Efter it had skrukned<sup>9</sup> a litle befor the fyre, and quhan it wes read lyk a coale, we took it owt in THE DIVELLIS nam. Till it be broken, it will be the deathe of all the meall children that *the Laird of Park* will ewer get. Cast it ower an Kirk, it will not brak quhill<sup>10</sup> it be broken with an aix, or som fuch lyk thing, be a man's handis. If it be not broken, it will last an hundreth yeir. It hes ane cradle about it of clay, to preferue it from skaith;<sup>11</sup> and it wes roften each vther day, at the fyr; som tymes on pairt of it, som tymes an vther pairt of it; it vold be a litle wat with water, and then roften. The bairn vold be brunt and roften, ewin as it wes by wa. It wanted

<sup>1</sup> Sow.      <sup>2</sup> Hares' livers.      <sup>3</sup> John Hay of Park.      <sup>4</sup> Belonged to Brodie of Lethin.      <sup>5</sup> Sighing; lamentation.      <sup>6</sup> The rest was probably omitted in writing down the Confession, as being blasphemous.      <sup>7</sup> It is writtin *meall* in the other Confession; and the metre (such as it is) requires this liberty. *Mowld* signifies 'earth' or 'dust.'      <sup>8</sup> Stubble.      <sup>9</sup> Parched; shrivelled.      <sup>10</sup> Until.      <sup>11</sup> Harm; injury.

no mark of all the partis of an child, little lippis, &c., and the handis of it folded downe by its fydis. *Johne Taylor* and *Janet Breadheid* his wyff, *Bessie* and *Margret Wilsones* in *Aulderne*, and I my selfe, with **THE DIVELL**, wer onlie at the making of it; bot all the multitud of all ovr **COEVENS** got notice of it, at the nixt meitting; for all ovr actis and deidis, betuixt grett Meittingis, moft be geven accompt of, and notted<sup>1</sup> in his book at each Grand Meitting—bot all my owin **COVEN** gott notice of it werie schortlie. **THE DIVELL** him self cam to me, to my awin hows, and bad me meitt him in *Johne Tayloris* hows, to help thaim to mak the faid pictur. All **THE COVEN** did flie lyk cattis, keas, hairis, and rewkis, &c. bot *Barbara Ronald*, in *Brightmanney*, and I, still<sup>2</sup> read on an horfe, quibich ve vold mak of a straw or beein-stalk.<sup>3</sup> *Bessie Wilson* was still in the liknes of a rewk.

Quhan we ar at meat, or in any vther place quhateuir, *the Maiden* of each **COVEN** fittis abow the rest, nixt **THE DIVELL**; and she ferwis **THE DEVILL**, for all the old peopill that he cairis not for, and ar veak and wnmeit for him. He will be with hir and ws all lyk a weath-horfe efter mearis; and fomtymes a man, bot werie wilfull<sup>4</sup> in carnall cowpulation at all tymes; and they ewin so als wilfull and desirowis of him. Som tymis, among ovr felwis, we wold be calling him 'BLAK JOHNE,' or the lyk, and he wold ken it, and heir ws weill aneughe; and he ewin then com to ws, and fay, 'I ken weill aneugh what ze wer fayeing of me!' And then he vold beat and buffet ws werie for. We wold be beattin if ve wer absent any tyme, or neglect any thing that wold be appointit to be done. *Alex<sup>r</sup> Elder*, in *Earlfeat*, vold be werie oft beattin. He is bot soft,<sup>5</sup> and cowld never defend him self in the leift, bot greitt and cry, quhan he vold be scourging him. Bot *Margret Wilson*, in *Aulderne*, wold defend hir self fynlie, and cast wp hir handis to keip<sup>6</sup> the stroakis off from hir; and *Bessie Wilson* wuld speak cruftie with hir townge, and wold be belling again to him stowtlie. He wold be beating and scourging ws all wp and downe with cardis<sup>7</sup> and vther sharp scurges, like naked gwraftis; and we wold be still cryeing, 'Pittie! pittie! Mercie! mercie, ovr Lord!' Bot he wold haw neither pittie nor mercie. Whan he vold be angrie at ws, he wold girne at ws lyk a dowge, as iff he wold fwellow ws wp. Somtym he vold be lyk a stirk, a bull, a deir, a rae, or a dowg, &c., and haw dealling with ws; and he vold hold wp his taill wntill we wold kisse his arce. And at each tyme, quhan ve wold meitt with him, we behoowit to ryse and mak our curtesie; and we wold fay, 'Ze ar welcom ovr Lord!'—and 'How doe ze, my Lord!' &c. Quhan we wold tak the furit<sup>8</sup> (fruit?) away of anie perfonen midden or dunghill, we wold fay thus, (when we wold putt haiked flesh of an vnchristned child, dowgis and sheipis flesh, and pairingis of naillis, &c., all haked throw-vther):—

' WE putt this intill this ham,<sup>9</sup>  
In our Lord **THE DIVELLIS** nam.  
The first handis that handles thé,  
Brunt and scalded fall they be!  
We fall distroy hows and hald,  
With the sheip and nout<sup>10</sup> intil the fald,  
And litle fal come to the fore  
Of all the rest of the litle-store!<sup>11</sup>

We killed an ox, in *Burgie*, about the dawing of the day, and we browght the ox with ws hom to *Aulderne*, and did eat all amongft ws, in an hows of *Aulderne*, and feasted on it.

**THE DEVILL** wold giw ws the brawest lyk money that ewer wes coyned; within fowr and twantie houris it vold be horfe-muke.<sup>12</sup> Alace! I deferw not to be fitting heir, for I haw done so manie evill

<sup>1</sup> Noted; recorded.    <sup>2</sup> Constantly; always; uniformly.    <sup>3</sup> Bean-stalk.    <sup>4</sup> Wanton.    <sup>5</sup> Uncourageous; simple; unresisting.    <sup>6</sup> *Keep*; ward off.    <sup>7</sup> Scourges made of cords—not 'cairds,' or instruments used in carding wool, flax, &c.    <sup>8</sup> The Editor never before met with this word; it evidently means strength, spirit, 'fashion,' (Fr. *foison*); that is, the fertilizing power.    <sup>9</sup> Home; home; destination.    <sup>10</sup> Nolt; cattle.    <sup>11</sup> The last four lines are the same with the conclusion of the **WITCH-GRACE**, in this Confession, p. 612.    <sup>12</sup> Horse-dung. In other Witch cases, money thus procured is usually said to have been turned into 'sclaitt-stanis.'



deidis, especiallie killing of men, &c. I deferw to be reivin wpon iron harrowes, and worfe, if it culd be devyfit!

And quhan we tak away the fruit of cornis, at *Lambes*,<sup>1</sup> we tak an wooll-sheir, and cuttis or clips onlie thrie stakis<sup>2</sup> of it, and plaitis vther thrie rudis together, and sayes,

‘ WE cutt this corne in our Lord THE DIVELLIS nam,  
And we fall haw the fruit of it ham!’

And this thryfe ower; and so we haw the fruit of that field. Ewin fo, quhan we tak keall or the lyk, &c. And we lay all vp till *Yewoll*, *Pace*, or *Halie* dayes; and pairtis it among vs, and feaftis on that together.

Wpon the quhilkis all and fundrie of the premisses, swa spokin and willinglie Confest be the said *Issobell Gowdie*, I, the said *Johne Innes*, Notar publict, haw wretten thir presentis, and with the Witnesses abow and vnder namet, haw subscryuit the sament with our handis, day, moneth, place, and yeir abow fett doun.

JOANNES INNES, Notarius Publicus.<sup>3</sup>

MR HARY FORBES, Minister of Auld Earn, Attestis.

HEN. ROSE, Minister at Nairne, Attestis the foirsaid Declaratioun, as to the principal substantialis.

HEW HAY of Newtown, Attestes.

JO. WEIR, in Auldearne, Attestis.

GEORGE PHINNIE, in Kirkmichael, Attestis.

(4.) ISSOBELL GOWDIE'S FOURTH CONFESSION.

AT AULDERNE, the tuantie sevynth day of May, 1662 yeiris. IN prefrence of MASTER HARIE FORBES, Minister at Alderne; PATRIK CAMPBELL of Boath; MR ALEX<sup>a</sup> DUMBAR, Schoolmaster and Clerk of the Session of Alderne; GEORGE PHINNEY, in Kirkmichaell; HEW HAY of Newtowne; and JOHN WEIR, in Alderne; WITNESSES to THE CONFESSION of ISSOBELL GOWDIE, spows to Johne Gilbert, in Lochloy.

THE said day, the said ISSOBELL, professing repentance for hir former sinnes of Witchcraft, and that she had bein ower long in THE DIVELLIS service; without ony compulfitouris, proceidit in hir CONFESSION, in maner efter following: That is to say. I acknowledg, to my great grieff and tham, that fyftein yeiris since I denyed FATHER, SON, and HOLIE GOST, in the *Kirk of Alderne*; and gaw over my bodie and sowll to THE DIVELL; he standing in the Readeris Dak of *Alderne*, and an blak book in his hand: *Margret Brodie*, in Alderne, held me wp to THE DIVELL, quhill<sup>4</sup> I did this, and quhill he marked me one the shoulder, and sowked out my blood thairat, and spitted it in his hand, and sprinkled it on my head, and baptifed me ‘JANET,’ in his owin nam. Efter that, he had carnall cowpulation with me, in the *New Wardis of Inshoch*; and still thairefter, fra tym to tym, at owr pleafour.

The names of THE COEVEN ar thes.<sup>5</sup> *Bessie Wilfone*, in Alderne; *Janet Burnet*, ther; *Elspet Nishie*, ther; *Margret Brodie*, ther; *Margret Wilfone*, ther; *Bessie Hay*, ther; *Johne Taylor*, in Belmakeith; *Janet Breadhead*, his spous; *Barbara Ronald*, *Issobell Nicoll*, in Lochloy; my self, with *Jean Mairten*, our MAIDEN; and *Johne Young*, in Mebestoun, owt OFFICER. THE NAMES OF OWR DIVELLIS, that waited upon us, ar thes. First, ROBERT, the *Jakis*; SANDERIS, the *Read Reaver*; THOMAS, the *Fearie*; SWEIN, the *roaring Lion*; THIEFFE OF HELL, *Wait upon hir self*; MAKHECTOUR; ROBERT, the *Rule*; HENDRIE LAING; and RORIE. We wold ken them all, on by

<sup>1</sup> *Lammas*, 1st August; *Festum S. Petri ad Vincula*. motto, before referred to, are annexed.

<sup>2</sup> Stalks; stems.

<sup>3</sup> The long Latin *docquet* and

<sup>4</sup> Until.

<sup>5</sup> The principal purpose of this renewed Examination seems to have been to get a more detailed account of the persons composing her COEVEN, &c., besides getting a solemn Confirmation of her former Declarations; so that the rest of that unhappy Society might in due time be brought to Trial and punishment.

on, from vtheris. Som of thaim apeirit in fadd-dun, fom in grassè-grein, fom in sea-grein, and fom in yallow. THE NIK-NAMES that THE DIVELL gaw wnto ws wer, PIKELL NEIREST THE VIND, this wes *Margret Wilsones* niknam; *Bessie Wilsones* niknam ves THROW THE CORN-YAIRD; *Elspet Nishies* niknam ves BESSIE BALD; *Jean Mairtenis* niknam, quho ves MAIDEN, is OWER THE DYK WITH IT; *Bessie Hayes* nickname is ABLE AND STOUT.

I haw sein the Elf-arrowes maid. The *Divell* dights<sup>1</sup> them, and the *Elf-boys* quhytes<sup>2</sup> them. We got ewerie on (of) ws fo many of thaim from the *Divell*, to shoot at men.<sup>3</sup> I my self killed on *William Bower*, at Miltoun of Moynes. This griewis me mor than any thing that I ewer did. *Margret Brody* killed an woman, washing, at the *Burn of Tarras*. *Bessie Wilson* killed an man, at the *Byth of Strutheris*. *Bessie Hay* killed on . . . . *Dunbar*, at the East end of the town of *Forres*, coming owt at a gait. *Margret Brodie* shot at on *David Blak*. *Margret Wilson* killed on *Alexr Hucheon*, in Aulderne. *Janet Breadhead*, now in prifon, killed *Johne Falconer*, in Park. Ther were thrie killed East the cowntrie, at *Candlmas* last: I killed on, *Margret Brodie* on, and *Bessie Wilson* on. I shot on *James Dik*, in Connicavell; *Margret Brodie* killed on *W<sup>m</sup> Cruikshank*; *Margret Wilson* killed on *Johne Ley*; *Janet Breadhead* killed a suyn,<sup>4</sup> also she killed an vther man at *Burgie*; and *Bessie Wilson* killed on thair, namet *W<sup>m</sup> Man*. We killed an ox, and brought it to *Bessie Hayes* hows, in Aulderne; and we did eat him thair. I shot at the *Laird of Park*, as he ves crossing the *Burn*<sup>5</sup> of *Boath*; bot, thankis to God now, that he preferwit him. *Bessie Hay* gaw me a great cuffe,<sup>6</sup> becaus I missed him.

*Margaret Brodie* shot at *Mr Harie Forbes*, at the Standing-ftanes, bot she missed; and speirit, ‘If she fould shoot again?’ And the *DIVELL* said ‘Not!—For we wold nocht get his lyf at that tym.’ We intentit<sup>7</sup> feuerall tymes for him, quhan he ves feik. *Bessie Hay*, *Jean Mairten*, the Maiden, *Bessie Wilson*, *Margret Brodie*, *Elspet Nishie*, spows to *Johne Mathow*, and I myself met in *Bessie Wilsones* hows, and maid an bag against him. The bag wes maid of the flesh, guttis, and gallis of toadis, the liewer of a hear,<sup>8</sup> pikles of corn, and pairingis of naillis of fingeris and toes; we steipit all night among water. The *Devell* learned ws to say thes wordis following, at the making of the bag:—

‘HE is lying in his bed—and he is feik and fair,  
Let him ly in till that bedd monthes two and dayes thrie mair!  
He sal ly in till his bed, he falbe feik and fair—  
He fall lye in till his bedd monethes two and dayes thrie mair!’

And quhan we haid said thes wordis, we wer all on our kneysis, our hair abowt owr showlderis and eyes, holding wp our handis to THE *DIVELL*, that it<sup>9</sup> might destroy the said *Mr Harie*. It ves intentit that ve, coming in to his chalmer, in the night tym, we fould fwing it on him. And becaus we pre-vailed not at that tym, *Bessie Hay* vndertook and cam in to his chalmer to wifit him, being werie intimat with him; and she brought in of the bag in hir handis, full of the oyll thairof, to haw fwong and casten dropis of it on him; bot ther wer fom vther worthie perfons with him at that tym, by quhich God prevented *Bessie Hay*, that she got no harm don to him, bot fswang a litl of it on the clothes of the bed quhair he lay.

*Johne Taylor* and his wyff, *Bessie* and *Margret Wilsones*, and I, maid a pictur for the *Laird of Parkis* maill children.<sup>10</sup> *Johne Taylor* brought hom the clay in his plaid newk; his wyff sifted it; we powred in vater in a cowg<sup>11</sup> amongst it, and wrought it for,<sup>12</sup> and maid a pictur of it, lyk a child, als big as a pow. It vanted no mark of the imag of a bairn, eyes, nose, mouth, litle lippies, and the hands of it folded down by its sydis. The vordis that we said, quhan we maid it, ver thes:—

<sup>1</sup> Dresses.      <sup>2</sup> Blocks them out.      <sup>3</sup> See the CONFESSIO of Apr. 13, 1662, where *Issobell* tells us they were licensed to sport, in this manner, when riding on straws through the air; and that they had power to kill all who did not sanctify themselves, &c.      <sup>4</sup> A sow.      <sup>5</sup> On good authority, *Issobell* and her master ought to have known, that the Laird was out of their power while crossing a running stream.      <sup>6</sup> A smart slap, or blow.      <sup>7</sup> Tried; essayed.      <sup>8</sup> A hare's liver.      <sup>9</sup> Viz. Their charmed bag.      <sup>10</sup> See the former CONFESSIOs.      <sup>11</sup> A sort of wooden dish.      <sup>12</sup> Sore; extremely.

‘ WE put this water among this meall,  
For long dwyning<sup>1</sup> and ill heall;  
We put it in intill the fyr,  
To burn them vp both stik and flour,  
That be brunt with our will,  
As any stikill<sup>2</sup> on an kill!’

THE DIVELL fitton on an blak kift. Ve wer al on our kneysis, and owr hair about our eyes, looking on THE DIVELL stedfastlie, and owr handis lifted vp to him, saying the vordes ower. And by this the bairnis died, &c. All this, with a great many mor terrible thingis, the saidis Witnesfes and Notar hard the said *Iffobell* CONFES, and most willinglie and penetently speak furth of hir ovin mouth. IN witnes quhairof, WE haw subscryuit thir presenttis, with owr handis, day, yeir, and place, abow fett downe.

*ITA EST Joannes Innes, Notarius Publicus, in fidem premissorum, rogatus et requisitus, subscribo.*

JOANNES INNES, No<sup>rius</sup> Publicus.

MR HARY FORBES, Minister of the Gospel, at Old Earn, Attests.

W. SUTHERLAND of Kinsterrie, Attestis. HEW HAY of Newtounne, Attestes.

ALL DUNBAR, Schoolmaster and Clerk to the Session of Oldearne, Attests.

GEORGE PHINNIX, in Kirkmichel, Attests. JO. WEIR, in Auldearne, Attestes.

#### VIII. CONFESSION of *Janet Breadheid, spouse of John Taylor, in Belmakeith.*

AT INSHOCH, the fowrteinth day of Aprill, 1662 yeiris. IN prefence of PATRIK DUNBAR of Benaferrie,<sup>3</sup> Shereff principall of the Shereffdome of Elgin and Forres; HEW HAY of Newtounne; ARCHBALD DUNBAR, in Meikle Penick; ARCHBALD DUNBAR, in Lochloy; WALTER CHALMER, in Balnaferrie; JAMES COWPER, in Inshoche; JOHNE WEIR, in Aulderne; and ane great multitud of all fortis of vther perfones; WITNESSES to THE CONFESSIONS and DECLARATIOUN efter fett downe, spokin furth of the mowthe of JANET BREADHEID, spous to Johne Taylor, in Belmakeith.

THE quhilk day, in prefence of me, JOHNNE INNES, Notar Publict, and Witnesfes abownamet, vnder subscryuand, ‘[the said] JANET BREADHEID, professing repentance for hir former finnes of Witchcraft, and that she haid bein over long in the [famin] service; without any pressuris,<sup>5</sup> proceidit as followis, to witt. FIRST, I knew nothing of Witchcraft wntill I wes mari[et with] my husband, Johne Taylor; andsit wes he, and Elspet Nishie, his mother, that entyfed me to that craft. And the firft [thing] that we did wes, we maid some drowgries,<sup>6</sup> of dowgs flesh and shepis flesh, againt Johne Hay, in the Mure; and therby took away his cornes, and killed his horse, noat,<sup>7</sup> theip, and vther guidis;<sup>8</sup> and layed it abowt his hows, to tak away his awin lyffe; and therefter, he thortlie died. Onlie my mother-in-law and my husband did this, to learne me; and this wes my firft [lesson] from them, &c.<sup>9</sup> When they gott me to consent to this craft; firft, they haid me to the Kirk of Nairne, in the nycht [tyme;] and THE DIVELL wes in the Readeris dask, and an book in his hand. And at that meitting, Bessie Wilfone, in Auld[erne;] Margret Wilfone, spows to Donald Callam, thair; Margret Brodie, thair; Barbara Friece, ther; Helen Inglis, spows to William [. . . .] thair; Janet Burnet, thair; Elspet Makbeith, thair; Elspet Nishie, spows to Johne Mathew, in Aulderne; Mariore Taylor, [spous] to Robert Barrie, ther; Bessie Hay, ther; Archibald Man, ther; Mariorie

<sup>1</sup> Pining; lingering sickness; gradual wasting away.      <sup>2</sup> Stubble.      <sup>3</sup> The Dunbars of Balnaferry and Westfield were *heritable* SHERIFFS of Murray.      <sup>4</sup> A considerable part of this paper, having been destroyed by mice, the Editor has supplied the blanks from conjecture, after a careful comparison with other similar Examinations. The words so supplid are put within brackets.      <sup>5</sup> Without the application of TORTURE, or other ‘legal compulstouris;’ voluntarily.      <sup>6</sup> Drugs; enchanted charms.      <sup>7</sup> Nolt, cattle.      <sup>8</sup> Farm stock; ‘bestial.’      <sup>9</sup> A pretty experiment, indeed, for enticing a novice to be initiated!

Man, his daughter, ther; Elspet Makhomie, relict [of] wmq<sup>11</sup> Alexander Huchefon, ther; Bessie Friece, spous to Johne Gilbert, ther; Iffobell Friece, spows to Androw Miller, ther; Agnes Torrie, spows to William Yowng, ther; Elspet Chifolme, spows to vmq<sup>11</sup> . . . . Makhomie, ther; Alexander Elder, in Earleat; Janet Finlay, his spows; Elspet Laird, in Miltoun of Moynes; Johne Robertson, in Leathin; Grifall Sinklar, his spows; Alexander Sheipheard, in Miltoun of Moynes; Janet Man, his spous; Mariorie Dunbar, in Brightmanney; . . . . Kyllie, in Vester Kinstray; Alexander Ledy, ther; Elspet Gilbert, in Leathinbar; Agnes Brodie, in Leathin; Janet Smith, spows to Robert Frafer, in Arry; Bessy Peterkin, in Torrich; Alexander Bell, in Drumdewin, a charmer; Iffobel Nicoll, in Lochloy; Bessie Young, ther; Elspet Falconer, spows to James Inglis, in Penick; Bessie and Margret Huchsons, ther; Walter Ledy, ther; wer all ther that night. Johne Taylor, my husband, wes then Officer; bot Johne Yowng, in Mebestoune, is now Officer to my COE[VEN.] Quhan I cam frst ther, THE DIVELL called tham all be thair names, on the book; and my husband, than [OFFICER,]<sup>1</sup> called thame at the dore. And when that was done, Bessie Wilson, in Alderne, fat down nixt THE DIVELL;<sup>2</sup> [Bessie] Hay, thair, fat nixt him, on the vther fid; Janet Burnet fat nixt hir; and Elspet Nishie, spows to the said Johne [Mathew,] fat nixt Bessie Wilson, hir mother. She wes THE MAIDEN to hir motheris Coeven. All the rest fat downe [as] they to cam.<sup>3</sup>

The nixt thing, efter quhat wes done that night, THE DIVELL lay with them all abowt. And then . . . . . for me, my husband presentet me, and he and Margrat Wilson, in Alderne, held me vp to THE [DIVELL to] be baptifed: And efter I haid put my on hand to the soallis of my foot, and the vthir hand to the [crown of] my head, and renunced my baptifme, and all betuixt my two handis to the Divell, the Divell [marked me] in the shoulder, and fuked out my blood with his mowth, at that place; he spowted it in his hand, and [sprinkled it] on my head. He baptifed me thairvith, in his awin nam, 'CHRISTIAN.' And than immediatlie thairefter, [they all returned] each to ther awin howffis. Within fyw dayes thairefter, he cam to me to my hows, quhan my huf[and] wes furth,] in the morning, at the plewgh, to fie the mark quhich he gaw me; and he did lye with me in the naked [bed,] and haid carnall cowpulation with me; and gaw me ane piece of money, lyk a teftain. He was a meikle, roch, blak man, cloven footed, werie cold; and I fand his nature within me als cold as spring-well-water. He promeisit to fie me again, within eight dayes, quhilk he did, and haid carnall cowpulation with me again, and gaw me an vthir piece of money, lyk the frst; bot they both turned read,<sup>4</sup> and I got nothing for thaim. He cam again within twantie dayes, and still<sup>5</sup> once in the twantie dayes, and lay with me at each tym continually.

[We] met in the place of Darnvay<sup>6</sup> nixt that, and thair we did eat and drink, &c. Efter that, we vould still meit [euerie] ten, twelve, or twantie dayes continwally.

Whan we haid Great Meittingis, Walter Ledy, in Penick, my [huf]band, and Alexander Elder, nixt to THE DIVELL, wer Ruleris; and quhan ther wold be but fewar, I my self, the deceassit Jean Suthirland, Bessie Hay, Bessie Wilfone, and Janet Burnet wold rule thaim. The frst thing that we did, except the taking of meat, wes taking of the cornis of Drumdewan, and [then] pairted that amongft ws. 2dly, We shoat noat<sup>7</sup> in plewghes. 3dly, Agnes Grant, who wes brunt on the . . . . hill of . . . .,<sup>8</sup> gott hyre from Elspet Monro, to destroy the Lairdis of Park and Lochloy, and thair [posteritie.] And then I and my husband, Elspet Nishie, and Bessie and Margret Wilfones, in Alderne, con[veened] our selwes with THE DIVELL, in Elspet Nishies hows; and then touk dowgis flesh, and sheipis flesh, and [haked] it werie small with an aix, and feithed it an haill fornoon in a pot, among water: And than I took it owt; and THE DIVELL, with his awin hand, did put it in a sheipis

<sup>1</sup> See *Issobell Gowdie's CONFESSIONS*; where it is stated that this worthy was OFFICER to a Coven. <sup>2</sup> She being MAIDEN to the Coven. <sup>3</sup> As they happened to come in; promiscuously. <sup>4</sup> Red. <sup>5</sup> Uniformly; constantly. <sup>6</sup> The seat of THE EARLS OF MORAY. See *Issobell Gowdie's CONFESSIONS*. <sup>7</sup> Shot *nolt*, or cattle, in ploughs, with elf-arrows. <sup>8</sup> Left blank, in the original.

bagg, and he steiring it still<sup>1</sup> abowt with his handis. We wer wpon our kneeyes, owr hair about owr eyes, and owr handis lifted up, and ve looking stedfastlie wpon THE DIVELL, praying to him, repeating the vordis quhich he learned vs, that it sould kill and defstroy the Lairdis of Park and Lochloy, and thair meall-children and posteritie. And then we cam to Inshoch, in the night tym, and skatered it wpon, and down, abow, and about the gait, and vther places quhair the Lairdis and thair fones wold most haunt; and then ve, in the lyknes of crows and rewkis stood abow the gait, and in the treis oposit to the gait. It wes apointed so, that if any of them sould twitch<sup>2</sup> or tramp wpon any of it, als veill as it or any of it to fall on thaim, it sould strik thaim with byllis,<sup>3</sup> &c. and kill them: Quhilk it did; and they shorthie died. We did it to mak that hows airles.<sup>4</sup> It wold wrong non els bot they. And it wes Keathren Sowter, that wes brunt,<sup>5</sup> that [shot] William Hay, the last Laird of Parkis brother, for<sup>6</sup> on Gilbert Kinley. It wes only that bagg that wes the death of both the last Lairdis of Park.

Also, four yeir since, I and my husband, Iffobell Gowdie, spows to Johne Gilbert, in Lochloy, and Bessie and Margret Wilsones, in Alderne, maid [a pictur] of clay, lyk the Laird of Parkis eldest sone. My husband brought hom the clay in his plaid [newk. It] ves maid in my hows; and THE DIVELL him self with ws. We brak the clay werie small, lyk meil, [and] sifted it with a siew, and powred in vater amongft it, with wordis that THE DIVELL learned vs, [in the DI]VELLIS nam. I brought hom the water, in a pig,<sup>7</sup> out of the Rud-wall.<sup>8</sup> We wer all wpon owr [kneeyes,] and our hair about owr eyes, and owr handis lifted vp to THE DIVELL, and owr eyes stedfast looking [vpon him,] praying, and saying wordis which he learned ws, thryfe ower, for defstroyeing of this<sup>9</sup> Lairdis [meall] children, and to mak his hows airles. It wes werie fore wrowght, lyk rye-bowt. It was about the bignes of a feadge or pow. It was just maid lyk the bairne; it wanted no mark of any maill child, such as heid, face, eyes, nose, mowth, lippes, &c., and the handis of it folded downe by its fydis. It ves putt to the fyre, first till it scrunked,<sup>10</sup> and than a cleir fyre about it, till it ves hard. And then we took it owt of the fyre, in THE DIVELLIS nam; and we laid a clowt abowt it, and did lay [it] vp on a knag, and sometimes vnder a chift. Each day we vold water it, and then rost and bek<sup>11</sup> it; and turn it at the fyre each other day, whill<sup>12</sup> that bairne died; and then layed it vp, and steired<sup>13</sup> it not wntill the nixt bairne wes borne: And then, within half an yeir efter that bairn wes borne, [we] took it owt again out of the cradle and clowt, and vold dip it now and than among water, and beck [it] and rost it at the fyre, each other day once, as ve did against the vther that ves dead, wntill that bairn [died] also. ALL quhilkis of the premisses, swa spokin and willinglie Confessit and declarit furth of the mouth of the said JANET BRED[HEID,] in all and be all thingis as is abow sett downe, I, the said JOHNE INNES, Notar Publict, haw writtine thir presentis, and with THE WITNESSES abownamet, in farder testimonie and witnessing of the premisses to be of veritie, We haw subscryuit the samen with our handis, [day, month,] yeir, and place abow specifeit.

JOANNES INNES, *Notarius Publicus*.<sup>14</sup>

HEW ROSE, Minister at Nairne, Attestis thir premisses, confessed in my presence, Aprile 15, 1662.

MR HARY FORBES, Minister of the Gospel at Old Earn, Attestis.

ARCHIBALD DUNBAR, witness, Attestis. W. SUTHERLAND off Kinsterie, Attestis the premisses.

[JOHNE WE]IR, in Alderne, Attestis; Confessed in my presence, Apryll 15, 1662.

J. COUPER, Attestes. W. CHALMER, witness to the premisses, confest in my presentis, 15 of Apryll.

HEW HAY Attestes the premisses, Confest 15 Appryll, 1662.<sup>15</sup>

<sup>1</sup> Ever; constantly.    <sup>2</sup> Touch.    <sup>3</sup> Boils.    <sup>4</sup> Heirless.    <sup>5</sup> For Witchcraft.    <sup>6</sup> At the instigation of.    <sup>7</sup> Earthen jug, or jar.    <sup>8</sup> The Rood, or HOLY-CROSS, well.    <sup>9</sup> The present Laird's male children. The last two Lairds are stated to have been destroyed by the charmed bag.    <sup>10</sup> Got parched, or shrivelled; *shrunk*.    <sup>11</sup> Bake.    <sup>12</sup> Every alternate day, until that child died.    <sup>13</sup> Stirred.    <sup>14</sup> The long Latin docquet is annexed.    <sup>15</sup> Some farther marking had at one time been on the margin; but only a few of the *letters* at the end of each line now remain. It appears to have been the Judgment of the Justice-depute, from a fragment of a Memorandum on the back of the CONFESSION; so that it is probable she had been tried at one of the 'JUSTICE-AIRS'—and of course would, on her own Confession, be condemned to be burnt.

## No. VIII.

CONTINUATION OF NO. XVIII. OF THE GENERAL APPENDIX OF  
DOCUMENTS ILLUSTRATIVE OF GOWRIE'S CONSPIRACY.

(See VOL. II. pp. 299 to 313.)

WHEN the Editor was in the progress of completing his collection of materials for illustrating the truth of the EARL OF GOWRIE'S CONSPIRACY against KING JAMES VI, one of the Volumes of *Sir James Balfour's* MSS. had been misplaced. Since that time, however, the Editor has had the advantage of again inspecting that truly valuable repertory of historical information, and now submits a few more of those highly interesting Papers, which, he is happy to notice, place the conduct of the celebrated *Mr Robert Bruce* in a much more favourable point of view. In justice to the memory of that eminent individual, it has been thought proper to insert them in this Appendix. Throughout the protracted controversy between *Bruce* and THE KING, the latter, obviously, had the worst of the argument—and tyrannically put down his able but dauntless and pertinacious antagonist by a most unlawful stretch of arbitrary power, after he failed in all his attempts at foiling him with his own weapons.

The relentless persecution of *Bruce* must, assuredly, be accounted an additional blemish in the character of KING JAMES VI, by every unprejudiced person. The reader is once more referred to the text, and to the documents and authorities formerly quoted, in reference to this subject.

(18.) LETTER, *Mr Robert Bruce* to THE KING.<sup>1</sup>

PLEAS 3OUR MAIESTIE,

Wpon the directione send to me by 3our hienes CONSELL, I thocht it meitt be my awin letter to testifie my resolucione to 3our M. in that mater of GOWRIE. 3our M. can not be ignorant in quhatt termes I passit my resoluciuon at *Sanct Jonnestowne*.<sup>2</sup> That resoluciuon is as zitt extant, subscrywitt be monie honest vitneffis. To that resoluciuon, both in mater and maner, I adhear; and fra it I am nott myndit to pas, be GOD his grace. This resoluciuon gaue 3our M. perfytt contentment than, and I doubt nott bott itt vill do the lyke zitt. So luiking that 3our MAIESTEIS scruple falbe fullie satisfied, in that mater, I reft,

3our M. his most humble and obedient subiect,

ROBERT BRUCE.

TO HIS MAIESTIE.

(19.) LETTER, *Mr Robert Bruce* to THE PRIVY COUNCIL.<sup>3</sup>

PLEAS 3OUR HONORIS,

I RECEAWED 3our Letteris on Setterday the 13 off this instant; and for satisfacionne thairoff I haue directed my Letter, containing my avin<sup>4</sup> resoluciuon in that mater, unto his M. My resoluciuon nov is relatiwe to my resoluciuon att *Sanct Jonstoun*, quhilk vas dyttit<sup>5</sup> by HIS MAIESTEIS felf, and subscrywet by monie honest vitneffis (befyd me) quha ar zitt liewing. This resoluciuon gawe his M.

<sup>1</sup> From Orig. preserved among the *Dennybas* MSS. Adv. Lib. A. 2. 52. No. 25. It is undated. <sup>2</sup> Perth, having been dedicated to St John as Patron Saint, was long known by this name. <sup>3</sup> From the same Coll. No. 26; also undated. <sup>4</sup> Own. <sup>5</sup> Edited, composed.

perfyt contentment then, and I doubt nott bot itt will do the lyk zitt; for vnto thatt resolutioun I adhear both in matter and maner; and I am reddie to testifie the fame, fo oft as his M. pleases, by my awin hand wreitt. Sa, luiking that your honoris fall not be forder trublit in that mater, I rest,

Your honoris to be commandit to his povar, in God,

To HIS M. most honorable PRIVIE CONSELL.

ROBERT BRUCE.

(20.) LETTER, *Mr Robert Bruce to THE KING.*

MAY IT PLEIS YOUR M.

HEIRING that my cuming to *Aberdene* was interpret to spring of contempt, I thocht it my bundin dewtie to purg my selfe to pe vttermost thairof, for I compt contempt of GOD and his Lewtennent pe heighest cryme that is; And thairfor, for purgation, I say, that quhatsoever is done with ane warrand of GOD and man can nocht incur pe suspition of a contempt, lat be ane actual; and in deid, gif thair had bene ane prescription or limitation of tyme in any Licience, I had failzeit in passing pe boundis thairof; 3ea nocht onlie that, but I avaittit upon pe proper tyme quharfor my Licience wes gevin me, and tuik pe benifeit quhen pe necessitie of my infirmitie confranit me; and being moir respectiue than that, I tuik it nocht quhill THE BISCHOP OF MURRAY brocht me pe adwyse of pe BISCHOPPIS OF SANCT ANDROS and GLASGOW to do so: And giff I had refaut pe meifest signification that culd be, that pe imbracing of pe benifit at that tyme wald nocht stand with your HIENESS contentment, I wald most glaidlie haiff abstanit thairfra; for I haif layed my compt, be GODIS grace, never to involue me in that giltines. So, to end, thair is no thing done be me quhairfor my former benifeit suld be retrenchit; and most huimlie I creave that your M. censure go nocht befor my procuring, but that my reparing to *Aberdene* for my better helth and confort of my wyff and childrin may stand with your M. fauor. So resting ever,

Your M. most humbill subiect and orator,

INDERNES,<sup>1</sup> ye 20 vijj of Merche (1606 ?)

ROBERT BRUCE.

To THE KINGIS most excellent MAIESTIE.

(21.) SUPPLICATION, *Mr Robert Bruce to THE PRIVY COUNCIL.*<sup>2</sup>

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humblie menis and schawis I, your feruitour, MR ROBERT BRUCE, Minister, That quhair, the last day when I wes brocht befor your ll., I wes commandit and ordaneit be your ll. to addressse my selfe to the burgh of *Invernes*, and thair to remane and within four myllis abute the fame, dureing his MAIESTEIS will and pleafour; lykeas, the tyme for my addressse thair daylie approtchis; quhairvnto, althocht I acknowledge my selfe bundin in conscience befor GOD and in my alledgeance to THE KINGIS MAIESTIE, my Souerane, to gif all dew obedience, as by GODIS grace I mynd neur to be disobedyent to HIS MAIESTIE or your ll., in ony of your ll. directionis, in this kynd; yitt, the indispositioun and inhabilitie of my perfone, conioyned with my grite aige, forceis me humblie to schew vnto your ll. how vnable I am to vndertak and to vnderly fuche a jorney and charge; ffor I am become so feible and waik,<sup>3</sup> and my aigeit and weyryed<sup>4</sup> perfone is so far worne and waisted with greif, cair, and vtheris visitationis quhairwith it hes pleast THE LORD in his mercye to chastice me, that hardlie dow<sup>5</sup> I travell any quhair, without haifard of my lyff: And yf it fall pleas GOD to visite me with seiknes, outhar at *Invernes* or be the way, it is not liklie that I fall ouercome<sup>6</sup> the fame. And tuotching the imputatioun layed vpoun me, whilk wes the caus of HIS MAIESTIS offence,<sup>7</sup> and of this hard course tane with me, I thank GOD I wes frie and innocent thairof, and I cleirit my selfe of the fame in your ll. prefence, it being a poynt verrie far fra my professioun to be a movair or steirair<sup>8</sup> vp of Seditioun, as HIS MAIESTIE wes informed of me; and fra my hairt I deteast fuche Seditious practizes, as being most impious and wicked, and repugnant to the

<sup>1</sup> Inverness. <sup>2</sup> It is unsigned, and no deliverance indorsed, but it is evidently the original, having the marks of the ribbon usually passed through Letters and bills, &c., when sealed and sent to a distance. <sup>3</sup> Weak.  
<sup>4</sup> Weary; spent. <sup>5</sup> Am I able to travel. <sup>6</sup> Survive, recover. <sup>7</sup> Displeasure. <sup>8</sup> Stirrer.

Holy Ordinanceis of God, quhairby we are commandit to gif all dew obedyence to our superioris. And as I schew vnto your ll., my comeing to this burgh the tyme of the Parliament wes vpon a meere necessitie, and to eschew the danger of horneing, quhairwith I wes threathned, for xxij merkis. And dureing the schorte tyme of my aboade heir, whilk wes not xxxvj houris, I spak not with a Parliament man, except *the Lord Kilfayth*,<sup>1</sup> whome I employed to be cautioner for me; and had no kynd of meddling with the affairis of the Parliament, becaus thay concerneit me not; bot keipit my selff very quyet till my away-going. And dureing the tyme of my Warding in *the Castell of Edr*, my cariage wes so modest, calme, and peceabill, withoute meddling with thir matteris of THE KIRK now in questioun, as I hoip nothing can be obiectit vnto me. And yf HIS MA<sup>TIES</sup> wald be gratioullie pleasit to suffer me spend the few remanent of my aigeit and weyrysome dayes at my awne house, I wilbe verrie glaid and willing to be perpetuallie confynned thair, and tua myllis thairabout; and I fall neur transcend that boundis, nor medle with ony matter concerneing the pollicie and governement of THE KIRK. Most humble befeiking your ll. to haif consideratioun of this my estate; and outhere be your selffis, or be your intercessioun at HIS MAIESTEIS handis, to grant me some ease and releiff in this heaue charge layed vpoune me, whilk wilbe my vtter ouerthrow and wrak. And your ll. anfuer.

(22.) LETTER, *The Archbishop of St Andrews*<sup>2</sup> to THE KING.

MOST SACRED SOVERANE,

IT may please your most excellent MA<sup>TIES</sup>, I haive seene your MA<sup>TIES</sup> directioun sent to THE EARLE OF DUNBAR about MR DAVID LYNDSEAYE his intemperance in preaching. I haive tane baldnes to give anfuer and avyse, in maift humble and submissè maner. The man vas input<sup>3</sup> be your MA<sup>TIES</sup> vpon my rafche and oft repeited fute. He hes oft done veill aganes the feditious, albeit inconstantlie. The vordes he spak, to my gryt greiff, wer to reprehend your MA<sup>TIES</sup> for toleratioun and advancinge off PAPISTES, quha ever foght your MA<sup>TIES</sup> wrak; and this was efter pat I had congratulat to the peipill your MA<sup>TIES</sup> lait wonderfull delyverie.<sup>4</sup> Ester Sermon, I convened *the Bailleis*, and *Counsell*, and sent pame to him to querrell him for his vnreverent usage; quhilk wrocht this effect that the daye follovinge he preached ane palinod,<sup>5</sup> fa impudentlie flatteringe to your MA<sup>TIES</sup> praise, and vilipendinge all the Princes of Europe be name, in your MA<sup>TIES</sup> respect,<sup>6</sup> that all men esteimed he vas makand penance for the former dayes insolence, with supererogatioun.

This his foolie<sup>7</sup> is nocht worthie of your MA<sup>TIES</sup> wrathe; and as for me, I will nocht give advyse to honour sick ane<sup>8</sup> with publict censure, at sic ane tyme. I haive advysed with your MA<sup>TIES</sup> most truflie servantis of our societie, quha thinkes meit to transport him, but noyce,<sup>9</sup> to a landwart<sup>10</sup> Kirk; and to affume to me ane<sup>11</sup> mor vyfe<sup>12</sup> and fast,<sup>13</sup> quhilk your M. fall see accomplifed, but your MA<sup>TIES</sup> empeschement.<sup>14</sup>

*My Lord of Dunbar* hes employed him selff fa faythfullie, eafaldlie,<sup>15</sup> and fortunatlie, in this lait service, that I presume to advyse your MA<sup>TIES</sup> to give him credit in your MA<sup>TIES</sup> service, in our gryttest turne, in this Parliament; for quhatfumever is glansed to your MA<sup>TIES</sup> in the contraire, is either *panici terrores*, or prevaricatioun.

SIR, I lacke moyen to do quhat I wald in your MA<sup>TIES</sup> service. I heir, daylie, foule vanities quhilkis I think I am called to repreffe. I want formall rycht and rent. Supplie this, SIR, in this your approching Court, and than ze fall nocht neid to writ hither; but the punisched fall feik thither toward your MA<sup>TIES</sup> for obteneinge pardone. Finallie, your MA<sup>TIES</sup> erandis in the credit off *the Earle of Dunbar*, or of ane off lyk dispositioun, is heir possibill and easie. *Non debet sub tali tantoque*

<sup>1</sup> Sir William Livingston, one of the Ordinary Lords of Session, who succeeded Sir John Preston, Lord Fentonbarns, Jun. 6, 1609. His son was created Viscount of Kilsyth and Lord Campsie, by patent, Aug. 17, 1661.  
<sup>2</sup> George Gladstones, translated from the See of Caithness anno 1606, but not consecrated till anno 1610. Died May 2, 1615. <sup>3</sup> Inducted, put in. <sup>4</sup> From the Earl of Gowrie's Conspiracy. <sup>5</sup> Lat. *palinodium*, recantation after professions of repentance. The term is still used both in the Civil and Ecclesiastical Courts. <sup>6</sup> In comparison to the King. <sup>7</sup> Folly. <sup>8</sup> Such a one. <sup>9</sup> Translate him without bustle or noise. <sup>10</sup> To a country or landward Parish Church. <sup>11</sup> One, viz. another Minister. <sup>12</sup> Wise. <sup>13</sup> Steady, sure. <sup>14</sup> Without hindrance or trouble to your Majesty. <sup>15</sup> Sincerely, without duplicity, (q. d. *one-foldly*.) in contradistinction to *two-fold*, double, deceitful. The word is now nearly obsolete,



*principe precarium esse imperium.* This,<sup>1</sup> I humbly recommend your MA<sup>TIES</sup> person and estate to GOD his mercifull Providence, I remaine,

Your MA<sup>TIES</sup> maist humble oratour and obedient servant,

EDINBURGHE, nynt of Februar, 1606(-7.)

To THE KINGIS most excellent MA<sup>TY</sup>.

SANCTANDROIS.

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No. IX.

BOND by JOHN *fifth* EARL OF CASSILLIS, to his Brother HEW KENNEDY, commonly called THE MASTER OF CASSILLIS, to pay him and his accomplices 1200 merks yearly, &c. to commence from the date of their taking the Life of THE LAIRD OF AUCHINDRAYNE.

(See Vol. III. pp. 124, 581, &c.)

[In the preceding Collection, and also in the 'Historical and Genealogical Account of the principal FAMILIES of the Name of KENNEDY,' recently published,<sup>2</sup> all the incidents then discovered relative to the accumulated acts of villainy perpetrated by THE LAIRD OF AUCHINDRAYNE and his son have already been disclosed. The public being likewise in possession of the leading features of this extraordinary case, from the graphic pen of SIR WALTER SCOTT, who has prefixed an introductory notice to his dramatic poem, 'AUCHINDRAIN, or the Ayrshire Tragedy,' it is altogether unnecessary to attempt even a brief sketch of their lives and crimes in this place.

The Historical Account above referred to, and the present Collection, contain a great variety of Documents which have been brought forward, alike to illustrate the Trials of the Lairds of Auchindrane, and the extraordinary state of society and manners in the important district of Carrick and the adjoining shires. But no Papers which have hitherto been discovered appear to the Editor to afford so striking a picture of the savage state of barbarism into which that country must have been sunk, as the following BOND by the EARL OF CASSILLIS to his brother and heir apparent, Hew Master of Cassillis. The uncle of these young men, Sir Thomas Kennedy of Culzean, Tutor of Cassillis, as the reader will recollect, was murdered, May 11th, 1602, by Auchindrayne's accomplices.

The MASTER OF CASSILLIS, for many years previous to that event, was in terms of open personal hostility to his brother. During all that period, however, the Master maintained habits of the closest intimacy with Auchindrayne and his dissolute associates, and actually joined him in various hostile enterprises against his brother the Earl.<sup>3</sup> The occurrence of the *Laird of Culzean's Murder* was embraced by their mutual friends as a fitting opportunity to effect a permanent reconciliation between the brothers; "bot (as 'the Historie' quaintly informs us) the cuntry thoct that he wald not be eirnist in that cause, for the auld luff betuix him and Auchindrayne."<sup>4</sup> The unprincipled Earl, (whose *sobriquet*, and that of some of his ancestors, was *King of Carrick*, to denote the boundless sway which he exercised over his own vassals and the inhabitants of that district,) relying on his brother's necessities, held out the infamous bribe contained in the following Bond, to induce his brother, the Master of Cassillis, to murder his former friend, the old Laird of Auchindrayne. Though there be honour among thieves, it would seem that there is none among assassins; for the younger brother insisted upon having the price of blood assured to him by a written document, drawn up in the form of a regular BOND!

Judging by the Earl's former and subsequent history, he probably thought that, in *either* event, his purposes would be attained, by "killing two birds with one stone." On the other hand, however, it is but doing justice to the Master's acuteness, and the experience acquired under his quondam preceptor Auchindrayne, that we should likewise conjecture that, on his part, he would hold firm possession of his BOND, to be used as a checkmate against his brother, should he think fit afterwards to turn his heel upon him, or attempt to betray him into the hands of justice.

The following is a correct copy of the Bond granted by the Earl, as transcribed from the original.]

WE, JOHNE EARLE OF CASSILLIS, Lord Kennedy, &c., Bindis and Obliffis ws, that howfovrne our broder HEW KENNEDY of Brounstoun, with his complices, taikis THE LAIRD OF AUCHINDRANEIS lyf, that we fall mak guid and thankfull payment to him and pame of pe sowme of tuelff hundreth merkis, zeirlie, togidder with corne to sex horsis, ay and quhill<sup>5</sup> we reffaw<sup>6</sup> pame in houfhold with our self: Beginning pe frst payment immediatlie after pair committing of pe said deid. ATTOUR,<sup>7</sup> howfovrne we reffaw pame in houfhold, we fall pay to pe twa ferwing gentillmen pe feis, zeirlie, as our awin houfhold ferwandis. And heirto we Obliss ws, vpoun our honour. SUBSCRIVIT with our hand, AT MAYBOLE, pe ferd day of September, 1602.

JOHNE ERLE OFF CASSILLIS.

<sup>1</sup> Thus.    <sup>2</sup> The Quarto Edition, Edin. 1830.    <sup>3</sup> For the confessed purpose of taking his life, in following out their deadly Feud.    <sup>4</sup> Historie of the Kennedies, p. 59.    <sup>5</sup> Aye and until.    <sup>6</sup> Receive.    <sup>7</sup> Moreover.

**GENERAL INDEX.**



# GENERAL INDEX

## TO CRIMINAL TRIALS, &c.

DURING THE REIGNS OF

KINGS JAMES IV AND V, MARY QUEEN OF SCOTS, AND KING JAMES VI.

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\* \* THE reader, in consulting the following INDEX, is requested to remark, that owing to the Editor's having been under the necessity of sending the TRIALS which occurred during the reign of KING JAMES VI. to press, before the introductory portions of this work were compiled, it became requisite for him to page the earlier reigns in Vol. I. thus, \* 1, \* 2, &c. In order to avoid the annoyance and trouble of consulting *separate* INDICES of persons and matters, the Editor has bestowed a great deal of time and labour in constructing an extremely copious GENERAL INDEX, which he may venture to say embraces every circumstance contained in the work, which is at all likely to be esteemed interesting and useful to the historian, lawyer, antiquary, or genealogist. The most prominent of the ancient words and phrases, and the leading historical facts, superstitions, &c., have also been incorporated, so as to render the work more acceptable, and also as useful as possible to the public, as a book of reference.

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