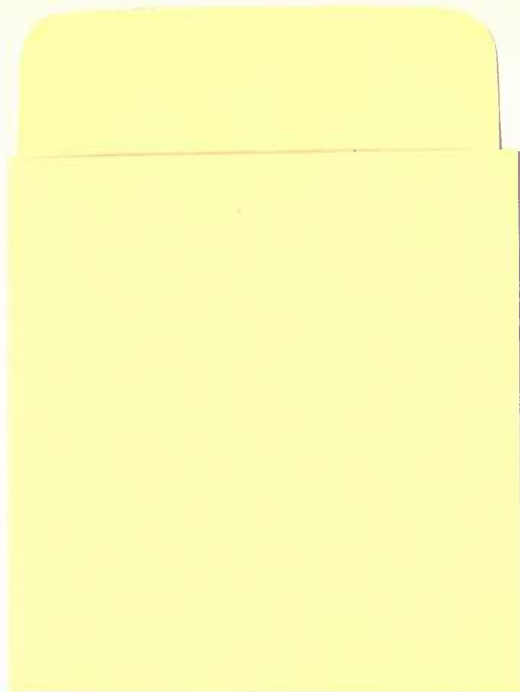


DA 750.B2 No.42 V.2 Pt.2

<http://stores.ebay.com/Ancestry-Found>



a31188000453007b



UNIVERSITY OF GUELPH

80856720

The Library

SOCSCI

DA 750.B2 No.42 V.2 Pt.2

Pitcairn, Robert, 1793-1855

Ancient criminal trials in
Scotland

21

<http://stores.ebay.com/Ancestry-Found>

Date due		
95 06	95 01 05	
92 05 06	95 05 10	
92 02 10	95 05 11	
92 05 06	96 01 04	
92 03 10	95 12 01	
92 12 07	96 01 03	
92 12 07	96 01 04	
92 12 09	96 04 09	
93 05 04	98 05 06	
93 04 15	98 04 20	
93 09 07		
94 01 06		
94 05 11		
94 09 07		

ANCIENT
CRIMINAL TRIALS
IN SCOTLAND.

VOL. II. — PART II.

1600—1609.

My Fairys Cousins
book

I.

The favorable price I have been able to obtain for
the lot of color paper from the
of July, 1800

from the paper for another set
to be left for the
and the balance

III.

Came Boston L per 7th. Left 7th. Left to me about the road
L July 20th. Ebor fall after last letter of old H. P. G. J. 20th.
for the had no right the chin I
of July.
I was ill at V.P. & how far
said 20th. Little.

III.

[illegible]

ANCIENT
CRIMINAL TRIALS
IN SCOTLAND;

COMPILED
FROM THE ORIGINAL RECORDS AND MSS.,
WITH HISTORICAL ILLUSTRATIONS, &c.

BY
ROBERT PITCAIRN, ESQ.

VOL. II.
PART SECOND.

EDINBURGH:
PRINTED FOR THE BANNATYNE CLUB.
M.DCCC.XXXIII.

76/20

deliverance, and of GOWRIE's and his brotheris vile and bloody Conspiracie, intended to be taking Jan. 1602. away of his Ma' life; as is particularly sett down in the printed book and Acts theranent, or not? As his doubting of that turne hes been the principall cause of the doubt of many, and of his H. slander in that point, if he be willing to utter in pulpit, in such places as fall be appointed, his resolution therin, according to the forme of the said Articles, as clearly, as any his Ma' good subjects have done; craving pardon, and excuseing his long incredulity, and the slander arying therupon; and wishing the people that anywise doubted pairof, as they were ever ready to conceive doubts upon unjust grounds, only moved by his example, foe now to be contented, he his means, rightly to be resolved thairof.¹

(Sic subscriptur) JAMES R.

(9.) THE SECOND CONFERENCE of MR ROBERT BRUCE with THE KING.

In the beginning of Aprile, the Erle of Marr directed a Letter to Mr Robert Bruce, at the King's direction, to come to Brechin, with diligence. Immediately before the receipt of the Letter, he was exercised in prayer, with shedding of tears. When he come to Brechin, as soon as the King saw him, he raise, and come forward to the place where he stood; and looked, as appeared to Mr Robert, very lovingly. He caused void the house,² none remaining but the King and Mr Robert. The King asked, 'If he was resolved?' He answered, 'Yes.' He asked next, 'What moved him?' Mr Robert answered, 'Sundrie things, namely, my Lord of Marr his deep swearing; for I thought (said he) that a Christian, of his quality, could not forswear himselfe, for all the gear in the world!' 'How could he swear?' said the King; 'he nather saw nor heard!' 'I cannot tell that, Sir,' said Mr Robert, 'but indeed he swore very deeply.' The King, understanding what was the forme of the oath, which he repeated to him: 'What was the cause, then,' said the King, 'yee would not trust me?' 'Sir,' said Mr Robert, 'Your Ma. took noe paines to informe.' 'I fent,' said the King, 'Sir Thomas Areskine to yow.' 'As for Sir Thomas Areskine,' said Mr Robert, 'I trusted him in a part; but thair were other things that I thought hard.' 'What was that?' said the King. 'That part which concerned the MASTER of GOWRIE and your Ma.' said Mr Robert. 'Doubt yee of that?' said the King. 'Then yee could not but compt me a murderer!' 'It followeth not, if it please you, Sir,' said Mr Robert; 'for yee might have some secreitt cause.'³ The King deduced the whole Tragedie, from the beginning. Mr Robert uttered his doubt, where he found occasion. The King heard him gentle, and with a constant countenance; which Mr Robert admired.⁴ At last, the King urgeth him to preach the Articles which were sent to him. Mr Robert answered, he had 'given his answer already to these Articles; and had offered to the Ambassadors that which all men thought satisfaction, yea more than preaching.' 'What is that?' said the King. 'That I will subscribe my resolution,' said Mr Robert. 'Trust you it?' said the King. 'Yes, Sir,' said Mr Robert. 'If ye trust it, why may yee not preach it?' said the King. 'I fall tell yow, Sir,' said Mr Robert; 'I give it but a doubtfull trust; for I learn this out of Bernard, "in doubtfull things, to give undoubted trust, is temeritie; and in undoubted things, to give a doubtfull trust, is infirmity!"' 'But this is undoubted,' said the King. 'Then bear with my infirmity!' said Mr Robert. 'But yee say it is more than preaching?' said the King. 'Sir, I ought to preach nothing but the word of God,' said Mr Robert. 'Obedience to Princes, suppose they were wicked, is the word of God,' said the King. 'I durst lay a waiger, ther is noe expresse word of King James the Sixth, in the Scripture.' 'Yes,' said Mr Robert, 'if thair be a King there, there is word for yow also.' 'The whole Kirk has done it already,' said the King; 'yee must not be singular!' 'Sindrie have not done it,' said Mr Robert. 'Shew me one!' said the King.

¹ The Answers are general and evasive; and as the substance is contained in the following most remarkable CONFERENCE with the King, at Brechin, it seems only necessary to refer the curious to *Calderswood's Church History*, MS. Vol. V. p. 598, &c. ² The Chamber. A common mode of expression at this time. ³ Occasion, necessity.

⁴ Lat. *admirare*, marvelled; or wondered at.

Apr. 1602. 'Your Ma. must hear with me,' said Mr Robert; 'for it were against the rule of Charitie to harme my brethren.' He desyred the King to conveyen the Ministrie, to see what they would injoyne him to doe. 'That needeth not,' said the King; 'none darr or will refuse but yee; and therefore yee are the sole and only ground of my slander.' Mr Robert, to clear him of this imputation, said, 'I have offered to subseribe my Resolusion, in what language your Ma. please; which none have done but I.' 'Where is your Resolusion?' said the King. 'I sent it in write to your Ma,' said Mr Robert. 'That which yee sent was too generall,' said the King; 'but what fault find yee in my Articles?' 'I cannot remember all; but one thing I remember,' said Mr Robert, 'yee would have me to resolve according to your book; and who can doe that?' 'There is never a false word in that book,' said the King. 'Yes, Sir, there are findrie.' 'Weill then,' said the King, 'wee fall putt out that claus out of the Articles. What other fault find yee?' 'I cannot remember now,' said Mr Robert. 'Have yee not the Articles?' said the King. 'I gave them to Sir Patrick Murray,' said Mr Robert. 'I am sure,' said the King, 'yee have keeped the Copie.' Mr Robert, perceiving the King's drift, to urge him farther, thought it not expedient to produce the copie. 'Weill,' said the King, 'stay heer till Sir Patrick Murrey come.' Yet, after supper, Mr Robert gott licence to retorne home, till the next advertiment.

Sundrie other things past between the King and him, in conference; as namelie, Mr Robert desyred, that he 'and others of the Ministrie be not urged to hurt their consciences; and that his Ma. would not think, that honest men would sell their soules; howbeit their bodies and geir fall be at his command.' 'I understand not what ye mean,' said the King, 'be selling of your soules; but I fall gar the best of you say and gaine say!' 'That may be, Sir,' said Mr Robert, 'and that yitt they say not against conscience.' 'Yee fall not find the like in me,' said the King; 'my saying fall be alwise one.' 'It setteth not to compare with your Ma.,' said Mr Robert.—He prayed in heart, all the time, thus—'O Lord! keep my heart unto thee! and save me from the danger that this traitonous and false heart is like to cast me unto!'

(10.) THE THIRD CONFERENCE of MR ROBERT BRUCE *with* THE KING.

MR ROBERT BRUCE, after his Conference with the King at Brechine, was confined in the parioch where he had his dwelling place, and suffered to preach noe where ells. He received a Letter from the King, to come to him, to Perth, the 24 of June. When he come and entered in the King's chamber, no other was suffered to enter but Sir Patrick Murrey. The King asked, 'Where the Articles were?' Mr Robert answered, that he had redelivered them to Sir Patrick Murrey. Sir Patrick produced them. After they were read, the King asked, 'If he was willing to preach according to these Articles?' 'Not, Sir,' said Mr Robert, 'if it please you?' 'Why?' sayis the King. 'Because my preaching is the mater of my Instructions and Commission: No Prince hath the power to give instructions to another Princes Ambassader. I am the sone of God's Ambassader and preacher!' 'But,' said Mr David Lindsey, 'yee offered to preach to that effect, before yee went out of the country.' Whereupon, Sir Patrick produced Mr Robert's Letter; which was read, in the audience of the King and Commissioners. 'Weill,' sayes Mr Robert, 'yee refused this offer, soe am I not bound to it.' 'Will yee goe from the thing yee have offered?' say they. 'Weill,' sayeth Mr Robert, 'will this Letter satisfie yow? Shall I be noe farther urged, in case we condescend to this Letter?' 'Nay,' quoth the King, 'yee may say all this and not be resolved! Say truly, was yee resolved at that tyme or no?' 'Not indeid,' said Mr Robert. 'How say yee then, that yee will give thanks for my deliverance, that day?' said the King. 'Yes, Sir,' said Mr Robert, 'I have cause to give thanks for your preservatione, suppose yee had cast your self in danger.' 'I told yow that,' quoth the King; 'yee see what he meant.'

¹ He was Minister of Leith, and preached the Oration before the King the day of his landing after the Conspiracy.

—Are yee now refolved? 'Yes, Sir,' said he. 'That's but the duty of a subject, when yee have Jun. 1602.
done,' said the King. 'Are yee refolved to preach?' 'I am discharged to preach the pleasures of men,' said Mr Robert: 'Place me where God placed me,' and I fall teach fruitful doctrine, as God fall give me grace: But we have not that custome to be enjoined to preach; nor I darr not promise to keep that injunction. It lyeth not in my hand to make a promise; I know not certainly what God will suffer me to speak; I may stand dumb. Therefore, Sir, leave me frie; and when I fall find my self to be moved, be God's spiritie, and to have the warrant of his word, I fall not fall to doe it.' 'That is plaine Anabaptistry! That is a caball and tradition,' said the King: 'Yee fall preach as the rest have done, or ells I cannot be satisfied. Yee fall goe!' 'I pray your Ma,' said Mr R., 'fett down your disjunctive, and the one, God willing, fall be as welcome to me as the other. I have racked certainly a peace of my heart, to please your Ma.; now seeing your Ma. cannot be satisfied, except I make shipwrack of all, lett me goe, in God's name. Suppose I have some commodities, as other mean gentlemen have, in your Ma's countrie, yett, Sir, I never defyred to have seen your Ma's face, or your countrie aither, except I had been certainly informed that your Ma. was satisfied!' 'What warrant had yee? Who informed yow foe?' said the King. 'If it please yow, Sir,' said Mr Robert, 'I had first a warrant from the mouth of both your ambassaders, who assured me their satisfaction should be yours.' 'I trust,' sayeth the King, 'they will not say, suppose of all this new kindeffesse that is knitt up betwixt yow.' 'Surelie, Sir,' said Mr Robert, 'I am perswaded they will say it, and heer is a brother, (meaning Mr Patrick Simfone,) that has heard my Lord of Marr say as much. Beside this, if it please yow, Sir, I have your Ma's own warrant, be Letter.' 'What!' sayeth the King, 'my Letter?' 'Your Ma's Letter,' sayeth Mr Robert, 'willeth me to send in my resolution, in write; and therupon, promised to be satisfied. And foe I did; and therefore, I ought not to be urged any farther.' 'My Letter beareth noe such things,' sayeth the King. 'If it bear not, Sir, it fall turn to my own paines,' said Mr Robert. 'I have it beside me.' The King went in to his Cabinet, and walked up and down a reasonable space. In the mean tyme, the Commissioners dealt with Mr Robert, almost each one after another. He would have gladly gone out of the house, but the door was locked; foe he behoved to stand, till the King come out of the Cabinet. At last, the King cometh out. The Commissioners say to him, 'Sir, seeing it is foe, that Mr Robert alledgeth such promises, yee fall leave the preaching free to his own will: But let us come to his subscription in the rowme therof.' 'Are yee content,' sayes Mr David and the rest, 'to subscribe the King's innocence and their guiltineffesse?' 'Not in these terms,' answered Mr Robert. The King urgeth him the more earnestly, and sayeth, 'I will not only have yow cleering mee, but my whole company.' 'As for your Ma's company,' sayes Mr Robert, 'they have no need of my cleering; nather will they seek it. I am bound to your Ma., and I will doe all that lyeth in my possibillity.' 'Then yee must subscribe my innocence,' said the King. 'Your own conscience, Sir, can doe that best,' said Mr Robert. 'It is very hard for me to do it!' 'Why is it hard?' said the King. Laith² was Mr Robert to answer, least he should irritate him; but he insifted. Then said Mr R. 'Your Ma. will not be offended if I speak freele?' 'Not,' said the King. 'I was reading,' said Mr Robert, 'upon Ammandus Polanus, touching the slaughter of the Magicians, when the King of Babell commanded to slay. Ammandus disputeth the question, whether the King of Babell did weill or not? First, he sayeth, *animi gratia*, it would appear that he did weill; for he had the plaine law of God for him, in manie places: Yett he concluds against the King, that he did not weill; ffor, howsoever he had the Law, yett he looked not to the Law nor had regard to God nor his glory: Therefore sayeth he, howsoever the Magistrat hath the sword and may most justly execute, yett if he have nothing but his own particular³ before his eyes, God nor his glory, he is a Murderer!—Now, Sir, I pray, what can I or any man say, what your Ma. had before your eyes? Or what particular yee had?' 'It is true,' sayeth the King, 'and therefore I will give yow leave to

¹ Restore me to my pulpit.² Loth, unwilling.³ Quarrel, offence, or cause.

Jun. 1602. poſe me upon the particulars.¹ 'Then, firſt, it pleaſe yow,' ſaid Mr Robert, 'Had yee a purpoſe to flay MY LORD?' 'As I ſhall answer to God,' ſayeth the King, 'I knew not that my Lord was ſlaine till I ſaw him in his laſt agonie; and was very ſorie, yea prayed in my heart for the ſame.' 'What ſay yee then concerning MR ALEXANDER?' ſaid Mr Robert. 'I grant,' ſaid the King, 'I am art and pairt of Mr Alexander's ſlaughter; for it was in my own defence.' 'Why brought yee him not to juſtice,' ſaid Mr Robert, ſeeing yee would have had God before your eyes?' 'I had neither God nor the Devil, nian, before my eyes,'² ſaid the King, 'but my own defence!' Heer the King beganne to fret. He took all theſe points 'upon his ſalvation and damnation,' and that he 'was once minded to have ſpared Mr Alexander; but being moved, for the time, the motion prevailed.'³ Farther, Mr Robert demanded of the King, 'If he had a purpoſe, that day, in the morning, to flay Mr Alexander?' The King answered, 'upon his ſalvation, that day in the morning he loved him as his brother!' Mr Robert, be reaſon of his oathes, thought him innocent of any purpoſe that day, in the morning, to flay them: Yett, becauſe he confeſſed he had not God nor juſtice before his eyes, but was in a heat and mind unto wrong, he could not be innocent, before God; and had great cauſe to repent, and to crave mercie for Chriſt's ſake!

In end, Mr Robert yielded to ſubſcribe his reſolution, according to the Act of Parliament; which he did, Partly becauſe, in his judgment, it was the duty of a ſubject to reverence the lawes of the Country, except he knew them, certainly, to be contrarie to the word of God: Nixt, he was bound to free himſelf of that imputation which was layed to his charge, partly be the King himſelf, partly by others, directed to him from the King, that 'come death, come life to him, come what would come of him, the whole blame ſould lie upon him, in reſpect he was the author of the flander!' Thirdly, becauſe he made a faithfull promiſe to him, that 'noe more ſould be craved of him.' Soe, upon theſe three reſpects, he gave his reſolution, in write; not that he was perſwaded, in his conſcience, for any thing that he could learn, be himſelf, or from God's Spirit, after prayer, as he himſelf recordeth in the Hiſtorie of theſe proceedings; but, in reſpect there was a ſtrait and publick Law, he thought good to follow it, till God gave him farther light. All the Commiſſioners, and Mr Patrick Simſone, who accompanied him, ſubſcribed as witneſſes. Whereupon Warrant was granted to him to travell abroad in the countrie; provided he come not neer Edinburgh, be four milles.

Nov. 1602. (II.) MR ROBERT BRUCE drew neer to Edinburgh, in tyme of the Aſſembly. *George Heriot* and *John Robertſone*, Commiſſioners for the Town of Edinburgh, made mention of his reſepition;⁴ wherunto the Aſſembly applauded. But the King and the Moderator⁵ alledged they had fundrie things to proponne, before that were granted. The King deſyred to have the Interlocutor of the Aſſembly, 'whither Mr Robert ſould be enjoyned to utter in pulpit, that which he had offered in his bill before his baniſhment, and the reſolution which he had ſubſcribed at Perth, after his returne, or not?' Mr John Hall⁶ being firſt aſked, answered, 'Ther could be nothing done in that mater, whill⁷ the parties were firſt heard.' Soe it was thought meet that Mr Robert ſould be ſent for: But the mater was delayed till the end of the Aſſembly; and howbeit he was nather called nor heard, they voted that he ſould publiſh in pulpit his bill and reſolution.⁸

¹ Grounds of quarrel or grudge.

² That is, In the heat of the ſtruggle and the deadly encounter In which he was engaged, he had no leiſure for reflection, but looked only for the means of ridding himſelf of his antagonist.

³ On cool reflection, and at that diſtance of time, the King is inclined to think it might have been in his power to have ſaved Mr Alexander's life. But this he admits, after being in the knowledge of all the facts and incidents, which he could not at the time have contemplated. Had he attempted to have taken him alive, in all human probability, it would have coſt his own life and that of his party: for Gowrie, as Provost of Perth, and adored by the citizens, could have in an inſtant overpowered the handful of followers attending upon the King, in this haſty and unprepared viſit.

⁴ The fact of his being reponeed or reinstated. ⁵ Mr Patrick Galloway. ⁶ The Moderator of the former Aſſembly.

⁷ Until. ⁸ It is unnecessary to pursue this matter farther. The Editor hopes that Wodrow's Life of this remarkable person, together with the Lives of other eminent public characters, written by Wodrow, shall soon be published. The publication of these Lives would prove a valuable accession to the History of Scotland, and could hardly fail amply to repay the person who undertook such a task.

(12.) *LETTER, the Laird of Beltries (Sir James Sempill¹) to Mr Robert Bruce.* Nov. 1602.

SIR,

I INQUIRED of his Ma. yesternight, if he had any new intention anent yow? He answered, none, but that yee sould enter and doe your dutie, as was told yow of before. His Ma. alledges, yee never bide long at one resolution; for, after my excusing yow of your not abilitie for preaching the last Sabbath, as yee willed me to doe, yett he sent Mr Henry Blyth to the Moderator, to enquire if yee sould teach? This I was ignorant of; but yett I answered, that it was upon a fear that possessed yow, of a new offence, in not teaching; and soe that was done for the full assurance of his Ma^s minde in it. To the purpose, Sir, yee fall enter, if yee please, on Sunday next, and advertise his Ma. two or three dayes before; inquiring, if he please to speak with yow? At your entry, yee must doe (as his Ma. speeche is) the duty of a good subiect and of a good pastor; not to say, simply, yee are resolved, which yee have done already; but yee must indeavour to remove all scruple from the auditor; as weill in clearing his Ma^s innocencie, as of your guiltinesse. These are his Ma^s own words: And my poor advice is, to satisfie his Ma.; feign, (with maie) I think it may and would be done, being a thing able to do good to the King and whole Common-weall, to knitte the hearts of his people to him, by removing scruples, if any be, or by confirming them in the conceived truth; which, be your silence in this mater, will be called againe in question be them. The Lord give yow that resolution which may best serve for his glory. HALYRUDHOUS, this Tuisday the last of Nov^r 1602. Keep this ticket for both our warrants.

(13.) *MR ROBERT BRUCE'S ANSWER to Beltries' last Letter.*

SIR,

I WAS upon my journey homeward, when I received your last Letter; and hearing that yee were gone in the country, I delayed any answer till your returneing. Therefore, now, Sir, for answer; first, I say, that if Mr Henry Blyth had any such commission of me, or if the honest man will say soe in my name, I will be content to take that imputation upon me: but otherwise, as it is true indeed, I received wrong, I am noe wayes ambitious of it. For I have been twice thrust into it, and as oft out of it; and I have noe will that his Ma. be compelled to use his Royall office upon the remanent of my frail life. For these four or five yeares bygane, I have been continually under a lingering and dwyning death, which I am assured has been more troublesome and tedious to me, both in body and minde, then that hour of death fall be, when ever it fall please the Lord to call me therto. I have not forgott these voices, that oftentimes I wondered to hear, 'that his Ma. dreadeth us bodily harme.' These things maketh me to look or I leap, and to advise weill or I enter; yett I speak nott this, as if I were minded to shake off my duty that I ought to my flock: But if it would please his Ma. to suffer us to stand in that liberty wherein the Lord hes placed us, and to speak in the chair of truth, as the word and spirit of truth sould direct us, I would promise, be God's grace, when ever the word sould give us occasion, as oft tymes it will, that then, from the authority of the word, I fall repress all sinister constructions of his Ma. actions, and by the authority thereof, beat down all seditious and insolent humors of subiects, that would presse to usurp upon your superiours; and soe, from the word, as moved therby to speak upon these matters; which must have a far greater grace nor² to speak be way of injunctions, or speak as it were a cunn'd lesson,³ or ane A B C putt in man's hand. The one duty smellth of Divine Theologie, the other of Court Theologie, and does noe good to the cause, but hurts greatly: And as God liketh of a cheerfull giver, soe when the people seeth these things to come freely, of my self, without constraint, nor yett putt unto my head, they will reverence them the

¹ He was son of John Sempill of Beltries, whose conviction for Treason is recorded in vol. i. p. 72. Sir James was Ambassador to England 1599, &c. and was author of a Satire, 'The Packman and the Priest.' His son Robert Sempill was author of the well-known Elegy on 'Habbie Simson the Piper of Kilbarchan.'

² Conned lesson, got by rote.

³ Than.

Dec. 1602. more, and have the greater weight with them. Soe to be short, if this sort of service may be acceptable to the Prince, I am at command; if otherwise, I will hold me with the benefite that I have gotten, within the compafs of obedience; and be God's grace, fall be unreproueable of any. Having noe farther for the present, I rest, &c.¹

(14.) LETTER, *Mr John Hall to Mr Robert Bruce.*

SIR,

Jan. 1603. JAMES AIKINHEID, bailiffe, gave intelligence to his Ma. that yee were purposed to preach this next Sabbath, God willing; and I being down in the Abbey, his Ma. gave me this answer, and ordained me to signifie the same unto yow: That is, because your advertisement was generall, and therefore he could not understand what yee was to doe in the matter, wherein he has been offended; also, he would assure yow, that if yee entered into the pulpit, and did not according to the Act of the Assembly, it would be a matter of great irritation: Therefore, be your tickett, ye would certifie againe that ye are ready to preach, and to satisfie his Ma. according to the Act of the Assembly; or otherwise it will not be heard as a sufficient offer. Sir, if yee write heereanent to mee againe, I fall be ready to deliver it, and shew yow the event.²

Your brother in Christ,

MR JOHN HALL.

(15.) MR ROBERT BRUCE'S LAST CONFERENCE *with THE KING, on Tuesday the fifth day of Aprile, 1603.*

Apr. 1603. MEN of all qualities reforted to Edinburch, to congratulate the King his preferment.³ Motion was made, be some brethren of the Presbytery of Edinburch, that Mr Robert Bruce should be desired to come East to congratulate with the rest; for the King took it evill in part, as was reported, that he should be the last in giving signification of his humble affection. Upon Saturday, the 2 of Aprile, Mr Robert returned answer, that 'in respect of his Ma's last Conference, holdin with the Commissioners, he durst not take the boldnesse to draw neer to his Ma.;' alwise,⁴ did signifie the sinceritie of his inward affections, to the Lady Marr and some other noble women, who could bear witness of his integrity in that point: But, seeing he was informed that his Ma. would accept the offer of his affection, he should come with diligence, to try what might be done.

Soe, upon Munday, the 4 of Aprile, he come to Edinburch and founded some stable men, his freinds, touching the King's disposition, whither he was willing to accept of him and his congratulation. Soe farr as he could learne, he was not able to redeem his countenance and favour, but with confession of a fault, and that upon his knees; be which meanes he might eschew publication in the pulpit, and recover his Ma's favour also. Mr Robert findeth himself brought in as great a strait almost as ever he was; and answered to the Lords that interceded for him, that 'seeing he could not purchase his Ma's prefence but upon these hard conditions, his earnest desire was, that they would make his excuse, in all humility, to his Ma. and to shew that notwithstanding he came to the town to congratulate, the preasse and throng of the people was soe great, because his Ma. was upon the point of his departure, that he could get noe access.' They take much in hand;⁵ but the King, understanding he was come to town, sent one of his domestick servants, James Murray of Powmais, the day following, Tuisday the 5 of Aprile, soon in the morning, before his Ma's departure, for him, before he was risen out of his bed. Mr Robert thought it hard, and that the King caught that peace of disgrace to his Ministry.

¹ (1602. Jan. 19.)—Mr Robert Bruce addressed a Letter to the Town-Council of Edinburch, which is an echo of that to the Laird of Beltries. This was followed by *George Heriot* and *Cornelius Inglis* waiting on the King, on Bruce's part; who inhibited any preaching; whereupon he left the town. On 27th January, he intimated his design to preach next Sabbath, to James Aikenhead, one of the Bailies of Edinburch.

² Much correspondence, &c. took place, till at last the Commissioners of the General Assembly, Feb. 25, 1603, 'declared that his re-entrance to the Ministry of Edinburch came through his own default.'

³ To the English Crown. The King departed for England immediately after this Conference took place.

⁴ Nevertheless.

⁵ Undertook; promised largely.

Alwile he went down to the Abbey. The King was at his breakfast. Mr Robert sought occasion Apr. 1603. of speech with him, at that tyme; thinking, that in the pefence of many frangers and noble men, the King would not urge him, as he did before. The noble men courteously gave him place. But when he was upon the point of bowing and entering in conference, Sir Patrick Murray, who stood upon his Ma^s left hand, and rounded fomewhat in his ear, prevented him. He was referred to the King's bed-chamber, to be heard after the preaching; which was very cold. It was made by Mr Andrew Lamb. Mr Robert, all the tyme, prayed to God to direct him be his Spirit, in the end; as he had done in the rest of that action before. He resolved noe wayes to goe to the knees, against his conscience; but rather now, in the entry to this great Monarche, to urge his Ma. with a thankfull heart to God for his wonderfull and unlooked-forre blessing. He had all the words and mater conceived, which he communicated to Mr James Melvill, Minister at Anstruther, who was weil pleased both with the mater and the maner; wherby Mr Robert was greatly encouraged to perfist in his resolution. In the meantyme, the Lord Fleming cometh for Mr Robert, and taketh him to the King's bed-chamber; where he found my Lord of Marr, my Lord of Blantyre, the Laird of Dunipace, Mr Peter Hewat, Mr Thomas Abernethie. The Lord Fleming went to the Chamber of Prefence, told the King Mr Robert was in the place appointed. The King incontinent withdraweth himself, goeth in to his bed-chamber, his boots on, ready to ryde. Soe soon as he drew neer, he walked in circle about the house,¹ as his custom was. Mr Robert casteth himself to meet him, with all reverence and humble inclination of his body that he could, without goeing to knee. The King heard him graciously, in outward appearance. The summe and effect of Mr Robert's words were this. 'Sir, I have marked four things in this great work, touching your Ma^s high advancement: first, that the God of heaven and earth has placed you in all these earthly thrones, without the losse of the credite of your holy Religion and hurt of the inward peace of your own conscience: Next, that he hes placed without shedding a drop of your Ma^s blood, which is lesse nor² conscience: Thirdly, without the hazard of your Ma^s subjects purfes, which is lesse nor blood: And last of all, that he hes foe wonderfullie directed the tongue of that worthy Lady and noble Queen, together with the affections of the whole Counsell, foe that if furth of your Ma^s own bowells, they could not have conspyred more effaldly³ to your Ma^s promotion. These things crave a twofold duety of your Ma.: First, that yee take heed to your own heart, that the glory and glance⁴ of these earthly things deceive you not; that ye make them not your reward, nor place the confort and consolation of your heart in them; but rather, as they are given, use them as stoppes and degrees to stepp up to the Crown that cannot fade nor faill: Next, seeing the God of heaven hes manifested his unspeakable care, in preserving foe many Crowns and Kingdoms to yow, sir, your Ma. cannot eschew the note of ingratitude, if yee extend not your Ma^s credit, and employ your whole care, for preservation of his own kingdome.' THE KING answered, 'Mr Robert, be God's grace I fall not place my confort or consolation in them, or in any earthly thing: As for the preservation of the kingdome, if I would preserve my own life, I must study to preserve it; for we have common freinds and commone enemies: The Papiests that shutt⁵ at that kingdome, shutt at my life also, as I know certainly.⁶ As touching this wonderfull mercy of God, Mr Robert, if yee be remembered I oft tymes foretold you, that God would bring this work about, after this sort; and named some places to him. But Mr Robert could not remember.

Mr Robert took his leave; and had as good a countenance of the King, as ever he had in his life, in his own judgement. The King did not urge him with any such thing as the Lords gave out; nor made mention of any thing, tending to that purpose. Ather the mediators were unfaithful, or God putt it clean out of his heart. When the King mounted on horback, Mr Robert went to him againe,

¹ A mode of expression for chamber.

² Than.

³ Truly, sincerely; from 'afauld'; literally one-fold.

⁴ Dazzle, splendour, glitter; literally the reflection thrown from a mirror by the sun.

⁵ Shoot, aim at.

⁶ In allusion to the numerous Conspiracies which had been devised by the Papiests against his person.

Apr. 1603. to take his leave; and was as weil received as any subject, of his calling, in Scotland. Those that stood by heard the King say, 'Now all particulars¹ are past betwixt yow and me, Mr Robert.' But Mr Robert himself could not remember that he heard these words.

(16.) *NOTES from Calderwood's Church History, MS.*

Feb. 1605. (1.) MR ROBERT BRUCE, the year of the King's departure out of the country, gott peace and rest; but the year following he was threatued of new, for the mater of GOWRY, to be deprived of life, living and stipend. He was very farr cast down. Whill he was ryding to Stirling to fetch the Erle of Caillillis to his house, it pleased the Lord that night to give him a comfortable vision in his sleep. He recommended his case to God, and soe fell asleep. He saw great difficulties presented to him, and it behoved him ather to passe through them, or to die be the way. At the last, he resolved, in God's obedience, to hazard; and whill he was passing through, he feileth a motion in his heart, moving him to say, in and through Michael, the Captaine of the Lord of hosts, 'I fall prevaill, O Michael! Michael! Who is like the strong God!' Mr Robert was greatly comforted with this; and putt it in write when he awaked.

This year the Commissioners of the Generall Assembly directed Summonds, warning him to compare at Edinburgh, the 27 of Februar, to hear and see himself removed from his function, in Edinburgh. He compeared before them, and took Mr Thomas Gray with him. But none gott access to himself. After long reasoning, they removed him. He appealed from their sentence. They inhibited him to preach thereafter. He obeyed not. The Laird of Lowrestoun, Commissioner, had Commission to see the sentence of Removall pronounced against him.

Jul. 1605. (2.) CHANCELLOR SETON sent for Mr Robert Bruce, advertised him that he had gotten command from the King to discharge him from teaching, &c.

Aug. 1607. (3.) THE fifth of August was solemnie kept in Edinburgh. The Kings skoll was drunken be the Duke, his Commissioner, and some other noblemen at the crosse of Edinburgh, which was covered, for the greater solemnitie. Bacchus was sett up, and much wine drunken and sweete meats cast abroad. Much vanitie and pastime, beside ringing of bells, and getting on of bale-fires. The pest brake up soon after.

(17.) *LETTER, Mr Robert Bruce to the Laird of Beltrife (Sir James Sempill.)*

RIGHT HONOURABLE COUSINE,

Feb 1603. YE most give me leave to utter my friendly counsell against you. To what purpose should ye and Mr Ewart put me in esperance of my liberty, be your Letters? Of yours I saw only one; and I have four of Mr Peter's, assuring me of ane comfortable issue; and, in truth, I gave such credit, and was so certainly perswaded be him, that I sent home my wife and children, and spoiled my self of all my outward comforts, and expounded my self to the extremitie of the season, in a cold lodging, in thir miserable and barbarous parts, that I have almost extinguished both my vitall and sensitive spirits. Why would ye not signifie his Ma^s will plainly unto me, or to Mr Peter either? His Ma. pleasure should have been a law to me. Yea, if his hienes would command me to the scaffold, I have a good conscience to obey him; and it would be more welcome to me nor this lingering death that I am in. The time has been I have done his Ma. acceptable service, as his own hand writts besides me will beare record; whilk I shall leave to my posterity as their rarest Jewells. I thank God, I was never within the compass of law; and yett am war used nor either Papist or Atheist. Alwayes I crave noe more of you, but a Christian duty. As I prayed you in my last Letter, soe will I now; feed me not with compliments: The worst shall ay be welcome to me, be his grace who sustaines me wonderfully. I am a

¹ Quarrels, causes of offence.

man that hes tasted of many afflictiones, and I wote not who crosses me! Bat be it Papist or Atheist, Feb. 1613. Bishop or Minister, I will lay over all my vengeance where it belongs. As to my prayer, in the end of my last Letter to his Ma., I heare, be Mr Peter Ewart, that I was quarrellit, as if I had prayed for reconciliations in that particular. Indeed, if it had been soe conceived, I might have been justly quarrelled. But the Lord knowes the contrary is most true. I had no more mind of that Treason, at that time, nor the bairne that is yett unborne. As to the rest of my faults yee make in my other Letters, they are but bairnly: For suppose I wrote unto yow with my own subscribing hand, yet it is not worthie to present his Ma. I wail¹ the best hand that I can gett, and for the omission of my subscription, what marvell? Seeing I wrott not the body. And yet the writter therof constantly affirms that I subscrivit, whilkas makes me to think that ye have not received my clofed Letter to his Ma., but the copie therof, which I directed to your selfe to be perused, and not to be presented, except ye knew it would not offend. I pray yon, confine, if ye delight in my conversation, lett the effect declare it. Lett me find the fruit therof; and if yee be not able, lett me be in no war case nor I am in, be your deid; for that were needlesse. Suppose ye have gotten new friends, men I grant that are more able to perfit you in your outward estate, yett I will looke that ye will observe a Christian duty towards me. So wilhing yow well in the Lord, I take my leave, and rests

Your most loving confine to his power, in God,

INUERNESSE, the 10 of February 1613.

ROBERT BRUCE.

No. XIX.

COLLECTION OF ADDITIONAL ORIGINAL LETTERS AND MISCELLANEOUS DOCUMENTS ILLUSTRATIVE OF GOWRIE'S CONSPIRACY.

(1.) LETTER, *George Nicolson, Queen Elizabeth's Ambassador in Scotland, to Sir Robert Cecil, Secretary of State.*²

It may please your honor,

THIS daye morninge, at 9 howers at that tyde, the K.[ing] wrote to the Chancellor, Secretary, Aug. 1600. and others, and to some of the Kirk; and word came hither in this maner, and the L.[ord] Secretary told me, That yesterday th' Erle of Gowry sent the M^r his brother, M^r Alex^r Riven, to the K.[ing] hunting in Fawkland Parke; shewing the K.[ing] that where, for his adoies, he had muche troubles to git treasor, &c. his brother th' Erle had founde in an old towre, in his house at St Johnstons [Perth] a great treasor, to helpe the K.[ing's] turne; wth w^{ch}, he saide, his brother wolde faine have the K.[ing] to go to see quietly, that day. Whereon, after the K.[ing] had hunted a while, and taken a drink, he tooke freshe horse and discharged his company (to wit), the D.[uke] and Erle of Marr then in company wth him, taking onely a few wth him; yet the D.[uke] rode, and the Erle of Marr followed, and the K.[ing] met by the way the L.[ord] of Inchchaffray, who also rode wth him to St Johnstons; where the K.[ing] cominge, th' Erle meting him, caryed him into his house, and gave him a good dynner; and after went to dynner wth the D.[uke] and his company. The M^r, in the meane tyme of their diniog, perswaded the K.[ing] to go wth him quietly to see it; as the K.[ing], discharging his company to follow, went wth the M^r from staithe to staithe, and chamber to chamber, locking still the doors behinde him, untill he came to a chamber where a man was, wth the K.[ing] thought had ben the man had kept the treasor. There the M^r cleked hold on the K.[ing] and drew his dagger, sayinge he had killed his father, and he wolde kill him! The K.[ing], wth good wordes

¹ Select, choose. ² The Original is in the State Paper-Office, London.—See *Chalmers' Life of Ruddiman*, p. 443.

Aug. 1600. and meanes, fought to diswaide him; fayeing, he was younge when his father was executed, and dyvers others honest men; that he was innocent thereof; had restored his brother, and for amends, made him greater then he was; that if he killed him, he could not eschape, nor be his heir: That he presumed Mr Alexander had learned more divinity than to kill his Prince; affuring him, and faithfully promising him, that if he wold leave of his enterprice, he wold forgive him, and kepe it secret, as a matter attempted upon heate and rathene's onely. That to these the Mr replied, what was he preaching? that should not helpe him; he should dye: And that therewith, he stroke at the K.[ing,] the K.[ing,] and he bothe going to the ground, that the Mr called to the man there present to kill the K.[ing,] That the man answered, he had nether harte nor hand; and yet is a very curragiouse man. That the K.[ing,] having no dagger, but in his hunting cloths wth his horne, yet defended himself from the Mr; and in strugling, got to the windowe, where he cryed Treason! w^{ch} S^r Tho^s Erskin, John Ramfay, and Doctor Harris, hearing, ran up after the K.[ing,], but found the doors shut, as they could not passe; yet John Ramfay, knowing another way, got up and in to the K.[ing,] who cryed to John he was slaine; whereon John out wth his rapier and killed the Mr. In this tyme, that th^e Erle should tell the Duke, Marr, and the rest, that the K.[ing,] was gone away, out at a back gate; that they ran out and Gowry wth him, and missing him, that th^e Erle saide, he wold go back and see where the K.[ing,] was. That he, wth 8 wth him, wth a steele bonnett and two rapiers, ran up the staires; that John Ramfay, meting them wth drawn swordes, S^r Tho^s Erskin and Doctor Harris being then comed to John, after fondry strokes, in the end killed the Erle also; S^r Thomas being hurt, and Doctor Harris mutilate and wanting 2 fingers. That this stir being, the towne men and Gowrie's friends, in evil appearance, said, they wold have accompt where th^e Erle was, or they wold pay the grene cotes! To pacifie w^{ch} the D.[uke] and Mar were sent to the Magistrates; and so quieted the matter, as the K.[ing,] and his company gott away; the K.[ing,] thanking God for his deliverance. And yesterday, knighted, as I heare, John Ramfay and Doctor Harris; but the Secretary told it not me.¹

Upon these, Lettres comed from the Courte, The whole Council here convened; and in end, at one of the clock rose, and came all to the market crosse, and there by sound of trumpet intimated, but in bref, the happie eschape of the K.[ing,] and their Act, that they made in Council, for the people to thank God for it; and in joy thereof, to ring bells and build bone fires. Mr David Lindfay, standing with the Council on the Crosse, made a pithy and short Exhortation to the people, to prayse God for it; and therewth praied and praised God for the same; the whole Council on their knees on the Crosse, and whole people in the stretes, in like forte. The pees of the Castle also shoute in joy; the few bells yet ringing; the youthies of the towne gone out to skirmish for joye, and bone fires to be bilded at night: And the Council to go, this tyde, over to the K.[ing,] for further deliberation in this matter. The K.[ing,] at his retorne to Fawkland, presentlie cause thrust out of the house, from the Q.[ueen,] Gowrie's two sisters in cheif credyt wth the Quene; and swears to roote out that whole house and name. Upon the conveninge of the Council, the portes of the towne were shutt, for apprehending Gowrie's other brethren; and the lands are to be given to these new knights and others. This is the information and reporte comed yet hither, by the K.[ing's] command; w^{ch} some yet doubted to be fully so. What will follow, I remit to the sequell; being glad the K.[ing,] is safe, without hurte. Gowrie's Secretary is taken, and matters hope to be discovered by him. Some false lyenge villians gave it out, I should have ben this day morne at Leith, by 3 of the clock, and should say, being asked by one, that I was there attending strange newes from beyond the water. I tolde the Secretarie of it, that it was false, as God be thanked it is; and that if I were charged by any such devilish devices, I wold refuse no debollish swinger or bloody villaine that should be so suborned to pnt doubt towards me; praying the Secretarie to remember it, and say it for me, if he hard it. That your honor sees how the malicious here spite me; in what danger I live, and how subject I am to all

¹ ' Mr James Hamilton is this day gone to England.'

accufation here; and ſome practiſing knaves wold whiſper it, that this plot ſhould be drawne and Aug. 1600. divided in other parts, [England.¹] But thus much, for this tyne, in haſte, wth myne humble duty and ſervice. I pray God preferve yo^r hon^r. Edenburgh, the 6th of Auguſt, 1600.

Yo^r honor's, &c. &c.

GEO. NICOLSON.²

I have no copie of this.

(2.) EXTRACTS *from* LETTER, *Sir Henry Neville to Mr Secretary Cecil*,³
Paris, 27th Feb. 1599—(1600.)

Right Honorable,

THE EARLE GOWRY, a nobleman of Scotland, who hath ſpent ſome time in theſe parts, is Feb. 1600. purpoſed to returne home through England; and deſires to have the honor to kiſſe her Majeſties hands, as he paſſeth. And becauſe I know him well, and have had good communication with him, and therein found him to be of very good judgement, and exceedingly well affected both to the common cauſe of Religion, and particularly to her Majeſtie, and that which may concerne her honor and ſervice, I have thought good to recommend him eſpecially, unto your honor; and to beſeech you to be a meanes, that he may receive that honour and favour that he is worthy of; that ſo he may depart, confirmed in that good devotion and reſpect which he beares already towards her Majeſtie. If your honor pleaſe to conferre with him about theſe alterations feared in Scotland, I beleieve he will give you good ſatiſfaction; and that you will finde him to be a man of whom there may be exceeding good uſe made. I have given him my paſſport, to ſerve him till he come to her Majeſties Court, in as ample and favourable fort as I could. The reſt I referre to your honor's good favour towards him; whereunto I humbly recommend him. And ſo, &c.

Your honor's very, &c.

HENRY NEVILLE.

THE Lord Hume purpoſeth ſhortly to returne likewise, as he telleth me, and hath already prayed my paſſport, which I cannot deny him. But you will be pleaſed to have regard to ſome of my former Letters.

(3.) EXTRACT *from* LETTER, *Sir Henry Neville to Mr Winwood*, London,
28th Aug. 1600.

Now to the occurrences of theſe parts, you ſhall underſtand, that the Erle Gowry, and a brother of Aug. 1600. his, have been lately ſlayne, in Scotland, in the Erle's own houſe, and in the King's preſence. They are charged to have conſpired the King's death at that time, but God woud not ſuffer them. They had prepared for it, to execute their deſſeign, although they attempted it; and ſo they fell into the pitt themſelves had digged.

This is the relation ſent hither of it; which, notwithstanding, is diversely cenſured, according to men's divers affections. But howſoever, her Majeſtie hath ſent Sir Henry Bronkard thither, to congratulate the King's eſcape, and to doe ſome other offices to him. There is alſo one Hambledown come from thence, to reſide here at leaſt for ſome tyne.

¹ This word is interlined.

² This muſt be allowed to be a very intereſting letter; as it exhibits a ſtriking picture of that ſingular tranſaction, at the moment, and of the manners of the times. In it we ſee, that the King had on a hunting-horn; that the King and his attendants wore *grene cotes*; and that the Earl of Gowrie's two ſiſters lived in the palace, at the moment of the conſpiracy, and were in *cheif credyt with the Queene*. The foregoing diſpatch of Nicolſon proves very clearly, that Queen Elizabeth had no *finger in that pye*, particularly when Nicolſon's declarations are coupled with the ſubjoined Letter, from Lord Willoughby. (No. 8.)—*Chalmers*.³ In theſe and the following Extracts, it has been deemed neceſſary to give any thing farther than what relates to the Conſpiracy. The above Letters to Cecil and Winwood, have been taken from that valuable and authentic Collection, *Winwood's Memorials and Affairs of State*, Vol. I. pp. 136, 249, and 274.

- Nov. 1600. (4.) EXTRACT *from LETTER, Sir Henry Neville to Mr Winwood*, (in cipher,) London, 15th Nov. 1600.

OUT of 205 (Scotland) we hear there is no good agreement, but rather an open diffidence between 165 (Counfail,) the King of Scots, and his wife; and many are of opinion that the discovery of some affection between her and the Earle Gowry's brother, (who was killed with him) was the truest cause and motive of all that Tragedy.

- (5) EXTRACTS *from LETTERS, Sir John Cary, (son of Lord Hunston), Governor of Berwick, to Sir Robert Cecil.*¹

(i.)

- Aug. 1600. (Aug. 10.)—THE KING has made great search, and lays great wait for the two younger brothers, who, by great fortune, escaped from the schools; and not daring to tarry in Scotland, they are this day come into Berwick closely, in disguised apparel; and being brought to me, they only desire, that their lives may be safe, and they may have a little oversight here, till the truth of their cause may be known: And the pitiful case of the old distressed good Countess hath made me, the willinglier, to give my consent, for their stay here a while; till I may, by your honourable means, know the Queen's Majesty's pleasure, whether they shall stay here, or go some whither farther into the country; for they only desire the safety of their lives; and the old Countess's case is pitiful and lamentable. I beseech your honour, let me know her Majesty's pleasure, with as much speed as may be; for that I would do nothing to offend her Majesty. The poor gentlemen stole into the town this morning closely, and I could not well turn them out again; seeing they come for refuge, to save their lives, till I know her Majesty's further pleasure therein.

(ii.)

(Aug. 24.)—UPON the receipt of your letter of the 16th August, according to the contents thereof, I did send for the tutor of the two gentlemen, the Earl of Gowrie's brothers; who, for my own part, I have not yet seen, since their coming into the town, so close have they kept themselves; as they have never yet stirred out of their chamber which they first entered into, to look abroad. I conferred with their tutor, which might be the surest way, for their own safety; advising them, for their better security, to go farther off from these bordering places, where the King might not so easily hear of them, and their being. I wished them to repair towards Richmond, or to Rippon, or to about Hull, or to some other such inland towns, out of the way, where the King might not so easily have intelligence of them; and so they to be free from the danger of their countrymen, who are very conversant upon the street-ways. He liking very well hereof, yielded willingly thereto; desiring only, for that they came very meanly in, without either money, horse, or apparel, to have three or four days respite, that they might send to their friends for money and nags, and such other necessities as should be fit for their journey; then will they presently depart, as secret as may be; and in the mean time, they shall remain very close, till their necessities be gotten, which will be within four days.

(iii.)

- Sept. 1600. (Sept. 4.)—BEFORE this day, I could not by any means get the present Earl of Gowrie and his brother out of the town; for that they had sent to their mother for maintenance, and could not hear till now any thing from her; and now it falls out so ill with them, as she hath sent them no manner of maintenance, hoping they should have staid here still; neither dares she trust many of her servants. For if it should be known, that she did, any manner of way, either give them succour or maintenance,

¹ These extracts were obtained by Lord Maitles from the Originals, in the Paper-Office, London. According to his plan, they are modernized.—*Cecil's Secret Correspondence*, p. 161.

or any manner of help, she should presently forfeit, and be thrown out of all that she hath. Such Sept. 1600. secret search and privy spial is there through the whole country for her and her sons, as no friend either dare or can travel between them; such privy search is laid for them in all places, as almost no man can travel, in their country, but he is searched. And if I had sent them sooner away, I should but have sent them to very great danger, either of being killed or taken; for that they being very poor themselves, and having no friends, nor any acquaintance, could neither have told whither to have gone, or what to do. But, finding their necessities, and their willingness to submit themselves to any appointment, and for that I would have them out of the town, before any fault were found, I have found means, that they are furnished with some money, and are stolen privately out of the town. I have sent them, with a man of mine own, to Durham, where they shall be secretly for a twenty days, till their mother may take some better order for their maintenance; and then they mean to travel to Cambridge, and there to study for a time. They have none but themselves, and their schoolmaster with them. All the time of their being here, they were as in a prison; for nobody ever saw them, neither did they ever stir out of their chamber; so as there can be no certainty known of their being here, but only upon mistrust; and as secretly are they gone out of the town.

(iv.)

(Sept. 21.)—I HAVE even now presently received your letter of the 15th of this instant, understanding thereby the Queen's Majesty's pleasure for the Earl of Gowrie's two brothers. All that hath been said of them, touching their behaviour here in Berwick, is but surmises and supposes, by the contrary party. For I will assure your honour, upon my faith, it could not have been better carried, nor closer handled by any creatures living, than by them, during their being here. For myself did never see them but once, and that was at midnight, only myself; and for any other, I know they kept themselves close enough; for they durst do no otherwise, they were so afraid of themselves. They went away as secretly; and to Durham they went long since, with an intent to pass onward to Cambridge, as I did before signify to your honour. So as what is now become of them, I know not, neither where they be; for since their departure, I have not heard of them any thing; so as I know not where to hear of them. Thus much I thought good with speed to certify you; that with speed there may be some course taken for their dispatch, according to her Majesty's pleasure.

(6.) LETTER, *King James VI. to Mr John Caldeleuch.*¹

TRUSTY frend, We greit 3ou hertlie well. We have taiken occasion beirby, richt ernstlie Aug. 1600. to will and desire 3ou, that 3e fail not, all excuissis set a part, to be at Falkland, upoun Wedynsday at evin nixt, the twenty day of this instant, for 3our best advys and opinion to be had, anent the planting of Kirkis of Edinburgh; the forme and maner of the univerfall thankis and prayis that fall be gevin to God, in every Congregation and Kirk within this realme, for our miraculous delyverie of that treasonabill Conspiracy, intendit laillie aganis us, at Sanct Johnstoun, be umquile Johne Erl of Gowrie, the Mr his brother, and thair affociattis; and for 3our advys to be gevin in sic uthir, our great and wechtie affairis, as falbe particularly impairtit to 3ou at 3our coming: ffor the quilk, luiking precesly that nicht, that on the morne thairefter, they materis may be handellit and put to ane point; We commit 3ou in Godis protection. From Halyruidhous, this xij day of August, 1600.

JAMES R.

To our trusty frend, Mr Johne Caldeleuch, Minister of Newburgh.

¹ Wodrow's MSS. Advocates' Library, Vol. LXIX. Jac. V. 1. 12. It is proper to mention, that this seems to be one of the numerous circulars which were addressed to the Clergy, as may be seen from the preceding Extracts from the Lord High Treasurer's Books, No. VIII. See Note, p. 239. No doubt each Letter would vary from another in some minute particulars, and according to the favour the respective parties enjoyed at Court.

Aug. 1600. (7.) EXTRACTS from LETTERS, *Rowland Whyte, Esquire,*¹ to *Sir Robert Sydney.*²

(i.)

(Aug. 16.)—THE King of Scots had lately like to have bene murthired. Young Goory³ (the Erle of Gooryes brother, whom the King restored to his honour and living, and bestowed on them both, great gifts and advancements) told the King in secrett, that in the Castell, which he kept vnder the King, he found a great chest buried, of that waight which cold not choose but be treasure. He wold not prefume to open yt, but in his Majesties prefence; and therfore befought him to take the paines to goe himself and fee yt brooke open: Which the King did, leauing his traine below in a base-court, and went alone with young Goorey vp the stairs, and from chamber to chamber, which Goorey locked as he went, till he had brought the King where he had appointed. And then he told the King that the time was come which he had long wilthd for, to be revenged vpon him for his father's death: That he had traid him to that place to kill him, which instantly he wold doe; and drew out his dagger to haue stabd him. But the King catcht him by the hand, and defyred hym to heare hym speake. Then sayd, that when his father was put to death, he was but an infant; and therefore, cold not be accessory to his death. That during his Minority, many thinges were comitted, by the Regents of his Kingdom, which he was forry for; which appeared by the great fauors he had bestowed vpon him and his brother. Bot all wold not serue; for he strugeld to stabb him; and the King, in defence of his life, shewed a great resolution and courage; which young Goorey perceuing, called to a fervant of his own, who was a partner in this Conspiracy; but he stode still, and swore he had neither hand nor hart to kill his auointed King; and tooke part with the King, who had time then to put his head out of a window, and cryed 'Treason!' and called for speedy help! Then his traine went vp the staires, where they found the Earle Goorey, and some others, with weapons, to resist them; but they made way, with the death of the Earle of Goorey and his companions, and so rescued the King, and before his face slue the young Goorey.—LONDON, Saturday the 16 of August, 1600. By post.

(ii.)

(Aug. 26.)—HERE is one Hamelton come from the King of Scots, to reside here as his Agent, and to deliuer to the Queen the maner of the Conspiracie against his Master.—STRAND, (London,) this 26 of August, 1600.

(iii.)

Sept. 1600. (Sept. 12.)—ONE PRESTON, Capten of the King of Scots Foote-gard, a very proper and discret Gentleman, was with the Queen, sent from his Master, to deliuer more matter discovered of the Treason intended against his Maiestie by the Earle Gowrey and his Complices.—STRAND-BRIDGE, this Saturday, the 12 of Septemb. 1600.

(iv.)

Oct. 1600. (Oct. 3.)—SIR HARRY BRUNCKAR is returned out of Scotland; and from the Kings own mouth, recceues the maner of the Conspiracy against hym; which is as yt is sett down in the printed booke I sent you the last week. The K. hath knighted all his fervants that assisted hym out of that perrill. Some displeasure the King conceaues against the Ministers; for that they wold not, in the pulpitt, preach against the horribleness of the fact.—STRAND, Friday night, late, the 3 of October, 1600.

¹ This gentleman was employed by Sir Robert Sydney to solicit his affairs at the Court of England, and to relate to him all that took place; for which he received a salary. His Letters are minute and valuable, as they contain much private information not elsewhere to be found.

² Lord Governor of Flushing, afterwards Lord Chamberlain to King James. He was brother of the celebrated Sir Philip Sydney. See *Sydney State Papers*, or Collins's Letters and Memorials of State, Lond. 1746. Folio. Vol. II. p. 211.

³ The Master of Gowry, Mr Alexander Ruthven.

(8.) LETTER, *Lord Gray*¹ to

Sept. 1600.

SIR,

I LANDIT that fame nicht I left you laft, at eicht houris, and ves in danger amonft the craiges, and never in my lyf fo feik. Heir I met v^t Thomas Hendryfone of Edinb: He hes no newes, faue of Th^e Earle of Gouryes death. He tellis it in the fame forte as ye haue hard it. Ther is execute M^r Th: Cranfoun and George Craigingelt, v^t fevin honest men of S^t Jhonfoun. They ar executed, for that they ver fund to be in armes befor the reft. His man, who ves v^t him, is bootit, M^r William Rynd; and hes deponit no thing, faue that my Lord studiit Magik in Italie and France, and had fprittis. His chamberlane, vho should haue flaine the King,² is yet keipit. M^r Patrik Gallouay hes preatchit all this in the pulpit of Edinb., bothe of the Magic and Treafoun; bot all vho ar dead, confest no thing. The King, efter the preatching, feuir folemnely, that all ves treu he hed preatchit, by his faluation and condemnation. The reft of the Minifters ves preassit to fubfcryue that it ves treu; bot they refast: Yet they grantit to thank God for his Ma^{tie}s delyuerance: And fo they ar banit.

Richart Prestoun is at Loundoun; bot as yet I knou not vhat they fay to him. From Loundoun ye shall heir all. And I remaine your louing freind and confing, GRAY.

DOVER, 28 Sept. 1600.

I forgot, amonft vther thingis that M^r Gallouay preatchit that Th^e Earle of Gourey ves a dealler betuene the Pope and the Kingis Ma^{tie}: Bot the reft of the Minifters will not beleue him.

(9.) EXTRACT from LETTER, *Mr Winwood to Secretary Cecil*,³

Paris, May 17, 1601.

THE Ambaffador of Scotland hath been advertised of a dangerous practice againft THE SCOTS May, 1601. KING: That lately, one called Glarnet hath been sent out of Scotland, with Letters to BOTHWELL, to hasten home with diligence, where he shall find sufficient assistance. The principal person who employed this person is THE QUEEN of SCOTLAND; and Letters have been intercepted out of Scotland, from Mr Gray, that the death of GOWRIE should shortly be revenged.⁴

(10.) EXTRACT from LETTER, *Lord Henry Howard (afterwards Earl of Northampton) to Edward Bruce, (Lord Kinlofs)*.⁵

[Without date, but previous to Aug. 24, 1602.]

OUT of the Archduke's Camp, one of her Majesty's greatest commanders heth been advertised, that Aug. 1602? a fire will break out in Scotland, before it be long; which makes Cecil to fear, knowing in what state King James stands with England at this day, that other trains, made under ground by secret pioneers, within the body of that state itself, may break out when it is least looked for. Add hereunto, the gallant maintenance of Gowrie's fon,⁶ so near Scotland, and with so great shews; though no man knows from whence, beside Sir John Cary,⁷ who is holden to be very inward in that counsil, as certain gen-

¹ From the original in the Advocate's Library. The envelope is lost, and no trace remains in any other Letters in the same valuable Collection. It does not appear whether this Letter is from Patrick, sixth Lord Gray, or his son, the well-known intriguing Patrick, Master of Gray, who acted so base and treacherous a part in England, during the latter part of the reign of Queen Elizabeth, and the earlier portion of King James VI. The families of Ruthven and Gray were nearly related by intermarriage. ² Andrew Henderson. ³ Winwood's Memorials, I. 326. See also Pinkerton's Dissertation, (appended to Laing's Scotland, (First Edit.) 1800, Vol. I. p. 534, &c.) who strongly asserts the Queen's participation in schemes against her husband. The inferences he draws from the alleged intrigues of Queen Anne are quite fanciful; and the hypothesis he then maintained, in regard to the Conspiracy, quite untenable. Laing discarded Pinkerton's Dissertation from the subsequent editions of his History. ⁴ See Notice prefixed to the case of Francis Mowbray, Jan. 31, 1603, &c. ⁵ From Cecil's Secret Correspondence with King James VI, edited by Lord Hailes; who has purposely modernized the style. Cecil employed Howard, and the King Bruce, as the medium of correspondence. ⁶ Patrick Ruthven, the son of William Earl of Gowrie, whose daughter, as has been remarked before, was married to Sir Anth. Vandyke. It was he who wrote the admirable Letter to the Earl of Northumberland, published in the Cabala, (Scrinia Sacra, 4to. Lond. 1654, p. 106.) which shews talents of no ordinary description. ⁷ See Extracts of his Letters to Cecil, (5.) p. 316.

Aug. 1602? tlemen in the North, making ferveral collections of tokens vifible, and words let fall, have advertifed their own conceits, in confequence, with thofe other fears which have been formerly advertifed.

The Mafter of Gray bath had long conference with Queen Anne; fince which time his ftyle is heaved up *cothurno altiore*, as Cicero faid of Anthony. Divers of Gowrie's neareft and deareft friends have fecret accels to perfons of great quality.¹ They keep old iffues open, and feed fpleen againft all thofe that are employed and trufted in the courfes of the prefent ftate; which the King's wifdom tempereth.

(11.) LETTER, *Lord Willoughby, Queen Elizabeth's Governor of Berwick, to Sir Robert Cecil.*²

SIR,

Oct. 1600. I RECEIVED your packet to Mr Hudfon, the 18th of this month; and another to Mr Ralph Gray, this morning; both which I have difpatched accordingly, but fuch is the negligence of the pofts, that the packetts are 7 or 8 dayes in coming. For occurens yt is uncertain, whether the convention hold; but the King is refolved to have bifhops: The Marquis of Huntley have reconciled the King and Queen. The Erle of Mar is retired to Stirling; who hath very difhonorably fugged [to] the King, that I was privy to the practice of the Earl of Goury: his reafon to induce him to believe yt was, becaufe I gave the faid Earle kind entertainment, at his being at London. Other newes hear is none, but that the cuntry is in very good quiet; which courfe I will endeavour to continue in the town, to my utmoft. But fuch are the contentions of the Council heer, that unlefs Sr Will. Bowes had carried himfelf very difcreetly, and I myfelf prefently prevented yt, they had quarrelled in my bed-chamber, being at Council. Thus, not willing to trouble you any further, I ref

Yo^{rs} faithfully affured to doe you fervice,

Berwick, this 21 October 1600.

P. WYLLOUGHBY.

(12.) LETTER, *Sir James Colvill of Enft Wemyfs to Sir Edward Bruce, Lord Kinlofs.*³

COUSING,

Jan. 1603. EFTER my hartly commendation, I culd not omit thir feu lynis, that 3e may knaw of my proſperus ariuel to this toun; defyring 3ou to haue my maift humble fervice recommendit to his lines. It greifis me mekil, in my paſſing throuche Ingland, the los he hes, for the laik of fum (refident⁴) honeft man, in quhom hartlie his M. might confyd; and flik as interly low him, nicht affur them felfis. For, to be plain, I dout vtheris, for caufis I vil not vret. I pray the Lord grant him that grace, that he may flavour them quha lous him aboue al. I dout not bot, or now, 3e haue refaut my Letter from London, defyring ernoſtly to knaw the fucces of that maister aganis his M. I hoip, vithe the grace of God, to difcouer mair in that, nor his M. hes 3it hard; as alfo, in findrie vther practifes aganis him, at my firft cumming. I man 3it ernoſtly requet 3ou to remember my couſing Capitane Coluill to his M., quha hes loſit al his eſperance, for his M. fervice; and hopis he ſhal ſhortly gif better prouf nor he has 3it doon. I wret to 3ow afor, tuichin Meſter David Foulis. Let him mak

¹ It appears, from the Letters of Nicolson to Cecil, preserved in the Paper Office, that Beatrix Ruthven, sister of Gowrie, was privately admitted into the presence of Queen Anne of Denmark.—*Hailes*. ² The Original is in the State Paper-Office, London.

³ From the Original, preserved in the Advocates' Library, Edin. (Denmyne Collections, A. 1. 34.) Colvill was then serving with reputation in the armies of Henry IV. of France. He was created Lord Colvill of Culross, Apr. 25, 1604. It is proper to mention, that his first wife was *Isobel Ruthven*, second daughter of Patrick Lord Ruthven, and sister of William, first Earl of Gowrie. His second wife, Helen Shaw, was widow of Robert Mowbray younger of Barnbougle. This connexion with the family of Gowrie, may account for the reliance placed in his information; but no farther trace is to be found of the matter, in any collection to which the Editor has had access. In an interleaved copy of Lord Cromarty's account of the Conspiracy, *Lord Hailes* remarks, 'there was another Colvill at Paris, then a ſiple of E. Essex (perhaps his 'cousing Capitane Coluille.)' Earl Bothwell was also then in France.

⁴ Interlined.

300 priué to the maister, for the man is content, and defyris only the furtie of convoy. Al vther Jan. 1603. thingis, to neu occasion; and my hartly commendationis to 3our brother: Praying 3ou, that this may ferue 3ou and Sir Thomas Erkyne, I remain 3our maist loving coufing,

FROM CALYS, our first of Januar (1603').

JAMES COLUILL of Eft Weimes.

THER was neuer so mayny passageris heir a vay.² I pray the Lord it be for gud: Bot hes M. hes gret caus to luik to him self.

To my Lord, MY LORD OF KINLOS.

(12.) LETTER, *Andro Hendersoun of Latoun, Chamberlain of Scone, to King James VI, informing his Majesty of certain conduct of David Lord Scone, &c.*³

MAIST nobill, gratiours, hie, renownit, deir Sowerane,
and my onlie confort vnder God,

IT WILL pleis 3owr Maieftie, (albeit ower bauld) all kynd of dewtie commandis me to wifite 3owr Jul. 1608. Maieftie with this few lynnys, sen I hawe owermekill mater for me. It will pleis 3owr Maieftie to caufe flay pe passing of the executioun of Scone,⁴ that it pafs noch conforme to 3owr Maiefteis last Gift: ffor, S', I protest affor⁵ God, sic as is prowtydit pairto mereitis nocht at 3owr Maiefteis hand:⁶ And, S', sen I hawe thair awin hand wret, for my Warrand, I can do na lefs nor mak 3owr Maieftie frequent thairwith, quhilk 3owr Maieftie sall sie, or ellis lat me noch hawe that grace to sie 3owr Maiefteis face. S', thay hawe gevin 3owr Maieftie ane werie improper style, faying in pair Letter, direct frome Restowne⁷ to Scotland, in pe Pakald be post, quhilk wes pe tyme I wes at 3owr Maieftie. The wordis of pe Letter ar pir; '3owr Maiefties promifes ar bot dissimulatiounes; and that '3owr Maieftie is bot lyke thais that ar about 3owr Maieftie.' S', quhen as thay wrait fwa, iudge quhat thair speeches wilbe amongis pair familiares! And my pairt of pe Letter is, S', that I 'mercit rather hanging nor ony wther rewaird!' S', this is bot ane pairt of pe Letter. S', quhen this Letter wes red in Scotland, it wes na smail reioysing to pe Ruthuenis; ffor in guid faith, S', skarce, quhen thair hard thais newis, that pe twa pairt of pe callay culd content pame for pryde; as sum of pair awin name quha wret pe Letter had experience of. S', pleis your Maieftie, feing (prayst be God) thair is appearance of forder licht of pat Treffoun,⁸ S', for Goddis cause, lat it be exactlie tryit; ffor in guid faith, S', be all thay traitowris fauouraris, 3owr Maieftie is callit 'pe Murtherar!' And my parte, 'ane manefuorne knaiffe!' S', thair is twa in particular, quhilk in guid faith 3owr Maieftie is obblitt to, wiz. Schir Jhone Moncreif and pe Laird of Bogie; ffor in guid faith, I cum newer in pe pairt, bot pair language mett me, that thay tuik it on pair conscience that quhilk I deponit aganis thay tratowris we pe treuth. I pray God, gif 3owr Maieftie knew pe hundreth part of pe greifis I haif fustenit, pir fywe 3eiris bygane; quhat be the infamows lybellis, and speeches of thay tratowris fauouraris.

Thus taking my leif, on my kneis, craifand at pe Almightie, to 3owr Maieftie, pe Quene and Prince graces, with all the rest of 3owr Maiefteis royall posteritie, mony guid and ioyfull dayes, with a hapie and ioyfull refurrectione.

3owr Maiefties most humbill and daylie oratour,

[This Letter bears no date, but
probably in July, 1608.]

ANDRO HENDERSOUN of Latoune.

To pe most nobill, gratiours, and hie renownit Pryns, KING JAMES of Britaine, ffraunce and Yreland.

¹ The date may be fixed to be 1603, as mention is made of the Duke of Savoy's attempt on Geneva. ² 'Hereawa,' in these parts. ³ From Collection of Autographs, formed by Sir James Balfour of Denmylne and Kinnaid, Bart. Lion King at Arns, preserved in the Adv. Library, Edinburgh. ⁴ This word had been originally left blank. The person whom Henderson employed to transcribe the Letter was probably kept in ignorance of the fact. Henderson inserts 'Scone' in his own hand. ⁵ Before. ⁶ Sir David Murray of Gospertie, created Lord Scone, and afterwards Viscount Stormont. He obtained the barony of Ruthven, and the lands attached to the Abbey of Scone, of which the Earl of Gowrie was Commendator. ⁷ Royston, one of the royal residences in England. ⁸ This proves the Letter to have been written previous to the Examinations, at least, before the Trial of George Sprot.

Jul. 1608? (13.) LETTER, DAVID LORD SCONE to KING JAMES VI., *exculpating himself and his nephew from the charges brought against them by ANDRO HENDERSON.*¹

PLEIS 3OUR SACRED MATIE,

I was conveynit heir, before my Lord of Dunbar, and confronted with Andro Henryfoine, wpon fume wneuerend speiches spoken be me of 3our Ma^{tie}, quhilks wer allutterly denyit, in the presence of S^r Alex^r Hay, 3our Ma^{ties} secretar, that euer he had spokin or wretting any thing in my preiudice, ather to 3our Ma^{tie} or any vther man leiveand; quhilk, if I haid euer hard spokin be ony vther man in the world, wnochallengit, I nicht bein thoct the onlie wngrate and unworthie man in the world: Bot I leave this to 3our Ma^{ties} gracious consideratione, what all my actiones hes bein in 3our Ma^{ties} service, bothe in word and deid; quhairof I will be glaid content to be censuret, be my grittest enemyis. Now, S^r, to qualesie the informatioun of Andro Henryfoinis, he hes produceit ane Lettre of my brother soneis, direct fra Ingland to me, about the space of four 3eiris and ane half sence; at quhilk tyme, 3our Ma^{tie} will be remembrit, I maid eirnest fute, to haue haid the fauour to have remayneit with 3our Ma^{tie}, and to haue haid some place of credit thair; whereanent, it pleaisit 3our Ma^{tie} to say to me, that 3our Ma^{tie} wold advyse with some of the Inglis Counfall, to gett fume place to me; and at my way-coming fra 3our Ma^{tie}, I delt with sik of 3our Ma^{iesteis} Counfall, as come vp with 3our Ma^{iestie}, to be my freind, in absence; seing all the rest of the Scottis Counfall that come with 3our Ma^{iestie} wer preferrit to placeis of credit (bot I): Of quhome I ressaueit verrie fair promiseis, nocht only to remember 3our Ma^{iestie}, bot to be my particular freind. And my brotheris sone beand thair, vpon some vther biffinesse of his awin with 3our Ma^{tie}, I desyreit him to hald sic of the Counfall, as haid promeit to be my freindis, in remembrance; quhilk he did, according to my Directione, and wrett heir to me to Scotland with Mr David Murray, that he had kiffit 3our Ma^{iesteis} hand, and ressaueit verrie guid wordis and fair promiseis, that yee wold nocht onlie remember 3our Ma^{tie}, and advyse with same on the meynis, how some place nicht be gottin to me. Quhilk Letter pat me in hop to heine send for schortlie thairefter: And within fyf or sex dayis efter pe receipt of this Letter, my brotheris sone wrett to me ane vther Letter, produceit now be Andro Henderfone, wherein he assuirs me, he is certefeit, be sum speciall freindis of myne, that the fair promiseis that wer maid be sum of pe Counfall, was nothing bot dissimulatione; and speciallie of thame pat I trustit maist into; ffor be sum speicheis that he haid hard, he seirit pat pei sould rather kyth my vnfreindis, and that 3our Ma^{tie} was informeit be sic as wer about 3ou, that I haid sent Andro Henderfone to beg sumthing fra 3our Ma^{tie} that I could nocht mak fute for my self: And quhateur 3our Ma^{tie} haid grantit to gif to him, 3our Ma^{tie} was informeit, he haid transactit with me for pe same; and I wald gett pe same to my self. This speicheis beand reportit, be sum freind, to my brotheris sone, and he, seirring I nicht be moveit fra the loue I buire to Andro Henderfone, to pas his Gift, quhilk 3our Ma^{tie} haid grantit to him, and that the samin nicht be layd to my charge sum vther day; and out of the love my brotheris sone buire to me, he gave me this aduerteisment; and alsfone as this Letter came to my handis, I sent it to Andro Henderfone, to the effect that he sould tak na exceptionis of my guidwill, albeit I haid refuist to pas his Gift, in respect of the premis; bot I gaif him suretie that I wald deill with 3our Ma^{tie} for ane benefit to him, quhilk I did; and obtenit of 3our Ma^{tie} better nor Sevin hundretlie merkis be 3eir, quhilk he possesseis presentlie; quhilk was thoct, be maney of pe cuntrie, mair nor he meretit; zit, in respect he did 3our Ma^{tie} no evill, being quhair he nicht haue done it (if God haid nocht bein 3our Ma^{iesteis} better freind;) and euer sence that tyme, I haue reteynit him in my service, and hes protectit him and euer fall; and he hes haid pe commandement of all pat I haue, in this pairtis. Bot 3our Ma^{tie} will knaw, in the awin tyme, that jis is nocht come fra Andro Henryfone; for he was neuer

¹ From the original, in Sir James Balfour's MS. Collection, Adv. Library.

very wyfe, and he hes loft ane guid pairt of þe witt quhilk he haid; for it appeiris he is nocht his awin man; for the quhilk I ame maift forey: And I will neuer tak me to him, for ony thing that can be reportit of me to 3our Ma^{tie}; and in the awin tyme, 3our Ma^{tie} will know how this comeis, fra quhome and how this pure man hes bene abuseit. Alwayis, I man leave this and all my vther actionis, bothe ia word and deid, to 3our Ma^{ties} gracious consideratiounes, fra the first tyme I haid þe honour to serve 3our Ma^{tie}, quhilk is threttie tua 3eiris fence; and I neuer haid caus to weyrie; ffor 3our Ma^{tie} hes nocht onlie honorit me, bot gevin me all I haue in the world, and brocht me vp fra nothing; and if I fould prove vngratte and wnthankfull to fa gracious a maifter, I merreit puneffment abone all tratouris in the world. Sa wiffing 3our Ma^{tie} all happines, withe þe contenance of 3our Ma^{ties} guid helthe, I reft 3our Ma^{ties} humill and obedient fervitour,

D. SCONE.

[The envelope has not been preserved, but the letter is marked, at the top of the folding, 'L. Scone to the K.' No date is noted.]

(14.) LETTER, SIR ANDREW MORAY of Balvaire, to KING JAMES VI., *defending himself against the accusations of ANDRO HENDERSOUN, Chamberlain of Scone*.¹

MAY IT PLEIS 3OUR SACRED MAIESTIE,

I HAVE bein, be vertew of 3our heichnes commandement, accusit be the Erle of Dumbar, as gif I had bein ane moft ondwitfull subiect vnto 3our Maieftie, kything the malice of my hart by the uttering of onreverent speiches. 3our Maiefties informer is Androw Henderfoun, of quhom I will forbear to speak any thing, least I fould seem to haue no better defence nor² the accusing of my accuser. The first point of my accusation is, that I haue callit 3our Maiefties promiss bot dissimulationis; and quhatsoeuer may, by consequence, be inferrit vpon this point; for verificatioun quherof, he hes producit vnto the Erl of Dumbar, ane Letter, wrettin by me, from Roisoun, the last of March, 1604, directit vnto my vncle, my Lord of Scone. The woordes are these. 'My Lord, Efter I had wrettin at lenth vnto 3our lo. with Maister David Moray, I have tryit sum thinges, quherof my dewtie bindes me to aduertise 3our lo. notwithstanding of that quhilk I wret to 3ow in my last Letter, that his Maieftie had said vnto my self, concerning 3ow; I fear it be al bot dissimulation.' Quhilk woordes, how far thay man be wreslit befor they can prooue the thing alledgit, I am persuadit that 3our Maiefties self, without any apologie of myne, will moft gratioullie consider. Neuertheles, to the end 3our Maieftie may the moir cleirlye understand how far this malicious imputatioun disfigreiss from my trew meaning, I will bot schortlye say this meikill. That former Letter, quherof I maik mentioun, sent be Mr David Moray, had in it tua pairts; the first, was ane declaratioun, how 3our Maieftie had not only moft gratioullie admitit me to 3our preface, bot also gracit me with moft fauorabill countenance; and maicour moft bountifullie had givin commandement to gif me tua hundreth pund. The vther part was, that I had rememberit my vncle vnto findrie of 3our Maiefties Counfell, and sum of 3our favorites, from quhom I had resauit great protestatiounes of affectioun vnto him, and as great promiss of friendship, in his adoes.³ Bot befor the wretting of this last Letter (quherof I am now accusit), I was certainlye informit, be sum of my vnclis special freindes, that they from quhom I had resauit fairest woordes, wer his greaetest enemies: Quhilk, mouit to call their promiss dissimulat. Sa that the fence of my woordes ar very cleir, after this maner; 'notwithstanding of that quhilk I wret in my last Letter, that 3our Maieftie had said and done vnto my self, yet that quhilk I wret concerning my vncle I tuik it al to be bot dissimulation.' Gif my former Letter wer as weil to the foir, to be producit vnto 3our Maieftie, as this last is, it wald maik this mater moft cleir. Bot as God schal be my iust judge, I

¹ From the Denmylne MS. Advocates' Library, Edinburgh.

² Than.

³ Concerns.

Jul. 1608. haue set donn vnto your Maiestie, most trewlie, beath the contents of the one, and my meaning in the vther. Then followis, in my Letter, 'I knew his Maiestie to be, as they ar that be about him; and I affiur you, ze haue na fauour of them that ar in greatest credit heir.' To this I ansuer, that I was neuer sic a sott to think that your Maiestie was so simpill to be guidit be them that ar about you. I protest, befor God, that I had na sic meaning. I haue baith hard and sein to muche of your Maiesties wisdom and resolutioun to think sa vyld a thocht. Bot my meaning was, 'seing my vncl had no fauour of them that wer in greatest credit about your Maiestie, (the quhilk I was most certantie mead to belieue,) therfor I greatlie fearit that their hard informatioun might mnif your Maiestie agentt him, he not being present to answer for him self, and having about your Maiestie so many enemies.' Their reftis yet more in my Letter, 'I heir say that their is ane turn past heir, in fauours of Androw Henderfoun, into the quhilk your lo. hes great neid to tak head to your proceeding; for albeit his Maiestie hes past it vnto him, I fear it be rather to try how ze behaue your self, nor for any good mynd they had to pleasour Androw Henderfoun.' Theis wordes I houpe neid no apologie. Befoir God I had mynd of no thing concerning your Maiestie. I knaw, and that be experience, that al your Maiesties grantes ar and haue bein euer most frie and absolut. My only meaning was, of the advantage they that wer about your Maiestie might maik of my vncl's behaviour in this matter; ffor it was directlie said, be fum of them, that he wald content Androw Henderfoun with a smal pairt, and tak the rest to him self. From this point, it will pleis your Maiestie to confider, that the grund of my accusatioun proceeds, and not from that zeal and affectioun my accuser professis to bear vnto your Maiestie: or els he had communicat this vnto your heichnes, at the first, and not keipit the sam besyds him thir four zeires and moir; and now at lenth reveilit it, be the instigatioun of vther men, as him self partly confessis. Their is no man could moir iustlie accuse me vpon this mater nor the Erl of Dumbar, gif his lo. had knawen my trew meaning; for it was his lo. of quhom I cheiflie meanit in my Letter: And I haue crauit his lo. most humble pardoun, for that I was sa folische, vpon any informatioun, to belieue, that his lo. thocht vtherways nor he had said vnto my self. Gif I durst haue presumit, without your Maiesties leue, I wald, with prostrating my self at your Maiesties feet, be woord, and not be Letter, mead this my most trew Declaratioun; and vnto the tym your Maiestie grant me that libertie (quhilk be thir presents I most humble beg at your gratus handes) my hart schal neuer be pertaker of any contentment; albeit my conscience bears me witnes, that I neuer sa mekill as thocht onreuerentlie of your Maiestie, zet am I grevid aboue measur to think that any thing sould haue escapit my hand, quhilk, in the hardest construcion, can be accomptit for ondwitfulness against your heichnes. Their is na thing in this world can discontent me mair than to want your Maiesties fauour; bot to want it throch my awen just deseruing wer to me insupportabill. I wer to be accomptit the most ingrate wrech that euer had lyf, gif euer I had sufferit any such thocht to haue had place within my mynd; considering the manifold fauours your Maiestie hes schawen, baith to my self and al my kynred. Their remains yet the last point of my Letter, into the quhilk I maik sum mentioun of my Lord Secretar. My simpill meaning was, that his lo. at that tyme had not sa great fauour as he desyrit to haue had, of theis that wer in credit about your Maiestie. I will cease to trubill your Maiestie any moir, w^{ch} my idill wordes; not dowing bot your Maiestie will, according to your accustomed goodnes, consider that the affectioun I careit vnto my vncl's weill, mead me the moir earnest in my Letter; and gif their be any wordes in it onadvisit, or not weill chosin (as I do confes their is many) your Maiestie will imput them to want of witt and laik of discretioun (quhilk euer accompaneis youth,) and not to malice, quhilk I protest, in the presence of God, is as far remouit from my hart, as it fliks neir to their hart that does accuse me. Praying vnto the Eternall to grant vnto your Maiestie ane moift happie and prosperous regne, ane blifft and ane long lyf, I rest

your Maiesties most humbill and most obedient subiect,

S. ANDROW MORAY
of Baluaird.

EDINBRUGH, the 13 of July, 1608.

(15.) LETTER, *Alexander Blair in Colone, to (David Lord Scone,) charging* Apr. 1610.
Hary Ruthven with using treasonable expressions.¹

THIS is to latt your ll. wnderstand the wordis that Hary Ruthven spak. He vas cumand downe betuix your ll. park dykis, aboue Scone; quhair he and William Wallace, feruitour to my ll. of Blantyr fell in conference about ane SPROTT, quha was execut in Edinburg at that tym. William Wallace sayis to Hary Ruthuen, 'this mater is mead cleier nor it was.' Hary Ruthuen anfuers him agane, and sayis plainly, 'Ha! ha! THE ERLE OF GOWRY was faiklesly put downe! And the King, and all that was thair that day, vas Trateuris to the Erle of Goury!' And William Wallace anfuering, forbade him to speik sik langage, for it wold do him evill. This I thought good to advertice your ll. that his Matie our gratius foueran might be acquent therwith. I have subferyvit this with my hand, and am redy, for my dewty to his Hienes, to seale it with my bluid.

ALEX^R. BLAIR.²

M. G. Graham³ B. of Dumblane, vitnes to this subfcripue.

(16.) DEPOSITIONS, *relative to the Treasonable expressions made use of by*
HARY RUTHVEN alias FREELAND.⁴

(i.) AT EDINBURGHE, the xxvj day of Aprile 1610, IN PRESENCE of Alexander Erle of Dunfermyne Lord Chancellor, David Lord Scone, the President, Advocat, and Schir William Hairt Justice depute.

ALEXANDER BLAIR in Colone, maryed, of the age of xxxviij yeiris, sworne vpoun his great aithe, being humblit vpoun his kneis, and demandit, 'What war the wordis he hard Hary Ruthuen speik, for the whilk he has bene wardit thir diuers oukis bigane?'⁵ Deponis, that vpoun the aucht day of September, the yeir of God I^m.vjth and aucht yeiris, Hary Ruthuene, William Wallace servand to the Lord of Blantyre, and the depouner, having mett togidder in Colone, and being comeand thairfra towardis the burgh of Perth; as thay war betuix my Lord of Scones Park dykis, aboue Scone, William Wallace sayis, that 'This mater of GOWRYIS TREASOUN is maid cleiar nor it wes, be the Executioun and Confeffioun of one named Sprott.' Vnto whome Hary Ruthuen anfuert, that 'The Erl of Gourye was ane honest man, and that he wes faiklelesly putt down!' And that 'Thay wer all tray-touris that wes at his Slauchter, King and all!' Quhairupoun William Wallace replyt, 'Speik not sik langage!' And this deponer said to him, 'That is sclanderous langage: You do not weele to speeke sik langage.' And the depouner sayis, that Hary Ruthuen and the depouner wer in goode terms of freindschip, at that time; and that Haryis wyffe and the depouner ar thridis of kin: And deponis, that Hary Ruthuen and William Wallace ar vnder very grite freindschip and kyndnes; and that Hary Ruthuen is doar and factour to William Wallace, in this rowme of Colone; and Hary aggreit William Wallace and Agnes Seytoun, anent hir lyverent of the rowme; and that Hary Ruthuen fend to William Wallace, ane hundreth merkis, in Januar last. Demandit, 'for quhat caus he concealed this mater, fra the moneth of September, quhill the moneth of August thairefter, that he reveilled it to the Lord of Scone?' Deponis, that shortly thairefter, he tauld to Henry Rattray, goode-bruther to the said Hary Ruthuen, that the said Henry Ruthuen had spokin sclanderous wordis of the King; and that the depouner wald haif reveillit the fame to the King, yf he wes in the cuntry: And feing his Maiestie wes absent, that he wald tell it to my Lord of Scone: To whome Hary Rattray anfuert, 'He will desye sow and my Lord of Scone bothe; for he hes alreidy biddan the prwffe of

¹ From the Original, among the Warrants of Parliament, &c. General Register House.

² There is written

in a very small hand, as a memorandum at the foot of this document, 'From Justice Clerk, Mr Wm Hairt this day xv dayis.' The date is likely to have been in April, 1610.

³ Mr George Graham, Bishop of Dumblane. He was translated to the see of Orkney anno 1614.

⁴ Originals in General Register House, among the Warrants

of Parliament, &c.

⁵ Weeks past.

Apr. 1610. the cannoun! And deponis, that findrie tymes, he foght the occasioun to haif tauld it to my Lord of Scone, but could not haif it; and that shortlie thairafter, he come to my Lord of Scone, being walking vpon the Greene of Scone, and tauld him that he had some mater to communicat vnto him; and my Lord anfuerit, 'Come to me ane ither tymie and I will heir zow.' Deponis alsa, that afor that tymie, he reveilled this fame mater to Andro Henderfoun, who advist the depouner to 'tell it to my Lord of Scone; and that nane hard this conference bot Andro Henderfoun and the depouner: And the depouner sayis, that he tauld this to Andro Henderfoun, witbin fourtene dayis after that Hary Ruthuane spak it; and he tauld it to Hary Rattray, within ane moneth after the speiking of it. Deponis alsa, that lang afor Hary Ruthuane spak thir speeches of his Maistie, the depouner hard him say, 'Andro Henderfoun is going to big (*build*): Lat him big quhat he will, I hoip to see the day that I fall putt him out of his house and duell in it!' And that Atlame Hepburne in Scone, and David Blair thair, wer present, and hard thir speeches, quhillis wer spokin in Sanct Johnnestoun, in Andro Boydis house thair, as thay wer come from the buryall of ane woman callit Coke, as he rememberis; and that Hary Ruthuane directit his speeches, on this mater, to the depouner, bidding him 'Go tell the fame to that fals knave Andro Henderfoun!' Deponis forder, that after Hary Ruthuane had spokin thir wordis, concerning Andro Henderfoun, that Andro Henderfoun and the depouner, being walking together on the brig of Perth, Andro Henderfoun peravis Constene¹ Hynd vpon the brig, and left the depouner, and past to Constene Hynd; and as thay war speiking togidder, Hary Ruthuane come by, gaif Andro Henderfoun ane grite touke² and almost putt him over the brig, saying vnto him, 'You may hold out of my gait!' And this was fourtene dayis afor the falling of the tree-brig of Sanct Johnnestoun.

(Sic subscriptur)

ALEX³ BLAIR.

HARY FRIELAND, sumtyme callit HARY RUTHEN,³ of the age of xl yeiris, maryed, duelland in Sanct Johnnestoun, being humblit vpon his knees, solemnlie sworne vpon his grite oathe, and demandit, 'Yf he rememberis, that in Harvest was a yeir, in the moneth of September, he and Williame Wallace, with Alexander Blair come from Collone to Sanct Johnnestoun?' Deponis, [he rememberis⁴] that he⁵ come from Colloun that day, towardis Sanct Johnnestoun,⁶ and that Williame Wallace and Alexander Blair come [in company] togidder, and that [a litle afor thame] Henry Bahnavis, Johnne Broun notair, [and Andro Gairdner,] and the depouner went [in company] togidder; and thay wer a large space befor Williame Wallace and Alexander Blair, and staved for thame vpon the top of the parkis of Scone, beyde the stane brig: And that the caus of thair being at Colone, wes, for geving of seasing of the Landis of Coloine to Williame Wallace; and that thai come all togidder fra Colone, in companyis, as is afoirsaid [to Scone.] Demandit, 'Yf ther hes been ony grudge or evill will betuix Alexander Blair and the depouner?' Deponis, that thair hes bene some mislykeing and drynes this langtyme betuix thame, becaufe this depouner gaif informatioun and advise to the Lady Rossy to perfew Alexander Blair, for ane horse, quilliik violentlie he spulzeit and tooke from the Ladyis dochter; and becaus he assifit and fortifeit William Wallace and his tennentis aganis Alexander Blairs oppressioun; and becaus the depouner was a doar, in procuiring of Agnes Seytoun lyvrent of the rowme of Colone, in William Wallace favour. Demandit, 'Yf at that tymie of thair cominge from Colone, he hard Williame Wallace say, that the Treasoun of GOURY was now cleirit and maid manifest, be the Deposition and executioun of one namit SPROT?' Deponis, vpon his grite oathe, that he never hard William Wallace speik ony sik speeches; and that he never hard William Wallace name Sprottis name: And deponis, vpon his grite oathe, that thair wes never ony suche anfuer maid be him to William Wallace, as is affermed be Alexander Blair; and that thair wes no kynd of conference betuix thame, concerning that mater of Goury or Sprott. Demandit, 'Yf at ony tymie, he

¹ Constantine.² A smart stroke or blow, by pushing or running at one.³ The Sirname was formally

abolished by Act of Parliament.

⁴ These and the following words, within brackets, are interlined.⁵ Altered to 'they.'⁶ 'Perth' deleted.

Being the original paper, the corrections, on reading over the Depositions to the witnesses, are of course, made by the clerk.

sayd, that he sould duell in Andro Henderfonis houffis, latt him big as he wald?' Deponis vpoun his Apr. 1610. grite oathe, that he neur ipak ony fuch mater. Demandit, 'Yf afor the falling of the brig of Sanct Johnnestoun, the depouner toukit Andro Henderfoun vpoun the brig?' Deponis, that at the tyme speicfeit in Alexander Blairs Deposition, this deponer, coming alongis the brig, with his horse in his hand,¹ he forgadderit vpoun the brig with Andro Henderfoun, the Persone of Bonhard, Alexander Blair, and Constene Hynd, quho wer all standing togidder; and thay sufferit the depouner to go by thame vpoun the midis of the brig, becaus he had ane horse; and at his by-passing, his shoulder tuicheit Andro Henderfoun, who tooke no offens thairat; and when the depouner was by² thame, Alexander Blair looked over his shoulder and sayd to the depouner, 'Yow mycht haif gevin ws the gait!'³ And that Andro Henderfoun was angerit at Alexander Blair for thair speecheis. And deponis, vpoun his grite aithe, that he spak na thing to Andro Henderfoun at that tyme. Demandit, vpoun his grite oathe, to declair, 'Quhat is his opinioun anent GOURYIS TREASOUN, feing he wes present with the Erll in the chalmir quhair his Maieftie wes persewit?' Deponis, vpoun his grite oathe, that he is and ever wes of opinioun, that the Erllis pairt wes worst; feing he saw the King's Maieftie haif na thing but ane hunting horne about his neck. Demandit, 'When he mett last with his bruther Alexander?' Deponis, vpoun his grite oathe, that he saw him nocht for aucht yeiris; and that the last tyme he saw him wes in Hull, in England, afor the deceis of the Quene of England.

(Sic subfcribitur)

H. R. of Freland.

ALEXANDER BLAIR, re-examinat, grantit that he met with Hary Ruthuen and Williame Wallace, at the taking of Williame Wallace seafing of Colone; and that after the giving of the seafing, Henry Balnaves, Johnne Broun and Andro Gardiner past away, and that Williame Wallace and Hary Ruthuene stayd a quhyle behind, to tak ordour with the tennentis; and then thay tua, with the depouner, come togidder.

HENRY RUTHEN, confronted with Alexander Blair, anent the forme of thair cominge frome Colone: Deponis, as of befor, that Williame Wallace, Alexander Blair, Henry Balnaveis, Johnne Brom and Andro Gairdner come togidder frome Colone; and that Williame Wallace and Alexander Blair fell togidder in company; and the depouner and the vtheris personis foirfaidis fell togidder, and wer ever afor Williame Wallace and Alexander Blair, whill thay come to the Hoill-brig, quhair the depouner and his company stayd for thame; and then this depouner fell in company with Williame Wallace and Alexander Blair; and that the vther personis foirfaidis wer within the breid⁴ of this chalmir of the tolbuith to thame, and hard every worde that wes spokin betuix thame.

ALEXANDER BLAIR deponis constantie,⁵ that at this tyme, the vtheris personis foirfaidis wer the space of three pair of buttis frome thame; and that he with Hary Ruthuen and Williame Wallace wer half ane hour togidder, at that tyme, going thame selfis allone.

HARY RUTHUEN denyis this altogidder.

(Sic subfcribitur)

ALEX^r BLAIR. H. R. of Frelendis.

WILLIAME WALLACE, seruand to Walter Lord Blantyr, sworne vpoun his grite oathe, being vpoun his knees; and demandit, 'Yf he knawis Hary Freeland and Alexander Blair?' Deponis that he knawis thame very weeel. Demandit, 'Yf in September 1608, quhen he tooke seafing of the hauch of Colone, yf Alexander Blair, Henry Freeland, Henry Balnaveis and Johnne Broun wer thair?' Deponis, that thai wer all thair. And that efter the geving of the seafing, Alexander Blair tooke this depouner in to his honse to drink; and the vtheris personis foirfaid went afor, and the depouner and

¹ He led his horse over this frail wooden bridge, which must have been in a very crazy condition, and probably without ledges, for in 'tuiking' Andrew Henderson, he 'almaist patt him over the brig.' ² Past. ³ The most honourable part of the way was 'the crown of the calsay,' or middle of the street. To usurp this privilege was attended with as much danger, as 'taking the wall,' in the days of Addison or Sir Richard Steele. A great deal of bloodshed took place in both countries, on such trifling matters of mere punctilio, between hot-blooded 'gallants.'

⁴ Breadth. ⁵ Without varying, with constancy.

Apr. 1610. Alexander Blair followit, and our-tooke thame at a mylne, quhair Hary Freeland and his company went in to drink ;¹ and the depouner and Alexander Blair stayd vpoun thame befyde the mylne, quhill thay come out ; and then thay come altogidder fra the milne, in company, to Scone ; and drank in my Lord of Scones fellair, as the depouner rememberis. Being demandid, ‘ Yf thair was ony speeche or conference betuix the depouner and Hary Ruthuen concerning GOURYIS TREASON or GEORGE SPROTT ? ’ Deponis vpoun his grite oathe, that thair was nevir ony kynd of speeche, talking, or conference amang thame, concerning that mater of Goury or of Sprott ; and that the affirmatioun of Alexander Blair, in that mater, is ane vntreuthe. And denyis that haill mater, and all the circo-
stances thairof, and all that is deponit, writtin and subscryuit be Alexander Blair, concerning that particular : And deponis, vpoun his grite oath, that, as he rememberis, thair wes no privat conference betuix the depouner, Alexander Blair, and Hary Ruthuene, that day : And deponis, that he had priue conference, that day, with Alexander Blair, anent the roume of Colone ; and that Alexander Blair maid ane offer of iij^m markis² for the same, quhill the depouner refuist.

(Sic subfribitur) WILLIAM WALLACE.

ALEXANDER BLAIR, confronted with Williame Wallace, anent the conference betuix thame and Hary Freeland, in thair cominge frome Colone : The said Alexander abydis be his former Deposition, anent the mater of Gourie and Sprott ; and Williame Wallece denyis the same altogidder.

(Sic subfribitur) ALEX^R BLAIR. WILLIAM WALLACE.

(ii.) AT EDINBURGHE, the xxvij day of Aprile 1610. In *presence of the Examinatouris aboue writtin.*

ALEXANDER BLAIR and HARY RUTHUENE being re-examinat and confrontit, vpoun the speecheis past betuix Hary Ruthuen and Williame Wallace, concerning Goury and Sprott : The said Alexander Blair abydis constantlie be his formair Deposition, in that mater ; and the said Hary Ruthuene altogidder denyis the same. The said Alexander Blair offerit, in the said Haryis presence, to try this mater BE SINGLE COMBAT betuix thame, quhenever it fall pleis his Maiestie or Counsaill to appoint thame tyme and place ; althocht it wer this same nycht : And sayis, that he is content to be hangit, yf in the combatt he move not the said Hary to confes the treuthe of this mater, as he hes deponit aganis him. The said Hary Ruthuen answuerit, that he can not be vrgeit, be law, to fecht in fuche a quarrell : And that he will abyde the ordinar tryall of the law ; and refuist the Combatt.

ALEX. BLAIR. H. R. of Frelendis.

WILLIAME WALLACE, being re-examinat, abydis constantlie be his formair Deposition maid yisterday.

AL. CANCELL^R. D. SCONE. JO. PRESTON. S. T. HAMILTON. S. WILLIAM HEART.

(iii.) AT EDINBURGHE, the lest day of Junij 1610. In *presence of the Erl of Dumfermylne Chancellour, David Lord of Scone, Mr Johnne Prestoun of Pennycooke President, Sir Alexander Hay Kingis Secretair, Sir Thomas Hammiltoun of Bynnie Aduoat and Mr George Young.*

HENRY RATTRAY of Kincarrody, maryed, of the age of xxx yeiris, or thairby, sworne vpoun his grite aith, and demandit, ‘ Yf Alexander Blair come to him, and tauld him that he hard Hary Freeland speeche some outrageous speeches aganis the Kingis Maiestie ? ’ Deponis, vpoun his grite aithe, that Alexander Blair nevir spak ony fuche mater to him. And sayis, that Williame Wallace haueing chargeit Alexander Blair to find him law souirtie, the said Alexander Blair come to this depouner, ane moneth afoir Hary Freeland wes maid prifounder, and sayd to him, ‘ Can I not be quyte of your goode-bruther ? I vow to God, yf I be not quyte³ of him, I fall putt ane fleche⁴ in his hoife ! ’

¹ This word deleted, and five words interlined.

² 3000 merks.

³ Fr. *quité*, required.

⁴ Fr. *fleche*, a shaft or arrow.

ALEXANDER BLAIR, being confrontit with Henry Rattray, and being re-examinat, vpoun that pairt Jun. 1610. of his formair Deposition, concerning Henry Rattray, the said Alexander, with mony aithis, abydis be his Deposition, in that point: And the said Henry Rattray, with mony aithis, denyis the same, and that thair wes never ony fuche purpois or conference betuix thame, as is contenit in that Deposition.

DAVID BLAIR in Scone, maryit, of the age of xl yeiris, sworne and demandit, 'Yf he rememberis that Alexander Blair, Henry Freeland and the deponer wer drinking togidder in Andro Boydis hous?' Deponis, that he rememberis weele thair of, and that Henry Rattray tooke thame in, to gif thame ane pynt of wyne, they being come frome the buryall of ane woman in St Johnnestoun. And deponis, that the company falling in discourfe, 'who had the best aill in the cuntrie?' It wes anferit, be one of the company, that 'Andro Henderfoun Chalmerlane of Scone haid the best aill.' And then Henry Freeland sayd, 'Andro Henderfoun is bying, and bigging, and conqueffing. It is evill to witt quho may brooke and posses thame heirefter, for all his goode aill!' And deponis, that he directit thir speeches to the haill company; and sayd, that 'he caired not quha wald tell it to Andro Henderfoun.' And the depouner rememberis not that he called Andro Henderfoun 'ane fals knaif;' bot sayis, 'he gaif evill wordis anew.' And sayis, that the Parfone of Bonhard wes present, and hard thir specheis.

CONSTANTYNE HYND, in Brigend, vnder the Baillie of Errole, maryed, of the age of xl yeiris, sworne and demandit, 'Yf he rememberis, that a litle afor the falling of the tree-bridge of Perth, this depouner, Andro Henderfoun, and Alexander Blair wer walking togidder vpoun the bridge?' Deponis, that he rememberis very weele thair of; and that in the meantyme, Hary Freeland come alongs the bridge, with ane naig in his hand; and the deponar, with his company, having thair bakis to Hary Freeland, he said to thame quhen he come to thame, 'Gif ws the gate!' And in his by-ganging, the passage being narrow and strait, the depouner is of opinioun that he rubbit clokis with Andro Henderfoun, and past by without ony forder specheis. And deponis, that Alexander Blair sayd to Hary Freeland, when he wes by, 'The half of the gait mycht haif served yow, when yow crapt vnder the boorde!'

AL. CANCELL^r. D. SCONE. ALEX^r HAY. S. T. HAMILTON.

NO. XX.

LETTERS OF JOHN, EARL OF GOWRYE.

[THE following Letters of JOHN EARL OF GOWRYE, are the only specimens of his literary compositions now known to be extant. The original of the Letter to King James VI. was presented to the College of Edinburgh, by Drummond of Hawthornden, in 1626; but it has unfortunately been either mislaid or lost, (with other autograph Letters in the same Collection,) subsequent to the year 1757. About that time, it had been transcribed and published by Sir David Dalrymple, Lord Hailes, in a reprint of the 'Account published by authority,' (No. IV. of the present Collection of Illustrative Documents,) and which was intended by him to serve as a specimen of his projected Collections relating to the Gowrye Conspiracy.

The other Letter is preserved in a volume of Original Papers, collected by David Calderwood the historian, who was a fellow-student, under Principal Rollok, with the Earl of Gowrye, at the College of Edinburgh; where they took the degree of Master of Arts, in 1594. At the time of writing these Letters, the Earl was in his 17th year, prosecuting his studies at Padua. They are also given, pp. 351-6, of the valuable 'Miscellany' of the Bannatyne Club. A fac-simile of the Earl of Gowrye's subscription to the last of these interesting reliques concludes this Collection of Papers.]

¹ 'Toun' is deleted.

Nov. 1595.

1. LETTER, *the Earl of Gowrye to King James VI.*

PLEASE YOUR MAJESTIE,

GIF the bestowing of great benefites fould moue the receauers theroff to be thankfull to the giueris, I haue mony and extraordinar occasionis to be thankfull to your Majeste; not only being fauored with the benefite of your Majesteis gude countenance at all tymes, bot also that it hath pleasit your Majeste to accept fo weill of me, as to honour me with your Majesteis most louing letter, as with ane certane signe and viue testimonie of your Majesteis gude fauor and gracioufnes touartis me; wheroff I esteeme so much, that I wald think my self very hapie, if it fould please your Majeste to comand me in any thing, that therby your Majeste might haue ane tryall of my prompt and fathfull obedience; for your Majesteis worthines and valor, attour the particular courtetis schauin to me, merits whatsomeuer I am able to do, and ane hundreth thousand tymes more. In end, I pray your Majeste to haue me excused that I haue taine the audacitie to wrett againe to your Majeste, for not hauing the comfort of your Majesteis presence, could not declare my willing mynd better then be vsing of the nixt remede. In the meane tyme, I sall repose my self still on your Majesteis constant fauor, quhill God of his mercie grant that I se your Majeste in fuche ane gude estate as I wishe, whilk will give me the gretest contentment of all.

Sua crauing earnestly of that Creator of all thingis to blis your Majeste with all felicitie and satisfactione in health, with ane increas of mony prosperous dayis, I kifs most deuotly your Majesteis hands.

Your Majesteis most humble subiect and obedient seruitor in all deuotione,

GOWRYE.

ATT PADUA, the 24th of November 1595.

2. LETTER, *the Earl of Gowrye to Mr Johne Malcome, Minister at Perth.*¹

Εὐλογητὸν ἐσὼ τὸ ὄνομα τῆ Θεοῦ εἰς αἰῶνα.

BELOVED BROTHER,

HAVING taken occasione to wret to Scotland, wald nocht omitt my deutie to you, in visiting you with this letter, that therby ye myght vnderstand of my present estate, quhilk continues as ofbefore; praising God, from my hairt, that of the riche abundance of his gude grace and mere mercie hes maid the beames and licht of his countenance, to shine vpon me most fauorably; to be ane guide to conduct me faillie *per hunc Auernum*, quherin mony here, (*quorum oculi densu*

¹ Mr John Malcolm, one of the Regents, and afterwards Principal of St Leonard's College, St Andrews, was ordained Minister of Perth, 4th November, 1591. He was the author of a Latin Commentary on the Acts of the Apostles, a work of considerable learning, printed at Middleburgh, 1615, 4to. He died at an advanced age, at Perth, 3d October, 1634.

caligine et nebulis obfufcati funt,) *ô miferum fpectaculum!* are drowned, in his Nov. 1595.
 iuftice; I meane nocht all, *abfit*; for I am acquainted with diuers heir, *qui*,
etiam inter has paludes ffigias, hes neuer boued ther kne to Baal: Quhat ane
 meruell is this? and quha can beleue it? and zit it is certanly true; *glorificetur*
igitur Deus in operibus fuis, ac eo magis quo funt mirabiliora et παρα την φύσιν.
 There wes ane notable exemple of conftancie not long ago, in ane Silefian Minif-
 ter, of fome threfcore yeares and mair, quha, efter he had beine deteined in pri-
 fone about nyne yeares, and the Jefuites had trauailed with him to recant; bot
 perfaiffing that thei could preuaile nothing at his handis, caufed bring him to the
 fyre, lyke bludie dogges; quhere, efter he had maid ane excellent difcours and
 harang to the people, fhauing them the gret honour he wes callit to in fuffering
 for Chriftes fake, and exhorting them to conuerfione, abode moft patiently, without
 ony fhinking, all tormentis; magnifeing Godis holy name, and praying that
 ther finnes mycht be forgiuen them. Efter he wes brunt, not being zit fatisfied
 of the crueltie that they had vfit againft him, quhen he wes liuing, did caft ane
 gret heap of ftones vpon his afhes, *multo fœuiorez quam erant Iudei aduerfus*
Stephanum. There were vtheris, quha for feare of death, at that fame tyme,
 maid filthie apoftacie fra the true Religione to that damnable idolatrie; and at
 that instant that ane of them begane to deny Chrift, in making defectione, there
 iflued blude out of his nofe in fuche gret abundance, that all did fee him thocht
 he fould have dyed prefentlie. This wes ane vifibill figne of the hand of God,
 that chopped on him quha had done fuch ane villanie againft his confcience, for
 to purchafe his auin lyffe, quhilk he wes not worthie to bruik, be the lofs of his
 foule. Bot thir renegates not the les efaped not their auin punifhment, for
 they all were fend *ad triremes, vbi non vnus hore fpatio vitam finituri, fed mo-*
rientes femper, nec tamen moriuntur. Laitlie, efter thefe thingis, ane certane
 Inglifhe man, being moued on zeale to caft ther *facula hoflia* (as thai moft falflie
 callis it) out of the priefftis handis, that wcs caring it in proceffione, to the
 grund, and to framp on it with his fete, wes apprehendit and denudit of his
 clothes, therefter ane hude putt on his heade, quheron wes painted the deuils
 image, and fome with bleafis, quha brunt him continually in the backe and breft
 as he walked forduart; bot he, in the meane tyme, wes occupiet in fchauing the
 people how thai were fchamfullie abufed by thefe mifcent idolaters, quha were
 leading them to their auin damnatione. In end, he fpake with fuch ane vehem-
 encie, that the enymies caufed knett his tounge, fearing fome vprere to enfeu,
 if he had gottin ony forder libertie to fpeke: So he wes brought to the place of
 executione, quhere, lifting vp his eyes to heauen, and on his knees kiffing the
 chain he wes bund with, they caufed firft cut of his hand for the fact he had
 committed, and nixt burne him quicke. All thir thingis were done in Rome,

Nov. 1595. that mother of all vyce, and hoorishe synagog of deuils. I am fory that my abfence will not permit me to kyth my mynd and gudwill, in helping to fett furth Godis glorie there, *cui totus ex animo incumberem*; bot quhen, at his gude plea-fure, I returne, fall with his grace, indeuore my felff to amend quhatfomeuer is omitted for laike of my prefens. I thank 3ou moft hartfully, of 3our remembrance of me in 3our prayeris; defyryng 3ou earnestlie to continen, according to the loue 3e cary to the faluatioune of my foule. Thus, remembering my loving commendationis to 3our felff, with the haill nychtbouris of the toune, Committis 3ou with them all to the protectione of the Omnipotent.

Youris aluayis affectionat,

GOWRYE.

AT PADOUA, the 28 of Nouember, 1595.

I DOUT nocht bot 3e haue hard, long fince, of the Papes benedictione given to the King of France; quhilk hes turned to ane maledictione. No vther neuis occuris heir for the prefent; bot nou agane, latlie, there is fome Inglishmen put in the hous of Inquifitione, in Rome.

To my beloued brother, MR JHONE MALCOM, Minister at PERTH.

No. XXI.

FAC-SIMILE OF THE SUBSCRIPTION OF JOHN EARL OF GOWRYE.

Yours aluayis affectionat.
J. Gowrye

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

Writing Slanderous Pasquils against the King, &c.—Sedition.

Oct. 10.—FRANCES TENNENT, merchand burges of Edinburgh.¹

[THE TRIAL of Francis Tennent forms one of the series, in a black catalogue of Cases, which must leave an indelible stain on the character of King James VI. Owing to the scrupulous care adopted

¹ On the margin, 'Convictus et Suspendus.'

by the Lord Advocate to suppress these offensive papers, the precise nature of the Pasquils alluded to, cannot now be correctly determined. The likelihood, however, is, that besides 'detracting' the King and his 'maift nobill progenitouris,' and publicly branding the King as the 'Sone of Senior Davie,' (a popular *soubriquet* for his sacred Majesty,) these offensive squibs had contained matter relative to the recent *Conspiracy of the Earl of Gowrie*. Such a conjecture is fortified by the circumstance of the well-known Mr Robert Bruce and Mr John Davidson, the persons to whom the Pasquils are fictitiously addressed, having publicly asserted the story of the Conspiracy to be an entire fabrication, and that the Murder was devised and perpetrated by the King and the Court faction, to rid themselves of a powerful rival.

After a minute and careful search, the Editor has not been able to obtain copies or fragments of these papers, or to get even a tolerable abstract of their contents. The only light we obtain from any contemporaneous writer, is from that amusing and minute Chronicler, Robert Birrell; who only ventures to say; 'The 8 of October, *Frances Kennaird* hangit at the Croce, for Treafone aganis his Maieftie, for making of Plakketis and wreittis, sic as Cokkolentis.'¹ The latter part of this mysterious intimation would lead us to believe, that these pasquils contained, amongst other satirical remarks, reflections on the Queen's conjugal infidelity. It is certain, at all events, that this shot took effect; and it is equally clear, that his Majesty retaliated, in a most ungenerous and cruel manner. In the course of investigating the public Records, &c. the only notice which the Editor observed, was in the Lord High Treasurer's Accounts; where, in the month of October, the following entry is made: 'ITEM, to the Officeris of Justiciare, for sammoning of ane Assyis to Francis Tennent, xli s.'

Should the Editor, afterwards, be so fortunate as to obtain inspection of these papers, or authentic contemporaneous transcripts, amongst the MS. Collections of Thomas first Earl of Haddington, then Secretary of State, Lord Advocate, &c. or from similar sources, they shall be given in the Appendix.]

Dilatit for false, malicious and vndeutifull wryting and disperfing of fklanderous, calumnious and reprochefull Letteris, to the dishonour of the Kingis Maieftie,² his hienes progenitouris, Counsale and proceedingis; conform to the Dittay, produceit (by) Mr Thomas Hammiltoun Aduocat to our souerane Lord.

DITTAY againft Frances Tennent.

FRANCES TENNENT, merchand burges of Edinburgh, 3e are Indytit and accufit for pe fals, malicious, vndewtiefull wryting and disperfing of fklanderous, calumnious and reprochefull Lettres, to pe dishonour of pe Kingis Maieftie, his maift nobill progenitouris, counsale and proceedingis; and steiring vp of feditionne and contempt in pe hartis of his subiectis, aganis his Maieftie; in maner, substance and effect contenit in twa of 3our Lettres writtin, heirwith produceit, and vfit as ane pairt of 3our Dittay: The ane of the saidis Lettres, writtin with 3our hand, and subfcryuit be the feingzeit name of 'JAMES SYMPSONNE, SCOLLER,' and directit 'to Mr Robert Bruce,' off the dait, at Newcastle, pe xvij day of Januar, the 3eir of God ^lm.Vc.lxxxxvij 3eiris; and the vther, lykewyis writtin with 3our hand, and subfcryuit with the feingzeit name of 'JOHNE STRATHAUCHIN;' and directit vpoun the bak, 'to Mr Johne Davidfoune:' Quhilkis twa Lettres, 3e laid donne in the Kirke of Edinburgh, to the effect the samyn mycht haif fallin in the handis of the pepill; thairbye to bring his Maieftie in contempt, and steir vp his pepill to feditionne and difobedience; exprefslie aganis the Lawis and Actis of Parliament maid aganis Lefing-makeris and authouris of feditionne and infamous speicheis and writtis. Quhilk 3e can nocht deny; Lykeas, 3e haif confest pe samyn, be twa fwerall Depositionis, subfcryuit with 3our hand.

¹ Perhaps for 'Cokkoleingis,' cuckoldings.
Apr. 25, 1601; and Ross, executed Sept. 10, 1618.

² See Cases of Diksoun, Aug. 3, 1596; Cornuall,

The Aduocat produceit his Maiesteis Warrant, for persute of Frances Tennent.
The said Frances Tennent produceit certane

DEFENSES, *in writt, aganis the Dittay*; quhair of the tennour followis.

'IT is alledgeit, for þe pairt of me Frances Tennent, that na proces aucht to be gevin aganis me, in þe Criminall actionne perfewit be my Lord Aduocat contrair me; becaus I am nocht deprehendit, *in recenti crimine*, bot is convenit vpoune ane deid, alledgeit done thre 3eir sence or pairbye: And conforme to the Actis of Parliament, I aucht to be summond vpoune fyftene dayis warning, and ane copie of þe Dittay gevin me; quhilk is nocht swa done; bot I am summarlie presentit on pannell, without ony citatioune preceeding. Secundlie, gifand¹ 3our lordschip wald proceid aganis me the said Frances, nochtwithstanding the alledgeance foirsaid; 3it I aucht to haif ane copie of þe Dittay, and ane day assignit to me, to ansuer pairto; seing I am convenit on my lyffe; And gude reffoune vald I had ane day to be avyfit pairwith; And to remember the Dittay to be speciall, anent the cryme; And to allege, that speking generallie, without courfing,² is na lawfull caufe to tak ane mannis lyffe. Thridlie, alledgeit, the Law Intitulat '*Si quis Imperatori maledixerit*,'³—and produceit the buik to instruct the Law, quhilk is ane Defence to me the said Frances in this caise.'

It is ansuerit be my lord Aduocat, that the alledgeance aucht to be repellit, in respect of the Dittay contening the cryme of Seditioun aganis the Prince, quhilk may suffer na delay. As to the last Defence maid vpoun the Law, '*Si quis Imperatori maledixerit*,' the samin aucht to be Repellit, in respect of the Actis of Parliament maid anent the crymes lybellit; ordaning the authouris of sklanderous speichis and writtis aganis the Prince, his progenitouris, Counsall or proceedingis, to be puneist to the death.

The Justice findis proces: Quhairvpoune the Kingis Aduocat askit instrumentis.

The samin day, twa Letteris being produceit be the Aduocat, maid and writtin be Frances Tennent, togedder with his Depositionis; the said Frances acknowledged and confessit in jugement the samyn to be his handwrit: Quhairvpoune the Aduocat askis instrumentis; and in respect thair of, and of the ij^c and fyft Aet of the Kingis xiiij Parliament, and vther Actis thairin mentionat, protestis, gif the Assyis clenge the said Frances, for Wilfull Errorr.

The Aduocat produceit

HIS MAIESTEIS WARRAND to pronounce dome aganis Frances Tennent, in maner following:

¹ Giving or granting, that your lordship, &c.

² 'Curfing' had been originally written, and is deleted in the record, to make way for the *improved* orthography 'courfing.'

³ Codicis, lib. 9, tit. 7, l. unic. 'Quoniam si id ex levitate processerit, contemnendum est: Si ex insania, miseratione dignissimum: Si ab injuria, remittendum.'

REX,

JUSTICE, Justice Clerk and your Deputis, We greit 3ow weill. It is oure will and We command 3ow, that vponne pe sycht heirof, 3e pronunce the dome following, vponne frances Tennent burges of Edinburgh, efter his convictionne, of the forgeing and casting doune of certane seditious Pafcallis:¹ That is to say, that he fall be takyn to the mercat croce of Edinburgh, and his toung cuttit out at pe rnte; and that thair falbe ane paper affixit vponne his brow, bering, that he is convict for forgeing and geveing out of certane vyild and seditious Pafcallis, detracting ws and our maist nobill progenitouris: And thairefter, that he fall be takyn to the gallous and hangit, ay quhill he be deid:² As 3e will ansuer to ws vponne 3our offices and obedience: Quhairanent, thir presentis falbe 3our Warrand. Subferynit with our hand, At Lynlythqw, the xxij day of September, 1600 3eris.

(Sic subfribitur)

JAMES REX.

The said Frances producit ane vther Warrand, subferyuit be his Maiesteie, dispensing with the former Warrand, quhairof the tennour followis:

REX,

JUSTICE, Justice Clerk and your Deputis and Advocat, We greit 3ow weill: sforsamekill as, albeit be our vther Warrand direct to 3ow, We commandit 3ow to put frances Tennent to pe torture of pe buittis; and pairefter to pronunce dome aganis him, that he suld be careit to pe mercat croce of Edinburgh, and pair his toung to be cuttit out, and syne hangit: Nochtwithlstanding, for certane causses moving ws, We haif thoct gude to mitigat that sentence, be dispensing with pe tortoring of pe said frances, other³ in the buittis, or be cutting out of his toung; and ar content, that 3e onlie pronunce dome aganis him to be hangit, without any forder: Quhillk We command 3ow to do, be thir presentis; and to forbeir the said tortour. Quhairanent thir presentis falbe 3our Warrant. Subferyuit with our hand, At Dundie, the xxvij day of September, 1600 3eris. (Sic subfribitur) JAMES REX.

VERDICT. For the quhillk crymes, the said Frances was put to the knowledge of ane Affyis,⁴ &c.; and (they) being throughlie avysit thairwith, reenterit agane in Court, quhair thay, be the mouth of George Dowglas, callit of Bengowre, chancellor, ffand, pronunceit and declarit the said Frances to be fylit, culpabil and convict of the dittay abouewrittin, and crymes thairin contentit.

SENTENCE. The Justice-depute, be the mouth of Robert Galbraith, dempstar of the said Court, Decernit and ordanit the said Frances Tennent to be tane to ane Gibbet, belyde the mercat croce of Edinburgh, and thair to be hangit quhill he be deid; and all his movabill guidis to be efcheit and inbrocht to our souerane lordis vse, as convict of the saidis crymes.

NOTA. Immediatlie efter dome pronouncing, Mr Thomas Hamilton take vp the tua Lettres, writtis and Pafcallis, the ane direct to Mr Robert Bruce, and the vther to Mr Johne Davidfone, Ministeris; quhillkis twa Pafcallis he vald nocht haif insert in proces.

¹ Pasquils.

² This seems to be a dreadfully severe and barbarous sentence, when compared with the trivial nature of the offence; and marks a shockingly vindictive spirit on the part of the King. The case of Archibald Cornall, Apr. 25, 1601, is another of many melancholy instances of the sanguinary temper of James VI. in all instances of infringement on his kingly dignity. Although the application of the torture, and cutting out of this unlucky libeller's tongue, were ultimately dispensed with, certainly the punishment was vastly disproportioned to the measure of the offence. The recent Conspiracies may perhaps have induced the King to make some severe examples; and poor Francis Tennent was offered up as the first suitable victim. Independently of his wounded kingly dignity, the wealthy burgess's *escheat* had proved too great a bait to James's cupidity, to admit of his passing scot-free.

³ *Outther*, either.

⁴ Consisting of merchants of Edinburgh, but persons of no note.

Purchasing Poison—Poisoning Fowls.

Nov. 5.—THOMAS BELLIE, burges of Brechin, and James Bellie his sone.

Dilatit and accufit for contravening of our fouerane lordis Actis of Parliament for bying, haifing and keping of poyfoune; mixing the famyn with daich,¹ and cafting doune thair of in Jonet Clerkis 3aird in Brechin, for deſtructione of fowlis; be the quhilk poyfoune they diftroyit to the ſaid Jonet twa hennis. And being perſewit be Mr Robert Lyntoune, ſubſtitute for Mr Thomas Hammiltoune, aduocat, for the ſaid cryme, they refuſit to paſs to Affyis, bot come in our fouerane lordis will for the ſaid cryme: Quhairvpoun the ſaid Mr Robert aſkit instrumentis.

The Juſtice continewis the ſaid dyet to the morne.

Nov. 6.—Continewis *in cras*, the ſeuint of November.

Nov. 7.—Comperit Mr Johne Marſchell, Miniſter of Brechin, and pro-duceit his Maieſteis will; quhair of the tennour followis.

REX,

WE, vnderſtanding that Thomas Bellie, induellar in Brechin, is become in our will for haifing and keping of poyſone, and poyſoning thairwith of certane hennis: Thairfor we declair our will as followis, to wit; That the ſaid Thomas ſhall, within the ſpace of fourtie dayes, remove and depairt furth of our realme, and remane as a exylit and baneift perſoune furth pair of, during all the dayis of his lyffe; vnder the pane of deid: Commanding heirbye our Juſtice, Juſtice Clark and thair deputtis, to pronunce and delyuer þis our Will, iudiciallie; and cauſe regiſtrate the ſame in our buikis of Adior-nall. Subſcriuit with our hand, At Halyrudehouſe, the ſaxt day of Nouember, 1600.

(Sic ſubſcribitur)

JAMES REX.

SENTENCE. According to the quhilk, the Juſtice, be the mouth of James Lowrie, dempſter, Ordanit the ſaid Thomas, within the ſpace of fourtie dayis, to remove and depairt furth of this realme, as ane exylit and baneift perſoune, furth thair of, during all the dayis of his lyfetime; vnder the pane of deid.

Slaughter.

Nov. 12.—WILLIAME HOME of Ballicafs.

Dilatit of airt and pairt of the Slauchter of vmq^{le} M^r Alexander Dikfoune, ſone to vmq^{le} Robert Dikfoune elder of Haſſingtonne-maynis; committit the xxj day of Aprile, 1597 yeiris.

PERSEWAR, Johne Dikfoune.

THE Juſtice continewis this mater, to the ſaxt day of Marche nixtocum. 'Plegio, Wilelmo Home de Ballandyne.'

[*Mr Williame Borthuik, Juſtice-Depute.*²]

Wamesucken — Forcible Abduction — 'Rapt and Rabifhing.'

Jan. 13, 1601.—JOHNE KYNCAID of Craighous.

[THE CASE of Kyncaid of Craighous, which follows, affords a lamentable inſtance of perverſion of the ends of juſtice, while, at the ſame time, it contains a moſt amusing illuſtration of the cupidity and

¹ Dough.

² He alſo officiated on Nov. 20, 22, 25, Dec. 17, and Jun. 7.

meanness of 'King Jamie the sapient and fext.' At this period, it was by no means an uncommon thing, in Scotland, to make short courtships with heiresses and rich widows, by 'captivating' them by a *coup de main* and getting married, according to the briefest form recognized by the laws of the land; and, no doubt, some of these unceremonious courtships, in the long run, proved happy to all parties. The Laird of Craighouse, a Cadet of the ancient family of Kincaid of that Ilk, in Stirlingshire, (as were the Kincaids of Warriston, Craiglockhart, Coates, &c.) was possessed of considerable wealth. From the whole complexion of the following story, it appears pretty clear, that this luckless gallant had been regularly *trained* to carry off a certain buxom 'wedo.' It is not even alleged in the Dittay, that any violence had been done to the lady, farther than the fact of carrying her off. Perhaps it may be thought by no means improbable, that the Bailie of the Water of Leith, out of whose house she was said to have been carried, in the face of open day, was one of the parties concerned in *facilitating* the 'abduction'; for it is very unlikely, that a 'wedo' could be thus forcibly taken, (after breaking up the doors of her dwelling,) and that she could, by any ordinary force, be carried, against her inclination, through the Village of the Water of Leith, and also through a populous part of the country, in the immediate vicinity of the City of Edinburgh, to the foot of the Braid hills, where Craighouse was situated; without raising the hue and cry, and being released, ere she had been carried a couple of miles. But it is still more incredible, that the perpetrators of this outrage should, in addition to the palpable indiscretion of committing this crime in broad daylight, be such bunglers, as 'all by accident' to ride into the heart of the King's hunting party! The *machinery* of the imprisonment, trial, and subsequent proceedings, were admirably contrived to practise on the fears of the unlucky Laird; until, at length, he fell into the snare which was so craftily laid for him—he 'become in our souerane lordis Will!' It appears from the Acts of the Priy Council, that, on Dec. 18, 1600, 'John Kincaid of Craighous (was) committit to ward, within the Castell of Edinburghe; thairin to be deteuin, vpoun his awin expensis, ay and quhill he be presentit to the Justice,' &c.; and the matter, as is proved by the Books of Justiciary, was hung up till Feb. 17, 1601; all which time poor Kincaid lay 'in durance vile,' and was finally forced, by *squalor carceris*, to accept of almost any terms. This 'Will,' it may be affirmed, is *matchless!* A fine of two thousand five hundred merks is imposed, which, considering the relative value of money at that time, was an enormous sum. To wind up the transaction, the King demands the Laird's *quid* '*broune horfê*,' to quench the remainder of his wrath; and perchance the King would think, with the reader, that 'the rapt of Craighons' was the best day's sport he had had for many a year.]

Dilatit of airt and pairt of the Rapt and Reveifching of Ifobell Hutchefoun, wedow; taking of hir captiue, &c.

PRELOQUUTOUR for the pannell, Mr Johnne Drowning.

PERSEWAR, Mr Robert Lyntoun, substitute, for the aduocatt.

The quhilk Johnne Kincaid of Craighous, hauing enterit on pannell, declarit, that he will becum in his Maiesteis will, ffor taking of Ifobell Huchfoun, wedow, his hienes frie leige furth of Johnne Johnestoun, baillie of the Watter of Leithis hous, and taking of hir to his awin hous of Craighous; committit the xvij day of December last.

(Signed) JOHNE KINCAID.

DITTAY against Johnne Kyncaid of Craighous.

FORSAMEKLE as he, with conuocatioun of the personis vnderwrittin, and diuerse vtheris our souerane lordis leigis; To wit, Robert Kyncaid, sone to

Edward Kyncaid, burges of Edinburgh, Daid Watfoun, sifter-sonne to Johne Johnestoun, baillie of the Water of Leith, Johne Watfoun, his seruand, Alexander Barcar, baxter in Edinburgh, Johne Quhippo, baxter thair, and Williame Hepburne, with diuerse vtheris his complices, of his speciall convocating, causing, command and directioun, laitlie, vpoun the xvij day of December lastby-past, being bodin in feir of weir, with swordis, secreittis and vtheris wappynnis, *invasiue*, contrair the tennour of our souerane lordis Actis of Parliament, come to Johne Johnestoun, baillie of the Water of Leith duelling-hous thair; quhair Iffobell Huchfoun wedow was, in sober, quyet and peceabill maner for the tyme, dredand na evill, harme, iniurie or persuit of onye personis, bot to haife levit vnder Godis peax and our souerane lordis: And thair, be way of hamefuckin and conuocatioune of our souerane lordis liegis, as said is, violentlie and forceable brak vp the duris of the said duelling-hous, enterit thairin be way of deid, and pat violent handis in the said Iffobellis persoun, tuke hir captiue, reft, reueischit and tuke hir away with him to his place of Craighous; quhair he detenit hir, quhill his Maiestie, being vpoun the feildis, accompaneit with Johne Erle of Mar, Sir Johne Ramfay and diuerse vtheris, his Maiesteis domestik serwandis, heiring of the committing of sik ane horribill fact, directit the saidis Johne Erle of Mar, Sir Johne Ramfay and diuerse vtheris his hienes serwandis, to follow hir, and to releve hir furth of his handis; quha haifing cum to his place of Craighous, and requyring for hir relive, he refusit to grant the samyn, quhill thay manassit to bring his Maiestie about his said hous, and raise fyre thairin; and swa compellit him to releve hir: Committing thairbye, Rapt and Reveisching of the said Iffobell, Hamefuckin, Convocatioun of our souerane lordis liegis; and hes tressonable vsurpit his hienes auctoritie, in taking and violent and forceabill detening the said Iffobell his frie liege, expres contrair the lawis and Actis of Parliament; and he being airt and pairt thairof: Quhairbye he hes incurrit the panis, contenit in the said lawis and Actis of Parliament; quhilkis suld be execute aganis him, with all rigour.

Continewit to the morne, the xiiij day of Januare.

[*Mr Williame Hairt and Mr Williame Borthuik, Juslices-Deputes.*]

(Feb. 17.)—The quhillk day, Johne Kyncaid of Craighous, being enterit on pannell, appointit to heir and see our souerane lordis Will declarit, in the quhillk he become, in ane Court of Justiciarie, haldin in the Tolbuith of Edinburgh, the xiiij day of Januar, the yeir of God I^m.Vj^c. and ane yeiris, be Mr Williame Borthuik, Justice-depute, for taking of Iffobell Hutcheoune wedo, his hienes frie liege, furth of Johne Johnestoun, baillie of the Water of Leith hous thair, and taking of hir to his awin duelling-house thair; committit the xvij day of December lastwas:—Comperit Mr Williame Brois, seruitor to Alexander Maf-

ter of Elphingfloune, Thesaurer to our souerane lord, and produceit ane Warrant direct to the Justice, Justice Clark and thair deputtis, contening his hienes Will; and desyrit the Justice to pronunce and declair the said Will, according thairto; and to cause insert the samyn in the buikis of Adiornall, to haif the strenth of ane Act and decret thairof. The quhilk Warrant being red, the Justice pronunceit his hienes Will conforme to the tennour thairof, and ordanit the samyn to be insert and registrate in the buikis of Adiournall; to haife the strenth of ane act and decret thairof; with executioun of horning and poynding, to be direct aganis the said Johnne and his cawtioun, for fulfilling of the said Will; and the horning to be vpoune ane simple charge of sax dayes wairning; quhairof the tenour followis:

JAMES, be the grace of God, King of Scottis. To our Justice, Justice Clark and pair deputis, greeting. Forfamekill as Johnne Kyncaid of Craighous, is becum in our will, for pe Reveisching of Isobell Huchefoun, wedo: Thairfor, We declair our will as followis, to wit; that the said Johnne Kyncaid fall mak payment to ws and our Thesaurer, in our name, or to sik vtheris as our said Thesaurer fall appoynt and assigne, of the fowme of xxv^s (2500) merkis money of our realme: As also, that he fall deliyuer to ws and our said Thesaurer his broune horse: Commanding heirbye 3ow our said Justice, Justice Clark and 3our deputis, to cause pronunce and declair pis our will aganis pe said Johnne, judicialle, and insert pir presentis in our buikis of Adiornall, to haif the strenth of ane act and decret; that executioun of horning and poynding may be direct aganis pe said Johnne, vpoune ane simple charge of sax dayes. Subscryuit with our hand, at Halyrudchous, the last day of Januar, 1601 3eiris.

(Sic subscritibitor)

JAMES REX.

Slaughter.

[*Mr Williame Borthuik, Justice-Depute.*]

Jan. 22.—WALTER SCOT, James Scot and William Scot in Schoftanis, all brether to Robert Scot of Bowhill, and John Scot in Quholplaw, alias callit *Johnne of Bonytoune*.

Comperit Mr Allane Hammiltoune, seruitour to Sir Archebald Naper of Edynbillie, knycht, and as procuratour for the said Sir Archebald, and produceit our souerane lordis lettres, deulie execute and indorfat, purchest be Alefoune Edmeiftoune the relict, and the said Sir Archebald Naper as fader, with the brether and remanent kyn and freindis of vmq^{le} Archebald Naper, Gudeman of the Wowmet;¹ to tak fouertie of Walter Scot, &c. that thay fuld haif comperit befor the Justice or his deputis, this day and place, in the hour of cause, and vnderlyne the law for the Slaughter of the said vmq^{le} Archebald;² be the quhilkis lettres the saidis personis ar denunceit our souerane lordis rebellis, and put to the horne. The said Mr Allane Hammiltoune protestit for releve of Johnne Naper, 3ounger of

¹ Woolmot, near Edinburgh. ² George Birrel gives the following notice in his 'Diarey,' p. 52, 'The aucht of November (1600), Archebald Napier flane be fyve of the name of Scot and Thomas Crichtoun, ryding hame to his awen hous to the Wowmet.'

Merchintoun, cawtioner for productioun of the saidis lettres : quhairvpoun he askit actis and instrumentis.

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

Breaking into the Place of Boningtoun—*Chest of Title Deeds, &c.*

Mar. 31.—JAMES WOD, ffear of Boningtoun, and Williame Wod of Latoun.

Dilatit of the breking of the Place of Boningtoun, &c.

PERSEWAR.

Mr Thomas Hammiltoun of Drumcarne, Aduocat to our souerane lord, for his hienes interes.
PRELOQUUTOIRIS for James Wod, Mr Johne Ruffell, Mr Alexander King, Mr Laurence M^cGill,
Capitan Andro Gray, Robert Gray.

The Aduocat produceit his Maiesteis Warrant, subfcryuit with his hienes (hand,) ordaining him to insist in persuit, &c. ; quhair of the tennour followis.

REX,

MR THOMAS HAMMILTOUN of Drumcarne, our Aduocat, We greit zow weill. It is our will, and We command zow, that estir pe sycht heirof, ze compeir before our Justice or his deputs, in our Tolbuith of Edinburgh, the last day of March instant, in pe hour of caus ; and insist in persuit of James Wod, fear of Boningtoun, and Williame Wod of Latoun, tane and dilatit of breking of pe Place of Boningtoun, and of pe tressonabill and thifteous steilling and away-taking furth pair of, of certane ewidentis, writtis and pleneissing, pertening to Patrik Wod, eldar of Boningtoun, and to pe Lady Viane :¹ As also, for contravening of pe Actis of Parliament in heiring of Mefs :² and ressetting of Lueis,³ ane Seminarie Preist : ffor pe quhilk thir presentis salbe zour Warrant. Subfcryuit with our hand, Att Halyrudhous, the last day of March, 1601. (Sic subscritur) JAMES R.

Thairefter, the said Mr Thomas Hammiltoun produceit the Dittay following.

DITTAY *against* JAMES WOD and WILLIAM WOD.

JAMES WOD, fear of Boningtoun, and WILLIAM WOD of Latoun : Ye ar indytit and accusit : fforfamekill, as it is statute and ordenit be our souerane lordis Actis of Parliament, and speciallie, be ane Act maid in his hienes Parliament, hauldin and begun at Edinburgh, the xxix day of Julij 1^m. V^e. lxxxvij yeiris, that incaice it sal happin ony landit men to be lauchfullie and ourdourlie convict of the crymes of Thift, Ressett thairof or Stouth-reiff, in tyme cuming, thay fall incur the cryme and payne of Tressoun ; that is to say, tinnall of lyffe, landis and guidis ; as the said Act at mair lenth beris : And trew it is, that ye and ather⁴ of yow, being landit gentilmen, accompaneit with Thomas Daw, smyth in Brechin, Alexander Daw, in Carrestoun, his brother, and vtheris your complices, laitle, vpoun the xvj day of March instant, came, vnder sylence and cloud of nycht, fra the citie of Brechin, to the Place of Boningtoun, pertening to Patrik Wod, eldar of Boningtoun, fader to yow the said James ; quhair Alexander Daw schott the haill zettis⁵ of the said place, and preissit⁶ to pryfe⁷ the

¹ A strange corruption, for Ulysses-haven, in the shire of Forfar.

² There is no notice of this branch of the Dittay having been insisted on, and no farther notice is taken. *Birrel* says, in his 'Diarey,' p. 54, 'The last day of Marche, James Wood of Bonnytoun and his guid-brother Williame Wood tholit ane Affyze for being at the Mefs in Andro Napier's hous ; but continewit the executioun.'

³ Name left blank.

⁴ Either, each.

⁵ Shot or unbolted the bars and bolts, or other fastenings, of the gates.

⁶ Made a strenuous endeavour.

⁷ To prize or wrench open by means of any lever, such as a 'pinch' or crow-bar, &c.

irne zett thairof, and to enter thairin perforce: And becaus ye could nocht pryffe the said irne zett, ye prysit vp ane stanchell¹ of ane laich volt windok,² and enterit thairby to the said place: And efter your entrie, ye opnit the haill duris, and schot the lokis of all the kistis³ within the said place, and specialle of the Chartour kist, standing in the chalmers of dace⁴ of the said place, pertaining to your said fader; furth of the quhillk ye tressonablie (and) thifteouslie stall, concelis, reffett, stouthfullie rest, and away-tuik, the haill evidents being thairin; and findrie vther writtis furth of ane vther kist, within the Galrie of the said place, and opnit the haill remanent kistis and cofferis being thairin; furth of the quhillkis lykewyfe, ye tressonablie and thifteouslie stall, stouthfullie rest, reffett and away-tuik nyne pair of scheitis, foure buird-clathis,⁵ twa dosone and twa of seruettis,⁶ ane pair of blankettis of fustiane, and ane peace of vnbleicht linning claith: And efter that the haill kistis wer opnit, and that ye wer paking vp the writtis and plenneiffing foirsaid, within the saidis buird-clathis, Matho Wod in Croftis, James Wod his sone, and Danid, ane ryonner boy to the Maister of Ogilvie, came to the Place of Boningtoun to yow, and helpit to pak vp the graith: Lykeas, ye the said Williame Wod of Latoune, with Matho Wod, James Wod and Danid, and ilkane of yow, thane thifteouslie convoyit away and bure vpoun thair bakis, the haill plenneiffing aboue writtin, writtis and evidents, togidder with ane lytill coffer with writtis, pertening to the Lady Vfone, furth of the said Place of Boningtoun, towards the Place of Boschene; quhair ye wes reffett be Johne Ogilvie, seruand to the Maister of Ogilvie, and be yow the said James Wod, fear of Boningtoun, haifing borrowit the said Place of Boschene to that purpois: And vpoun the Thursday thaireftir, being the xix day of this instant, ye thifteouslie transportit and convoyit the saidis evidents, writtis and plenneiffing, fra the said Place of Boschene to the Place of Inchtur; quhair ye the said James Wod, be your self, and vtheris of your causing, reffett the famin: And swa, ye and ather of yow ar art and pairt of the thifteous breking of the said Place of Boningtoun, and of the tressonabill and thifteous steiling, concealing, away-taking and stouth-reiff, furth thairof, of the plenneiffing, writtis and evidents aboue writtin, pertening to the said Patrik Wod of Boningtoun, fader to yow the said James, and to the said Lady Vfone; and of the reffett thairof: Of the quhillkis crymes, ye, being landit gentilmien, and being ordourlie and lanchfullie convict, ye and ather of yow hes incurrit the cryme and pane of Tressoun, viz. tinfall⁷ of lyffe, landis and guidis: To the takin⁸ that ye and ather of yow ar art and pairt of the saidis crymes, ye haif confest the famin be your Depositionis; as the famin, subseruit be your handis, beris.

The famin day, the Laird of Latoune, efter reding of the Dittay producit be the Aduocat, declarit that he wald becum in the Kingis Maiesteis Will for the famin: Quhairvpoun the said Mr Thomas Hammiltoun askit instrumentis.

The parteis, requiring that this mater mycht continew to the morne, THE JUSTICE repellis, and ordanis proces.

The preloquitouris for James Wod desyrit that thay may haif licence to propone declinatouris aganis ony Assessor that he sall speir att.—It is alledgeit be the said James Wod and his preloquoutouris, that na proces can be led aganis the said James; becaus he is challangeit vpoun crymes of Tressoun, and that he is nocht summond vpoun fourtie dayes, to vnderly the law for the said cryme, quhillk aucht to be; in respect he is nather tane in *flagranti crimine*, nor putt

¹ Stancheon.² The window of a low vault or cellar.³ Chests.⁴ The presence

chamber, or room of state. Properly speaking, it is that part of a hall which was raised higher than the rest; the place of honour. ⁵ *Chawmer o' dais* is still used to signify a parlour, in remote parts of the country. ⁶ Table-cloths. ⁷ Servets, towels, or table napkins. ⁸ Loss; from the

verb to *tyne*, or lose.⁸ In token, evidence, or proof.

to the horne.—To the quhilk it is anfuierit, that it is nocht necessar to warn him vpoun fourtie dayes, becaus he is accusat of Tressfoune, and brocht fra the Kingis waird to the bar.

THE JUSTICE findis proces, and repellis the alledgeance; quhairvpoun my Lord Aduocat askit instrumentis.

It is alledgeit, that the Dittay is nawyis relevant, becaus it is difconforme to the Act of Parliament; becaus the Act of Parliament is anent commoun thift, reffett of thift, or stouth-reiff; and trew it is, that the propositioun of the Dittay is nocht sa fett doun, but only vpoun simpill thift; quhair that the wordis of the Act of Parliament is extendit only to commoun thift, commoun reffett, commoun stouth and reiff.—The Aduocat anfuieris, that the alledgeance aucht to be repellit, in respect of the Actis of Parliament and Dittay; speciallie, feing thair is na thing objectit aganis the tua poyntis of Dittay, anentis the reffett of thift and stouth-reiff, quhilkis ar baith feuerallie (*separately*) releuant.—It is anfuierit be the defender, that thay wordis of the Act of Parliament, anent reffett of thift, stouth-reiff, man (*must*) be *eiusdem nature* with thift; that is to say, commoun thift: And forder, the haille strenth of this Dittay, sa far as is qualefeit aganis Bonningtounne, is qualefeit vpoun the alledgeit actual deid of thift, alledgeit committit be him, quhilk of all necessitie man be, be the Act of Parliament, commoun.—The Aduocat anfuieris, that the wordis of the Act of Parliament ar consaunt dif, and ewerie poynt thairof is relevant, lyke as the pannell is perfewit for the thift, reffett of thift and stouth-reiff.—It is anfuierit be the pannell, that that word 'commoun' is vnderstand to be repetit in ewerie pairt of the dif ; and as simpill thift is nocht Tressfoune, *multo minus* is simpill reffett or simpill stouth-reiff, Tressfoune; for thay man be *eiusdem nature*.—The Aduocat alledgis, that the said alledgeance aucht to be repellit, in respect of the wordis of the Act of Parliament.

(2.) Forder, it is alledgeit be the defender, that the Dittay is nocht relevant, becaus it condiscendis nocht quhat landis the excipient hes; for, without it wer speciallie condiscendit vpoun, the Dittay can nawyis be relevant to infer Tressfoune: And forder, gif the Aduocat wald condiscend, we mycht and wald allege, that gif ony Infeftment the defender had of thay landis, he wes, lang before the alledgeit committing of the cryme lybellit, denudit of thais landis, be Decreit of Redemptioun obtenit att the instance of his fader; and we declair that the alledgeance is only proponit to elide that pairt of the lybell concerning Tressfoune; vnder protestatioun, that he nawyis grantis the cryme lybellit.—The Aduocat anfuieris, that the alledgeance aucht to be repellit, in respect of the Dittay; for gif he haif land, the conclusiounne anent the Tressfoune standis relevant; and gif he want land, the rest of the Dittay will tak his lyffe and all his gudis.—It is anfuierit,

that my Lord Aduocat man say *positiue*, that he is landit, and condiscend quhat land he hes; ffor it man be lybellit and cognoscit be Assyise, quhidder he be ane landit gentilman or nocht; and ane presumptioun can nocht be put to ane Assyise, bot (*without*) ane affirmatioun and ane speciall condiscending vpoun quhat land he hes; and the partie man be hard, to propone his defensis aganis the samin.—The Aduocat repetis his former answuer.

(3.) Forder, of all necessitie, the Aduocat man condiscend vpoun the names of the landis, becaus gif he wald condiscend, that same condiscending wald be ane sufficient exceptioun to the defender, to purge him of the hail Dittay; be reasoun that the euidentis, alledgeit stollin, will be fund to be the euidentis of the landis quhairof he salbe condiscendit to be heretour; and swa, can nawyis be thift; for ane man can newir be callit and convict of thift, for steilling of his proper guidis; that is contrar to the definitioun of thift, quhilk is *contractatio rei aliene, invito domino*.—The Aduocat repetis his former answuer and the Dittay.

(4.) ITEM, it is allegeit that the Dittay is nocht relevant, in respect that it condiscendis nocht, quhat euidentis and of quhat landis thay ar of; quhilk man be condiscendit vpoun, in respect the defender wald sufficientlie purge the hail Dittay and away-taking thair of, be schawing that the saidis euidentis wer his awin proper euidentis.—The Aduocat repetis the Dittay for answuer.

(5.) ITEM, it is forder allegeit, that this Dittay can nocht be putt to the knowledge of ane Assyse, becaus it man ressaue ane Ciuile precognitioun, quhilk is nocht¹—The Aduocat answueris, that thair is na Ciuilitie in Tref-soun, and the allegiance mereitis na answuer.—The defender sayis, he will say na mare at this tyme.

(6.) ITEM, anent the seruiettis, *non relevat, et est res parvi momenti*; and *per se* can work na thing.

INTERLOCUTOR of Relevancy. THE Justice findis the Dittay relevant; and remittis the samin to the tryell of ane Inqueist, nochtwithstanding of the hail alledgeances aboue writtin, proponit for the pannell; and to be verefeit to the Inqueist, as accordis.

Vpoun the quhilk Interloquoutour, the Aduocat askit instrumentis.

ASSISA.

Sir Patrick Creychtoun of Strathuird,	Mr Patrik Balfoure of Pitcullochit,	Johne Mathesoun of Brochtounne,
Patrik Hepburne of Riccartounne,	James Richefounne of Smetounne,	Alexander Fairlie of Braid,
Patrik Leviingtounne of Saltcoittis,	Johne Houstounne of Lany,	Patrik Johnnestounne of Elphing-
George Lyle of Stanypeth,	Johne Fairlie of Comeistounne,	flounne.
Mr Patrik Hepburne of Smetounne,	Willame Congiltounne of that ilk,	

The Aduocat askit instrumentis of the swering of the Assyse; and that my Lord Justice will nocht ressaue the Laird of Latounne in will; bot will put him to ane Assyse. The Aduocat (also) askit instrumentis of the reding of the Dittay to

¹ Left blank.

the Assyse; and of the productioun of the Act of Parliament; and of the productioun of the foure Depositiounis, maid and subseruyit be the pannell; beirand the haill contentis of the Dittay.

The Defender acceptis the Dittay, the haill verificatiounis and Judgeis Interloquoutour, and repetis the haill allegeancis proponit ofbefore, to be cognosceit be the Assyse; And alledgis, to the Assyis, that seing the Act of Parliament is ane pairt of the Dittay, and the fundament and ground of the famin; and seing, the haill Dittay and verificatioun consistis vpoun thift; in caise the Assyse find nocht the pannell giltie of Commoun Thift, protestis, that he be chargeit of the said Dittay and Act of Parliament; and ane cryme or poynt of Thift, of the law and practik of this realme, man newir be estemit Commoun Thift; and ane persoun can newir be convict of Commoun Thift, for ony ane alledgeit poynt or cryme; ffor he, of the law and practik of the realme, is estemit ane Commoun theif, quha is convict of thre feuerall poyntis and crymis of Thift; quhilk is nather qualescit in the Dittay nor verifeit. And forder, the Defender takis instrumentis, that thair is na thing produceit to verifie him to be ane landit gentleman; and thairfore, of all necessitie, man be claigeit of all poyntis of Tressoun; ffor except it had been relevantlie qualifeit in the Dittay, and sufficientlie instructit, that the Defender wer ane landit gentilman, Tressoun could nather be inferrit nor concludit vpoun that dittay. Forder, the defender alledgis, that the remanent of the crymes contenit in the said Dittay, for the alledgeit away-taking of the euidentis and the Confessioun maid be him of the famin, is na cryme of Thift; haifand consideratioun, that the euidentis is confessit to appertene to his fader, to quhome he is eldest sone and apperand air; and the away-taking of his faderis euidentis, can newir import Thift; haifing consideratioun, that his fader, quhom-fra the euidentis is alledgeit tane, is na persewar nor complenar; and thair is na actioun that can be compitent for the awaytaking thair of, bot¹ only ane simple actioun of spuilzie; ffor that wer ane dangerous preparatiue² to the haill realme of Scotland, that quhen ane sone offendis his fader, ather be alledgeit away-taking of his euidentis, horse or vther graith, the fader newir complenand nor fyndand falt with the doing of the said deid, that the committeris false be convict of Tressoun or Thift, at the Aduocatis instance.

To the quhilk, it is ansuerit be the Aduocat, that the Assyse aucht nawyis (to) respect the alledgeance proponit, in safar as this Dittay is consait aganis William Wod of Latoune; becaus he nather proponis nor adheris to itt, bot hes ratifeit his Depositiounis, and hes becum in his Maiesteis will, for the haill poyntis of the Dittay; in respect quhair of, in cais the Assyis onywyis clange,³ protestis for Wilful errour. And in safar as the alledgeance is proponit for Boningtonne,

¹ Unless, excepting.

² Precedent, example.

³ Cleanse, or acquit.

the fyrst pairt, anent the Commoun Thift, nawyis concernis the Affyis, bot the dittay foundit vpoun the Thift, Refsett of Thift and Stouthreiff, specialle sett doun in the Dittay, in ewerie speciall poynt thairof, is fund relevant be my Lord Justice; and the consideratioun of the relevancie of the famin, only pertenis to the Judge, and nawyis to the Affyis, quhais dewtie is only to try, declair and determine, gif the fact and deid contenit in the Dittay to haif bene done and committit be the Pannell; and gif thay be giltie thairof, thair giltienes of the quhilk Dittay being manifest, be thair awin Depositionnis, subscryuit with thair handis and red in thair presens before the Affyis, thay nor nane of thame can pretend ony ignorance thairof: And quhair it is alledgeit, that it is nocht verifeit that the said James Wod is ane landit gentilman, that aucht to be repellit, in respect of the notorietye that he is eldest sone and apperand air to the Laird of Boningtoun, and fear of the said lewing; as his subscription of his awin Deposition, producit, beris: Nether is it necessar that the Aduocat, perseward for his Maiesties interes, sal verifie, be writt or production of the pannellis evidents, that he is ane landit gentilman; quhilk wer impossibill, the writtis being in the defenderis awin handis; quhilk, possiblie, can nocht be presumit to be habill to be recoverit be the persewar; bot in crymes of Tressoun, fyve yeiris possession of heretage, be the rebell, is *loco tituli*, and makis the rebell to be repute to haif bene heretabill proprietor of the saidis landis, and the heretabill rycht of the famin to befall to the King, be sforfaltour. And it is of veritie, that the defender hes posselt the Landis of Birnie, as heretabill proprietour thairof, be the space foirsaid: in respect of the notorietye quhairof, and of his awin affirmatione foirsaid, it being manifest and notour that he is ane landit gentilman, and that he hes committit the haill crymes contenit in the dittay, as is cleirlye verifeit be the Depositionnis producit, and Latounis Confessioun, and becoming in will; in caise that the Affyse clange him of ony of the pointis libellit, protestis for Wilfull errorr aganis the said Affysouris, and all payne that can follow thairvpone. As to the last pairt of the alledgeance, that the fader, to quhome the evidents and geir pertenis, persewis nocht, and that the fact is committit be his eldest sone and apperand air; answers, that albeit the partie grewit keipis sylence and persew nocht, the Aduocat hes sufficient interes, be exprefs Act of Parliament, to persew all crymes, without concurrence of the partie: Lykeas, the persewar acceptis that pairt of the alledgeance, that the deid contenit in the Dittay is committit be the Laird of Boningtounis eldest sone, quhilk beris ane judicall Confessioun of the tressonabill fact contenit in the Dittay, and sand be interloquontour of the Judge to be ane tressonabill cryme.

It is answert, that the Dittay and ewerie heid thairof aucht to be verifeit; and quhair it is alledgeit, that he man be persewmit ane landit gentilman, becaus he

subscrieves 'fear of Boningtoun,' that argument can work na thing, becaus na thing can mak ane man fear, bot Chartour and feasing; and forder, gif that may verifie, *ergo*, it is confest be the perfewar, that the evidētis tane away ar the defenderis awin proper rychtis, and sa can nocht be Thift: As to the Act of Parliament, the samin militatis na thing in this caice, ffor in the caice of the Act of Parliament, it is the cryme that makis the man tratour; and this cryme *pe*, *et sua natura* is na Treffoun, except it be committit be ane landit gentilman; quhilk man (*must*) be verifeit.

VERDICT of the Assise.

QUHILKIS personis of Assyis, being chosin, and the said JAMES WOD, fear of Boningtoun, and WILLIAM WOD of Latoune, being accusit oppinlie in judgment, be reding of þe said Dittay, &c., thay removit altogidder furth of Court, to the Counsal hous of the said Tolbuith; quhair thay, being convenit, electit and chuse the said James Rychardfoune of Smetoune Chancillar, and reasonit and votit vpoun the poyntis of the said Dittay; and efter lang deliberatioun, being throwchlie auisit thairwith, thay reenterit agane in Court, and thair, be the mouth of the said James Rychardfoune Chancillar, all in ane voce, stand, pronunceit and declarit the said *Willame Wod of Latoune* to be fyllit, culpabill and convict of the Dittay aboue writtin, and haill crymes thairin contentit; in respect of his Depositionnis, and that he become in his Maiesteis Will thairfore: AND als, the said persones of Assyse, for the maist part, be the mouth of the said James Rychardfoun of Smetoun Chancillar, stand, pronunceit and declarit the said James Wod, fear of Boningtoun (as fear of Boningtoun, quhilk he confest to, be his awin subscriptione at his Depositionnis) to be fyllit, culpabill and convict of airt and part of the thifteous breking of the Place of Boningtoun, entering thairin perforce, accompaneit with the persones contentit in the said Dittay, and of opning of the haill duris and lokis of all the kiftis within the said Place; and speciallie, of the Chartour-kift, standing in the chalmer of daice of the said Place, pertening to Patrik Wod of Boningtoun his fader; and of the thifteous steilling, conceling, stouthfullie reifing, reffetting and away-taking furth of the said kift of the haill evidētis being thairin, and findrie vther writtis furth of ane vther kift, standing within the galrie of the said place; and opning of the haill remanent cofferis and kiftis being within the said place; and of the thifteous steilling, stouthfullie reifing, reffetting and away-taking furth thairof, of nyne pair of scheitis, foure burdclathis, twa dosone and twa feruettis, ane pair of blanketis of fustean, and ane piece of vbleacht linning clait, pertening to the auld Laird of Boningtoun; and of ane coffer with evidētis, pertening to the Lady Vfsane; committit vpoun the xvj day of March instant, vnder sylence and cloud of nycht.

'Hary Stewart of Craigiehall and George Dowglas of Langnudrie, amerciati in þe pane of ane hundred markis' each; for not appearing 'to haif past vpoun the said Assyse.'

SENTENCE. Apr. 1. THE quhilk day, JAMES WOD, fear of Boningtoun, and WILLIAM WOD of Latoune, being presentit on pannell, to heir and sie dome pronunceit aganis thame, as thay that war lawfullie and ordourlie convict and fund guiltie, be ane Assyis, in ane Court of Justiciarie, haldin in the Tolbuith of Edr the last day of Marche lastbypast, be the said Justice-depute, of airt and part of the thifteous breking of the place of Boningtoun, &c. as at lenth is contentit in thair Convictionis: Thairfoir, the said Justice-Depute, according to the tennour of the Act of Parliament, hes fund, be the Convictione of the said James Wod, as feare of Boningtoun, and the said William Wod of Latoune, be ane Assyis, of the crymes of thift foirfaids, that thay and ather of thame hes incurrit the cryme and pane of Treffoun, viz. tynfall of lyffe, landis and guidis: ffor the quibilk cause, he, be the mouth of Robert

Galbraith, dempstar of Court, hes Ordanit and Ordanis thame and ather of thame to be tane to ane gibbet, standand be-eist the mercat-croce of Ed^r, and thairvpounne to be hangit, quhill thay be deid :¹ And all thair landis, heritageis, takis, fleddingis, rowmes, possessionis, coirniss, cattell, guidis and geir to be forfaitit and inbrocht to our souerane lordis vse, as convict of the saidis crymes.²

[*Mr William Borthuik, Justice-Depute.*]

Breaking into the Place of Bonningtoun—Stealing Title Deeds, &c.

Apr. 3.—THOMAS DAW, smyth in Brechin, and Alexander Daw, smyth, his brother, in Correstounne.

Dilatit of airt and pairt of the thifteous Steiling, conceling, ressetting and away-taking of certain eidentis and writtis, with pleneiffing, furth of the Place of Bonningtoun ;³ with certane pleneiffing, scheittis, blankettis and buirdclathis ; and ane coffer, with writtis, pertening to the Lady Viane.

The Aduocat takis instrumentis of the Confessiounne of the pannell, of thair being at breking of the Place of Boningtounne ; and that Thomas Daw gat thre crownis, and Alexander Daw gat ane croune, for thair panis : And protesting, gif the Assyis clenge, for Wilfull errour : Repeittis lykewyis the Depositionis of Latounne and Boningtounne ; quhillkis ar produceit to the Assyis.

VERDICT. The Assyis,⁴ be the mouth of Thomas Somervell, merchand in Ed^r, chancellor, stand, pronounceit and declarit the saidis Thomas Daw and Alex^r Daw to be flylit, culpabill and convict of airt and pairt of the thifteous steling, conceling, ressetting and away-taking of the saidis writtis and eidentis, &c.

May 7.—The Justice-depute, be the mouth of Robert Galbraith, Dempstar, ordanit the said ALEXANDER DAW to be tane to the gibbet on the Castle-hill, and thairvpoun to be hangit⁵ quhill he be deid ; and all his movabill guidis to be escheit and inbrocht to our souerane lordis vse, as Convict of the saidis crymes.

¹ It is probable that great interest was made for the young Laird of Bonningtoun. The sentence was not carried into execution till Apr. 27 ; under which date, Robert Birrell records as follows :— ' James Wood of Bonnytoun beheidit at the croffe, at 6 houres in the morninge, for breaking the Place of Bonnytoun, quhillk apparteneit to hes father, and sould haif beine hes awen.'

² Since the above was written, the Editor has found the following interesting notice :— ' UPON Moun-day pe 27 of Aprile (1601), THE LAIRD OF BONYTOUN was beheaded at pe Croffe of Edinburgh, betwixt six and sevin in the morning, be a Commission from the King, directed to pe Bailliffes of Edinburgh, tymously in the mornig ; for howbeit great intercession was made be Huntly, Erroll, Hume, and operis, yett pe Ministers were instant with the King, to have a prooffe of his sincerity. He died ane obstinat Papist, ever looking for pardon till the last gasp. He pretended he suffered for the Roman Catholic Religion, but it was noe point of his Dytay ; only the steeling of his father's evidences and writtes was layed to his charge. LATOUN gatt Remission, be pe moyen of Courttearis.'—*Caldewood's Church Hist.* MS. Adv. Library.

³ In an abstract of their Dittay, which is inserted, it is stated, that they, ' accompaneit with the Wodis,' &c. ' vnder sylence and cloude of nycht, come to pe Place of Boningtounne, and pair thifteouslie clam ye barnekyn wall with ane ladder,' &c. ⁴ Composed of ' merchandis' and ' burgesis' of Edinburgh. ⁵ Birrell says, ' The 7 of Maij tua men wer hangit on the Castell Hill, the ane callit William Crichtoun, for thift ; and the uther, Alexander Smythe, dager-maker, for opining of the lockis to the Laird of Bonytoun.'

Perjury — Hearing of Mass, &c.

Apr. 24.—MR WILLIAM BARCLAY, brother to Sir Patrik Barclay of Towie, (Tollie) knycht.

Dilatit of Periurie; and Heiring of Mefs, contrair the Actis of Parliament.

Comperit David Hairt, seruitour to my lord Thesaurer, and produceit the lettres deulie execute and indorsat, purchest be Mr Thomas Hammiltoun, his hienes aduocat, aganis Mr Williame Barclay, for the crymes within contenit. ‘Continewit *in cras*.’

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

Apr. 25.—DITTAY. THAT quhair, it is expresse provydit, statute and declarit, be Act of Parliament, maid in the tyme of his hienes derrest mother, vmq¹⁰ Marie Quene of Scottis, that the panis of Periuirie salbe to the personis committeris thairof, confiscatioun of all thair guidis movabill, warding of thair personis for yeir and day, and langer, induring hir Maiesteis will; and to be infamous personis, never abill to brnik office, honour, dignitie nor benefice, in tyme to cum: And als, it is statute and ordanit, be Act of Parliament, maid in his hienes Parliament, haldin and begun at Ed^r the viij day of Junij the yeir of God J^m.V^e.lxxxxiij yeiris, that in all tyme cuming, all Wilfull Heraris of Mefs, and conceillaris of the samyn, be execute to the death; and thair guidis and geir escheit to our sowerane lordis vsf, sa fone as thay fall be fund gyltie and convict thairof, or declarit fugitive for the samyn, befor the Justice-generall and his deputtis, or the lordis of his hienes Privie Counsale; as the saidis Actis, at mair lenth beris. AND trew it is, that the said Mr Williame Barclay, haifing, in pe moneth of . . . lastbypast, sworne and subscrynit befor the Presbyterie of Ed^r that he wes of the Religioune presentlie professit within this realme; nochtwithstanding thairof, vpoun the xx and xxj dayes of Marche lastbypast, he assistit and hard twa Messis, quhilkis war said be Mr Alex^r M^cQuhirrie, ane Jesueit Preist, within Andro Naperis duelling house in Ed^r; be the heiring quhairof, and assistit thairto, he hes professit and sworne the contrair Religioune; and sua, hes committit the cryme of Periuirie, and incurrit the pane thairof abouewrittin, contenit in the said Act of Parliament: Lyke as, he, be the wilfull heiring of pe saidis twa fenerall messis, at the twa fenerall tymes *respective* abouewrittin, hes incurrit the panis contenit in the vther Act of Parliament, maid anent Wilfull heraris of Mefs, viz. the pane of death and confiscatioun of all thair movabill guidis.

The said Mr Williame refusit to abyde the tryell of ane Affyis; bot become in his Maiesteis Will for the samyn crymes: Quhairvpoun the said Mr Thomas Hammiltoun askit Actis and instrumentis.

[*Mr Williame Borthuik, Justice-Depute.*]

May 2.—The said Justice-depute produceit his Maiesteis Warrant, concerning his hienes Will; quhilk he pronunceit and oppinlie red in judgement; quhairof the tennour followis.

JAMES, be pe grace of God, King of Scottis. To our Justice, Justice Clark and his deputis, greting: fforfamekill as Mr Williame Barclay, brop^r to pe Laird of Towie, is becum in our will, in ane Justice Court, baldin in our Tolbuth of Ed^r, vpoun pe xxv day of Apryle lastbypast, for Periuirie, and heiring of Mefs, contrair pe tennour of our Actis of Parliament: Thairfor, We declair our will, as followis, to wit: ffor pe Periuirie, We ordane pe said Mr Williame to be declarit Infamous, and nocht habill, now, to brnik office, honour, dignitie or benefice, within our realme: And for pe heiring of Mefs, we decerne and ordaine him to be Baneist our realme, during all pe dayis of his lyfetime, and never to returne within pe samyn, vnles, be satisfactioun of pe Kirk, he obtene our speciall Licence to pat effect; vn-

der pe pane of deid : And that he remoue or depairt furth of our realme, within fourtie dayis nixt efter his libertie furth of his presert waird. Commanding, heirfoir, 3ow, our said Justice, Justice Clark and 3our deputtis, to pronunce and deliuer pis our will, iudiciallie, aganis pe said Mr Williame : And pair-estir, caufe commit him to waird agane, within our Castell of Ed^l, pair to remane quhill the forder knawledge of our will and plefour towards him. As 3e will anfuere to ws pairvpoune : Quhairanent pir presentis falbe 3our Warrant. Subscriuit with our hand, At Dalkeith, the last day of Apryle, and of our regne pe xxxiiij 3eir, 1601.

(Sic subscritur)

JAMES REX.

Quhill being oppinlie red and declarit in judgment, the Justice-depute interponit his authoritie thairto.

[*Mr Williame Haert, Justice-Depute.*]

Exhibiting the King's Portrait, on the Public Gibbet, &c.

Apr. 25.—ARCHEBALD CORNUALL, one of the toune officiariis of Edinburgh.

[THE following Trial is perhaps unparalleled in the Annals of Criminal Jurisprudence, in any country; and cannot be read without exciting feelings of the utmost disgust and indignation, at the cold-hearted and vindictive, nay, sanguinary spirit, which dictated the pronouncing and carrying into execution of so awful a sentence, for an offence of so trivial a nature, probably originating in pure accident or inadvertency, or at most in a foolish jest of the officer, who would, no doubt, for his own interest, as well as that of his employer, in making a sale, endeavour to dispose of the picture to the best advantage. The Dittay only accused him of '*preissing* the Dittay to haif hung the fame' upon the gallows; but that he was prevented from doing so by the people.

It is evident that the King instigated these disgraceful proceedings; and it is equally certain, that the unhappy victim of this most tyrannical act suffered death accordingly. The '*Affile*' bears all the marks of a selected '*set of worthless and pluckless wretches.*' No less than *eight* of their number are Tailors, who have at no time been famed for extraordinary firmness or independence. The veracious Robert Birrell gives the following account of the matter. '*The same day (Apr. 27), Archibald Cornell, toune officer, hangit at the Crosse, and hung on the gallows 24 houres : And the caus quhairfore he wes bangit : he being an unmerciful, greidie creatur, he poyndit ane honest manis hous, and amongst the rest, he poyndit the King and Queins picturis ; and quhen he came to the crosse to compryse the same, he hngg thame up upone twa naillis on the same gallows, to be comprysit ; and thai being sene, word 3ead to the King and Queine, quhairupone he wes apprehendit and hangit.*' If Birrell is correct with regard to date, (which it would appear he is,) it makes the matter still worse, so far as the King is concerned; for it puts violent and sudden rage out of the question. The '*treffonabill fact*' took place upon the 15th day of April; so that the trial, condemnation, and execution must have proceeded on cruel, deliberate, and malicious determination: The proceedings before the Justiciar are dated Apr. 25; and the poor town officer did not suffer death till Apr. 27.

Unfortunately for the character of King James VI. this is by no means a solitary instance,—witness the Cases of John Dickson, in Lyne, Aug. 3, 1596; Francis Tennent, Oct. 10, 1600; Thomas Ross, son of Ross of Craigie, in 1618 (executed Sept. 10), and many others. Another very remarkable instance of the arbitrary and despotic character of James, in the month of October the same year, is given in the new and accurate edition of Lord Hailes' Annals, 8vo, Edinburgh, 1829, Vol. iii. p. 106, and which is reprinted here, in illustration of the above remarks. The object of this latter act of tyranny is abundantly clear. Mr Peter Narne was a victim offered up to the English nation, at a time when the King was plotting with Cecil, &c. to secure his succession to the throne of Elizabeth; as a foretaste, doubtless, of the protection he would afford them against every encroachment of his Scottish subjects. There is no doubt that this unfortunate man suffered, for his supposed *intention to murder* ;

as the torture was directed to be used, till he should confess; and then the Judge was directed to pronounce sentence of death!

So extraordinary is this Case of Archibald Cornwall, in all its bearings, that the Editor deemed it requisite to investigate the matter, as minutely as his opportunities permitted. The result of these inquiries are appended, and left to the reader's consideration, without farther observations.]

Dilatit of the ignominious Dishonouring and Defaming of his Maiestie, in taking of his Portratour, and laying of the samyn and setting thair of to the stowpis and vpberaris of the gibbet, preiffing to hing vp the samyn thairvpoun.

PERSEWAR, Mr Thomas Hammiltoun, Aduocat to our Souerane Lorde.

ASSISA.

Patrick Acarfane, wrytter,	Johne Blak, tailzeour thair,	Edmond Smyth, tailzeour ('in the Cannogait,')
William Tailzeour, deacon of the	Johne Horne, fruitman in Edr,	
tailzeouris in the Cannogait,	Johne Pillons, cordiner thair,	James Sympfoun, tailzeour thair,
Johne Rankene, tailzeour, burges	James Aikman, tailzeour thair,	William Bauchop, wryter thair,
of Edinburghe,	David Bennet, tailzeour thair,	Alexander Lyell, lkyner thair,
Patrick Somervell, burges thair,	Adame Carketill, tailzeour thair,	Patrick Mc'Gregour, fruitman.

The Aduocat takis instrumentis of the Admissioun and fivering of the Affyis.

The Aduocat protestis for Wilful Errour, in case they acquitt; in respect of the notorieitie of the deid, knawin to thamefelffis.

The quhilk day, Archibald Corneuell, ane of the toune officeris of Edinburghe, being enterit on pannel, dilatit, accusit and persewit, be dittay, producit be Mr Thomas Hammiltoun of Drumcarne, aduocat to our fouerane lord, for the trefsonabill and ignominious dishonouring and defaming, sa far as in him lay, of our fouerane lord the Kingis Maiestie, be taking of his hienes portratour to the public mercat place of this burgh, and thair schamefullie and wyildlie (*vilely*) setting the samyn to the stowpis and vpberaris of the gibbet; and in mair, and manifest and trefsonabill contempt and dishane of his Maiestie, he stuid vp vpoun ane buird or furme, besyde the said gibbet, and cald ane naill thairin, sa heich as he culd reiche it, and listit vp his hienes portratour foirfaid, and held the samyn vpoun the gibbet, preiffing to haif hung the samyn thairon, and to haif left it thair, as ane ignominious spectacle to the haill world; gif he had nocht bene stayit, be the just indignatioun of the haill people, minassing to stane him to deid, and pulling him perforce fra the said gibbet, to stay his trefsonabill fact foirfaid; committit be him, vpoun the xv day of Apryle instant.

VERDICT. The Affyis, be the mouth of the said Johne Rankene, chancillar, ffind, pronounceit and declarit, for the maist pairt, the said Archebald Corneuell to be fylit, culpabill and convict of the trefsonabill setting of his Maiesteis portract to the tramme of the gibbet; and presenting of the samyn, to be hung heich vpoun ane nail in the said gibbet.

SENTENCE. For the quhilk cause, the said Justice-depute, be the mouth of Robert Galbraith, dempstar of the said Court, decernit and ordanit the said Archebald Corneuell to forfalt lyffe, lands and guidis, and to be tane to the said

gibbet, quhairvpoun he preiffit to hing his Maieftis portratour, and thairon to be hangit quhill he be deid; and to hing thairvpoun, be the space of xxiiij houris, with ane paper on his foirheid, contening that vyld cryme committit be him.

(1.) NARRATIVE taken from *Wodrow's MSS.*¹

IN the said moneth of Aprile (1601), one of the officeris of Edr, having rowping at the Croce of Edr certane poindit geir, among the quhillk the Kingis picture wes; and to the effect that the bred² and picture micht be the better sene (the officeris stand being hard befye the gibbet) vndiscretlie and rashelie the officer wes calling³ in ane naill in the gibbett, to haue hung vp the bred, as wes reportit, and yit hang not vp the famin, bot ceiffit, being admonischet be sum of the pepill standing by, that it wes not weill done to put vp any naill to the effect foirfaid: Allwyse, vpoun the said presumptionn, the officer wes challengit and put in wairde, within the tolbuith: And the Kingis Maieftie, being informit thairof, causit examine certane witneses thairvpoun; and thairefter the said Officer wes put to ane Assise, and convict vpoun the said presumptionn; and dome gevin vpoun him, to be hangit xxiiij houris, with ane paper on his foirheid, declairing the said caus. Lyke as, he wes sua done with, vpoun the said xxvij of Aprile, about fax houris at evin; and sufferit to hing on the gibbet quhill the next day, at evin, at the same time: And thaireftir, the gibbet wes takin down and brunt with fyre.

(2.) ACCOUNT taken from *Calderwood's MS. Church History.*

Apr. 27, 1601.—UPON the same Mounday, at sex houres at even, ane Officer of Edinburgh, named Archibald Cornwall, was hanged upon a gibbet, at pe Croffe of Edr. At pe rowping of some poynded gear, at pe Croffe of Edinburgh, finding a broad wherein was the King's picture, and standing hard be-side the gibbett, undiscretely and rashly was driveing in a nail in the gibbett to hing up the board, as was reported: bnt being admonished by some of pe people standing by, he ceased and hanged it not up: Alwayes, upon the same presumption, he was putt in waird, in the jayle. The King, being informed, caused examine certaine witneses; and thereafter, he was putt to ane Assise, convicted and condemned to be hanged, and to hing twentie four houres, with a paper on his forehead: which was done; and thairefter the gibbett was taken down and burnt with fire.

(3.) EXTRACTS from THE RECORDS of the Town Council of THE CITY OF EDINBURGH.

Apr. 17, 1601.—FOR the honour and reverence thai aught to our soveran lord, his darrest spous and children; Statutes and ordanis, that nane of thair Maieftis and graceis pictures and portraits be poyndit, rowppet or comprysket, for any maner of caus, publictlie or privatlie, heirefter: Dischargeing thair officeris and seriantis of the sam and of thair offices in that pairt, vnder the payne of tynfall of thair said offices, and wairding of thair persounis for the spaice of twenty dayes.

(Apr. 22.)—The Bailleis, deyne of gild, thesaurer, and maist pairt of the Counfall being convenit, appoyntis George Todrig baillie, David Williamfoun and Patrik Sandelandis, to pas to his Maieftie, presentlie at Dalkeyth, and to inform his Maieftie of the trewth, anent the offence confaet be his Maieftie aganis Archibald Cornuell, officer, for the alleget hinging of his Maieftie and spous picture at the gibbet, in ane rowping.

(May 1.)—Thomas Hammiltoun appointed in place of 'vmq^{le} Ar^d Cornuell.'

(4.) COMMISSION OF JUSTICIARY to *Robert Lord of Roxburgh, for the Torture, Trial and Execution of Mr Peter Narne.*

JAMES, be the grace of God, King of Scottis; To all and findrie our lieges and subditis, quhom-

¹ Wodrow's MSS. Adv. Library, Edinburgh, Vol. IX. Rob. III. 2, 9. ² Board; a painting on panel. ³ Driving.

ever it effeiris, to quahais knowlege thir our letters fall come, greeting. FORSAMEKLE AS MR PETER NARNE, having maist traiterouffle devist and conspyrit the Murther and destruction of Englishmen; and for executione of this vyld and abhominable fact, having trained thame within our realme, promissing unto thame to get thame advancen in credite and service with us; and haveing brocht thame to the town of Kelfo, he thair resolvit to have accomplishen his said vyld Murther; and being in the actual execution, he was, be the providence of God, stayed, the puir innocent strangeris relevit, and himself apprehendit, and is presentlie in handis. Quhillk vyld and detestable coyfnage and Conspiracie of an intendit and conspyrit Murther, being of so rare ane example and preparative, and carrying with it sa foull ane sclander and reproche to our nation, giff the same be not accordingly tane order with and punisheit: And albeith, thair be na law maide againe practizars and Conspiratours of ane Murther, unexecute; and that this fact, naikedlie considerit, will not appeir puneishable to the death; yet We, haveing regaird to the circumstanceis thair of, with the interest quhillk it carryis to our service, and the sclander and reproche to our nation, We have thairfor, of our awin absolute auctorite and power, Ordanit the said vyld and detestable Conspiracie to be puneishit to the death; to the terror of all uthiris to interprise the lyke herefter. For quhillk purpois, We have maid and constitute, and be the tenor heirof Makis and Constitutis, our richt trust coung and counsallor ROBERT LORD OF ROXBURGHE, our Justice in that parte, to the effect undirwritin; Gevand, Grantand and Committand to him, our full power and Commissioun, expres bidding and charge, to try and examine the said Mr Petir, upoune the forme, maner and circumstanceis of the said Conspiracie, and upoun the vyld Murther, quahairof he is suspect gilt; And, giff neid beis, for the better discoverie of the treuth, to put him to Tortour: As alswa, to put him to the knowlege of ane Affize for the same, and giff he cry gilt of the said Conspiracie and intendit Murther committit be him, that he caus execute him to the deid for the same; and in special, for the foull and treterous Conspiracie foresaid: And for this effect, Justice Courtis, at quhatfomevir placeis convenient, to sett, begyn, affix, have and continew; fuitis to make to be callit; absents to amerciast, unlaws and escheitis of the saidis Courtis to ask, lift and raise, and for the same, giff neid beis, to poind and distrenzie; Assisers neidfull to this effect, *respective*, under the pane of fourty pundis, to summond, warne, cheis, and cavis to be sworne; clerkis, serjands, dempflair, and all uthir officiars of Courte neidfull to make, creat and ordane, for quhome he sal be baldin to answer; and generallie, all and findrie uthir thingis to do and use, quhillk for executioun of this our Commissioun ar requisite and necessar; ferme and stable halding, and for to hald, all and whatfomevir thingis in our name fall be done herein. Given undir our signet, and subserivit with our hand, AT BRECHIN, the tent day of October, and of our reign the xxxv, and yeir 1601.

(Locus sigilli.)

JAMES R.

Breaking into the Lord Chancellor's House—*Theft, &c.*

May 7.—WILLIAME CREYCHTOUNE, sumtyme indweller in Edinburgh.

Dilatit and accusit, fforamekill as he, accompaneit with John M'Culloch and Robert Ahannay, laitie, in the moneth of September lastbypast, cam to Johnne Erle of Montrois chancellaris hous, befyde the Abay of Halyruidhous, and thair, vnder fylence of nycht, brak the samyn, and thifteouffle thall, concelit, ressett and away-tuik furth thair of, fourtie-fve pound pecis, ane cloik, twa dowblettis, ane bow and foure arrowis, with ane pair of silke schankis, pertening to James Grahame, sone to the Chancellor, and vther seruandis to the Chancellor: Att the leift, for airt and pairt of the steilling, conceling and away-taking thair of.

As at mair lenth is contenit in the Dittay, quhilk wes verifeit be his awin Depositionis and Confessionis.

VERDICT. The said Williame wes putt to the knowlege of ane Assyse, and thay being chosin, sworne and admittit, be the mouth of George Frensche in Edinburgh, chancillar, stand, pronounceit and declarit the said Williame Creychtoun to be ffylit, culpabill and convict of the crymes foirfaidis.

SENTENCE. ffor the quhilk caus, the said Justice-depute, be the mouth of Robert Galbraith, dempstar, ordenit the said Williame Creychtoun to be tane to ane gibbet to be affixit vpoun the Castel-hill of Edinburgh, and thairvpoun to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

[*Mr Williame Hairt and Mr Williame Boirthuik, Justices-deputes.*]

Treason—Purchasing, Forging, and Vending of Counterfeit and Adulterated Coin—Theft, &c.

Maij 29.—THOMAS M^cALEXANDER of Drummochreyne; James Johnestoun, sone to . . . Johnestoun in Kirkcaldie, sumtyme feruitour to Johne Johnestoun, wryter; George Dowglas, sumtyme in Bengoure, now in Edinburgh; Williame Maxwell, sone to George Maxwell in Haik; Cuthbert Home, sone to vmq^{le} Robert Home of Reidheuch; and James Moffat, sone to . . . Moffet of Helbeth.

Perfewit be Mr Thomas Hammiltoun of Drumcarne, aduocat to our fouerane lord, for his hienes interes, of the crymes following, that is to say,

DITTAY against M^cAlexander and Johnestoun,

FOR airt, pairt, red, counsale and conceiling of the tressonabill Outing¹ amangis our fouerane lordis liegis, in the Tounis of Gawyeflyde, Dalfarf, Hammiltoun, Clochtane, Air, Irvin, and vtheris partis, of certane fals and counterfit ten schilling peices, to the similitude of his hienes trew coingie; committit ane yeir senfyne in harvest. *Item*, for airt, pairt, red, counfall and conceiling of the tressonabill forgeing, counterfitting, casting and prenting of xxx fals ten schilling peices, within the citie of Glasgw, in David Hallis bak chalmir thair; quhair thay, togidder with vmq^{le} Marioune Hepburne and ane serwand woman of hirs was lugeit; off the quhilkis, thay tressonable outit ane to the said David Hallis wyffe; and the said Thomas M^cAlexander delyuerit twa of the saidis peices to the said James Johnestoun, at the Bridgend of Glasgw; and als delyuerit to him fyve pundis w^{ts} thairof, in ane lytill zaird at the said Brigend, quhilk he tuk bak fra him agane. *Item*, for airt, pairt, &c. of the tressonabill forgeing, prenting and casting in calmis² of trie, fillit with calk,³ within the place of Tourlandis, of twa fals four merk pecis, to the similitude of his Maiesteis trew coingie of four merk pecis of siluer; quhairof the said Thomas outit ane to ane honest man in Air: Lyke as, the said James, be direction of the said Thomas, convoyit the calme out of Irving to the place of Tourlandis, quhair he and Sandie of Tourlandis wes present at the tressonabill forgeing of the saidis pecis, quhilk wer maid of ane pew-

¹ This term corresponds with the modern law term 'uttering'; literally, putting out, circulating. ² Probably for 'worth,' although it is also an usual abbreviation for 'wecht,' weight. ³ Moulds. ⁴ Wood bedded with chalk or plaster.

der plait: Committit in harvist, bygane thrie zeir. *Item*, the said Thomas being accusitt for airt, pairt, &c. of the tressonabill ressaueing fra George Dowglas, callit of Bengowre, of fourtie poundis in fals fyve pound pecis, foure pound pecis, and crounis, to haif bene outit amangis our souerane lordis liegis, as trew and guid gold; quhairof he outit twa fals crounis to Johne Johnestoun in Mayboill, and lent the rest thairof (except ane foure pound peace and twa crounis, quilkis he referuit to him self) to Gilbert Makalexander in Air; and delyuerit the foure pound peace to Bruce, his seruant. *Item*, the said Thomas dilatit and accusitt, forsamkill as he, accompaneit with William Boirthuik of Johnestounburne and twa of his seruandis, betuix Martimes and 3will,¹ in the yeir of God 1^m. V^c.lxxxvij yeiris,² past owre att the Qeinis-ferrie, towardis Castell Campbell, or thairby, quhair thay brak ane hous, and thisteouflike stall, concelitt, ressett and away-tuik furth thairof foure hors, and cam about be Stirling to Falkirk, quhair his naig³ tyrit: And swa, wes airt and pairt of the thisteous steilling of the saidis foure hors. *Item*, the said Thomas being dilatit of airt and pairt of the thisteous steilling, concelling, resetting and away-taking of ane naig fra ane seruand of the Erle of Cassilis, quhilk Bruce his seruand shall be his directioun, and William Maxwell delyuerit the samyn to Gylbert M^calexander.

DITTAY against George Dowglas, sumtyme in Bengowre, now in Edinburgh.

DILATIT for the tressonabill bying of fourtie peasis of fals gold, in fyve pound pecis, foure pound pecis and crounis, and the maist pairt of them wer crounis, fra vmq⁴ David Johnestoun, quhilk he ressaueit in the moneth of Junij, or thairby, in Kingorne, to be tressonabill outit; for the quhilk he payit fourtie merk in guid siluer, quairf Johnstounburne, his partiner, payit tencie merkis. Lykas, he, togidder with the said William Boirthuik, William Maxwell, Moirle and Janies Hoppingill his seruandis, past, at Mydfomer was ane yeir, to ane fair in Air, for outing of the famin, quhair he, in the said fair, cost⁵ ane broune meir;⁵ for the quhilk, he tressonabill outit and payit xxiij poundis of the said fals gold: And als, bocht ane naig fra James Hammiltoun, seruand to the Maister of Cathcart; for the quhilk he tressonabill outit and payit xxvj or xxvij lib. of the said fals gold; The quhilk gold the said James Hammiltoun, being outand in Aire, for certane Lundoun wairis, the famin wes cryit fals; the said James immediatlie thairefter followit the said George, fra the burch of Air, be the space of foure myles, raist the country and oweruik him and his company, and compellit him to ressaue the fals gold, and restoir the said naig to the said James Hammiltoun: Eftir the quhilk, he, accompaneit with Thomas M^cAlexander apperand of Drummochryne, William Boirthuik of Johnstounburne and his seruandis, satt down be ane brae-fyde, and pairtit⁶ the fals gold quhilk he left vnoutit,⁷ and delyuerit fourtie poundis worth thairf to the said Laird of Drummochryne, in fals fyve pound pecis, foure pound pecis and crounis; and outit and delyuerit to the said William Boirthuik, his partiner, tencie poundis worth thairf; and retenit thrie crounis thairf to him self; quhilk he thairefter outit and delyuerit to the said William Maxwell; and swa, hes committit Treaoun.

DITTAY of Williame Maxwell, sone to George Maxwell in Haik.

INDYTIT, accusitt and persewit, for airt, pairt, red, counfall and conceilling of the pairting of the said fals fyve pound pecis, foure pound pecis and crounis, quhilkis George Dowglas, callit of Bengowre, pairtit and delyuerit att ane brae-fyde, cumand out of Air, att Mydfomer wes ane yeir, to Thomas M^cAlexander, apperand of Drummochryne, and Williame Boirthuik of Johnestounburne; quhairf he delyuerit fourtie poundis worth to Drummochryne, and xx lib. thairf to the said Williame Boirthuik, quha delyuerit the samyn to the said Williame Maxwell, quha convoyit it to Edinburgh; and att his cuming, restoirit agane to the said Williame Boirthuik, quha thairefter outit ane of the saidis fals crounis in, and ane vther in Lauder; and thairby, the said William Maxwell committit Treaoun.

¹ Yule or Christmas.

² Anno 1598.

³ Horse, nag.

⁴ Purchased, bought.

⁵ Mare.

⁶ Parted, divided.

⁷ Uncirculated.

Item, indytit ffor the tresfounable reffauing fra George Dowglas of thrie fals crounis, to be outit as guid gold amangis our fouerane lordis leigis; quhairof he delynerit ane to Jeane Reid, fipous to James Lewingstoune, in wad¹ of ane faiddill, and the vther twa he delyuerit to the Guidman of Johnestounburne. *Item*, accusit, fforfamekill as he, being in company with vmq^{le} . . . Morlie, and being fernandis to Williame Borthuik of Johnestounburne, be his speciall directioun and command, past to West Lowtheane about Caldermure or thairabout, and thifteouslie stall, concealit, reffett and away-tuik furth thair of, twa meiris; quhilk he convoyit to the west end of the toune, and thairfra directit thame hame with . . . Morlie to Johnestounburne; and cam in hin self to Edinburgh to James Lewingstounis hous thair, quhair ye mett the Guidman of Johnstounneburne and tauld him how ye sped.

DITTAY against James Moffet, sone to . . . Moffet of Helbeth.

FORSAMEKILL as he, accompaneit with Petir Daveis Johnestoun of Kirkhill, Thomas Stewart feruand to Rob of Kirkhill, Jony Lyall and Crystie Brydene seruandis to the Guidman of Cairtertoune, and James Wilfoune vnder Geordie of Kinmonth, in the moneth of . . . I^m.V^c.lxxx . . . yeris, cam to ane hill pertening to Mr James McMath of Dalpever, and thair thifteouslie concealit, reffett and away-tuik aff the samis, fourfoir of scheip, pertening to the said Mr James; off the quhilk he gatt fourtene for his pairt.

DITTAY against Cuthbert Home, sone to vmq^{le} Robert Home of Redheuch.

FORSAMEKILL as he, accompaneit with Johne Broderstane, younger sone to Johne Broderstane, ffeischour in Tranent, and Richard Paterfoune, in the moneth of March, or thairby, I^m.V^c.lxxxviiij yeris, cam, vnder fylence and cloud of nycht, to John Creychtounis duelling-hous at Prestoun-grangemyll, and thair thifteouslie brak the said hous aboue the dur, enterit thairin, and brak vp his kist, and thifteouslie stall, concealit, reffett and away-tuik furth thair of, foure hundredh poundis worth of gold and siluer, or thairby, and maist crewallie dang the said Johne Creychtoun and his wyff, and left thame for deid: Of the quhilk foume he gatt fiftie pound for his pairt. *Item*, ffor the thifteous Refsetting of faxtene schep, or thairby, pertening to Sir Patrick Hepburne of Lufnes, knycht, and Williame Caldeleuch in Eider Geumillscheillis, his seruand and schiphird; quhilkis scheip wes thifteouslie stollen be Mertene Hall: Committit in the moneth of Januar I^m.V^c. yeris. *Item*, ffor Commoun Thift, Commoun Refsett of thift, inputting and outputting of thift, fra cuntry to cuntry, fra land to land, bayth of auld and new.

FOR the quhilkis crymes, the saidis (persounes on pannell) wer putt to the knowledg of ane Assyise, of the persounes after specifeit; they are to say.

ASSISA.

John Stenhoip of Stenhopifmyll,	John Logane of Cowstoune,	Alex, Horsburcht of Horkas,
Williame McClellane Tutor of W ^m Annand in Tranent,		Johne Henderfoune in Prestoune,
Bombie,	Johne Farguyfoune of the Yle,	Rob ^t Anderfoun burges of Perth,
David Seytoun, elder in Tranent,	George Hereis, sumtyme of the	Williame Polwart, sumtyme of
Capitan Patrik Herring,	Kirktoune of Essie, now in	Rottinraw,
James Dalzell eldar, in the Water of Leith,	Edinburgh,	Williame Halyburtonne, sumtyme
	Johne Boiwall of Afflek,	of Inchkairney.

The Aduocat protestit for Wilfull Errour, in cais thay acquit.

VERDICT. Efter the accusatioun of the saidis persounes be Dittay of the saidis crymes, quhilk wer verifeit be thair awin Depositionis and Confessioun, (the Assyis) removit altogidder furth of Court to the laich Counsal-hous; quhair

¹ Pledge, security.

thay, eftir cheſing the ſaid Johne Boifwall of Afflek Chancillar, reaſonit and votit vpoune the ſaid Dittayis *reſpective*, and ewerie point thairof, &c. ; and be the mouth of the ſaid Chancellar fſand, pronounceit and declarit the ſaid Thomas M^cAlexander and George Dowglas, James Johnſtoun, Williame Maxwell, James Moffett and Cuthbert Home, to be flylit, culpabill and convict of ewerie poynt of the Dittayis *reſpective* aboue writtin, quhairof euerie ane of thame *reſpective* wes accuſit, and quhilk wes laid to thair charge.

DOME pronounced againſt the Pannels.

FOR the quhilk caus, the ſaid Mr Williame Haert, Juſtice-depute, be the mouth of Robert Galbraith dempſtar, ordanit the ſaid *Thomas M^cAlexander*, as convict of Treafounne and thift; *James Johnſtoun*, as convict of Treafoun; *George Dowglas*, as convict of Treafounne; *Williame Maxwell*, as convict of Treafounne and thift; to be tane to the Caſtell-hill of Edinburgh, and thair to be virreit at ane ſtaik quhill thay be leid, and all thair landis, beretagis, takis, ſtedingis, rowmes, poſſeſſiounis, cornis, cattell, guidis and geir, to be ſforfaltit and eſcheit, and inbrocht to our ſouerane lordis vſe: AND als ordanit, be the mouth of the ſaid dempſtar, the ſaidis *James Moffett* and *Cuddie Home* to be tane to the ſaid Caſtell-hill of Edinburgh, and thair to be hangit vpoun ane gibbett, quhill thay be deid; and all thair movabill guidis to be eſcheit and inbrocht to our ſouerane lordis vſe, as convict of the ſaidis crymes of Thift.

[*Mr Williame Haert, Juſtice-Depute.*]

Treason — Uttering baſe Coin, &c.

JUN. 6.—THOMAS GLASS in Fowles, and Johne Gib at the Wodheid of Condie.

THOMAS GLASS was dilatit for the treſſonabill Outing of xij falſe fyftieſchilling peiceis of gold, to the ſimilitude of our ſouerane lordis trew coinzie, amangis his hienes liegis; off the quhilkis peiceis, he reſſautit foure fra vmq^{le} Walter Murray in, foure fra Johne Murray his brother, and foure fra Patrik Drummond of the Lenach. *Item*, for the treſſonabill reſſauing fra George Drummond, ſaidler in Perth, of twentie peice of falſe fyve-pund peiceis, hat-peiceis, and fyftieſchilling peiceis; and for the treſſonabill outing thairof amangis our ſouerane lordis liegis, as trew gold; quhairof he gaif ane pairt to Robert Schadden, nolt dryuer. AND ſiclyke, *JOHNE GYB*, for airt and pairt of the cumming in cumpany with vmq^{le} Mr Williame Balfoure, brother to the Laird of Burlie, Johne Oliphant and vmq^{le} Harie Cuke, his ſerwandis, Patrik Murray of Gallwallis, his ſerwandis, in the moneth of Februar laſtbypaſt, vnder ſylens and cloude of nycht, and thair thifteouſſie breking vp the dur of the ſaid hous, entering thairin perforce, and thifteous ſteling, conceling, reſetting and away-taking furth thairof, ane purſe with foure ſcoir and twelf merkis, pertening to the ſaid Andro; quhilk the ſaid Johne delyuerit to the ſaid Mr Williame; togethir with ane horſe and ane meir, and his haill infycht pleneiſſing.

VERDICT. The Affyis, be the mouth of William Stalkar, goldsmynth in Edinburgh, Chancellour, ffand, pronunceit and declarit the saidis *Thomas Glas* to be ffylit, culpabill and convict of the crymes aboue writtin, quhairof he was accusit; and als, ffand and pronunceit the said *Johne Gib* to be ffylit, &c. of the crymes whairrof he was accusit and persewit.

SENTENCE. THOMAS GLAS to be tane to the Castell-hill of Edinburgh, and thair to be wirreit at ane staik quhill he be deid, and his bodie to be brunt in asses; and all his landis, heritageis, takis, ftedingis, rowmes, possessionis, coirnis, cattell, guidis and geir to be forfalt and escheit to our souerane lordis vse, as convict of the crymes foirsaidis: AND als decernit and ordanit the said *JOHNE GIB* to be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Horse-stealing — House-breaking — Theft.

JUN. 18.—*NICOLL alias NIKKIE MOFFETT*, at the Brigend of Cramond, and David Adiesoune, sone to Johnne Adiesoune, in Dyfert.

NIKKIE MOFFETT was dilatit and accusit for airt and pairt of the thifteous steling of twa naigis fra James Bannatyne, tennent to the Laird of Cleghorne, twa yeir senfyne or thairbye, furth of ane burnesfyde bevest¹ Calder. *Item*, for airt and pairt of the thifteous steling of ane blak naig fra Patrik Clarksoune in Blakburne; of ane gray meir; and for commoun thift and commoun ressett of thift.—AND siclyke, DAVID ADIESOUNE being accusit for the steling furth of Margret Strathauchinis hous, in the Cannogait, of ane naipkyn, quhairin thair was xij aucht mark peiceis, ane hairt of gold, ane pair of grene silk gartonis, and ane cloik of Inglis hewit² grene claith, pertening to David Drummond, seruitour to Sir Johnne Ramfay, committit at Martymes lastwas: *Item*, for bryking of Mark Lord Newbottill chalmer, and steling furth thair of ane veluot cloik, ane raise veluet gounne furrit, and vtheris guidis and geir: *Item*, for the thifteous steling furth of Robert Erskyne house, in the fit of the Cannogait, of certane gold, siluer, claythis, guidis and geir, with thre hundreth markis: *Item*, for commoun thift, &c.

VERDICT. The Affyis, be the mouth of Hector Davidsoune, sword-flipper in Edinburgh, Chancellor, ffound the pannels to be ffylit, &c.

SENTENCE. To be tane to ane gibbet, standand vpoun the Castell-hill of Edinburgh, and thairvpoun to be hangit quhill thay be deid; and all thair movabill guidis to be escheit, &c.

¹ To the westward of.

² Coloured.

Striking a Person, while the King was sitting in Judgement, &c.

JUN. 20.—JOHNE DUNDAS of Newlistoune.

Dilatit for contravening of the Actis of Parliament, in stryking of Mr James Hammiltoune, sone to James Hammiltoune, at the West-port of Lynlythqw ; committit the 3d of¹

PERSEWAR, Mr Robert Lyntoune, aduocat, substitute for Mr Thomas Hammiltoune.

PRELOQUOUTOURIS for the pannell, Mr Johne Scharpe, Mr Will. Oliphant, Mr Robert Leirmonth.

DITTAY against Johne Dundas of Newlistoune.

THAT quhair, be our fouerane lordis Actis of Parliament, maid in the moneth of Julij 1^m.V^o.lxxxxiij yeiris, it is statute and ordanit, that quhofoewir fall stryke or hurt in ony tyme thairestr ony persoune, before his hienes Justice or his deputis sittand in judgement, or within the inner 3ett of our fouerane lordis Palice, quhair his hienes fall mak residence for the tyme, or within the outar Tolbuith of Edinburgh, the tyme that the Lordis of his hienes Sessioun (sit) for administratioun of Justice, fall incur the pane of death, and salbe accusit criminallie thairfore ; as att mair lenth is contenit in the said Act of Parliament maid thairaneat : AND trew it is and of veritie, that the said Johne Dundas of Newlistoune, being forgetfull of his dew obedience and reverence, quhilk he aucht to our fouerane lord and his hienes autoritie, laitlie, vpoun the ferd day of Junij instant, he being within the Tolbuith of the burcht of Edinburgh, in the bak hous thairof, quhilk is betuix the owtar Tolbuith and the inner Tolbuith, his Maiestie being for the tyme, in proper persoune, stand in the Inner hous with the Lordis of his hienes Counfall and Sessioun for administratioun of Justice, he than enterit in conference and speiche with Mr James Hammiltoune, eldest lauchfull sone to James Hammiltoune, att the West-port of Lynlythqw ; and eftir sum contentious and hett langage past betuix 3ow (them) twa, 3e (he) maist dyspytefullie, butt respect or regard of his Maiesteis personall presens in the Inner-hous and Tolbuith, or to the tyme and place, the before none, in the tyme of the sitting of the Lordis of Sessioun, invadit and persewit the said Mr James, and straik him with 3our (his) neave vpoun the face, and had noch failzeit to haif followit out 3our (his) persuit, with all rage and crenalitie, againis the said Mr James, war noch 3e (he) wes flayit be ane number of our fouerane lordis guid subiectis, awaiting in the Tolbuith vpoun his hienes, or vpoun thair awin actionis for the tyme : Quhairby he, be strykeing of the said Mr James vpoun the face, quhen our fouerane lord in proper persoun wes sitand in the inner Tolbuith, and the tyme that the Lordis of Sessioun wes sitand thair for administratioun of justice, hes incurrit the pane of death ; quhilk sould be execute aganis him, conforme to the said Act of Parliament, with all regour.

(The pannell) declarit, infasar as his Maiestie, as is contenit in the Dittay, wes sitand in the Tolbuith, the samin was by his knowledge ;² and that vpoun the occasioun of sum contentious wordis fallin furth betuix him and Mr James Hammiltoune, quhairwith he wes movit to mak sum mynt³ for revange thairof, and thairby maid sum truble in the Myd-hous, quhairwith his Maiestie is justlie offendit ; That he will cum in his Maiesteis will for ony fact or offence committit to our fouerane lord, or the Lordis of his hienes Sessioun, the tyme and place contenit in the Dittay ; to be confiderit be his Maiestie, according to his hienes guid will and pleafour, and according to his accustomit clemencie, schawin to vtheris his hienes liegis for the lyke crymes of before.

¹ The fourth of June instant. See Dittay.

² Unknown to him.

³ Attempt, motion.

With the quhilkis premisses, the Justice tuik him to be auisit quhill Tyisday nixtocum, the xxiij day of this instant, that he mycht knaw his Maiesteis will thairin : And ordenit the Bailleis of Edinburgh present, to tak the said Johnne Dundas to waird to the Castell of Edinburgh : And siclyke, caufit Andro Home, ane of the Officeris of Court, to warne the persounes summond vpoun the said Johnne Dundas Assyis, to compeir in the Tolbuith of Edinburgh to pas vpoun his Assyis, vnder the panis contenit in the Actis of Parliament.

Jul. 9.—THE following Precept ordanit to be insert in the buikis of Adionnall.

REX,

JUSTICE, Justice Clark and 5our deutes. We greit 3ow hairdie weill : Forfamekill as Johnne Dundas of Newlistoun, being indytit and accusit in ane Court of our Justiciarie, haldin within our Tolbuith of Edinburgh, pe xx day of Junij lastbypast, for pe invading and persewing of Mr James Hammiltoun, lauchfull sone to James Hammiltoun, att pe West-port of Lynlythqw ; and strykeing of him vpoun pe face, vpoun pe ferd day of pe said moneth of Junij, &c. And We having ressaunt the said Johnne Dundas in our will, and having weyt and considderit the hail circumstance of pe cryme contenit in pe said Dittay, and quhatfumeir thing wes done be the said Johnne the day and place foirsaid ; the said Johnne, according to our will notisfeit be ws to him self, hes payit the soun of ane thowfsand sewin hundreth and fiftie merkis, quhilkis wer debursit in sum of our necessar affairis ; quhairof we discharge the said Johnne for ewir be pir presentis. And siclyke, according to our directionn gevin to him, as ane vpir paid of our will, hes comperit in presens of our Chancillar, President and Lordis of Sessioune, thay being convenit in full nowmer in pe said Inner counsal-hous for administration of justice, and thair hes fullerie satisfeit pame for ony offence done be him to pame, the saidis day and place. We Will thairfore, and be pir presentis declairis, that the said Johnne Dundas salbe fred and relewit furth of pe waird, quhairin presentlie he is ; and We command 3ow to freith and releve him of pe samin : As also, we declair that the said Johnne Dundas sall nocht att ony tyme heirestir be indytit, persewit or accusit for ony fact or deid committit he him the day and place foirsaid ; bot We acquyte and mak him frie pairaf in all tyme cuming : And thairfore We command 3ow, that, in our Justice-Court to be bauldin in pe said Tolbuith of Edinburgh, the said nynt day of Julij instant, in presens of pe said Johnne Dundas, 3e mak publicatioun of pe declaratioun of our Will, estir pe forme and tennour of pir presentis ; and that the said Johnne hes obeyit and fulfillit the samin in all pointis : Kepand pir presentis for 3our Warrand. Subscryuit with our hand, att Halyruidhous, the sewint day of July, the 3eir of God, 1^m.Vj^{re}. and ane 3eiris. (Sic subscritur) JAMES R.

MONCRIF CANCELLARIUS. FYVIE SECRETARIUS. HOME COMPTROLLER. J. HALYRUIDHOS.

Namesucken — Brigancy — Oppression — Horse-stealing — Foraying, &c.

Aug. 1.—THOMAS CWININGHAME, sword-slipper, serwand to (Williame Cwninghame) the Laird of Tourlandis.

Dilatit of certane crymes of Thift, and for taking of captive and presoner Patrik Gemmill.

DITTAY against the Pannel.

THOMAS CWININGHAME, sword-slipper, sumtyme seruitour to Williame Vans, armorar in the Cannogait, being enterit on pannel, dilatit and persewit : Forfamekill as be, accompaneit with Alexander

and Hew Cwninghames, breper to the Laird of Tourlandis, vmq^e Johne Cwninghame alias Potter, Marioune Parker, Issobell Parker hir sister, Williame Speir, serwand to the said Alexander, and ane vther boy, laitie, in the moneth of Januar lastbypast, vnder scyence and cloude of nycht, be way of Hamefuckin and Brigancie, come to Patrik Gemmill duelling-hous in Tempillous, quhair he, his wyffe and familie was, in sober and quyet maner, takand the nychtis rest, dredand na evill or harme; and thair brak vp the dur of the said hous, enterit thairin perforce, and tuke the said Patrik and his wyffe furth of thair bedis, band his wyffe fit and hand, and kaitt hir in ane mekill kist,¹ manassit² the said Patrik to delyuer to thame his siluer and gold; and becaus he refusit to do pe samyn, thay band ane tedder³ about his nek, and hang him vp vpoune ane balk,⁴ quhair he hang ane lang space, quhill⁵ the said Thomas for pitie cuttit him doune; and thairefter thay pakkit vp his haill infycht guidis and ple-neissing in scheittis, and causit the saidis thre wemen convoy the samyn thisteoullie vpoune thair bakis: And thairefter tuke and apprehendit the said Patrik Gemmill captiue and presoner, and convoyit him, being ane ageit man of threscoir of yeiris, in ane grit storme, be the space xxvij myles fra his awin houe, quhill he come to Clyddisholme, quhair he was releuit be the Bailleis of Lanerk: Vfurpand thairbye our souerane lordis auctoritie vpoune thame; the said Patrik being his hienes frie liege; and the said Thomas was airt and pairt of the saidis crymes. ITEM, for airt and pairt of the cuming vpoune ane Sabbath day, ten onkis senfyne or thairbye, in tyme of preching, accompaneit with Williame Cwninghame of Tourlandis, Alexander Cwninghame, his brother, vmq^e Johne Cwninghame, the pot-ter, and vtheris serwandis of the young Laird of Blaquhannis, and vtheris thair compliceis, to the nowmer of xliij personis or thairbye, and rynnng of ane sorrow⁶ with the Laird of Cwninghames heidis teunentis, for the thisteous steling and reving fra thame of xij horfe and meiris, quhillkis war fauld in the cuntrey. ITEM, for airt and pairt of the thisteous steling and away-taking of twa naigis, ane foir⁷ and ane vther broune, pertening to Thomas Bigger in Byres furth of the landis of Warreikhill, committit in Junij lastwas. ITEM, for commoune thift, commoune reffett of thift, &c.

VERDICT. The Assyis, be the mouth of Johne Farguesoun of the Yle, Chancellor, sffand, pronunceit and declarit the said Thomas Cwninghame to be flyld, culpabill and convict of the haill poyntis of the Dittay aboue writtin, and crymes thairin contenit.

SENTENCE. To be tane to ane gibbet, vpoune the Castell-hill of Edinburgh, and thairvpoune to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Striking Ministers — Obstructing the Designing of Manse and Glebe.

Aug. 18.—SIR DAVID WOD of Craig, knycht.

Dilatit, accusit and persewit of the crymes following.

PERSEWAR, Mr Thomas Hammiltoun, aduocat to our souerane lord.

PRELOQUOUTOURIS for the pannell, Mr Johne Scharpe, Mr Lawrence McGill, Mr Robert Cockburne.

DITTAY against the Pannell.

FORSAMEKILL, as it is expresse statute and ordenit be Act of Parliament, maid in our souerane lordis Parliament, hauldin and begun att Edinburgh, the xxix day of Julij, the yeir of God Im.Vc. lxxvij yeiris, that quahatsumewir person or personnes invadit ony Minister, or puttis ony violent

¹ Chest.

² Menaced, bullied.

³ 'Tether,' halter or rope.

⁴ Beam.

⁵ Until.

⁶ Foray,

or predatory incursion.

⁷ Sorrel.

Fr. saure, Ital. sauritto, a dark reddish colour.

bandis in him, for feiking of thair lewings,¹ or sic vther caussis or quarrellis specifeit in the said Act, falbe pwneit thairfore with all regoure, and incur the pane of tinfall of thair movabill guidis for the faid invasioun and violence allanerlie, albeit na Slauchter nor mutilatioun follow thairvpoun; the half of the said movabill guidis to be applyit to our fouerane lordis vfe, and the vther half to the partie offendit, but² preiudice of the heichar pwneifchment, gif ony gritar cryme concur with the violence and invasioun foirfaid; and to be callit criminallie thairfore, before our fouerane lordis Justice or his deputtis, att particuler dyettis: As the said Act att mair lenth beris. And trew it is, that Sir David Wod of Craig, knyecht, accompaneit with vtheris his complices, with convocatioun of our fouerane lordis liegis, to the number of tuelf personnis or thairbye, all bodin in feir of weir with swordis, gantilletis and vtheris wappinnis, *inuafue*, incontrair the tennour of the Actis of Parliament, laitle, vpoun the xxvj day of March lastbypast, cam to the Kirk of Fordoun, and to the landis occupyit be lyand beyde the said Kirk, and within the Sherefdom of Kincardin, quhair Mr Adam Walker, Minister att Fordoun wes, accompaneit with sum of the Presbiterie of the Mernis, according to the ordinance of the Act of Parliament, and the directioun of the said Presbiterie, cum to haif designit³ ane Manse to Patrik Bonkle, principall Minister att Fordoun, and to his successouris; dredand na ewill, harme, iniurie or perfruit of ony persoun, bot to haif lewit vnder Godis peax and our fouerane lordis; and thair, fyrst boisitit,⁴ manassit and threatnit the saidis Ministeris, and speciallie the said Mr Adam Walker, for thair bodellie harmes; and thairefter, sett vpoun the said Mr Adam Walker, and invadit and strak him with the gaird of his sword vpoun the heid, putt violent handis in him, and with his sword, behind his bak, strak att him, and dang him to the eird;⁵ and with thair drawin swordis hurt and woundit him in baith his handis, to the effusioun of his blude in grit quantitie; and thairby, for the quarrell of the designatioun of ane gleib⁶ and manse, quhilk is ane pairt, at the leist, fould be ane pairt, of the said Mr Adamis lewing, he beand ane of the Ministeris of Fordoun, and helper to the said Patrik Bonkill to the cuir⁷ thairof, thay haif putt violent handis in the said Maister Adam, invadit, strak, dang and bled him with the gairds of thair swordis, and with drawin swordis, in maner foirfaid; and he wes airt and pairt thairof: Quhairby he hes incurrit the payne of tinfall of all his movabill guidis; the ane half thairof to be applyit to our fouerane lordis vfe, and the vther half thairof to be applyit to the vfe of the said Mr Adam Walker, as partie offendit.

The pannell takis instrumentis of his entrie, and proteftis for releve of his cautioner summond for his entrie; and that thair is na partie perfewar bot my Lord Aduocat; and that na persoun affistis him in this perfruit; and that the lettres ar rasit at his lordschipis instance allanerlie.⁸

The Aduocat passis fra all vther persounes, nor⁹ the Laird of Craig; and passis fra that pairt of the summondis, ordaning ony vther persounes guidis to be escheit, *pro loco et tempore*.

The Judge declaris, that na pairt of the pane contenit in the Act of Parliament fall fall to the pairtie,¹⁰ bot only to the Kingis pairt, conforme to the Act of Parliament.

¹ Livings, stipend.
² Without.

³ To designate or appoint a place for the Minister's manse, or dwelling-house, &c.

⁴ Intimidated, brow-beat.

⁵ Struck him to the ground.

⁶ The glebe (*gleba*) is a piece of arable and pasture ground, uniformly allotted to the Parochial Clergy of Scotland, and usually adjoining the manse.

⁷ Viz. the cure of souls.

⁸ At the instance of the public prosecutor alone; not at the instance of the private party, with the Lord Advocate's concurrence.

⁹ Excepting, but, other than.

¹⁰ Viz. that the private party injured shall have no share of any penalties which might be awarded; but that the whole should fall to the Crown, as sole prosecutor.

It is alledgeit be Sir David Wod, that this mater aucht noch to be putt to ane Affyis, except it wer verifeit, be writt, that Mr Adam Walker is the Minister of the Kirk of Fordoun, and that he had commissioun to mak designation of the gleib and manse that day. Anfuers the Aduocat, that the alledgeance aucht to be repellit, in respect of the Act of Parliament and of the summondis; and thay thingis are *meri facti*, and only pertinent to the Affyfe.

Forder, it is alleget be the said Sir David and his preloquoutouris, that the lettres ar allterlie¹ irrelevant, takand thair ground and foundament vpoun thais wordis of the Actis of Parliament, 'anent the invasioun and putting of violent handis in ane Minister, vpoune quarrell, for feiking of his lewing;' and that particular cause is only proponit in this lybell; and it is subsumit, that diuerse of the Ministeris of the Mernis, and speciallie the said Mr Adam Walker, wes boifit and manassit² the day lybellit, quhilk alledgeit boifiting and manassing is na relevant cause to induce the penaltie lybellit. Forder, that pairt is generall, noch condiscendand vpoun the names of the vther Ministeris. *Item*, thair is ane manifest irrelevancie in ane vther pairt of the saidis lettres and subsumptioun thair of, berand, that the gleib alledgeit designit wes ane pairt of the said Mr Adam Walkeris lewing, att the leifit could be ane pairt thair of, becaus he is alledgeit to be successour to Patrik Bonkill, quha be the letteris thame selfis is grantit to be the Minister of Fordoune: As also, it is grantit that the said preterdit designation wes maid be the said Patrik, and swa is grantit to be allterlie the said Patrikis lewing: And the Act of Parliament vnderstand in that pairt, to be, of the lewing of the personnes that ar offendit, and noch of the lewingis he hopis for to be successour; quhilk is *de futuro contingenti*; for he may be depriyit, or deceife, before the deceife of Patrik Bonkill.

The Aduocat repetis the summondis and Act of Parliament, for ane anfuers.

The Judge, in respect that this summondis is only execute aganis the Lairdis self, quhairby he is accusit vpoun his awin deid done be him to Mr Adam Walker, alledgeit Minister att the Kirk of Fordoune, and craving designation of the gleib and manse, as the said summondis beris, to Patrik Bonkill, principall Minister thairatt; and that his coadiutour wes strikin and invadit for that cause, sustenis the summondis.

Quhairvpoun Mr Thomas Hammiltoun askit instrumentis.

ASSISA.

William Rait of Halgrene,
Robert Arbutnet, feare of
that ilk,
Johne Allerdes of that ilk,
Patrik Falconer of Kilhill,
Johne Irving in Quhyterigis,

David Rait feare of Halgrene,
David Arbutnet of Fyndowrie,
Alexander Sybbald (Sibbett) in
Watterstoune,
Robert Strathachin in Manbodo,
Andro Gray of Kinggornie,

Robert Rait in Sillieflat,
Robert Arbutnet in Barkhill,
William Sybbald (Sibbett) in
Carnetoune,
Archibald Irving in Reidmyre,
James Tullo in Allertoune.

¹ Altogether, entirely.

² Intimidated and menaced or threatened.

The Aduocat protestis for Wilfull Errour, in caise thay Acquyte; becaus the Laird of Craig hes confest the deid, and maid his repentance thairfore.

VERDICT. The Affyis, be the mouth of Robert Arbuthnet, fear of that Ilk, Chancillar, for the maist pairt, stand, pronunceit and declarit the said Sir David Wod to be Acquyte, cleane, innocent and clangeit of the hail crymes aboue writtin, quhair of he wes accusit and persewit: Quhairvpoune the said Sir David Wod askit actis and instrumentis; and protestit for his Testimoniall.

Sir Johnne Wifchart of Pittarro, knycht, Johnne W. his sone and air, Robert Falconer of Balandro, Johnne Allardes, fear of that Ilk, Johnne Ramsay, eldar of Balmayne, Alexander Lyndesay of Brodland and Patrik Craig in Kinneth, and ilk ane of thame, wes vnlawit in the pane of ane hundreth merkis, for nocht comperand on the said Affyis.

Murder.

Nov. 13.—WILLIAME NUKILSOUNE (NICOLSOUNE) in Dirltoun.

Dilatit, accusit and persewit,

FORSAMEKILL as he, and Adame Nicolsonne, his sone, with thair complices, being bodin in feir of weir, with swordis, forkis, quhingear and vtheris wappynais, *invafue*, laitle, vpoune the xiiiij day of September lastbypast, haifing consauit ane deidlie hatrent and malice aganis vmq^{le} Williame Jakfoune in the Cannogait, for taking of aue schaeff of peis off thair land, sett vpoune him, vnder scyence and cloude of nycht, besyde the Place of Dirltoun, quhair he was in sober and quyet maener for the tyme, deand his lessall effairis and busshoes, dredand na evill, harme, iniurie or persuit of ony personis, bot to haif leuit vnder Godis peax and our fowerane lordis; and first straik him with ane fork in at the leask;¹ and thairefter, strake him with quhingearis aboue the left palp,² and throw the bodie; and thairefter, bure him to the said Williamis dwelling-houfe in Dirltoun, and causit dicht³ the blude fra his woundis, and syne tuke him furth of the said houfe, and careit him to the Place of Dirltoun, and kaist him behind the 3et thair of, to the effect that the said crewall Murthour suld nocht haif cum to lycht: And swa, maist crewallie and vmercifulle slew and mordreist him; and he was art and pairt thair of.

VERDICT. The Assise, viz. * George Dewar feruitour to the Lady Gowrie, George Bettie, cuke and brewster to her in Dirltoun,⁴ &c., be the mouth of Hew Baillie in North-Beruk, chancelar, stand the pannell to be Innocent and Acquit of art and pairt of the Slauchter of the said Williame Jakfoune, &c.

Murder of the Warden of the West Marches.

Nov. 14.—THOMAS ARMSTRANG, sone to Ringanis Thom. (In the Ditay he is styled 'sone to Sandeis Ringane'.⁵

Dilatit, accusit and persewit be Archibald Carmichell of Edrom, brother to vmq^{le} Sir Johne Carmichell of that Ilk, knycht, Warden of the West Marches of Scotland, for the tyme, of the cryme following: that is to say,

¹ The groin or flank, sometimes spelt *leask* or *lisk*.
² Breast.

³ Wipe off.
⁴ The rest of no note.
⁵ This last seems his proper designation, as the Dittayments 'the said Ringane (Ninian) his fader.' The loose mode of designating persons, in the rank of life of the panel, which was prevalent in the Borders at this period, is apt to lead modern readers into confusion as to identity of persons.

FORSAMEKILL as he, accompaneit with the said Ringane his fader, Lencie, Hew, Archie and Watt Armfrangis his brether, Sym of the Syde, Lencie of the Syde, Rob Sandie, Rob Scott, Thome Tailzeour, Williame Forrester, Williame Grahame of the Braid of the Grange of Medop, and divers vtheris his complices, to the number of xx, commoun thewis and traittouris, all bodin in feir of weir,¹ with jakis, steilbonettis, lances, hagbuttis; haifing, be the instigation of vtheris quhais names he knew, consultit, dewysit and interprysit the crewall, tressonabill and schamefull Slauchter of vmq^{le} SIR JOHNNE CARMICHELL of that ilk, than Warden of the West Marchis, vpoun ane Soneday, in the moneth of Junij, the yeir of God I^m.Vj^e. yeiris, att ane meitting at the fute-ball,² quhair diuers borderaris and freindis was conuenit to that effect: Quhilk purpois being plattit and sett doun³ be him and thame, and being fuirle aduertest that the said vmq^{le} Sir Johne was to keip Court⁴ at Lochmaben, vpone the morne thairefter, being Monunday and the . . . day of the said moneth of Junij, the yeir of God foirsaid; for executioun of the quhilk tressonabill and vngodlie fact, thay mett altogidder, at thair tryfling place⁵ of the Blerieheid, qnhair thay lay att waitt for the said vmq^{le} Sir Johne Carmichellis passing by; and as he wes in sobir and quyet maner passand by to the said Court, dredand na ewill, harme, iniurie or perfruit of ony persounes, bot to haif lewit vnder Godis peax and our fouerane lordis, he being his Maiesteis Wardene for the tyme, thay altogidder sett vpoun him at the Rae-knowis, schott thair hagbuttis att him, and thairwith maist schamefullie, crewallie (and) tressonablie schot the said vmq^{le} Sir Johne Carmichell throw the body, and slew and murtherit him thair; vpoun sett purpois, provisioun and foirthocht felony.

VERDICT. The Affyis, be the mouth of George Ferrie, portioner of Restalrig, Chancillar, flaud, pronunceit and declarit the said Thom Armfrang to be culpabill and convict of airt and pairt of the tressonabill and crewall Slauchter and Murthour foirsaid.

SENTENCE. For the quhilk caus, the said Justice-depute, be the mouth of Robert Galbraith, dempstar, Decernit and Ordanit the said Thom Armfrang to be tane to the mercat croce of Edinburgh, and thair his rycht hand to be strickin fra his arme; and thaireftir to be hangit vpoun ane gibbett, quhill he be deid;⁶ and thaireftir, to be tane to the Gallows on the Burrownmure, and thair his body to be hangit vp in irne cheinis;⁷ and all his movabill guidis to be escheit, to our fouerane lordis vfe.

¹ Arrayed or furnished in warlike manner.

² At this period, especially on the Borders, it was by no means uncommon to have such meetings for playing at foot-ball, archery, &c.—and these games were often taken advantage of, for the perpetration of deeds of violence; at least, they were frequently terminated by bloodshed and violence, through the feuds of neighbouring clans or districts.

³ Plotted and arranged.

⁴ A Warden's Court, for punishment of excesses committed on the Borders, &c.

⁵ Appointed place of meeting.

⁶ Robert Birrel thus notices this event.

⁷ The 11 of July (1600), the Laird of Carmichael buriet; quha wes slaine be the Armfrangis and Carliles, be doing and execting his office of Wardenrie, vpone the 16 of Junij befor.¹ He thus notices the execution of Armfrang and the *Peck*, whose trial immediately follows. 'The 14 of November, Thomas Armfrang and Adam Steill, alias callit the *Peckit*, wer baith hangit at the croffe. This Thomas had his hand strak aff with ane stroke, befor he wes hangit, becaus he wes at the slaughter of James Carmichael. This *Peckit* wes one of the maist notabill thieves that evir raid.'² This is the earliest notice in this Record of a Criminal being hung in chains which the Editor has yet met with, and was evidently, in this instance, suggested by the atrocity of the crime, and the dignity of the person so basely murdered. The deficiency of facts, in the earlier Volumes, may account for this circumstance; as the particulars were then seldom recorded.

Horse, Cattle, and Sheep-stealing — Slaughter, &c.Nov. 14.—ADIE SCOTT, callit *the Peck*.

Being enterit on pannell and accusit,

For the thifeous steilling, conceilling and away-taking of certane oxin, furth of the Drochellis, pertening to the Eill of Mortoune and his tennentis. ITEM, for airt and pairt of the thifeous steilling of certane scheip furth of ane rowme beyde Lammington. ITEM, for airt and pairt of the thifeous steilling (and) conceling of fourfoir heid of nolt, furth of the landis of the Cairne, pertening to certane Lowthian men, quhill wes in gerling¹ on the famin landis. AND for airt and pairt of the slauchter of vmq^{le} Hary Rannald, feruitour to Sir James Sandielandis of Slewmanne-mure, and vmq^{le} Andro Smyth in Auchnowlis-hill, committit in the moneth of Auguft, 1^{re}.Vj^e. yeiris. ITEM, for airt and pairt of the thifeous steilling of foure hors furth of Corfwodburne, pertening to Sir James Sandielandis of Slewmanne-mure. ITEM, for airt and part of the thifeous steilling of xvj oxin furth of Leftoun-scheillis, pertening to Alexander Dowglas. ITEM, for airt and pairt of the thifeous steilling of certane guidis fra the Guid-wyff of Garvell-fute. ITEM, for airt and pairt of the thifeous steilling of certane guidis furth of Ingerftoun-burne, pertening to Rychard Hodge thair. ITEM, for airt and pairt of the thifeous steilling of certane clath furth of Carington-mylne. ITEM, for the cuming to Johne Ker Minifter of Lynis hous, breking thairof, taking of him self prefoner, and steilling of his infycht and pleneiffing furth thairof. ITEM, for airt and pairt of the thifeous steilling of twa naigis furth of Hairburneheid, pertening to Adame Johnestoun thair. ITEM, for airt and pairt of the thifeous steilling of thrette gers oxin² furth of Corfwodburne, pertening to certane Lowthian men. ITEM, for the steilling of certane oxin, pertening to Adamfoun in Leftounscheillis. ITEM, for the fetting uponne vmq^{le} Rodger Schaw in Craiginbae, George Schaw thair, Quintene McMillane in Craignell, Downie McMillane thair, Sandie McMillane thair, Johne Chalmeris in Clatteran-schawis, Johne McMillan in Dafelloch, George McMillan his brother, George McMillan in Craiginbae, Andro McMillan in Powfchafkene, James Reid in Stronefchafkene and Williame Gordoune in Knokfchene, att the Sandiehillis; quhair he and his complices slew the said vmq^{le} Rodger Schaw in Craiginbae, and thifteouffie stall xxij naigis fra thame. ITEM, for airt and pairt of the thifeous steilling of nyntene nolt furth of the byre of Nether Qulitlaw, pertening to Thomas Ker of Caveris; committit at Martimes 1600 yeiris. ITEM, for Commoun Thift and Commoun Reflett of Thift, inputting and outputting of thift.

VERDICT. The Affise³ fand, pronunceit and declarit the said Adie Scott to be flylit, culpabill and convict of the haill cryme of Thift and slauchteris aboue writtin, laid to his charge.

SENTENCE. The Justice Ordanit him to be tane to ane Gibbett att the mercat croce of Edinburgh, and thairvpoun to be hangit quhill he be deid; and all his movabill guidis to be efcheit, &c.

Uttering Adulterated Money, &c. — Treason.

Nov. 27.—GEORGE DRUMMOND, burges of Perth.

Dilatit and accusit of,

The Trefsonabill outing⁴ of fals and adulterat money, sic as Hatt-pecis,⁵ cronnes, foure pound pecis,¹ Grazing.
preceding Trial.² Oxen sent from the Lothians to pasture or graze.⁴ Uttering, issuing.³ The same as in
⁵ An early coin of James VI. in which the head
is surmounted with a hat, in place of the crown or laurel.

and foure merk pecis, amangis our fouerane lordis liegis, as trew money and coingie, att the flairs of Perth, Striuling, and in vther mercattis in the North pairtis; quhill fals coingie he bocht fra Hanis Johnestoune, Fleming, Charles Hereis, Fleming, and Arthour Smyth, a smyth duelland befyde Banff, and wes coingieit be thame in Banff, Elgyn, Abirdene and Lenocho, fyve or sax yeiris fyne.

VERDICT. The Assyis, be the mouth of Petir Spens, dagmaker in the Cannogait, chancellor, stand, pronouncit and declarit the said George Drummond to be culpabill, flylit and convict of the cryme of Treasoun aboue written.

SENTENCE. To be tane to the Castell(hill) of Edinburgh, and thair to be wirreit att ane staik quhill he wes deid, and his bodie to be brent in assis; and all his landis, heretageis, guidis and geir to be forfaltit, efcheit and inbrocht to our fouerane lordis vse, as convict of the saidis crymis.

[*Mr William Hairt, Justice-Depute.*]

ASSESSORS, Lords Halyruidhous, Dunkeld and Fentonbarnes.

Treason—Keeping the House of Cuninghamehead against the King's Commissioners — Slaughter.

Dec. 15.—WILLIAME CUNNINGHAME of Tourlandis.

Dilatit, accusit and persewit be Mr Thomas Hammiltone of Drumcarne, aduocat to our fouerane Lord, of the crymis following, contenit in Dittay produceit be the said Aduocat.

DITTAY against the Pannel.

WILLIAME CUNNINGHAME of Tourlandis, ye ar indytit and accusit, sforsamekill as Alexander Cwninghame, your brother, and certane his complices, hyrit and conduceit fuddartis,¹ haifing, in the moneth of March the yeir of God 1^m.Vj^e. yeiris, tane the Hous of Cwninghameheid, and being chargeit be vertue of our fouerane lordis lettres to haif randerit the famin within², vnder the payne of Treffoune; Neuirtheles, it is of veritie, that ye, within fourtie aucht houris efter the taking of the said place, and eftir the charge gewin for randerung thairof vnder the pane of Treffoun, convoyit youre selff and enterit within the said place and hous of Cwninghameheid, and tressonablie assisit the said Alexander Cwninghame, your brother, in keping of the said hous aganis the Lairdis of Dunraith and Vrehill, his Maiesteis Commissioneris, quha wer assaigeing the said place, and that be the space of xxiiij dayes eftir your entrie within the famin; during the quhillk tyme, ye and your compliceis tressonablie fshot out of the said place diuers hagbutis att the saidis Commissioneris and thair assisieris; committand thairby oppin and manifest Treasoun, and iocurrand the tinsall of lyffe, landis and guidis; quhillkis aucht and fould be execute aganis yow, with all regour. To the takin³ that ye ar gyltie of the said cryme, ye haif confest the famin, be youre Deposition. ITEM, ye ar indytit and accusit, sforsamekill as ye, accompaneit with Alexander Cwninghame, your brother, and vtheris your compliceis, being bodin in feir of weir, with secreteis, steilbonnetis, dagis and pistolettis, prohibite to be borne, worne, vsit or fshot with, be our fouerane lordis Actis of Parliament, lailie, in the moneth of September, or thairby, the yeir of God 1^m.V^e.lxxxxvj yeiris, haifing consanit ane deidlie feid, rancour and malice aganis vmq^{le} James Stewinroune in the Myltoune of Robertoune, come to the Landis of the Myltoune of Robertoune, quhair the said vmq^{le} James wes in fobir and quyet maner, doand his lesull effairs and bussines, dredand na ewill, harme, iniurie or persuit of ony personnes, bot to haif

¹ Waged, or stipendiary soldiers.

² Left blank.

³ In proof, token, or testimony.

lewit vnder Godis peax and our fouerane lordis; and thair, with your wappiunis foirlaidis, maist schamefullie, crewallie and vnmercifullie slew the said vml^e James; and ye was airt and pairt of the said crewall Slauchter; committit vpoun sett purpois and prouisioun, and foirthocht felony. To the talkin that ye ar airt and pairt of the said Slauchter of the said vml^e James Stewinfoune, ye wes, vpoun the xxij day of Januar I^m.Ve.lxxxvij yeiris, denunceit rebell and putt to the horne, for nocht comperand befor the Justice or his deputis, in the tolbnith of Edinburgh, the xxiiij day of November, the yeir of God foirlaid, to haif vnderlyne the law for airt and pairt of the Slauchter foirlaid; att the quhilk horne ye haif remainit continewallie senfyne, and as yit remanis: as the Letteris of Hoirning, produceit heirwith, beris.

PERSEWAR, Mr Thomas Hammiltoun of Drumcarne, Aduocat to our fouerane lord.

PRELOQUOTOURIS for the pannell.

Mr Williame Oliphant,

Mr Johne Ruffell,

The Laird of Reidhall,

Mr Alexander King,

The Laird of Glengarnok,

The Laird of Capringtoun.

The Preloquotouris produceit ane Warrant of the Lordis,¹ commanding thame to compeir in Defence of the Laird of Tourlandis, now enterit on pannell; quhilk Warrant is subscryuit be the Chancellor, *in presentia Dominorum*.—The pannell takis instrumentis, that the Justice declaris that *Sir Johne Cockburne of Ormiston*, Justice clark, fall nocht be judge nor Assessor, nor yit Justice clark in this mater.² Alledgeis, that *Sir George Home*, thesaurer, can nocht be Assessor, becaufe he may win and tyne in the cause, in caise of convictione. The Aduocat answers, that the alledgeance aucht to be repellit, in respect he is nocht partie. The said Sir George Home declarit he wold nocht void in that mater.—The Aduocat takis instrumentis of the admitting of my Loirdis of Hallyruidhous, Dumkerd³ and Fentounbarnes to be Assessours in this cause.

The pannell alledgeis, that he sould be cited vpoun fourtie dayes wairning, for the alledgeit Treasoun of keping of the hous. The Aduocat answers, that it hes bene the inviolabill practik, quhen ony is tane⁴ for Treasoun, to putt him to ane Assyis for the said cryne of Treasoun, but⁵ citatioun.

The Justice repellis the alledgeance maid be the pannell.

It is alledgeit that the Dittay is nocht relevant, in respect of the generalitie thair of, nocht condiscendand att quhais instance the charge wes gevin to rander the place, quhom to, or *ex qua causa*. The Aduocat alledgeis that it aucht to be repellit, in respect of the Dittay.⁶ Forder, the Dittay is nawyis relevant, becaus I wes nocht chargeit, nor na intimation wes maid to me of the charge,

¹ This form was usual, especially in cases of Treason, in order to screen Counsel from the consequences of defending one who must be inferred to have been most obnoxious to the King. A Supplication was, in the first instance, presented to the Lords of Council and Session, by the pannell, praying them to name 'prolocutors' for the defence, and suggesting various names. The prayer was generally granted, as a matter of course.

² '*Declinator*' of the Judge was competent, on the ground of relationship, or that he had a pecuniary or other interest in the case, &c.

³ Bishop of Dunkeld?

⁴ Taken or apprehended and put in ward.

⁵ Without.

⁶ It will be noticed, in the course of this Collection, that this loose and unjust mode of answering a special objection was usually sustained by the Court, seemingly on the ground, that such must of necessity be held to be *inferred*, from the general scope of the Indictment. Much of the apparent obscurity in such matters, however, may arise, from the brief manner in which these circumstances are recorded in the Books of Adjournal.

nor na qualificatioun of the Dittay of my knowledge. The Aduocat anfuieris, it aucht to be repellit, in respect of the Dittay.

The Justice ffindis the Dittay relevant, and referues the haill defenffis proponit aganis the verificatioune of the Dittay to the Affyis; ffindis the proces for the slauchter.

The Aduocat passis fra the taking away of the horße, *pro loco et tempore*.

ASSISA.

Nicoll Caruecroce of Calfhill,	Capitan Patrik Herring,	Thomas Alexander, portionar of
James Weitchie of North Syntoun,	Archebald Layng, merchand thair,	Drummeldrie,
Robert Hepburne of Markill,	Johne Fairlie, merchand thair,	Williame Dowglas of Erlisfynlne,
Johne Baillie of St Johnes Kirk,	James Johnesloun, merchand	Johne Dunbar of Moynes,
Edward Edger, merchand burges	burges thair,	Thomas Hay of Serogis,
of Edinburghe,	Robert Home of the Hench,	Andro Logane of Grantounne.

Quhilkis persounes being chosin, sworne and admittit, eftir the accusatioun of the said William Cwninghame of Tourlandis, of the crymes contenit in the Dittay foirsaid; ffor Verificatioune of the fyrst poynt thairof, the said Mr Thomas Hammiltoun, aduocat, produceit the said William Cwninghames Depositionis and Confessiounis; quhairof the tennour followis.

DEPOSITION and CONFESSION of the Pannel.

AT ED^B, the xij day of December, 1601 3eiris. In prefens of Johne Erll of Montrois, chancillar, St George Home of Spott thesaurar, Mr Thomas Hammiltoun of Drumcarne Aduocat, Sir Johne Cockburne of Ormiston Justice Clark, and Mr William Haert of Lewielandis Justice-depute, WILLIAME CWININGHAME OF TOURLANDIS, being sworne, and being demandit, anent pe last taking of pe Place of Cwninghameheid and keping of pe samin, anfuieris, that the hous wes fyrst tane be his broper Alexander, vpoun quhais aduerteifment, vnderstanding that thair wes sum variance betuix him and the sudartis within the place, the deponer cam to pe place, and enterit pairin, and remanit within pe samin be pe space of twentie or xxiiij dayes; be pe quhilk space he wes besaiget be pe Lairdis of Dunraith and Vrchill, haifing the Kingis Commissioun; during pe quhilk tyme thair wes schuting out of pe hous and schuting in: Declaris, that his broper Alexander had nochit enterit in pe place of Cwninghameheid fourtie aucht houris, before the deponer cam to him; and the taking of pe place wes about March, 1600 3eiris: Denyis that he wes chargeit or putt to pe horne, for nochit randerig of pe Place of Cwninghameheid; bot his broper wes chargeit, vnder pe payne of Trenfoun, befor pe deponar enterit in pe hous, and gatt knowledge pairaf quhen he enterit.

And als the Aduocat produceit the Extract of the Lettres, vnder the signe and subscrption of Mr Robert Young, for chargeing of the Toune of Glasgw to assist the Kingis Commissiouner, for Assageing of the said hous, and to head fourtie hag-butteris thairto, in respect of the Commissiounne and Lettres of Treausoun, direct and execute aganis the Laird of Tourlandis and his complices; quhilk wes disobeyit. Quhilk Extract of the Letteris, is of the dait, at Halyruidhous, the fewint day of March, 1600 yeiris.

And for verification of the last poynt of the Dittay, concerning the Slauchter of the said vmq^e James Stewinsounne, the Aduocat produceit Extract of the

Letteris of Hoirning, vnder the subscriptioun of Mr Johne Skene, clark of Register, quhairby the said Williame Cwninghame of Tourlandis wes putt to the Horne.

VERDICT. Eftir productioun quhairof, and diuers alledgances maid aganis the famin, and anfuers maid thairto be our fouerane lordis Aduocat, the hail perfounis of Affise past altogidder out of Court to the Counſal-hous; quhair, eftir cheffing of the said Nicoll Carncorſe of Calhill chancellor, &c., they ſtand, pronunceit and declarit the said Williame Cwninghame of Tourlandis to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the said vmq^{ie} James Stewinſoune, committit in the moneth of March, in the yeir of God J^m.V^c.lxxxvj yeiris, as the Dittay beris: AND als, ſtand, &c. the said Williame to be ffylit, culpabill and convict of the aſſiſting of Alexander Cwninghame his brother and his complices, in the keping of the Place of Cwninghameheid aganis the Lairdis of Duntraith and Vrchill, his Maieſteis Commiſſioneris; the said Alexander being chargeit, vnder the payne of Treafoune, to haif randerit the famin, conforme to his Depoſitiounes, ſubſcryuit with his hand.

SENTENCE. To be tane to the mercat croce of Edinburge, and thair his heid to be ſtrikin fra his body: And als his lands, heretageis, takis, ſtedingis, rowmes, poſſeſſiounes, coirnes, cattell, guidis and geir to be ffoirfaltit, eſcheit and inbrocht to our fouerane lordis vſe, as convict of the said cryme.

Adultery.

Dec. 16.—DAUID GRAY, fyſchemonger in Edinburgh.

Dilatit for the cryme of Adulterie, committit with Elſpeth Hiſlope, indueller in Edinburgh, and Margaret Gourlay, wedow in Edinburgh.

The ſaid Dauid confeſſis that he had ado with baith Elſpeth Hiſlope and Margaret Gourlay, as the Dittay beiris; bot knawis nocht quhither the bairnis be his or nocht. For the quhill he aſkis Godis mercie, and cummis in the Kingis will.

VERDICT. The Affyis, for the maiſt pairt, ffylis Dauid Gray of the cryme foreſaid.

Dec. 26.—SENTENCE. The Juſtice, be the mouth of Robert Galbraith, dempſtar, Ordenit the ſaid Dauid Gray to be baneift the burcht of Ed^r, and during all the dayes of his lyff; and nocht to return thairin, without his Maieſteis licence, vnder the payne of deid: And als, Decernit and Ordanit the ſaid Dauid to pay to the Baillie of the Quarter of Ed^r quhair he duellis, the ſoume of fourtie poundis money, to be applyit to the vſe (of) the Kirk: And to paſs in waird in the Tolbuith of Ed^r, thair to remane quhill the ſamin be payit.

¹ The 16 of December, . . . Cuninghame of Tourlands beheidit at the croſſe, for Treafoune.—*Birrel's Diary*, p. 55.

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

ASSESSOURIS. My Lord Chancillar, The Bischop of Dunkeld,
The Lord of Halryuidhous, The Comptrollar, My Lord Collectour.

Slaughter — Wearing and Shooting Dags and Pistolets, &c.

Dec. 18.—THOMAS TRUMBILL apperand of Mynto; David Dauidfone of Kames; George, Raff, James and Williame Dauidfone, his fones; Jaquie Laidlaw of Rafflat; Hector Trumbill of the Firth; James Trumbill, callit *baneist James*; Mark Trumbill in Bewlie; Andro Trumbill, his brother; Walter Trumbill, callit *Sir Davidis Wattie*.

Accusit and perfewit be Mr Thomas Hammiltoun of Drumcarne, aduocat to our fouerane lord, for his hienes interes, being assited be Mr James Ker, brother to vmq^{le} Thomas Ker of Craing, of the crymes following.

DITTAY against the Pannels.

FORSAMEKILL as it is statute and ordenit be diuers of our fouerane lordis Actis of Parliament, that na maner of persoun or persounes, of quhatfumewir estait, degrie or conditionn thay be of, fall schuit, weir or beir culveringis, dagis or pistolettis vpoun thair bodeis, or in thair cumpaneis, in any pairt of this realme, ather to burcht or land, vnder the payne of cutting aff of the rycht hand, and confiscatioun of all thair guidis movabill, being convict be ane condigne Assyis thairof: Neuertheles, it is of veritie, that the saidis persounis, accompaneit with diuers vtheris thair compliceis, with convocatioun of our fouerane lordis liegis, to the number of xxx persounes or thairby, all bodin in feir of weir, with jakis, steilbonettis, hagbuttis, daggis, pistolettis, lances and vtheris wappinnis invasiue, of thair causing, command, assistance and ratyhabitioune, the saidis dagis and pistolettis being expresse forbidden, vpoun the fourtene day of September lastbypast, being the mercat and fair day of the burcht of Jedburghe, cam to the said burcht in ane professit hostilitie, nochtwithstandand publick Proclamatioun maid in our fouerane lordis name, and in name of Sir Andro Ker of Pharnyherst knycht, Provest of the said burcht of Jedburghe, and of the bailleis thairof, that nane sould repair to the said fair or mercat bot in sobir and quyett maner, keping oure fouerane lordis and the said Provest and bailleis peax: And yit, in manifest contempt of the said Sir Andro Ker, thay haifing consauit ane deidlie feid aganis him and vmq^{le} Thomas Ker his brother, and haifing of lang tyme before invadit and perfewit Thomas Ker of Caveris, thair freind and kynnisman, for his slaughter and hurt, and woundit him in diuers pairtis of his hody, to the grit effusioune of his blude, nawyis repenting thame of thair former wickit deidis and wrangis, bot continewing thairin, thay adressit thame selfis before his ludgeing in the burcht of Jedburghe, soiranent the mercat croce thairof, he being within the samin in sobir and quyett maner for the tyme, with his (wife?) and famelie: and thair, in publick mercat tyme of day, estir diuers bragis, insolent behavioure and manassingis vnto be thame soiranent the said Provest ludgeing, in contempt of him and his seruandis, seiking the occasioun of ane new quarrell, without any offence, harme or iniurie done to thame, nocht only thay wure vpoun thair bodeis and in thair cumpaneis pistolettis and gummis, bot als schot the samin att the said Sir Andro, his seruandis, and diuers honest inhabitants of the said burcht, of sett purpois, provisioun, auld feid and forthocht fellony; bot specially, schot the said vmq^{le} Thomas Ker and vmq^{le} George Glaidner, domestik seruand to the said Sir Andro: And swa, thay maist crewallie and vnmmercifullie slew the said vmq^{le} Thomas Ker and vmq^{le} George Glaidner with thair wappinnis foirsaidis: And thay and ilk ane of thame ar airt and pairt thairof; and consequentie, thay and ilkane of thame ar nocht only giltye of the saidis slauchteris, bot lykewyis of schuiting and

weiring of the saidis dagis and pistolettis, in maner foirsaid; with convocationn of ourre souerane lordis leigis: And in respect thairof, thay and ilkane of thame aucht and sould be pwneist in thair personnes and guidis, according to the lawis of this realme, in example of vtheris.

PERSEWAR, Mr Thomas Hammiltoun of Dramcarne, aduocat to our souerane lord; Mr James Ker, brother to (the said vmq^{le} Thomas and to) the said Sir Andro Ker of Phairnyherst.

PRELOQUUTOIRIS for the pannell, Mr Johne Scharp, Mr Williame Oliphant, Mr Johne Daling, The Scheref of Roxburcht, The Guidman of Buchtryg, The Guidman of Hwtounhall, The Laird of Mynto 3onnger.¹

Williame Erll of Angus comperit and desyrit Jaquie Laidla, duelland in Ancrum, quhill is ane pairt of the Regalitie of Jedburghe-Forrest, to be Replegeit to his Regalitie. The Justice findis him to be replegit.

The pannell desyris that thair materis may be continewit quhill Tyifday,² and that it may cum *in pari passu* with the vther caus;³ becaus letteris being rasit be thame ofbefore, before my lord Justice and his deputis, againis the Laird of Phairniherst and his complices, to ane day of lang tyme bypast, before ony Lettres wer rasit be the partie aganis thame, it pleasit his Maiestie to command to desert that dyett: And summondis being rasit now be my lord Aduocat aganis bayth the parteis to this day, for deidis alledgeit committit be thame aganis vtheris⁴ vpoun ane day, viz. the xiiij of September last; it hes pleasit my lord Justice, with auisse of the Nobill men, counsalouris and assessoris, to continew the persuit of thais parties nixtocum the xxij day of this instant; off all reafoun, this persuit aganis thame aucht to be continewit to the samin day; and tryell tane of the factis committit be ather of the parteis aganis vtheris, *pari passu*, and be ane Inqueist, but ony diuision of the caussis.⁵

THE JUSTICE, nochtwithstanding of the desyre, Ordanis proces.

The Aduocat declaris he will insist aganis all the personis enterit vpoun pannell: And passis fra thair wordis in the lybel, 'be way of Hamefucken.'

THE JUGE Ordanis the Aduocat to condiscend, in speciall, vpone the tyme of the hurting of the Gudman of Kaveris.

The Aduocat condiscendis and declaris the hurt done to the Gudman of Kaveris, wes committit be the hail persones persewit, awcht yeris syne, or thair-by, lastbypast.

The pannell takis instrumentis of the Interloquoutour and the Aduocattis speciall condiscending vpone the tyme foirsaid of the hurting of the Gudman of Kaveris.—My lord Aduocat declaris he insistis aganis the pannell for the crymes of Slauchteris libellit, vpoune foirthocht felony; and for the bering and wering

¹ His name is only inserted at the second *diet*, after the case was continued to the Air of Roxburgh.

² Tuesday. ³ A counter pursuit against Sir Andro Ker of Phairnyherst, and others, which was delayed till Dec. 23, (q. v.)

⁴ Against each other.

⁵ Without any separation of these two cases.

of piftolettis ; with convocatioune, and being airt and pairt thairrof.—The pannell allegit that the lybell, in that pairt anent the Convocatioune, is na wyfe relevant, quhairvpone the perfonen vpon pannell or ony of thame may be put to the knowlege of ane Inqueift ; vnder proteftatioun, that thai one na wyfe grant the famyn to be of veritye ; becaus the perfonis of the pannell, famony of thaim as convenit in Jedburgh, the tyme libellit, convenit at the command and directioun of the Sheref of Roxburgh, quha of befor, with concurfe of the Laird of Phairnyhirst, than Proveft of the burgh of Jedburgh, had tane affurance betuix vmq^{le} Thomas Ker and vmq^{le} Robert Trumbill of Bewly and vtheris thair freindis ; to the effect, that the Sheref mycht haif convoyit thame furth of the faid burgh, but ony truibill, at the Burne-wynd-Port, quhairin thai enterit, vpone conditione accordit vpone betuix the Sheref and the Proveft : Lyke as, the Sheref, according to the faid conditione, convoyit thame furth of the faid Poirt, in quyet maner, but offence of ony man ; in refpect quhairrof, thair repairing to the faid Sheref can nocht be comptit ony Convocatioune, quhairvpone ony cryme may be inferrit ; alwyfe this allegiance is proponit for the haill pannell, vnder proteftatioune forfaid, that thai grant na Convocatioune.

My Lord Aduocat askis instrumentis vpone the declaratioune forfaid, and that it is proponit for the haill pannell.

THE JUSTICE ffyndis the lybell relevant, notwithstanding the allegiance ; and Repellis the fame *loco quo* ; and Referris the cognitioune thairrof to the knowledge of the Affyfe.

Quhairvpoun the pannell askit instrumentis.—The pannell denyes ony bering or wering of hagbuttis or piftolettis the tyme libellit ; and takis instrumentis that it is affermit in the libell, *differtis verbis*, that thai wer fchot to the deid with hagbuttis and piftolettis.—My lord Aduocat askis instrumentis, that it is affermit in the lybell, that thai wer fchot and flane with hagbuttis, piftolettis, ‘ and vtheris wappynis.’

It is allegit be the pannell, that my lord Aduocat can never be hard to allege that thai wer flane with ‘ vtheris wappynis,’ in refpect of the exprefs affirmatioun in the lybell, that thai wer fchott with hagbuttis and piftolettis.—My Lord Aduocat paffis fra thai wordis in the lybell, ‘ to þe deid.’

The pannell defyrit tyme to avyfe with the lybell, in refpect of the paffing fra the wordis forfaid be the Aduocat.

THE JUSTICE ordanis proces.

The procuratouris allegis for the pairt of the haill pannell, vnder proteftatioun that he on na wyfe grantis the lybell, nor na cryme thairin contenit, nor na pairt thairrof to be of veritie ; that the pannell aucht not to be put to the knowlege of ane Affyfe, becaus vmq^{le} Thomas Ker and George Gladner, his fervand, wer

ordourly enterit our fouerane lordis rebellis, the tyme of the allegit Slauchter; and proponis this allegiance vnder protestatioun forsaide. And for verificatioun of the said allegiance, produceit the extract of the Hoirning; be the quhilk lettres thai wer denunceit to the horne, for the Slauchter of vmq^{te} Henrie Olypher.

My Lord Aduocat allegis the saidis personis wer lawfully relaxit fra the Horning produceit, befor the cryme libellit; and thairfore the forsaide allegiance aucht to be repellit; and produceit the said Relaxatioun; and askit instrumentis of the productioun of the Horning, and allegis the famin to be null, in respect of the executioun not contening any copy of the saidis lettres to haif bene gevin to the said Thomas Ker and George Glaidner, or affixt vpon thair dwelling place. To the quhilk it is ansuerit be the pannel, that the said Horning is lawchfull, being for ane criminal caus, to witt, for Slauchter, quhilk merittis na favour; be the quhilk letteris thre personis being only summond to vnderly the law, Thomas Ker and George Glaidner ar bayth personally apprehendit,¹ and the personis lykwyse lauchfully summond at the market croce, and ane copy affixt; and the letteris beris expresly, that the messinger 'deliuerit to the said Thomas ane,' quhilk of all necessity man be supponit and pre-swmit to be 'ane copy,' being deliuerit be the officer, quha had na vther erand with the said Thomas, bot to charge him and deliuer him ane copy: And be the subiect of the letteris, can be referrit to na thing bot to ane copy; and the omiffioun of that word in the extract of the Horning furth of the Register can nocht preiuge the partie.—Ansuerit my Lord Aduocat, that the Horningis, being of thair awin natour odious, and nevir vsit to reslave ony favorabill interpretatioun in jugement, this Horning being vsit to stay the tryell of the parties vpon pannel, for the crwell Slauchteris and vtheris crymes libellit, the Horning wanting ane necessar solempnity requisit be the Act of Parliament, is manefeist null, and sa can not stay proces.

THE JUGE Repellis the allegiance proponit aganis the nullity of the Horning. Quhairvpon the pannel askit instrumentis.

My lord Aduocat ansueris, the saidis personis wer lawchfully relaxit fra the said Horning befor the crymes committit be the pannel and produceit the said Relaxatioun. The pannel yit, as ofbefoir, desyres continuatioun quhill Tyf-day, or to the morne, that thai may, in the mene tyme, aduys with the Relaxatioun produceit. My lord Aduocat craves proces, and dissafentis fra all continuatioun.

THE JUSTICE ordanis forder proces.

¹ A technical phrase, employed when the officer 'serves' or 'executes,' as it is termed, the Letters or writ upon the party against whom directed, by delivering a copy to him personally.

It is allegit yit be the pannell, that in respect the maist pairt of thame hes bene detenit in waird this lang tyme bigane, swa that thai culd not provyde thame felffis for defence, and this Relaxatioune is bot laitylly produceit, and laitylly writtin as apperis, delay awcht to be grantit presently, in respect of the tyme of the nycht.—It is answert be my lord Aduocat, sik ane allegiance blekkit¹ never this buk ofbefore.—It is allegit, vnder protestatioune forsaide, that thir persones vpone pannell awcht not to be put to the knowlege of ane Inqueist, for the allegit Slauchter of the said vinq^{le} Thomas Ker, becaus, the tyme of the committing of the Slauchter, he wes enterit our fouerane lordis rebell and put to the horne, and herewith produceit the said Horning, vsit at the instance of James Maistertoune, for nonpayment sevin scoir ten li. (L.150) mony, and xl li. for expensfis.—It is allegit be the pannell, that the Relaxatioune producit for the first Horning, vsit aganis Thomas Ker and George Glaidner, is null, becaus it is expresly providit be Act of Parliament, that all registratiounis falbe in the Sheref Court bukis of the schyre quhair the pairtyes wer denunciit, or quhair thai dwell. This Relaxatioune is nether affermit to be registrat in the Sheref bukes nor be the Sheref clerk, nather declarand befor quhame it is registrate, nor be quhame, nor befor quhame it wes produceit.—The Aduocat answert, the allegiance aucht to be repellit, in respect of the Relaxatioune producit, quhilk is minut,² produceit and registrate in the Sheref bukes of Roxburgh, and subscryvit be the ordiner clerk thair of.—It is allegit be the Aduocat, that the Horning producit, at the instance of James Maistertoune, aganis the said Thomas Ker (is null ?) becaus it is nocht lauchfully registrate, within xv dayes efter the denunciatioune, conforme to the Act of Parliament, nor yit subscryuit be the Sheref clerk.—It is forder allegit be the pannell, for the fortificatioune of the allegiance proponit for the nullaty of the said Relaxatioune producit, that it is null ; for this caus, becaus it is not registrate nor affermit to be registrate be ony Sheref clark ; and insafer as it apperis to be subscryvit be ane callit Dowglas, thair wes never ane of that name Sheref clerk of Roxburgh, except ane Mr George Dowglas, quha deceifit twa yair before the said Relaxatioune ; and he never affermes him self to be clerk to the Sheref of Roxburgh. My lord Aduocat answert, as of befor, the Relaxatioune is sufficient notwithstanding the allegiance, and declaris that this Relaxatioune was registrat be Mark Dowglas, Sheref Clerk of Roxburgh, quha wes reput sheref clerk, and vsit the office by registratioune of Horningis and Relaxatiounis, and geving furth of extractis thair of.—Vpone the quhilk declaratioune the pannell askis instrumentis ; and forder allegis, that Mark Dowglas wes never sheref clerk, nor affermes him to be sheref clerk, bot be the contraire, be deceis of Mr George Dowglas, Sheref clerk, Robert Trumbill wes lawfullie providit to

¹ Never blackened, defiled, disgraced.

² Minuted, noted in the ' Minute book.'

the said office, quha vñt and exerceit the said office of clerkship, dyueris yeris after the deceis of the said Mr George Dowglas.

The pannell declairis thai haif na mair to say, nor will say na mair, befor this mater be put to the knowlege of ane Assyse.

THE Juges continewis the said mater quhill the morne.

Dec. 19.—THE Aduocat allegis, that he will infist only aganis HECTOR TRUMBILL of the Firth, JAMES TRUMBILL, MARK TRUMBILL and ANDRO TRUMBILL.

It is alledgeit for the rest of the pannell, that my lord Aduocat can nocht pass fra thame, in respect of the stait of the proces, quhairin the pannell comperit and proponit findrie defensilis, quhairvpone Interloquoutouris ar gewin, with auise of the Assessoris: and eftir the proponing of the alledgances and answers maid thairto, and Interloquoutour gewin be my lord Justice; partie being willing to abyde tryell of Justice, my lord Justice may nocht pass fra persuit in thair preiudice.

THE JUSTICE findis, that my lord Aduocat may pass fra thame.

The pannell allegis the Relaxatioune produceit, makis no mentioun that it wes registrate in the Sheref bukis of the sherefdom of Roxburgh; in respect quhairof, na respect aucht to be had to my lord Aduocatis allegiance made thairanent.

THE JUGE, *ex officio*, desyrit the ayth of James Dowglas of Kaveris, Shereff of Roxburgh, being present, gif he knawis that Mark Dowglas wes Sheref clerk of the said sherefdom, and wes in vse to keip Courtis, and register and extract Horningis; quha being sworne, declaris, he knew not the said Mark to be Sheref clerk, be his knowlege; and that he wes never ressavit nor admittit be him to the said Office of clerkship. Quhairvpone the pannell askit instrumentis.

My lord Aduocatt askis instrumentis that my lord Justice declaris he will heir the parties be word, (and) he will gif his Interloquoutour thairvpone.—It is answerit be the pannell, that the allegiance proponit be my lord Aduocat aganis the validity of the extract of the Horning product, subscryvit be my Lord Clerk of Register, awcht to be repellit, in respect of the extract, quhilk is ane Extract furth of the Register of the Horningis of the Sherefdom of Roxburgh, and as the originall buk of the Register makis na mentioun of the clerk, swa the extract furth of the Register can mak na mentioun, becaus the Extract respectis the Register, and the Register of every sherefdom awcht not to mak mentioun of the clerk, of the productione of ilk feuerall horning; becaus it being the Register of the Sherefdom, is merkit be the clerk, quhilk is sufficient for the haill horningis thairin contenit: And my lord of Register makis na mentioun of the Sheref clerkis in the Extract of ony Horningis gevin furth be him; and

gif this Extract falbe fund null, for the argument foirfaid, the haill Extractis fubfcriyuit be my Lord of Register, and the haill declaratiounis gevin be the Lordis of Sefsioune thairvpone, will be fund null: And it is not proper for my Lord Justice to fynd all the faidis Extractis null, for the quhilk thair is ane fufficient Warrant be Actis of Parliament, gevand my Lord Register power to extract all Horningis furth of the Registeris, and that they fall mak als grate fayth as the principall; and gif flik ane Relaxatioune had bene, as is now produceit, thefe wald haif bene alfo in the Register of that yeir.

THE JUGE fyndis the Extract of the Horning produceit, vnder my Lord of Registeris fubfcriptioun, to be fufficient. Quhairvpone the pannell askit instrumens.

It is forder allegeit be the pannell, that this Extract of the Relaxatioune produceit, is nocht contenit in the Register of the Sherefdom forfaid, nor is nocht contenit in the Register thair of that yeir, quhilkis ar extant in my Lord of Registeris handis.

THE JUSTICE Repellis the alledgance maid aganis the Relaxatioune, and fuffenis the faid Relaxatioune produceit.

Quhairvpone my Lord Aduocat askit instrumentis.

THE JUSTICE declaris he and the Affefforis will heir bayth the faidis parteyis, be word; and gif thair allegeanceis be worthy writting, he will heir thaim to writt; vthirwyfe nocht.

Quhairvpone my lord Aduocat askit instrumentis.

ASSISA.

Adame Qulytefurd of Myltonne,	Gilbert Pennycuik of that Ilk,	George Heiflop, armurare, burges
Neill Montgomerie of Langfchaw,	Petir Collace, indueller in the	of Edinburgh,
Matho Fynlafoune of Killeithe,	heid of the Cannogait,	George Waldye, fkyunner, burges
William Weir of Auchterfardell,	Andro Naiper, burges of Edr,	thair,
Robert Cairncorfe, burges of Edr,	Andro Scott, chirurgean,	Johne Dowglas, burges thair,
James Hoppringill of Qahyte-	James Stalker, indueller in the	William Fyddes, baxfter, burges
bank,	heid of the Cannogait,	thair.

The quhilk day, James Ker, brother to the Laird of Phairnyhirft, being perfonally prefent in jugement, fwoir the Dittay to be trew, in prefens of the Affyfe; quhairvpone my lord Aduocat askit instrumentis.

To the taikin¹ that this deid being done vpone the Ruid day,² the ffair day of Jedburgh, be thir perfonis vpone pannell, thai wer takin ryd hand³ be the Proueft of Jedburgh; and at his Maiefteis command brocht to the tolbuith of Edinburgh, and hes bene kept captives thairin continually fenfyne.—The pannell takis instrumentis, that thair is na verificatioune vfit nor produceit, for verifeing

¹ In proof or evidence.
fact, 'with the bludie hand.'

² Holy Rood, or Holy Cross day, Sept. 14.

³ Red-band, in the

of the Dittay, bot the aith of Mr James Ker, informer. The pannell produceit ane Testimoniall, subscryuit be the Sheref, togidder with ane new Declaratioun of the maner and trewth of the Slauchteris of vmq^{le} Thomas Ker and George Glaidner; quhilk thay defyrit to be insert in proces.—The Aduocat protestis, that the informatioun of partie sould nocht be ressaunt, nor the Testimoniall of the Shereff sould be ressaunt.—It is agreit vpoune, that George Gybsoune and Wilhame Mayne sould be ressaunt witnefs.

The Aduocat protestis, in respect that George Glaidner is slayne with ane hagbut or pistolet, quhilk is na wappin of defence, bot vnlauchful wappin, in caise the Assyis Clange, for Wilfull errour. And the Pannell protestis for Wilfull errour, in case thay Convict thame, albeit he wes slane with ane hagbut or pistolet, seing thay were nocht the slayaris of him, nor had na hagbut nor pistolet; bot thair wes that he gaue away with the saidis crymis.—And the Aduocat alledgis that the pannell are airt and pairt of the saidis crymis.

THE JUSTICE findis that the Testimoniall sould nocht be ressaunt.

SPECIAL VERDICT of the Assyse.

Quhilkis perfonnes of Assyis being sworne, &c. thay removit altogidder furth of the Court to the Laich-Connal-hous, quhair, efter cheifing of the said Neill Montgomery of Langschaw chancillar of the said Assyis, and after examinatioun of George Gibsoun and William Mayne, burgeffis of Edinburgh, quha wer ressaunt as witnefs, with consent of our souerane lordis Aduocat and of the perfonnes on pannell; and efter laug reasoning and voting vpoun the poyntis of the Dittay foirsaid, being throwchellie auisit thairwith, thay reenterit agane in Court, in presens of my lord Justice; Quhair thay, be the mouth of the said Chancillar, stand, pronunceit and declarit Hector Trumbill of the Firth, James Trumbill, callit '*baneist James*,' Mark Trumbill and Andro Trumbill, brether to vmq^{le} Robert Trumbill of Bewlie, to be flylit, culpabill and convict of airt and pairt of the slauchteris of the saidis vmq^{le} Thomas Ker, brother to Sir Andro Ker of Pharneyhirst, and of vmq^{le} George Glaidner his seruand, committit vpoun the xiiij day of September lastwas, in the Burne-wynd of Jedburghe: And als, be the mouth of the said Chancillar, stand, pronunceit and declarit the saidis perfonnes to be Acquit of Convocatioun of our souerane lordis liegis, and of bering, weiring and schuting of pistolettis and hagbuttis, and of foirthocht felony, and of all the rest of the lybell.

The Justice thaireftir continewis all pronunceing of Dome, till he get his Maiesteis mynd thairanent; and committit the perfonnes convict to waired within the tolbuith of Edinburgh.

On Dec. 26, the following is inserted in the Record.

DOME for Andro Trumbill, brother to the Guidman of Bewlie.

Dec. 26.—THE JUSTICE, be the mouth of Robert Galbraith, dempstar of Court, decernit and ordanit the said *Andro Trumbill* to be tane to the mercat-croce of Edinburgh, and thair his heid to be strikin fra his body; and all his movabill guidis to be escheit and inbrocht to our souerane lordis vse, as convict of the saidis crymes. Quhilk wes pronunceit for dome.

**Shooting with Hagbuts, &c.—Slaughter—Demembration—
Convocation of the Lieges, &c.**

Dec. 23.—SIR ANDRO KER of Pharnyherst, James Ker of Lyntellie, Williame Ker, his sone; Michael Ker in Oxnem, (stewart to the Laird of Pharnyherst,) David Anislie, younger in Falaw, Johne Anislie, his brother, Lancelot Anislie in Oxnem, Adame Anislie, his sone, Thomas Robsfoune, callit *Prettie-fit*; Matho Robsfoune in Burnesit, Thomas Gay in Tounheid, John Gay thair, Williame Rutherford, callit *Gray Will*, burges of Jedburgh; Johne Rutherford, his sone; James Hislop in Elchiesfeill, Mr James Ker, brother to the Laird of Phairnyhirft; Williame Robsfoune in Burnewynde, Thomas Ker, brother to *George the Browler*.

Dilatit for contravening of the Actis of Parliament, in beiring, weiring and schuting with hagbuttis and pistolettis: And als, for airt and pairt of the slauchteris of vmq^{le} Robert Trumbill of Bewlie, and vmq^{le} Johne Middilmest, brother to Williame Middilmest of Lillie-chapell: And for airt and pairt of the schuting of James Dowglas, apperand of Todhoill, with twa bullettis in the wambe, hurting and wounding of him thairwith: And als, for hurting and wounding of James Dowglas in Cruik, in the neise, and demembering of him of ane pairt thair of: And for demembring of Henrie Davidfoune, sone to David Davidfoune of the Kamis, of his rycht hand: And for demembring of Mark Trumbill, brother to the said vmq^{le} Robert Trumbill of Bewlie, of the thowme of his left hand: And for demembring of Andro Trumbill, his brother, of the lytill finger of his left hand; and for hurting and wounding of Williame Trumbill in Tounheid, in the wambe, be the schot of ane pistolet with twa bullettis; committit the xiiij day of September lastbypast: With convocationne of our souerane lordis leigis; vpoun sett purpois, provisioun, auld feid and foirthocht felonye.

PERSEWARIS, Mr Thomas Hammiltoun, aduocat, Nicolas Trumbill, the relict of vmq^{le} Robert of Bewlie, Thomas Trumbill, apperand of Mynto.

PRELOQUUTOIRIS for the pannell, Mr Johne Ruffell, Mr Thomas Craig, Mr Johne Leirmonth.

Comperit Williame Erll of Angus, lord of the Regalitie of Jedburghesforrest, and desyrit the persones following, duelland within the boundis of the said Regalitie, to be replegeit to the privilege thair of; to witt, Sir Andro Ker, &c.; and produceit his Infestment of the Regalitie, contenand expres privilege of Regalitie, and desyrit the said personis to be repledgeit.

The Aduocat allegis, that the said Laird of Pharnyherst, and remanent personis, can nocht be replegeit; becaus the seasing prewis nocht Pharnyherst to be in Jedburghesforrest, or within the regalitie thair of; and except he preve itt,

they can nocht be hard to replege. The Lord Angus anfueris, that Pharnyherft and landis thair of ar pairt and pertinent of the lordſchip of Jedburghefforrefst, haldin of my Lord Angus.—The Aduocat takis instrumentis, that Thomas Trumbill, apperand of Mynto, declaris, as he is informit, that the Place of Pharnyherft is nocht within the boundis of the Regalitie: And als, the Aduocat allegis, that my Lord of Angus can nocht be hard to preve, be witneſes, the Place of Pharnyherft to be pairt and pertinent of Jedburghefforrefst.

THE JUSTICE findis that it man be verifeit be writt, that the Place of Pharnyherft is pairt and pertinent of Jedburghefforrefst.

Thairefter, it wes fund be Interloquoutour that it may be verifeit be witneſſis, that the Place of Pharnyherft lyes within the boundis of the ſaid Regalitie.

The Lairdis of Aytoun, Broxſmyth, Traquair, being produceit as witneſis to preve as above; and the Aduocat anfuerand, that they wer kyn and freindis to the Laird of Pharnyherft, the Juſtice ſtand that they could nocht be reſſaut for the reſpect fairſaid.

The Laird of Drummalzeare wes ſworne, that he cam nocht heir to defend the Laird of Phairnyherft, and wes produceit as witneſs to preve Pharnyherft to be within the Regalitie; and being ſworne, deponis that he knawis the Place of Pharnyherft to be within the Regalitie of Jedburghefforrefst.

Gylbert Pennycuik of that Ilk, being ſworne, previs na thing.

James Anſlie, being ſworne and produceit, the Aduocat allegis that James Anſlie could nocht be reſſaut, becauſe he is of the name of Anſlie, of the quhilk name diuers wes att the Slauchter aboue writtin; and ſwa the perſewaris, declarand that thay bure feid aganis all the name of Anſlie, the ſaid James could nocht be reſſaut: And the Juſtice referrand the mater to the declaration of the ſaid James, quha wes ſworne, and declarit he bure feid att na man, reſſaut the ſaid James witneſs, nochtwithſtanding that the informeris alledgeit feid: Deponit, that he knew Phairnyherft to ly within the boundis of the Regalitie.

Allegis the Aduocat, that the Laird of Pharnyherft can nocht be repledgeit, becauſe he being Proveſt of the Kingis frie burcht of Jedburghe, and accuſit of ane capitall cryme committit within the ſamin, he can nawyis be repledgeit to ony Regalitie, in reſpect of the qualitie of the place and perſoun; nather can his hienes Aduocat be drawin to inſiſt in ſic ane perſuit before ony inferiour Judge, bot aucht only perſew him before his hienes Juſtice Generall.—It is anfuerit for my Lord of Angus, proponer of the exceptionne of Replegiatioun, that albeit the Laird of Phairnyherft acceptit vpoun him to be Proveſt of Jedburghe, that can nocht prejudice my Lord of Angus of his privilege of Regalitie within the haill boundis of the lordſchip of Jedburghefforrefst; nather yit prejudice the Laird of Pharnyherft of ony benefite compitent to him, in reſpect of

his duelling-place : And albeit ane capitall cryme be committit within the Regalitie, ather within burcht or land, that can nocht preiudge the lord of the Regalitie of his priviledge, quha is Judge compitent to all and quhatfumeuer perfounes duelland within the boundis of his Regalitie, quhairwir the cryme be committit ; And forder, the Laird of Pharnyherft is nocht perfewit as Proveft, vpoun the difcharge of his office, or for ony failzie¹ committit be him, in vſing or exerceing thair of, bot as ane privat man, for the crymis contenit in the Dittay : And albeit my lord Aduocat is nocht obleift to compeir befor ony vther Inferiour Judge, that is na caus to preiuge the lord of the Regalitie of his privilege, ſeing the parteis offendit may perfew, and any lord Aduocat may perfew be his ſubſtitute ; and gif that argument ſould be reſpectit, the haill heretable Regaliteis ſould be vnprofitabill, and na replegiatioun ſal be admittit in favours of the lordis of the Regalitie and thair bailleis : And forder, his Maieſteis Aduocat is ordinarlie partie in all criminall perfuitis.

The Laird of Pharnyherft, being inquyrit, gif he wald adhere to my lord of Angus' deſyre and alledgeance, he anſuerit, that he wald gif his procuratouris leiſt to anſuer for him : And Mr Johne Ruffell, as procuratour for the Laird of Pharnyherft, declarit he wald keip ſylence, quhill² the diſcuſſing of my Lord Angus' alledgeance ; quhairvpoun he aſkit inſtrumentis.

DENUNCIATION againſt William Ker, &c. for the above crimes.

THE quhill day, Sir Andro Ker of Phairnyhiſt knight, oftymes callit as cawtioner and ſouertie for WILLIAM KER, brother to Robert Ker of Ancrum, George Moſcrope, burges of Jedburghe, David Moſcrope his brother, thair, George Ker in Oxnem, Johne Ker in Redden, Andro Ker thair, Charles Robſoune in Wallis, George Pyle in Mylneheuche, David Pyle his brother, and Symmie Hall in Haviefyde, to haif enterit and preſentit thame befor our ſouerane lordis Juſtice or his deputis, the ſaidis day and place, in the hour of caufe, to haif underlyne the law for the above crymes ; lawfull tyme of day biddin, and nocht enterand the perſonis abouewrittin, as he that become cawtioune for thair entrie, as ſaid is : Thairfoir the Juſtice decernit and ordanit the ſaid Andro Ker, as cawtioner foirſaid, to be vnlawit and amerciat for thair nocht entrie, in the panis contenit in the Actis of Parliament, vid. for nocht entrie of the ſaid William Ker, in the pane of twa hundreth markis, and for nocht entrie of the remanent ix perſonis, for ilk ane of thame in the pane of ane hundreth markis : And als Adjudgeth the ſaidis William, &c. to be denunceit our ſouerane lordis rebellis, and put to his bienes horne ; and all thair movabill guidis to be eſcheit and inbrocht to his Maieſteis uſe, as fugitives fra his bienes lawis for the ſaidis crymes.

PERSEWARIS.

Margaret Trumbill, freind³ to John Middilmest,
Mark Trumbill, brother to Bewlie.⁴

PRELOQUUTOURIS for the pannell.

The Erl of Crawford, My Lord Vchiltrie,
My Lord Newbottill, The Lard of Lytildene.

Dec. 24.—My Lord of Angus declaris, that he inſiſtis only to haif James Ker of Lintellie and William Ker, his ſone, repleget ; but vnder proteſtatioune

¹ Failure, malverſation.

² Until Lord Angus's allegation of being lord of this Regality, &c. was diſcuſſed.

³ Relative, blood relation.

⁴ Theſe ⁴ perſewaris' and alſo the ⁴ preloquutouris' here noted, are inſerted in the Record, in addition to thoſe formerly entered.

that he passis nocht fra the priviledge of his Regalitie, nochtwithstanding that he requyres not the land of Pharnyherst replegeit.

THE JUSTICE Admittis the replegiatioun to my Lord of Angus, for replegiatioun of James Ker of Lintellie and Williame Ker, his sone: And my Lord of Angus appointis the thryd day of the nixt Justice-air of the Regalitie of Jed-burghe-fforest, or soner, vpoun fyftene dayis warning, for administratioun of Justice; and ffind Ker (of Caveris) cautionner for administratioun of Justice; and James Commendater of Melroisse¹ become fouertie for thair entrie; and the Guidman of Lintellie obleift him to releve my Lord of Melroise.

The Laird of Pharnyherst takis instrumentis that Mark Trumbill of Bewlie infistis in persuit of his lyffe.—The Laird of Mynto refusis to persew; quhair-vpoun the Laird of Pharnyherst askit instrumentis.—The Laird of Pharnyherst askit instrumentis, that Mark Trumbill infistis in persuit of his lyffe.—The pannell, except the Laird of Pharnyherst, askit instrumentis that Mark Trumbill wold nocht infist aganis thame.

The pannell askit instrumentis that thay offerit thame selfis to ane Tryell, and to abyde ane Assyfe.—The said Mark Trumbill lykwayis declaris, that he will nocht persew the Laird of Pharnyherst, att this tyme, in respect he can nocht gett ane Assyis to him.—The Laird of Pharnyherst askit instrumentis of the declaratioun of Mark Trumbill; and specialie, in that poynt, that he being inquyrit, gif he had just caus to infist aganis the Laird of Pharnyherst? Declarit, that in respect his lyffe wes saift be him, and in his handis, he wald nocht persew: And nochtwithstanding of the said declaratioun, to testife his obedience to his Maiesteis Justice, and that he cravis na subterfuge, in respect of his innocencie, and that he did na thing bot as ane publict Magistrate, thairfore he willinglie offeris him selff presentlie to ane Tryell: And becaus this persuit is only movitt att my lord Aduocatis instance, he cravis his lordschipis declaratioun.

The Aduocat desyrit this mater to be continewit quhill Setterday; becaus that he had informatioun of his Maiestie to infist in persuit; and vpoun informatioun of partie, quha hes past fra the persuit.

SIR ANDRO KER of Phairnyherst, and Sir Johne Ker of Hirsell, as cawtioneris for Mr James Ker, Michael Ker, Thomas Ker, brother to George the browster, and James Hildop, to haif enterit thame, &c. were amerciat in the panis following, viz. for nocht entrie of Mr James 200 markis, and for ilk ane of the rest 100 markis: And these parties were ordered to be denounced rebels, &c.

Dec. 26.—Continued to Justice-air of 'Roxburghe, tertio Itineris, vel super premonitione xv dierum, plegiis, Patricio Home de Aytoun, D. And. Ker de Phairnyherst et D. Joanne Ker de Hirsell.'

¹ Afterwards named 'Johne,' in the Record.

Slaughter in Single Combat, in France.

Jan. 13.—CAPITAN JOHNE RIG, Archeour of the Gaird of France.

Dilatit for the Slauchter of vmq^{le} Mr Thomas Strathauchin, alias Meirnis.

Comperit Mr George Strathauchin, alias Meirnis, and produceit our fouerane lordis lettres, deulie execute and indorsat, purchest be him selff aganis Capitan Williame (Johne) Rig; and defyrit proces.

Comperit Mr Thomas Hope *excusatorio nomine* for Capitan Johne Rig, and produceit ane Warrant subferyuit be the Kingis Maiestie, ordaning the dyet aganis the said Capitane Johne to be desert; of the quhilk Precept, the tennour followis.

REX,

JUSTICE, Justice Clark and your deputtis, We greit 3ow weill. Forfamekill as Capitan Johne Rig and vmq^{le} Mr Thomas Strathauchin, Archeouris of pe Gaird of France, and swa being serwardis to our darrest broder Henrie King of France, the said Mr Thomas Strathauchin appeillit to the said Capitan Johne Rig to pe Singular Combat; in pe quhilk Combat the said vmq^{le} Mr Thomas was hurt and woundit, and be evill handling and cure of cherurgeanis, deceissit: Quhilk Combat, and all that followit pairvpoun he bene tryit be our said darrest broder Henry King of France and his Jugeis, as Jugeis compitent to pe said Tryell, the said vmq^{le} Mr Thomas and the said Capitan Johne Rig being baith subiectis to our said darrest broper: And nochtwithstanding, as We ar informit, the freindis and kyn of pe said vmq^{le} Mr Thomas Strauchin hes raist our vperis letteris, and hes summons pe said Capitan Johne Rig, to compeir befor 3ow in our Tolbuith of Edinburgh, pe xiiij day of Januar instant, in pe hour of cause, to vnderlye our lawis for pe Slauchter of the said vmq^{le} Mr Thomas, albeit it be of veritie, that We nor our Justices can nawyis be Jugeis compitent to pe said Capitan Johne Rig, he being ane Archeour of our said derrest broperis Gaird, and swa his subiect; befor quhome and his Jugeis he hes bene alreddie tryit: Lyke as, also, the said Capitan Johne Rig being vpoun pe poynt of his voyage, to pass in France to his seruice, can nocht gudlie attend vpoun pe famin dyett: QUHAIRFOIR, We haifing tane sufficient tryell in pe said mater and of pe proceeding pairf, hes concludit that the said Capitan Johne Rig salbe nawyis trublit in tyme cuming for pe said slauchter. Commanding 3ow, that 3e onnawyis proceed aganis him nor his cawtioner, at pe said xiiij day of Januar instant, nor in na tyme cuming, for pe Slauchter of pe said vmq^{le} Mr Thomas; discharginge 3ow pairf, and of your offices in pat pairt: And for pe said Capitan Johnis mair securitie, cause registreir pir presentis in our buikis of Adiornall, *ad perpetuam rei memoriam*, and for 3our Warrant. Subferyuit with our hand, at Halyrudehous, pe first day of Januar, 1602 3eiris.

(Sic subscriptur)

JAMES REX.

To the quhilk it is ansuerit be the said Mr George Strathauchin alias Meirnis, persewar, that the said Letter was ane priue Letter, and aucht nocht to be admittit.—With the quhilk Letter and ansuer maid thairto, the Justice being throughlie avysit, admittit his Maiesteis Warrant, and desertit the said dyett: Quhairvpoun the said Mr Thomas Hope askit instrumentis; and the said Mr George protestit, that the admissioun thairf preiuge nocht his persuit in tyme coming.

Treason — Forging and Uttering Base Coin, &c.

Jan. 13.—PATRIK DRUMMOND, in Lenach.

Dilatit of airt, pairt, red, counsale and conceilling of the tressonabill fforgeing, prenting, coinzeing and out-putting of false and adulterat money, sik as false fyve-pund-peices and fyve-schilling-peiceis; quhilkis, fyve yeir senfyne, or thairbye, was coinzeit be Hans Johnestoune, Fleming, and vmq^{le} George Drummond, saidler in Perth, in the kill of Lenach and vpoun the Craigis thairof, of his knowlege and conceilling; ffor the quhilk he ressaute ten false fyftie s. peiceis.

VERDICT. The Affyis, being sworne and admittit; and the pannell accusit be dittay, quhilk wes verefeit be his awin Deposition, and the Depositionis of vmq^{le} Walter Murray in Dunfermling, vmq^{le} George Drummond, saidler in Perth, and vmq^{le} Thomas Glas in Creif, and Thomas Reid, serwand to the said Hans, &c.; they, be the mouth of Andro Naper, merchand, burges of Edinburgh, stand, pronunceit and declarit the said Patrik to be flylit, culpabill and convict, &c.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair wirreit¹ at ane staik quhill he be deid; and thairefter, his bodie to be brunt in asses; and all his landis, heritageis, coirmis, cattell, guidis and geir to be fforfalt, and be inbrocht to our souerane lordis vse.

House-breaking — Theft — Horse-stealing.

Jan. 13.—PATRIK MURRAY of Galwald.

Dilatit of the cryme following, viz. Forfamekill as he, being in company with vmq^{le} Mr Williame Balfoure, brother to the Laird of Burlie, vmq^{le} Johne Gyb, Hary Cuik, Johne Oliphant, and vtheris thair compliceis, in the moneth of februar lastbypast, cam, vnder sylence and cloud of nycht, to the duelling hous of Andro Fluikar, in the Brigend of Gairny, and thair brak vp the dur of the said hous, enterit thairin, and steilling furth thairof his haill insycht pleneissing in ane seak, with ane meir; and had and convoyit the famin away with thame to the place of Strowie. ITEM, for airt and pairt of the thifteous steilling, conceling and away-taking of ane horse furth of ane stabill in the Cannogait-heid, pertening to Toscheoch of Monyvaird; committit twa yeir fyne, or thairby.

VERDICT and SENTENCE. The pannel being 'fylit' by the Affise, the Justice Ordanit him to be tane to ane gibbet standand in the Castell-hill of Edinburgh, and thairvpoun to be hangit quhill he be deid; and ordanit all his movabill guidis to be efcheit, &c.

¹ Strangled.

Slaughter.

Jan. 23.—THOMAS JAK, wrycht in Haltoune.

Dilatit, accusit and perfewit, fforamekill as he, accompaneit with Joline Her-ring in Lang-Forgoun, bodin in feir of weir, with fword and vtheris wappinnis *invasiue*, laitlie, vpoun the xxix of Julij lastbypast, haifing confaut ane deidlie feid aganis the said vmq^{le} Alexander, sett vpoun the said vmq^{le} Alexander foiren^t his duelling hous, at the Kirk of Forgoune, and thair crewallie hurt and woundit him in the heid, and claif his harne-pan² with swordis, and thairby flew him; and he wes airt and pairt of the slauchter of the said vmq^{le} Alexander Moncur.

PERSEWARIS.

Andro Moncur, sone to the defunct,
Patrik Moncur of Chapeltoune,

Joline Flouris, sifter-sone to the defunct,
Mr Thomas Hammiltoune, (King's Advocate.)

The pannell, nochtwithstanding that he is innocent of the Slauchter of the said vmq^{le} Alexander Moncur, he becommis in the Kingis will for the samyn, and for beiring of piftuletis.

VERDICT. The Assyis, be the mouth of Robert Gyb in Lochtoune, chancillar, ffand the said Thomas Jak to be ffylit, culpabill and convict of airt and pairt of the Slauchter.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair, his heid to be strikin fra his body, and all his movabill guidis to be efcheit, &c.³

Murder—Theft.

Jan. 29.—JAMES CRUIKSCHANK, feruitour sumtyme to Mr Dauid Ogilvie.

Dilatit, accusit and indytit, fforamekill as he, accompaneit with Andro zoung alias Dauid sone, hantand⁴ in Sanct Johnistoun, laitlie, vpoun the fourt day of Januar instant, sett vpoun vmq^{le} Robert Innes, merchand att the Kirk of Inch, one Carnboddod-mure, and thair, in the dawing of the day,⁵ maist crewallie (and) schamefullie Mordreift and slew the said vmq^{le} Robert Innes, be cutting of his thrott: And als, thifteouslie stall, conceillit and away-tuik fra him his pak,⁶ contening merchand-geir, with his purs and certane money thairin.

VERDICT. The Assyis, be the mouth of Robert Varnour, fkyunner in Edinburgh, chancillar, ffand the said James to be ffylit, culpabill and convict of the crewall Murthour of the said vmq^{le} Robert Innes; and of the steilling of his pak and purs, with certane money thairin.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpoun ane gibet quhill he wer deid; and thairestir his heid and rycht

¹ Before, immediately opposite to.

² Skull, 'brain-pan.'

³ On the margin, 'Convict et

decollat.'

⁴ Literally, haunting, dwelling, but without any fixed occupation.

⁵ At dawn,

immediately before sunrise.

⁶ Travelling pack, he being what is termed a 'packman,' or small-ware merchant.

hand to be strikin fra his body; to be affixit, the hand in Dundee, and the heid in Carnbodo-mure; and all his movabill guidis to be escheit, &c.

Stouthreif — Cattle-stealing — Horse-stealing, &c.

Feb. 12.—JAMES VALLEM and George Vallem, sonis to David Vallem of Woodwrae.

Dilatit, accusit and persewit, be Dittay following,

FORSAMEKILL as thay, accompaneit with Williame Ogilvie, Williame Cumming, Archebald Dowglas, Rikard, Ramfay, and vtheris their complices, commoun thevis and brigandis, in the moneth of Junij, the yeir of God Im.Vc.lxxxxvj yeiris, being bodin in feir of weir, with swordis, secreitiss, pistolettis and vtheris wappynniss *invafue*, vmbefet¹ the hie way and passage to Williame Goung and James Blak, cadgearis,² duelland vpoune the fourth syde of the fferrie of Dundie, and to twa of their servandis, at the Coittoune of Melgum, lyand within the Shereisdome of Forfar, quhair thay wer dryvand fevin pakis of merchand-geir, on fevin horfis, towardis Brechin, to the flair thairof; quhilkis packis pertenit to Patrick Wedderburne, burges of Dundie, and Johnne Alexander, burges of Edinburgh, vmq³ John Wrycht, burges thair, and Thomas Allane, tailzeour, burges of the Cannogait; and thair fet vpoune thame oppinlie, in day lycht, at xij houris in the day; and, be way of Stouth-reif, violentlie reft, stall and away-tuke fra the saidis cadgearis, the saidis fevin pakis and fevin horfis; and thifteoullie and masterfullie convoyit the samyn away with thame, togidder with the saidis cadgearis, to the mouth of Glenmoy, and disponit vpoune ane grit pairt of the said merchand-geir, at their pleasour: AND als, the said James being accusit, forsamekill as he, accompaneit with Williame Cummyng and vtheris his complices, in the moneth of October lasthypsait, come to the toune and landis of Auchterlony, pertening to Johnne Carnegie, gryuter,⁵ and thair thifteoullie stall, conceillit, reffett and away-tuke furth thairof, fax oxin and twa ky, pertening to the said Johnne Carnegie and James Pittilach his seruand; quhilk thay draif to the North and sauld, at thair plefour. ITEM, the said James indytit and accusit for airt and pairt of the thifteous steilling of ane quhyte horfe furth of Mr Williame Gairdyn stabill, Vicar of Abirleynnoch, pertening to Johnne Mortimer younger of Fleyningtoun, committit foure yeir senfyne, or thairbye. ITEM, the said George Valleme being indytit and accusit for the thifteous steilling, conceilling and away-taking of ane horfe fra Johnne Kyd.

PERSEWAR.

PRELOQUUTOIRIS for the pannell.

Mr Thomas Hammiltoun of Dramcarne, aduocat.

Mr Thomas Craig, Mr Johnne Ruffell.

It is alleget that the Dittayould nocht be putt to ane Affise, because thay could be summond vpoun xv dayes wairning, and thay could haif ane copy. The Aduocat anfuersis, that in respect of the Dittay, quhilk is vpoun thift, the alledgeance aucht to be repellit.

THE JUSTICE finidis proces.

¹ Forcibly beset, &c. by stopping or blocking up the way.

² In this sense 'cadgers' were

carriers, who travelled through the country with their pack-horses, and were employed by small-ware merchants to transport their goods to fairs and markets. At this period, all distant carriages were effected by means of pack-horses; and (as is the present custom of *carriers*) they usually travelled in companies, for mutual protection and security. The modern term *cadger*, is commonly applied to persons who collect eggs, fowls, butter, &c. from small farmers, &c. and bring them to market for sale. Their present equipage consists of a horse or ass, with *creels*, or panniers, placed across the animal, when foraging and bargaining with small farmers and cottagers; but when they go to market, their accumulated store is commonly brought in carts. ³ Properly, one who keeps or takes charge of a granary or farm. It is sometimes spelt 'grainter, or 'granitour.'

It is allegeit, that this mater, concerning the taking away of the pakis, fould nocht be putt to the knowledge of Affyis, becaus it is ane mater of depredatioun; and be Act of Parliament maid in the tyme of King James the ffyft, cap. xxxvij, all depredatiounis and maisterfull reiffis fould be fyrft Ciuilie difcuffit before the Lordis. The Aduocat anfuers, that the faid alledgeance aucht to be repellit, in refpect of the Dittay contening Stouth-reif and thift. The preloquutouris takis instrumentis, that thay defyrit to putt thair alledgeance in writt thame felff, and to dyte itt; and that the Juftice anfuert that he, be the auife of the Chancillar, Collectour, Thefaurer, Lord Hereis and vtheris¹

THE JUSTICE Repellis the alledgeance, in refpect of the Dittay.

The Pannell takis instrumentis, that na partie comperis to perfew, bot my Lord Aduocat; and na perfoune can be putt to ane Affyis, without ane fworne Dittay. The Aduocat anfuers, that he fould nocht fweir.

VERDICT. The Affyis, be the mouth of Alexander Kerfane in Balbethie, chancillar, fand the faidis George and James Vallemes to be ffylit, culpabill and convict of the crymes *refpective* aboue writtin, laid to thair chairge.

SENTENCE. To be tane to ane gibbet at the mercat croce of Edinburgh, and thairvpoun to be hangit quhill thay be deid; and all thair movabill guidis to be efcheit, &c.²

[*Mr William Boirthuik, Justice-Depute.*]

Slaughter — Hearing of Pistolets, &c.

Mar. 3.—PATRIK LORD GLAMMIS; Johnne Lyoun, fone to Johnne Lyoun in Rouchalhill; Johnne Lyoun, fone to . . . Lyoun, burges of Dundie; Johnne Scrymgeoure, Johnne Edmeftoune, and Fargus Murray, feruandis to the faid Patrik Lord Glammiss; Williame Lyoun, feruand to the faid Johnne Lyoun, fone to Johnne Lyoun in Rouchalhill.

Dilatit for airt and pairt of the Slauchter of vmq^{le} Patrik Johnneftoune of Mof-toun; and for beiring and weiring of piftolettis, contrair the tennour of the Actis of Parliament; committit vpoun the faxt day of September laftbypaft.

Comperit Mr Williame Oliphant, and produceit ane Warrant, direct be his Maieftie; quhairof the tennour followis.

REX,

JUSTICE, Juftice clark and 3oure deutes, We greit 3ow weill. Forfamekill as the thryd

¹ Assessors to the Justice. The sentence is left unfinished; but it is probable that it referred to the right of the Justice to dictate the 'allegeances' and replies, in cases where the matter was disputed between the King's Advocate and the Counsel for the pannel. ² 'The xiv of Februar, twa brether hangit, viz. David Volume and his brother, for oppreffion and fpuilzie.'—*Birrel's Diary*.

day of March nixtocum is appointit and assignit to Patrik Lord Glamis, and certane his friendis and seruandis for pair comperance before 30w, to vnderly oure lawis for þe slauchter of vmq^{le} Patrik Johnnestoune; nochtwithstanding, for certane caussis moving ws, it is oure will, and We command 30w to continew the said dyet, vnto þe tent day of Mairch nixtocum; and that 3e dispens with the personall comperance of the saidis persones, and tak new cautionn of þame, that thay fall compeir befor 30w, the said tent day of March nixtocum. As 3e will ansuer to ws pairvpoun. Quhairnant thir presentis falbe to 30w ane Warrand. Subferyuit with our hand, At Halypudious, the faxtene day of Februar, 1602.

(Sic subfcribitur) JAMES R. MONTROIS, Can^{ti}us, S. G. HOME,¹ The^r.

Quhilk Precept the Justice admittit.

The quhilk day Sir Johne Murray of Tillybairdyn, knycht, comperand be Mr Williame Oliphant, his Aduocat, be his letteris obligatouris, subferyuit with his hand, at Glamis, the last day of Februar, 1602 yeiris, become plege and fouer-tie for Patrik Lord Glamis, &c. that they fall compeir befor our fouerane lordis Justice or his deputtis, the tent day of Marche nixttocum, &c.

The quhilk day, Johnne Gordoun of Boigis, Sheref-depute of Abirdene, and Johnne Arbuthnett of Carnedaw, oft tymes callit as cautioneris and fouerteis, coniunctlie and feuerallie, for reporting of our fouerane lordis letteris, dewlie execute and indorfat, and persewing thair of, purchest be Margaret Arbuthnett, the relict, Johnne, Robert, Gylbert and Alexander Johnnestounis lauchfull bairnis, with the remanent kyn and friendis of vmq^{le} Patrik Johnnestoune of Mostoune, &c.; lauchfull tyme of day biddin, and nocht produceand the saidis letteris dewlie execute and indorfat, and nane compeirand to persew thame; thairfoir the Justice-deput, be the mouth of James Lowrie, dempstar, decernit the said cautioneris, conjunctlie and feuerallie, to be vnlawit and americiat, for nocht reporting thair of, and for nocht persuit thair of aganis the said Patrik Lord Glamis, in the pane of . . . thowfsand poundis; and vpoun ilk ane of the remanent fax persones, in the pane of ane hundreth merkis.²

[*Mr Williame Haert, Justice-Depute.*]

Stealing the Poor's Box of Cockpen — Adultery, &c.

May 21.—WILLIAME NORWALL, scolemaister in Cokpen.³

Dilatit, accusit and persewit, for the thiftious steilling, away-taking and con-celing of the puir folkis box, furth of the Kirk and Sessioun-hous of Cokpen, vpoun the xj day of Apryle lastbypast; quhairin thair wes aucht poundis money, or thairby, gewin in almous to the pure; quhilk he brak vp at the watter-lyde, besyde Mountounhall.⁴ ITEM, ffor the cryme of Adulterie, committit fourtene or fyftene yeir syne, or thairby, with Christiane Dowglas; he haifing ane mareit wyffe, callit Margret Morisoune, than on lyffe.

¹ Sir George Home, afterwards Earl of Dunbar, Lord High Treasurer of Scotland. faurario deliberat.

² See June 9, 1602.

⁴ Monktonhall?

³ 'The-

The said Williame become in our souerane lordis will; and the Justice, ressaueand him in will, ordanit the said Williame to be Baneist this realme, during all the dayes of his lyffe; and to depart furth thairof within aucht dayes efter the dait heirof, and nocht to returne thairin vnder the payne of deid. And the said Williame obleist himself to the effect foirsaid; vnder the payne to be hangit, but Assyse.

Barbarous Murder of a Dumb Young Man.

JUD. 2.—WILLIAME GEIKIE Younger in Kethynniss.

Dilatit for airt and pairt of the crewall Murthour and Slauchter of vmq^{le} Patrik Cathrow, in Kethinniss ('ane dumb borne 3oung man'); committit vpoune the xx day of Februar lastbypast.

PERSEWARIS.

Dauid Cathrow, myller at the mylne of Kethinniss, fader-bother to the defunct; Mr Tho^s Hammiltoune. PRELOQUOUTOR for the pannel, 'Mr Williame Oliphant (advocate.)

DITTAY *against the Pannell.*²

FORSAMEKILL as he, with his complices, being bodin with ane grit sting or rung,³ laitie, vpoune pe xx day of Februar, the 3eir of God I^m. Vj^e. ane 3eir, haifing consauit ane deidlie hatrent, rancour and malice aganis pe said vmq^{le} Patrik, quha was ane simpill, pure, dum 3oung man, sett vpoune him within pe toune of Cowper-in-Angus, quhair he wes in sober and quyet maner for pe tyme, doand his lesull effairis and bussines, traifing na ewill, harme, iniurie or perisuit of ony personis, bot to haif leuit vnder Godis peax, and our souerane lordis; and pair, crewallie invadit him for his slauchter, hurt and woundit him with pe said rung on the face and neise, and brak pe girsell of his neise,⁴ to the effusoune of his blude in grit quantitie; and gaif him diuerse vperis bauch, blae and bludie straikis, vponn his heid, bak, wambe and schoilderis; Lyke as, the said Williame Geikie, nocht being satisfeit with pe crewaltie done to pe said vmq^{le} Patrik Cathrow, in day licht; he, vpoune pe said xx day of Februar, pe 3eir of God foirsaid, vnder scyence and cloude of nycht, vmbeset pe hieway and passage to pe said vmq^{le} Patrik, in the Rasche-myre, lyand betuix Cowper and Kethynnis, as he was in sober and quyet maner passand on the hie way towardis the toune of Kethynnis, to his said faper-broperis duelling hous pair, dredland na harme or iniurie to haif bene done to him be pe said Williame, in respect of the bludie woundis gevin to him ofbefore; and pair, of new, sett vpoune pe said vmq^{le} Patrik, and with ane rung, best,⁵ straik and dang him vpoune pe heid, face, bak, filletis and wambe, and brak his haill intrallis, that it was piteous to haif hard pe lamentabill routis⁶ and cryis of the pure dum man; and left him nocht, quhill⁷ be pe saidis crewall straikis he slew and mureidit him, and left him deid vpoune pe ground: Commitand pairbye crewall, schamefull and abhominabill Slauchter and Murthour, being ane dumb borne 3oung man, vnhabill to haif defendit him self; vpoune sett purpois, provisoune and foirthocht fellonye.

The Aduocat proteftis for Wilfull Errour, in cais thay acquit, in respect of the Dittay and taikinniss.⁸

¹ To be hangit without farther Trial.

² This Dittay, it need hardly be observed, has been preserved here chiefly on account of the extraordinary nature of the case, and the remarkable phrases with which it abounds.

³ A large bludgeon or cudgel.

⁴ The gristle, cartilage, or flexible

part of his nose; perhaps implying also the 'bridge.'

⁵ Beat, Old Fr. *basté*, *basted*. It may

be 'beaten,' *bast*, a synonymous word.

⁶ Bellowsings, usually applied to the lowing of cattle, especially when impatient to be milked, or to be driven home in the evening.

⁷ Until.

⁸ Evidence, *tokens*, proof.

VERDICT. Eftir accusatiounne of the said Williame, be Dittay, of the crymes aboue writtin, quhilk he alluterlie denyit, the Affyis, be the mouth of Sampfounne Ker, in Auchterhous, Chancellor, stand the said Williame Geikie to be Clene, innocent and acquit of airt and pairt of the crewall murthour and slauchter foirlaid, &c. Quhairvpounne the said Williame Geikie aikit actis and instrumentis.¹

Exercising the Office of Notary without lawful Warrant.

JUN. 9.—WILLIAME NORVELL, scole-maister in Cokpen.²

Accusit and persewit be Dittay, at the instance of Mr Robert Lyntounne, substitute to our fouerane lordis aduocat, for the crymes following.

DITTAY against the Pannel.

FORSAMEKILL as, it is statote be the Actis of Parliament and lawis of this realme, that na maner of persounne gif him self furth for ane Notour, or vse or exerce the office of Notarie, vnles thay be first presentit be his Maiestie, be his hienes Letter of Presentatiounne directit to the Lordis of the Sessiounne, and thaireftir admittit be the saidis Lordis to the said office, efter tryell; and thair Prothogoll-buik fychtit and markit be the Clark of Register and his deputtis; and gif ony man preswme to do in the contrair, to be pwnest to the death: As the saidis Actis of Parliament at mair lenth beiris. And trow it is, that the said Williame Norvell hes vsit and exerceit the said office of Notarie, as ane ordinar Notar, in fyndrie deidis, ilk as in Contractis, Obligatiounis, Sealingis, Requisitionis or Redemptionis; and generallie in all thingis, quhen he was requyrit, continewallie sen the moneth of November, the yeir of God 1st.Vc.lxxxv yeiris, to the day of his apprehensiounne; albeit it be of veritie, that he was never admittit to the said office of Notarie; lyke as, he never had his Maiesteis Presentatiounne direct to the saidis Lordis of Sessiounne, for his admissiounne to the said office; nather had he ane Prothogoll-buik, markit be the Clark of Register or his deputtis, conforme to the ordinance prescryuit be the saidis Actis of Parliament: Quhairin he hes fallsie circumvenit and dissauit our fouerane lordis leigis, as ane falsse dissauear; geveing him self furth to be ane Notour, he being nane: Quhairbye he hes incurrit the panis contenit in the saidis Actis of Parliament.

VERDICT. The Affyis, be the mouth of Robert Synyth, merchand in Edinburgh, Chancellor, stand the said Williame to be ffylit, culpabill and convict of the saidis crymes.

SENTENCE. To be tane to ane gibbet, standand vpounne the Castel-hill of Edinburgh, and thairvpounne to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Slaughter.

JUN. 15.—JAMES CWNINGHAME of Glengarnok.

Dilatit of art and part of the slauchter of vniq^{le} Williame Cwninghame, in Walzaird.

¹ It is likely that the Lord Advocate abandoned his writ of Error against the Assise; at least no mention is made of the matter, in the Record. ² See May 21, 1602. Although the former Assise had acquitted Norvell, yet the public prosecutor had set his seal upon him; and, in his next charge, crushed this ill-fated thief, adulterer, and 'fals notour.'

PERSEWARIS, Katherine Crawford, the relict; Gabriell Cwninghame, as brother.

PRELOQUUTOIRIS for the persewaris.

The Laird of Cwninghameheid, the Laird of Craigance, Mr Thomas Hammiltoun.

PRELOQUUTOIRIS for the pannell.

The Laird of Caprintoun, the Laird of Houftoun, the Laird of Blair, Williame Porterfeild of at Ilk, Mr Johne Scharp, Mr Williame Oliphant.

The Justice continewis this dyet to the morne, the xvj day of this instant. (Plegio, Roberto Hammiltoun de Inchemauchan.)

Jun. 16.—The persewar askis instrumentis, that he is reddie to persew, and will insist conforme to the cautione fundin contrar the Lard of Glengarnok; and protestis for releif of his cautionar.—The Aduocat declaris, that he will nocht insist in persuit, becaus he hes na informatioun of the partie nor the Thesaurer.—The pannell takis instrumentis, that Gabriell Cwninghame and the preloquutoiris insistis in his persuit.

THE JUSTICE, being auit with my Lord Chancellor and the rest of the Assessoris, declaris, that vpoun occasioun moving thame, will nocht putt this mater to the knowledge of ane Assyis this day; bot continewis the samin to the thryd day of the nixt Justice-air of the sherefdom of Perth, or soner, vpoun (xv dayis warning.)

The Laird of Glengarnok, present, takis instrumentis, that the partie persewar, raser of the letteris, hes comperit this day judiciallie, and offerit him reddie to persew; lyke as, the said Laird of Glengarnok, being enterit on pannell, offeris him to (abide) ane tryell, for the cryme lybellit, according to the law.

Johne Blair of that Ilk becomes pledge and fourtie for James Cwninghame of Glengarnok, that he fall compeir, &c.

Slaughter — Stouthreif.

Jun. 24.—JOHNE MURE of Auchindrane.¹

Dilatit of airt and pairt of the slaughter of vmq^{le} Sir Thomas Kennedie of Culzean, kny^t: And of stouthreif² of his purse, worth ellevin fcoir rois-nobillis; sax dosoun of goldin buttounis; ane ryng of gold, contenand nyne dyamountis set thairin; his sword, belt and quhingar;³ committit the xij day of May lastbypast.

PERSEWARIS, Dame Elizabet McGill, the relict of vmq^{le} Sir Thomas Kennedie of Cullane, kny^t, James Kennedie as sone, Mr Thomas Hammiltoun of Drumcairne, Aduocat to our souerane lord.

PRELOQUUTOIRIS for the pannell, the Laird of Langschaw,⁴ the Laird of Rowallane,⁵ the Laird of Auchinlek,⁶ the Laird of Blair,⁷ Mr Williame Oliphant, Mr Johne Ruffell.

The Laird of Langschaw takis instrumentis of the entrie of Johne Mure of Auchindrane; and protestis, that he be relevit, as cawtioun.—The persewaris

¹ See Jul. and Nov. 1608, Feb. 1609, and Jul. 1611. ² Theft accompanied by violence. ³ A kind of short sword or hanger. ⁴ Sir Niel Montgomery. ⁵ Mure. ⁶ James Boswell.

⁷ John Blair of that Ilk.

takis instrumentis of the productione of the letteris ; and protestis for releve of thair cawtioune.

Compeirit Johne Maister of Orknay, and produceit the Warrant vnderwrittin ; quhair of the tennour followis.

REX,

JUSTICE, Justice Clark and your deputtis, We greit 3ow hairtlie weill. Forfamekill as We, vnderstanding, that the xxiiij day of Junij instant is appoyntit be vertew of our vperis Letteris, direct at pe instance of Dame Elizabeth McGill, relict of vmq^{le} Sir Thomas Kennedie of Culzeane, kny^t, and James Kennedie, thair eldest lawfull sone, with concurrence of our Aduocat for our intres ; for tryell of Johne Mure of Auchindrane, and certane vperis personis his complices, for pe crewall murthour and slauchter of pe said vmq^{le} Sir Thomas Kennedie ; commitit be pame in pe moneth of Maij lastbypast. And We, willing to be condinglie tryit, for pe pairt of pe said Johne Mure of Auchindrane ; and for better tryell pairof, necessar it is, that the boy callit,¹ quha was directit fra Mayboill to pe said Johne Mure of Auchindrane, as also the boy callit,² quha come to Thomas Kennedie in Bargany, a lytill befor pe committing of pe said murthour, war apprehendit and examinat and tryit, quhill we vnderstand is nocht zit done ; and that the saidis twa boyis ar fugitiues ; quhairbye pe veritie is suppresit. Thairfor it is oure will, and We command 3ow, incontinent efter pe sycht heirof, 3e continew your Court, and all proceeding aganis the said Johne Mure of Auchindrane in pe said mater, quhill the thrid day of pe air ;³ or that he be new fummond, he pe pairtie, to pat effect. As alsua, that 3e proceid and minifter justice aganis all the remanent personis contenit in our saidis Letteris comperand, and that war fummond to vnderlye our law for the cryme aboue specifit. And this 3e fail nocht to do, without ony delay. As 3e will ansuer to ws vpoune your obedience. Anent the quhill, pir presentis falbe your Warrant. Subscryuit with our hand, at Falkland, the twentie-foure day of Junij, 1602. (Sic subscritur) JAMES REX.

The said Johne Mure of Auchindrane disaffentis to all continewatioun of this mater ; and offerit him reddie to vnderly the law for the crymes aboue writtin.

Sir Neill Montgomerie of Langschaw become pledge and fouirtie for Johne Mure, that he fall compeir the thrid day of the nixt Justice-air of the Sherefdom of Air, or soner, vpoun xv days warning.

Theft — Shooting of Pistolets — Barbarously Burning a Woman on a red-hot 'Girdill,' &c.

Jun. 29.—ALEXANDER ROWANE, sone to Nicoll Rowane of Sandiedub.

Dilatit of certane crymes of theft, schuting of pistolettis, and for burning of Katherine Huggoune, in the Burnefyde of Saling, vpoune ane girdill.⁴

Comperit James Wynrahame, and produceit the Warrant vnderwrittin ; quhair of the tennour followis.

JUSTICE, Justice Clark and your deputis, and Aduocat, We greit 3ow weill. Forfamekill as pe xxix day of jis instant wes appointit and assignit to Alexander Rowane, for his personall comperance befor 3ow, to haif vnderlyne our lawis for certane odious crymes, att lenth specifit in pe criminal

¹ William Dalrymple. ² There was only one boy. Dalrymple, however, had been prevailed on to change his name several times. This unfortunate youth was afterwards murdered on the Sands of Girvan, by the elder and younger Mures and James Bannatyne, under circumstances of peculiar atrocity. See Jul. 1611, &c. That Case is perhaps one of the most remarkable, in all its parts, of any one on record. ³ The Justice-air of the Sherifdom of Ayr.

⁴ A large circular piece of hammered iron, still in common use in Scotland, in place of an oven, for toasting oat-cakes, &c.

letteris direct pairanent : Thairfore, and for findrie vper our wechtie occasiounes moving ws, especiallie, becaus oure Thesaurer, quha aucht to persew in pat mater, will nocht be present, att pat day : It is our will pairfore, and We command 3ow to continew the said dyett, vnto pe fyrst day of Julij nixt ; and in pe meane tyme, that 3e keip pe said Alexander Rowane in fuir waird : As 3e will answere to ws pairvpoune. Quhairanent thir presentis salbe 3our warrand. Sabferynit with our hand, att Perth, the xxvij day of Junij, 1602.

(Sic subscrubitur)

JAMES R.

Jul. 1.—THE JUSTICE continewis the mater to the thrid day of July.

PERSEWARIS.

James Stewart, portioner of Sandiedab, Katherine Huggoune, at the Burnefyde of Sawling, Cristian Hammiltoune in Lynmylne, Mr Thomas Hammiltoune for his hienes intres, Mr Johne Gib.

PRELOQUOUTOURIS for the pannell, Mr Vmphra Blyndfcheillis, Mr Alexander Peblis.

DITTAY *against the Pannell.*

FORSAMEKILL as, the said Alexander, with his complices, in the moneth of Januar lastbypast, come to the landis of Overtoune of Pitvar, and thair thifteoullie stall, concelit, reffett and away-take furth thair of, ane gray horse pertening to Robert Tempilman thair. ITEM, for airt and pairt of the thifteous steilling, conceling and away-taking of ane blak kow, fra James Inglis, in the Pow of Adie ; committit in the moneth of August or thairbye, the yeir of God I^m.V^c.lxxxviiij yeiris. ITEM, for contravening of our souerane lordis Actis of Parliament, in schuiting of ane pistulet, chargeit with twa bullettis, at the said Cristian Hammiltoune, and schuting of hir throw the courfchet¹ thairwith ; committit in the moneth of August lastwas. ITEM, forsamekill as, he and his complices, in the moneth of December or thairbye, the yeir of God I^m.V^c.lxxxviiij yeiris, come to Katherine Huggoune duelling-houfe, at the Burnefyde of Sawling, and thair put violent handis in hir persoune, and sett hir bair erfe vpoune ane reid hett² girdill, standand vpoune ane ingill ;³ held her perforce thairon, quibill⁴ ane grit pairt of the flesche of hir hipis was brunt. ITEM, for airt and pairt of the thifteous steilling of certane blak aittis fra the said James Stewart ; committit in the moneth of Februar lastwas. ITEM, for commoune thift and commoune reffett of thift.

Jul. 3.—The pannell takis instrumentis, that thair is na persounes compeiris to persew, except the persounes aboue writtin ; and farther, that nather Johne Broune in Fairnyherst, James Gibsoune, Agnes Rowane, Johne and Thomas Hornes, compeiris nocht to persew, nather to informe my Lord Aduocat.—Alledgeit for the pannell, that the burning of Katherine Huggoune is nocht relevant, and aucht nocht to be put to ane Affyis, becaus scho was nocht brunt to the deid.—The Aduocat answereit, that this being ane extraordinar and odious cryme, the attempting of it, and proceeding to the verie executioun, be setting of hir vpoune ane burning girdill, as *conatus cum effectu*, mereittis the deid,⁵ and aucht to pass to ane Affyis.

THE JUSTICE ordanis this matter to be (put) to the knowledge of ane Affyis.

The Aduocat takis instrumentis of the swering of the Affyis ; and also of the sweiring of that poynet of the Dittay concerning Cristian Hammiltoune, of schuting of hir with ane pistulet throw the hair of the heid : And further, of the

¹ Often spelt *courche*, or *curchey*, a sort of cap or *mutch*, shaped to the head like a close hood, but the back part so formed as to descend on the shoulders, and a little over the ears. Old Fr. *courrechef*.

² Red-hot.

³ Fire.

⁴ Until.

⁵ The punishment of death.

fweiring of Katherine Huggoune, concerning the burning of hir vpoune the girdill ; and of the fweiring of James Stewart, of the pairt of the Dittay concerning him, aganis Alexander Rowane.—The Aduocat protestis for Wilfull Errour aganis the Affyis, in cais thay clenge,¹ in respect of the notorietie of the crymes laid to his charge, and of the fweiring of the Dittay be the persewaris.

VERDICT. The Affyis, be the mouth of Dauid Bruce of Brathieburne, Chancellor, stand, pronunceit and declarit the said Alexander Rowane to be ffylit, culpabill and convict of the haill crymes and poyntis of Dittay aboue writtin.

SENTENCE. For the quhilk caus, the Justice, be the mouth of Walter Pirie, dempstar, decernit and ordanit the said Alexander Rowane to be tane to ane gibbet, standand vpoune the Castel-hill of Edinburgh, and thairvpoune to be hangit quhill he be deid ; and all his movabill guidis to be escheit, &c.

Barbarous Murder, &c.

Jul. 3.—PATRIK STEWART, in Innervak.

Dilatit, accusit and persewit be Mr Thomas Hammiltoun of Drumcarne, aduocat to our souerane lord, for his hienes interes, of the crymes following, to wit.

DITTAY *against the Pannell.*

FORSAMEKILL as he, accompaneit with Stewart, his brother, and Allester Reoch, his ferwand, laitlie, in the moneth of November, the yeir of God 1^m.Vj^e. yeiris, haifing consait ane deidlie malice aganis vmq^{le} Angus Dow McEwir, his ferwand, for alledgeit abusing of Stewart, his dochter, in fornicatioune, take and apprehendit the said vmq^{le} Angus, band him hand and fit as ane malefactour, brak his rycht leg with ane ax, and thairefter, with ane scharpe knyffe or durk, cuttit away his secreit memberis fra him, and put in het assis and emmeris² in the bag of his secreit memberis, quibilk restit vncuttit ; and crewallie demanit, hurt and woundit him thairbye ; and thairefter kuit³ him on horsbak, and convoyit him to the tonne of Blair-in-Atholl ; quhair the said vmq^{le} Angus tuke bed, and continewand bedfast, in grit dolour and diseas thairof, be the space of fyve dayes or thairbye ; at last, he, in the said moneth of November, deceisit, be the said crewall handling ; and swa was crewallie and vmercifullie slane be thame : The said Patrik being airt and pairt of the said crewall slaughter ; the lyke of the quhilk crewaltie and tyrannie was never hard to be committit within this cuntrey, nather in hieland nor lawland.

PERSEWAR, Mr Thomas Hammiltoun of Drumcarne, aduocat.

PRELOQUOUTOURIS for Patrik Stewart, Mr Johne Russell, Mr Alexander King.

Willame Stewart of Tullich takis instrumentis of the entrie of the said Patrik ; and protestis, that he, as his cautioner, be releuit ; quhilk wes grantit.

The pannell denyis the cryme ; quhairvpoune his preloquoutouris takis instrumentis : As also the pannell takis instrumentis, that na partie compeiris to persew, except our souerane lordis Aduocat ; or that na persoun swoir the Dittay.

¹ Cleanse, acquit.

² Hot ashes and live-embers.

³ Cast, tossed.

ASSISA.

Johne Stewart Neilfoune in Fofs, Alexander Robertfoune of Faf- Duncan Robertfoune of Glen-
 Williame Stewart in Duntulleich, calſe, gennet,
 Johne Tarlafoune, apperand of Johne Farguefoune, callit Bar- Mr Robert Rois of Craigie,
 Moingeis, rounne Farguefoune, Duncan Robertfoune of Pitcaftell,
 Tarloch Robertfoune in Calie- Johne Farguefoune in Cluny, James Robertfoune of Killifchawie,
 bruer, David Barrounne in Faudowie,¹ Andro Boyd, portioner in Litill
 Robert Robertfoune of Strowan, Alexander Stewart in Biſchoprie, Dunkeld.

The Aduocat proteſtis for Wilfull Errour, in caſe thay acquit, in reſpect of his awin Confeſſiounne; quhair he confeſt, that he wald haif ſlayne his brother, for the latting of the ſaid vmq^{le} Angus gang.

VERDICT. Eftir accuſatiounne of the ſaid Patrik be Dittay, quhilk was veri-
 feit be his Depoſitionis, the Affyis, be the mouth of the ſaid Chancellor, ſtand,
 pronunceit and declarit the ſaid Patrik Stewart to be fylit, culpabill and convict
 of airt and pairt of the ſlauchter of vmq^{le} Angus Dow McEvir.

SENTENCE. To be tane to ane place beſyde the mercat-croce of Edinburgh,
 and thair his heid to be ſtrykkin fra his bodie; and all his movabill guidis to
 be eſcheit, &c.

THE ſamin day, George Leſlie Capitan of Blair, Neill Stewart in Fofs, Robert Stewart in Faucaſt-
 tell, Alexander McIntoch in Tirenſie, George McIntoch, his brother, Alexander Stewart in Bohef-
 pik, John Butter in Eiſter Dunfallandie, Andro Burt, eldar in Cult, Johne Stewart McRobert in
 Archgowll, George Naſmyth in Laclache, and James Naſmyth off Inwar, vulawit, ilk ane of thame in
 the pane of ane hundreth markis; for nocht compeiring and paſſing vpounne the Affyſe, &c.

Rapt and Rabiſhing — Beſieging Houſe of Auchmedden, &c.

Jul. 6.—JAMES CHENE of Pennan.²

Dilatit of the Rapt and Reveiſching of Mariorie Cuke, dochter to Williame
 Cuke in Vrinach: And ſiclyke, for the aſſageing of Gilbert Baird of Auchmedden
 (his) houſe: And for ſchuting of piſtolettis at Liliſ Baird, and cauſing of hir
 pairt with barne; and vtheris crymes.

PERSEWARIS, Mr Thomas Hammiltounne, Williame Cuik of Vrinoch, for Mariory.

PRELOQUOTOURIS for the pannell.

Mr Thomas Craig,

My Lord Home,

My Lord Sanquhar,

The Laird of Donypace,

Mr Johne Ruſſell,

Mr Alexander King.

DITTAY againſt the Pannel.

FORSAMEKILL, as it is expreſſie provydit, ſtatute and ordanit be our ſouerane lordis Actis of Par-
 liament, maid in the tyme of his hienes prediceſſouris, that na maner of man commit Rapt or Reveiſch-

¹ This perſon's name affords an inſtance of the difficulty and uncertainty of Genealogical enquiries, and the immense
 reſearch requiſite for tracing Family-pedigrees, eſpecially in the North of Scotland. He is here deſcribed as '*David
 Barrounne in Faudowie*;' when choſen Chancellor of the Aſſiſe, he is deſigned '*David Farguiſoun, Barroun of Fau-
 dowie*;' and he ſubſcribes the verdict of the Aſſiſe, '*DAVID MCDUFF OF FAUDOUY*!' Another perſon in the ſame
 Aſſiſe, '*Johne Fargueſoun, callit Barrounne Fargueſounne*,' ſtill farther illuſtrates this remark, regarding the labour
 and indefatigable induſtry which muſt be diſplayed by the correct Genealogiſt and Hiſtorian. ² See Jul. 9,
 29, and 30. The pannell was brother of Patrik Chene of Eſſilmonth, a perſon of conſiderable note and influence.

ing of women, vnder the panis contenit in the saidis Actis: And trew it is, that James Chene of Penman, accompaneit with Alexander Chene, sone to Williame Chene in Orcheartoun, Geddes and Thomas Davidfoune, seruitour to Patrik Chene of Edilmouth, accompaneit with diuerse vtheris thair complices, with conuocatione of his hienes liegis, to the nowmer of twelf personis or thairbye, all bodin in feir of weir, with secreittis, plait-flevis, gantilettis, steil-bonnnettis, swordis, dagis and pistolettis, expresse prohibite to be borne, worn, vsit or schot with, be his hienes Actis of Parliament and Secreit Counsale, vnder diuerse panis contenit in the samyn, laitlie, in the moneth of July, the yeir of God 1m.Vc.lxxxxvij yeiris, come, be way of Hamefuckin, vnder seylence and cloude of nycht, to the said Williame Cuke duelling-hous in Vrinach, lyand within the Sherefdom of Abirdene, quhair the said Mariorie Cuke was, in fober and quyet maner for the tyme, doand hir lesall effairis and buffines, traiffing na ewill, harme, iniurie or perfruit of ony personis, bot to haif leuit vnder Godis peax and our fouerane lordis; and thair pat violent handis in hir bodie, tuke hir captiue and presoner, and perforce reueischit,¹ and conuoyit hir away with thame to the said James Chene duelling-hous in Penman; quhair the said James deforcit and abusit hir bodie, and held and detenit hir in captiuitie within the said James house, be the space of xij dayis or thairbye; vsurping thairbye our fouerane lordis autoritie vpoun thame, in taking of the said Mariorie, his hienes frie liege but² commissioun or autoritie: And fwa, he being airt and pairt of the saidis crymes, hes contravenit the tennour of the saidis Actis of Parliament, in rapt and reueisching of the said Mariorie, being than ane virgyn; and hes incurrit the panis contenit in the saidis Actis, quhilkis aucht and suld be execute aganis him with all regour, in exampil of vtheris to commit the lyke in tyme cuming.

The pannell being³ defyrit quha wald insist in this perfruit, The Aduocat declaris that he insistis, togidder with Williame Cuik, fader to Mariory Cuik: And the said Mariorie, being chargeit to insist, sche is excusit, be Testimoniall of the Minister, that sche is lyand in chylde-bed-lair.

ITEM, fstand that my Lord Aduocat has interes to perfew, albeit that the principall letteris ar nochit rasit at his instance, for the Reueisching of Mariory Cuik; the Walkning⁴ being rasit in my Lord Aduocattis name, nochit contenand Mariory Cuikis name.

The Aduocat takis instrumentis, that he passis fra the wordis, 'as administatour, tutour, gyder and gournour,' and kepis the wordis 'as fader.'

THE JUSTICE ffindis Williame Cuik, as fader, hes interes to perfew for the iniurie done to his dochter; albeit sche wes of perfyte aige quhen the principall Summondis wes rasit, and is nochit present to perfew.

The said Mr Johne Russell preloquoutour defyris, that his alledgeance may be recordit be writt.

It is alledgeit, for the pairt of James Chene, that he aucht nochit be putt to ane Assyfe for the reueiffing of Mariory Cuik, becaus he opponis *exceptio spontanee voluntatis* aganis the force and violence; as he, being fyrst mareit with Katherene Ruthirfurd his spous, and insofar as it is offerit to be provin, before the tyme lybellit, that the said James had carnall deill with the said Mariory; and thairefter, in respect of the familiaritie betuix him and hir freindis, sche

¹ Carried away by force.² Without.³ Having?⁴ Process of Wakening.

frelie, of hir awin meare will, cam to the said James, in cumpany with Marioune Cullen and Helene Quhyte, remanit in his hous be the space of xiiij dayis alto-gidder, he being absent all the tyme furth of the said hous, and sche mycht haif returnit to hir faderis hous att hir pleasour, it being distant bot ane myle or twa att the farrest, hir fader and freindis haifing acces to hir ; the said James being absent be the space of xxxij mylis att the leift, purposlie send to Abirdene to by hir clathis ; during the quhilk tyme sche nocht only administrat hir effairis, bot tuik of hir kiftis and coifferis sic geir as sche pleasit, quhilk thaireftir wes ressaunt aff hir hand be hir fader and mother : Quhilk being done, sche wes perswadit be hir fader and Rychart Vgiftoune to affirm, that sche wes reveist, and sche fould gett geir fra him for hir aduancement. In respect quhairof, the said alledgeance being verefeit presentlie, the mater can nawyis be putt to ane Assyis ; att the leift, this exceptioun and tryell thairof man be tane coniunctlie with the lybell ; and takis infrumentis, that thay offer presentlie to verifie the said alledgeance, before the mater be putt to ane Assyse.

The Aduocat alledgis, that the alledgeance aucht to be repellit, in respect of the summondis ; and na probatioun can be ressaunt in the mater, be the Justice.

THE JUSTICE, with auise of his Assessoris, repellis the alledgeance, in respect of the summonds.

The pannell protestis, that nochtwithstanding thair alledgeance be repellit *hoc loco*, that thay may haif place to verifie the said alledgeance to the Assise.

THE JUSTICE continewis this mater to the nynt of July.

PRELOQUUTOIR for the pannell, My Lord Erle of Crawford.¹

Jul. 9.—Allegeis, that the bering of pistolettis or schuting thairwith, can nocht be put to ane Assyse, becaus thair is Commissioun grantit to the Laird of Effilmonth¹ and vtheris thairin contenit, to tak the Laird of Troupe and vtheris, in quhais cumpany the said James wes present, att the executioun of the said Commissioun ; vnder protestatioun, he affermis nocht that he wure pistolettis, att the tyme lybellit ; and produceit the Commissioun.—The Aduocat allegeis, that the alledgeance aucht to be repellit, in respect of the Commissioun grantand na Commissioun to the said James Chene ; nather wes he desyrit be the Commissioun, att the tyme lybellit, to assist thame.—Allegeis James Chene, that gif he wure ony pistolettis the tyme libellit, he did na wrang ; vnder protestatioun, becaus his Maiestie directit his Commissioun to certane his Commissioneris, speciallie to Patrik Chene of Effilmonth, his brother : Quhilk Commissioun is ane sufficient to him to beir pistolettis ; and gif ony wyis he hes borne or worne the saidis pistolettis, it wes done with his said brother and vtheris his Commissioneris, in executioun of the said Commissioun.—The Aduocat alledgeis that

¹ In addition to those formerly entered.

² Patrik Chene, brother of the pannell.

the said alledgeance aucht to be repellit, in respect of the Commissioun berand na anfuier.—Anfuierit the pannell, the Commissioun gevis ane Warrant to convocat the Kingis liegis.

THE JUSTICE Repellis the alledgeance, except that thay instantlie verifie that he wes with the Commissiouneris the tyme lybellit; and that thay wer in the executioun of thair officeis.

ASSISA for the Reveiffing.

Alexander Fairlie of Braid,	Robert Flescheour, burges of	William Bandene, alias Ruth-
Johne Traill of Blebo,	Dundee,	vene, younger of that ilk,
Johne Johnestoune, callit Johne	Patrik Lyounne, merchand, burges	Hector Rae, merchand, burges
of Elphinstoune, burges of Edr,	thair,	of Edinburghe,
Andro Logane of Grantounne,	Gabriell Merfer, burges of Perth,	Thomas Somervell, merchand,
Alexr Wod of Lammielesham,	Mr David Home, brother to the	burghes thair,
David Kynneir of that ilk,	Laird of Wedderburne,	Mr Archibald Wilkie, in the
Johne Fairlie of Comeistounne,		Cannogait.

The Assyis being sworne, and the Dittay red, my lord Aduocat produceit for takyn,¹ Letteris of Horning aganis the said James; quhair the said James gaid² to the horne, for the rapt and reveiffing of the said Mariorie Cuke; and als produceit ane proces of the Presbiterie of Deir, fynding the said James gyltie of the said cryme; and als vsit the said William Cuke ayth, to be gewin, quha wes present to offer his aith.³

Repellis the foure-half-about.

It is alleget that *William Cuik* can nocht gif his aith, becaus the deid wes nocht done to him; and his dochter is absent. *Secundo*, he can nocht gif his aith, becaus that he offeris him to prove, that sen the last Court, the said William offerit to compeir at the bar, and fueir that the reweiffing is nocht of veritie.—The Aduocat takis instrumentis, that he repetis the Interloquoutour pronunceit, that William Cuik had guid interes to persew in this caus, and that he offeris him reddie to sweir the Dittay; in respect quhairof, and of the Letter of Hoirming produceit aganis the pannell for the said cryme, and of the proces and sentence gewin aganis him be the Presbiterie of Deir, for this famin caus; gif the Assyife clange, protestis for Wilfull Errorr.

The pannell askis instrumentis, that gif the King and Kirk wer satisfeit, he wald forgif the said James. The pannell takis instrumentis, that William Cuik declaris that he can nocht, of his conscience, fyle or clange the said James, bot⁴ Mariorie Cuik his dochter tuik vpoun hir conscience, that the said James tuik hir away and reveiffit hir.—The Aduocat thaireftir produceit the said Wil-

¹ Token, or proof.
evidence upon oath.

² Went, suffered himself to be put to the horn.
⁴ Unless, except.

³ Testimony, or

liame Cuikis Depositionis, maid before the Counfall, quhairvpoun he askis instrumentis.

The pannell askis instrumentis that the Aduocat vſes na forder probatioun. *Item*, James Chene produces ane Testimoniall, ſubſcryuit be David Howiefoun, Miniſter of Abirdowr, teſtifeing, that the witneſſes contenit in the proces produceit aganis James Cheyne, teſtefeit na reveiffing.—The Aduocat takis instrumentis, that Mr Johne Ruſſell produceis and gewis in the Testimoniall ſubſcryuit be Mr David Howiefoun, Miniſter of Abirdowr. The ſaidis Maiſteris Thomas Craig, Alex^r King, and Thomas Craig (Johne Ruſſell) vſes the ſaid Testimoniall, as preloquoutouris for James Chene, quhilk wes ſend to thame be Mr Alex^r Cheyne anangis the reſt of his writtis, to be vſit in Defence of the ſaid James Cheyne.—The Aduocat produceit ane vther Testimoniall, ſubſcryuit and writtin be the ſaid David Howiefoune, teſtifeing the ſubſcription of the vther Testimoniall to be falſ.

SPECIAL VERDICT. The perſones of Affyſe being choſin, ſworne and admittit, and the ſaid James being accuſt be Dittay of the crymes ſoirſaidis; and our ſouerane lordis Aduocat, for verificacion thairof, haifing produceit to thame our ſouerane lordis Letteris, purcheft at the inſtance of the ſaid Meriorie Cuke and Williame Cuke, hir father; be the quhilkis the ſaid James was denunceit rebell and putt to the horne, in default of ſynding of fouirtie, that he ſuld haif comperit befor the Juſtice or his deputtis, to haif vnderlyne the law for the ſaidis crymes; and als, haifing produceit the Extract of the proces led and deducit aganis the ſaid James, for the away-taking and violent reveiffing of the ſaid Meriorie Cuk, befor the Prebiterie of Deir, the fourt day of Auguſt, the yeir of God 1597 yeiris, Mr Duncan Davidfoun being Moderatour; togidder with the Depoſitiounis maid be the ſaid Williame Cuke, at Falkland, the firſt day of July inſtant, in preſence of my Lord Chancellor, Theſaurer, Biſhops of Roſs and Dunkeld. Aganis the quhilkis writtis and verificacione, the ſaid James Cheyne and his preloquoutouris maid diuerſe alledgeanceis for clyding of the ſamyn, and anſueris maid thairto be the Aduocat; the ſaidis perſonis of Affyis removit altogidder furth of Court to the Counfall-hous, quhair thay, efter cheſing of the ſaid David Kynneir of that Ilk chancellor, &c., ſtand, pronunceit and declarit the ſaid James Chene to be Clene, innocent and acquit of the rapt and reveiffing of the ſaid Meriorie Cuik, dochter to Williame Cuik in Vrinach; and of detening of hir in captiuitie, be the ſpace of xij dayes; and of the deſorcing of hir, committit in the moneth of July, the yeir of God 1597.lxxxxvij yeiris.¹ And als ſtand, pronunceit and declarit him to be flyit and convict of the lying with hir in the place of Pennan, at the tyme ſoirſaid, without violence. Quhairvpoun the ſaid James alkit actis and instrumentis.

THE JUSTICE continewis the nixt dyet to xx day of this moneth.²

Treason — Forging Mark-pieccs.

Jul. 13.—ALEXANDER REID, cuitlar in Edinburgh.

Indytit, accuſit and perſewit, ſforſanekill as he, being ane prentar in our ſouerane lordis Coingie-hous thir diuers yeiris bygane, and haifing the credite to

¹ 1597. This method of marking the year aroſe from the mode of expreſſion then in uſe, viz. 'Ane thouſand fyue hundreth, thre ſcoir ſeuintene 3eiris.' ² See Jul. 20, 1602.

his hienes trew coinzie, ffor the quhilk the Maister-coinzeour satisfeit him honestlie and payit him for his panis; nochtwithstanding thairof, he, vnmynndfull of his dewtie, fyrst to God, nixt to his Maiestie, and last to the said Maister-coinzeour, the said Alexander Reid, vpoun the xxviij day of Junij lastbypast, gatt ane fals half-merk-peace of copper prentit, with the ballance on the ane syde, fra Cristian Reid, spous to Dauid Lowriestoun, in Corstorphene; and als bocht ane fals batterit peace, blank but prent,¹ fra Williame Smyth, feruitour to William Weylandis, lorymer,² burges of Edinburghe, vpoun the fyrst day of July instant; the quhilkis twa fals pecis, he, vpoun the thryd day of the said moneth of Julij instant, maist tressonable prentit, fforgeit and past his Maiesteis trew prenting irnis with the prent of the mark peace; and thairby hes committit Tressoun.

ASSISA.

Williame Stalker, goldfmyth,	James Lethingtoun, iufter in the	Robert Thomsoun, goldfmyth,
burgis of Edinburghe,	Coinzie-hous,	burgis of Edinburghe,
Alex ^r Bruce, cuttlar, burges thair,	Dauid Lyndsay, fmytb, burges of	Robert Tailzeifeir, cuttlar in Leith
Williame Myller, meltar in the	Edinburghe,	wynd,
Coinzie-hous, ³	James Mynto, forgear in the	George Seytoun, forgear in the
Thomas Myller, cuttlar, burges	Coinzie-hous,	Coinzie-hous,
of Edinburghe,	Walter Mathie, forgear thair,	Moreis Gray, forgear thair,
Johnie Quhyte, cuttlar,	Patrik Schaw, prentar thair,	Williame Sinclar, forgear thair.

VERDICT. The Assyis, be the mouth of the said Patrik Schaw, chancillar, ffand, pronunceit and declarit the said Alexander Reid to be ffylit, culpabill and convict of the tressonabill prenting of twa mark pecis, vpoun his Maiesteis trew irnis, as his hienes trew coinzie.

Jul. 20.—SENTENCE. The Justice, be the mouth of Walter Pirie, dempstar, decernit and ordanit the said Alexander Reid to be tane to the Castell-hill of Edinburghe, and thair to be hangit quhill he be deid; and all his movabill guidis to be efcheit, &c.

Hamesucken — Besieging House of Auchmedden — Adultery.

Jul. 20.—JAMES CHENE in Pennan.⁴

The quhilk day, James Chene being enterit on pannell, dilatit, accusit and persewit of the crymes efter specifeit, thay ar to say,

For contravening of our fonerane lordis Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis vpoun his persoune, and in his cumpany, oppinlie, outwith houffis, in the monethis of September, October, November, December, Januar, Februar and Marche, the yeir of God 1597, vpoun the landis of Pennan, Auchmedden, and diuerse vtheris boundis, within the sherefdom of Abirdene. Item, fforflamekill as he, accompaneit with diuerse vtheris, his complices, formeris and brokkinn men, all bodin in feir of weir, with hagbuttis and pistolettis and vtheris wappynniss, *inuafue*, in contrair the tennour of the Actis of Parliament, laitlie, in the moneth of Marche, the yeir of God

¹ Without any impression.

² Old Fr. spur-maker, *lormier*.

generally dealt in saddlery.

³ The Royal Mint.

⁴ See Jul. 9, 1602.

1597, haifing confaut ane deidlie feid, rancour and malice aganis Gilbert Baird of Auchmedden and Lillas Baird his spous, come, be way of Hamefuckin, vnder fcyvence and cloude of nycht, to the faid Gilbertis duelling-place of Auchmedden, quhair the faid Lillas Baird was for the tyme, in fober and quyet maner, accompaneit with hir bairnis and ferwandis, hir husband being abfent, and thair clam¹ the cloife dykes of the faid place, pullit out the stainchellis² of the kitchen wyndoys, brak vp fum duris, and affageit the faid Lillas and hir ferwandis withia the faid place, be the fpace of thre hours or thair-bye; clam vp to the tops of thair houffis, kaift in flanes at the chymnay heid, fchot in hagbutis and piftolettis at the duris and wyndoys of the faid place; fchot the faid Lillas throw the claythis, fcho being grit with barne;³ ffor feir of the quhilk fchot, fcho fchortlie thairefter pairtit with the faid barne,⁴ quhilk was crewallie flane be the faid James; and fwa, ye committit Hamefuckin, Affageing of houffis vnder fcyvence and cloude of nycht, and hes contravenit the tennour of the faidis Actis of Parliament, in beiring, weiring and fchuting with hagbuttis and piftolettis. ITEM, for contravening of our fouerane lordis Actis of Parliament in abufing of his bodie in notour Adulterie, with Mariorie Cuke, dochter to Williame Cuke in Vrinot, within his awin duelling-place of Pennan, in the monethis of July and Auguft, the yeir of God 1597, he being mareit with (Katherine) Rutherford, his spous, and being vnderorecit.

The faid James declarit, for obedience of his Maieftie, that nochtwithftanding that he was maift innocent of the faidis crymes, and that he may vfe his lawfull defence aganis the famyn, he vald become in our fouerane lordis will; provyding alwayes his lyffe may be faiff: Quhairvpoune the faid Mr Thomas Hammiltoun, and als the faid James Chene, askit actis and infrumentis.

Jul. 30.—The Juftice produceit HIS MAIESTIE'S WILL, quhairof the tennour followis.

REX,

JUSTICE, Juftice clark and your deputtis, We greit 3ow hairtie weill: fforamekill as James Chene of Pennan, being accufit before 3ow for findrie crymes, he voluntarie become in our will, for pe cryme of Adulterie and fyndrie Oppreffounis committit be him. Heirfoire it is oure will, that 3e fall gif furth dome aganis pe faid James, that he fall be Baneifebit this cuntry, and fall nawyis retorne within the fame, without oure Licence, vnder pe pane of death, to be incurrit be him, and of pe fowme of thre thowfand markis to be incurrit be his cautioner, quhome 3e fall ordane him to fynd for his remaning furth of pe cuntry; and that befor he be put to libertie. Quhairanent thir presentis falbe to 3ow ane fufficient Warrant. Subferyuit with our hand, At Falkland, pe xxvij day of Julij, 1602.

(Sic fubferibitur) JAMES REX.

The quhilk Will the faid Juftice-depute pronunceit, &c.; and the faid James askit actis and infrumentis.

Slaughter — Shooting of Hagbuts and Pistolets.

Jul. 21.—DAVID GRAHAM of Craig, and Alexander Kennedie of Bal-iarrak.

Dilatit of art and part of the Slaughter of vmq^{le} Richard Spens, feruitour to Johne Erle of Caftillis; and for beiring and weiring and fchuting of hagbuttis and piftolettis; committit in December.

¹ Climbed.

² Iron stanchions.

³ Pregnant.

⁴ Miscarried.

PERSEWAR, Mr Thomas Hammiltounne of Drumcarne, aduocat.

PRELOQUUTOIRIS for the pannell, Mr Thomas Craig, Mr Alexander King.

Comperit Rychard Spens as fader, . . . Spens and . . . Spens, as brether to vmq^{le} Rychard Spens, and declarit thay wald nocht infist in perfuit of Dauid Grahame of Craig, att this present, and att na tyme heireftir ; and als desert. The said Dauid Grahame declaris, he offeris him reddie to vnderly the law, for the crymes contenit in the letteris.—The said Rychard Spens and his sonis desyrit that the perfuit of Alexander Kennedie sould delay, quhill thay may haif tyme to summond ane Assyis.—The said Alexander Kennedie takis instrumentis that he offeris him to vnderly the law, for the crymis lybellit ; disassenting to all continewatioun now, as ofbefore.—‘ DESERT’ as to Grahame : And as to Kennedie, continued to the Justice-air of ‘ Air, tertio Itineris.’

Adultery.

Aug. 19.—ELSPET HEISLOP, lait fervand to Archibald Bauld, indueller in Edinburghe.

Dilatit and accusit for contravening of our souerane lordis Actis of Parliament, in abusing of her body in the filthie and abhominable cryme of Adulterie with Dauid Gray,¹ fishmunger in Edinburghe ; committit in the monethis of March, Apryle, Maij, Junij, Julij, August, September, October, November, December, Januar and Februar, in the yeiris of God 1594-5-6-7-8-9, 1600 and 1601 yeiris, att the leist, in ane or vther of the saidis monethis and yeiris *respectiue* foirsaid ; and that within the burcht of Edinburghe, att the West-port thair of and vtheris pairtis, about the said burch : In the quhilk cryme sche hes procreatt and borne to the said Dauid foure findrie bairnis, quhair of twa deceissit this lyffe, vnbapteist ; and ane is yit on lyfe, vnbapteist.

Quhilk cryme the said Elspett confest, and become in our souerane lordis will for the famin.

(Nov. 27.)—SENTENCE. The Justice ordanit the said Dauid Gray and Elspeth Hislope to be kairtit throw the Toune, and ane paper vpone thair heid, contening thair cryme : And to be banischit the said burgh ; and nocht to return thairin, during all the days of thair lyftyme, vnder the pane of deid.

Slaughter.

Nov. 10.—JOHNE CONGILTOUNE, gairdner, in the Plesance (of Ed’.)

Dilatit of art and pairt of the Slauchter of vmq^{le} George Spottiswod, brother-german to vmq^{le} Ninian Spottiswod of that Ilk ; committit in Junij 1588 yeiris.

¹ See Jan. 12, 1602.

PERSEWAR, Agnes Spottifwood, onlie dochter to the said vmq^{le} George.
PRELOQUOUTOUR for the pannell, Andro Blak.

The said Johne Congiltoune allegeis that this mater can nocht pass to ane Assyis, in respect he hes our fouerane lordis Remissioune, grantit for the slauchter of the said vmq^{le} George, vnder our fouerane lordis Previe Seill, of the dait, at Edinburghe, the thrid day of Marche, the yeir of God 1588. And als, produceit ane Letter of Slaynis, grantit be Williame Spottifwod of that Ilk, Mr Johne Spottifwod his father-brother, Williame Spottifwod, Alexander Spottifwod and . . . Spottifwod, brether to the said vmq^{le} George, and Cristian Thomesoune, the relict of the said vmq^{le} George, to the said John Congiltoune, daitit at Edinburghe, the xxij day of Februar 1588.

Dauid Corbie, mercliand burges of Edinburghe, James Dauidsoune, flescheour burges thair, become cautioneris and fouerteis, coniunctlie and feuerallie, to satisfie the partie persewar, as law will; Lykeas, that he fall pass the said Remissioune the Grit Seill, vnder the pane of floutie punds.

Slaughter — Shooting of a Pistolet.

Nov. 19.—WILLIAME WAUCHOPE, sone lauchfull to vmq^{le} Johne Wauchope, baillie of Nudrie.

Dilatit of airt and pairt of the Slauchter of vmq^{le} Johnne Symfoun, messinger in Edinburghe; committit in the moneth of October or thairby, the yeir of God 1^m.V^c.lxxxix yeiris. ITEM, for contravening of our fouerane lordis actis of Parliament, in schuiting of ane pistolet at James Wadie, sone to vmq^{le} . . . Wadie, wrycht.

VERDICT. The Assyse, be the mouth of Archibald Geddes elder, burges of Ed', chancellor, ffand, pronunceit and declarit the said Williame Wauchop to be Giltie and ffylit of the saidis crymes *respectiue* aboue writtin.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair his heid to be strukkin fra his body; and all his moveabill guidis to be escheat, &c.

Child-murder.

Nov. 27.—AGNES COWANE in Corstorphin.

Dilatit for the crowth Murthour and Slauchter of ane young infant barne, procreat be her to George Kyle, seruitour to the Laird of Corstorphin.

VERDICT. The Assyse, be the mouth of Patrik Home of Polwart, chancellor, ffand, pronunceit and declarit the said Agnes to be culpabill and convict of the saidis crymes.

SENTENCE. To be tane to the Castelhill of Edinburghe, thair to be hangit vpon ane gibbet quhill scho be deid, and all her moveable guidis escheit, &c.

Adulterating and Uttering Base Coins, &c.

Dec. 15.—ALLANE NAPER, culteller in Glesgow.

Dilatit ffor the treffonable gilding of twenty sevin fals aucht-merk and foure-merk peces, of the number of threfcoir fals aucht-merk and four-merk peces; quhilks war send to him to his duelling-hous in Glesgow, be Campbell of Glenlyell, about tua yeir syne or thairby; togidder with tua licht angell-nobillis, and that with Donald M'nair, serveand to the said Campbell of Glenlyell.

VERDICT. The Assise, be the mouth of James Hoppringill of Quhytebank, chanceler, ffind, pronunceit and declairit the said Allane Naper to be flylit, culpable and convict of the crymes aboue writtin: and that, in respect of his awin Confessioun maid in jugement, and of his cumming in the Kingis Maiesteis will thairfoir.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be wirreit at ane staik, and his body brint in assis; and all his moveabill guidis to be escheit, &c.

Slaughter.

Jan. 4, 1603.—WILLIAM WAUCHOPE, brother to vmq^{le} Archibald Wauchope of Nydrie.¹

Dilatit of airt and pairt of the Slaughter of vmq^{le} David Edmestoun of the Wownett, committit in the moneth of

PERSEWERIS, Aliesone Home, relict of the said vmq^{le} David, Ewfame Edmestoun, sifter.

PRELOQUOTOURIS, David Home of Rowiestoun, George Home brether to the said Aliesounne.

PRELOCUTOURIS for the pannell, Mr Laurence McGill, Mr George Wauchope.

The pannell takis instrumentis, that nane compeir to insist in his persute, bot the partie. It is allegit be William Wauchope that this matter can nocht pass to the knowledge of ane Assyse, nor that the partie hes na entreis to persew, bot ressaunt ane Assythment.²—Ansuerit that thair is na thing produceit to verifie.

THE JUSTICE repellis, in respect naething is producet to verifie.

It is forder allegit that this matter can nocht pas to ane Assyse, in respect his Maiestie hes remittit the samyn, be his speciall Letter of grace, quhilk is produceit, blank in the dait, and subferyuit be his Maiesteis allanerlie.—It is ansuerit be the persewer, that this Letter is only ane Letter, blank, sinisteruslie purchest, contrair the Act of Parliament, vndaittit, vncomponit be the Thesaurer, and subferyuit only be his Maiestie; quhilk is nocht sufficient of the law.—It is

¹ See Feb 2, 1603.
solatium for the Slaughter.

² A fine or compensation made to the relations of the party slain, as a

declairit be the defender, that he cumis in his Maiesteis Will, baith concerning the fact and the imperfectiones of the Letter.

The parteis produceit ane Letter, subscryuit be his Maiestie, commanding the Justice to proceid and minister Justice, and put him to the knowledg of ane Assyse, for Slauchter and heiring of pistolettis.

THE JUSTICE continewis this mater to Thurisday nixt; and wairnit the Assyse, *apud acta*, to the said day.—(Jan. 6.)—‘DESERT.’

Importing and Uttering Base Coin.

Jan. 13.—ALEXANDER THOMESOUN, mariner in Borrestounes.

Dilatit, accusit and persewit for the tressonable hame-bringing of fourscore sax false merk-peices furth of the realme of Ingland to Scotland; and for the tressonabill out-putting of sex of them to . . . Gray, Baillie in Eyemouth; committit in the moneth of Januare instant.

VERDICT. The Assyis, be the mouth of David Home of Rowistoun, chancellor, stand, pronuncet and declaret the saidis Alexander Thomesone to be fylet, culpable and convict.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be hangit vpon ane gibbet, quhill he be deid; and his guidis, geir, landis, heritageis and possessiones, gif he ony hes, to be sforfalt and escheit, &c. As also, ordanit the saidis fourscore sax false merk-peices, quhilkis war produceit in jugement, to be meltit and distroyit at the said croce.

Murder — Theft.

Jan. 20.—JOHNE RAMSAY, sumtyme in Meluill mylne.

Dilatit of the crewall Murthour and Slauchter of vnq^{le} James Roisè, sumtyme thesaurer and burges of Edinburghe; committit vnder silence and clud of nycht, vpon the aughtene day of September, 1^{re}.Vj^c. and ane yeiris; and thifteous Steilling and away-taking fra the said James, of his horse, cloik and purse, at the tyme foirsaid.

VERDICT. The Assyis, be the mouth of David Fairlie merchand, chancellor, stand, pronunceit and declairit the said Johne Ramsay to be fylet, culpable and convict of the saidis crymes.

SENTENCE. To be tane to ane gibbet, besyde the corse of Edinburghe, and thair to be hangit quhill he be deid: And thaireftir, his heid to be strukkin fra his body, and put on the Nether-boll of Edinburghe; and the remanent his memberis to be vsat at his Maiesteis directioun, and his haill moveabill guidis to be escheit, &c.

Hamesucken—Rapt, Ravisching and Forcing.

June 21.—HENRIE SINCLER of Quhytkirk.

Dilaittit, accuset and persewit at the instauce of Mr Tho. Hammiltoun of Monkland, aduocat to our souerane lord, for his hienes entreis, of the crymes following, viz.

FORSAMEKILL as the said Henrie, being accompaneit with James Hepburne, serveand for the tyme to the Laird of Roisling, Andro Anderfone, and vtheris thair complices, with convocatioun of our souerane lordis leigis, to the number of aucht perones or thairby, all bodin in feir of weir, with swoirdis, secreteis, steil-bonettis, &c. laillie, in the moneth of December, 1^m. Vj^e. yeiris, come be way of Hamesukkin, vnder silence and clud of nicht, to vmq^{le} George Carkettillis dwelling hous of the Monkrig, quhair Margaret Carkettill, now spous to Archibald Hammiltoun of Bairfute, was, in sober and quyet maner for the tyme, takand the nichtis rest; and thair brak the said hous, enterit within the samyn, and put violent handis in the said Margaret, had and raveschet hir away with thame perforce; and convoyit hir away to the place of Merkill; quhair the said James forcet and abusfet her body: And thaireftir, transpourtir hir to the place of Quhittekirk, quhair scho was detenit all the nicht captiue and priffoner, and keipit and detenit hir in captiuitie with the said Henrie and remanent perones foir-faidis, be the space of aucht dayis thaireftir, or thairby; scho being our souerane lordis frie leige; vfur-pand thairby his hienes auctoritie vpon thame: And sua, the said Henrie was airt and pairt, red and counsall of the taking of the said Margaret, and of the Rapt and Raveisching of hir, and keeping of hir in captiuitie; scho being his hienes frie leige; and of the forcing and abusing of hir body, to the greit contempt of our souerane lord, his hienes auctoritie and lawis: At the leist, of Resfetting of hir, in maner foirfaid.

Comperit, Johne Home, Constable of the Castle of Edinburgh, and takis in instrumentis of the entrie of the pannell.

ASSISA.

Sir Johne Ker of Spylaw,	Henrie Lauder, in Dunbar,	Adam Hepburne of Bonhard,
Stevin Bruntfield of Grynd-	Adam Scott, brother to the	James Henderfone of Drydane,
lawdene,	Laird of Dryop,	And nine others,

(Feuars and burgesses, excepting 'Mr Thomas Levingstoun, sone to the Laird of Hayning.')

The said Henrie denyit the Dittay, and ewerie poynt thairof.

The Aduocat alledgett that the said Henrie could nocht deny the Resfett.

VERDICT. The Assyis, be the mouth of the said Adam Hepburne, chancellor, in respect na partie comperit to sweir the Dittay, nor that nathing wes product be our souerane lordis Aduocat for verifeing thairof, stand, pronuncet and declairit the said Henrie to be Clene, innocent and acqyute of the haille poyntis of Dittay aboue specifeit. Quhairvpon the said Henrie Sincler askit instrumentis.

High Treason—Doom pronounced upon the Dead Body of a suspected Traitor, produced at the Bar of the Court.

Jan. 31.—FRANCES MOUBRAY, deceased, (son to the Laird of Barnbowgall.)

[THE CASE OF FRANCIS MOWBRAY may, perhaps, be considered as one of the most extraordinary of its kind, in the whole range of the Criminal Records of this or of any other country. There is something monstrous in the idea of wreaking vengeance on the lifeless remains, even of the most atro-

cious criminals; but in the present instance, the victim had only been imprisoned in the Castle of Edinburgh, on vehement suspicion of Treason; and, in his endeavour to effect an escape, he was precipitated over the rocks, and killed. The production of the mangled body of the suspected criminal, at the bar of the Supreme Criminal Tribunal of the country, and the subsequent sentence of Forfeiture, however repugnant to modern ideas and to every proper feeling, were by no means, in themselves, solitary examples of such procedure, in cases of High Treason. To avoid repetition, reference is made to a Notice prefixed to the Forfeiture of Logan of Restalrig, (see Vol. II. p. 276,) for several illustrations of a similar nature. In addition to these instances, it may be noticed, that *Robertson*, in his History of Scotland, observes, that after the battle of Corrichie, the dead body of the Earl of Huntly was presented in Parliament, before sentence of Forfeiture was pronounced against him; and other cases might easily be mentioned.

In order to arrive at the *facts* of this case of Francis Mowbray, which are of themselves of considerable historical importance, the Editor found it necessary to institute an examination of various contemporary Histories and MSS. preserved in the Advocates' Library.

The most accurate account of Mowbray's Treason, however, is detailed by *Archbishop Spotswood*, (p. 471.) in the following brief passage. 'About the same time, the King had intelligence given him, that one FRANCIS MOWBRAY, son to the Laird of Barnebowgall, who had lived a while in the Infant's Court at Bruxells, had undertaken to kill him. This brake out first at London, by an Italian, a fencer, whose name was Daniel; which coming to the Queen's ears, she commanded Sir Robert Cecil, her secretary, to call the persons (for they were both in the city) and examine them. The Italian abode by his speeches. Mowbray denied, and offered to prove him a liar, in combat; which the other accepted. Both being sent into Scotland, they were tried (examined) first severally, then confronted before certain of the Council. The Italian produced witnesses, who verified all that he had deposed: Whereupon Mowbray was committed to the Castle of Edinburgh; where, seeking to escape by night, at a window of the chamber where he was detained, the sheets proving too short, by which he thought to descend, he fell from a great precipice; and was found, the next morning, dead, at the foot of the rock. The corps was the same day, being the last of January, presented to the Justice, and Sentence of Forfeiture pronounced against him; his body hanged for a space upon the gibbet, and afterwards quartered, and affixed to the gates and most open places of the town. His friends (for he was well born, and a proper young gentleman) gave out, that he had been strangled, and his corps thrown down at the window. But this carried no appearance, and was believed of few.'¹

From the various Collections of State Papers of this period, we find, that King James was kept in constant alarm, from the incessant machinations of British as well as Foreign Papists and Jesuits; and, owing to many previous communications from the English Court, advertising the King of the certainty of such attempts being on the eve of execution, his Majesty had probably considered it necessary to make very severe examples of the first plotters who should be detected.

These Popish plots were in constant agitation, until the remarkable discovery of the Gun-Powder Treason, Nov. 5, 1605. *Calderswood* records one instance, in his MS. Church History, not mentioned by other historians, where the King certainly acted with unwonted lenity, no doubt in consequence of *Instructions* from Queen Elizabeth. It is thus briefly told. 'About the end of April (1602,) an English gentleman addressed himself to Court; and got presence of the King, upon the last of April; and conferred with him a little space, in Dumfermline. Therafter, he went to his lodging. He flew

¹ Robert Birrell gives the following account of this monstrous proceeding. 'The 3d of January, Francis Mowbray brake ward out of the Castell; and he fell owir the wall and brake his craige. Thairefter he was trallit to the gallows and hangit; and thairefter was quarterit, and his heid and four quarteris put one the four Portis.'—*Diary*, p. 57.

James Chamers, one of the Kingis fervants, and hurt the barber that was peling his head, before they were aware. He was apprehended and putt in the Tolbooth of Dumfermline. He cryed like a mad man, "The hour! The hour! The King!" &c. Being examined, he confessed that he and ane Italian sould have slaine the King. As is reported, he was transported to the Castle of Edinburgh, and keeped in the irones; but within a quarter of a year was sett at liberty. It was reported that the King thought not much of the matter, but tooke the man to be some what distracted in his witts.

Without further remarks, the remaining Papers which have been collected are appended, and left for the reader's deliberate consideration.]

THE JUSTICE ordanit his Maiesteis Precept to be insert and registrat in the buikis of Adionall.

REX,

JUSTICE, Justice clerk and your deupis, We greit ȝow weill. Forfamekill as vmq^{le} Frances Mowbray, being acuset of maist heich, horrible and detestable poyntis of Treffone and Lesinaiestie, aganis us, our persone and Estait, and for ȝe samyn, committit to waird within our Castell of Edinburgh; and the samyn being sufficientlie verifeit be ȝe Depositiones of twa or thre witneffis, and ȝe tryell pair of fa cleir, pat pair remanit na obscuritie of ȝe same. The said vmq^{le} Francis, obduret in mynd, and to all appearance seducet be Sathan, quha was the first motioner of theis his devillische interpryses, hes, vpon intention to escaip furth of our waird, procurit his awin miserable and schamefull death; and hes maid his giltines (be his breck of waird) mair nottour and manifest. It is our will heirfoir, that ȝe cause give dome and sentence aganis him, to be demaynit, quarterit and hangit; and his heid and quarteris to be put vponne ȝe maist publict pairtis and places of our burghes of Edinburgh; as ane quha is gillie of ȝe saidis crymes. And pat ȝe direct ȝe officiaris (to quhome ȝe execution of theis turnes belang) to do ȝe same, with all ȝe formes accusomet in sic caissis: Quhairnant ȝir presentis fall be ȝour Warrant. Subscrivit with our hand, att Halyrudhois, ȝe last day of Januare, 1603.

(Sic subscribitur)

JAMES R.

MONTOIS, CAN^{RIUS}. MAR. HEREIS. HALYRUDHOIS.

S^r G. HOME, THE^r. JO. PRESTOUN. M. T. HAMMILTOUNE.

SENTENCE. According to the quhilk Precept, and for obedience thairof, the Justice, be the mouth of Walter Peirie, dempstar, decernit and ordanit the said vmq^{le} Frances Mowbray, now presentit on pannell, to be demanit as ane tratur, as eftir followis: That is to say, To be hangit be the craig vponne ane gibbet, besyde the mercat-croce of Edinburgh, and his body to be quarterit; and his heid, ane leg and ane airme to be put vp above the Nether-holl, ane elne above the rest; and ane vther leg to be hung on the West-point of Edinburgh, and ane vther airme to be hungin vpoun the Potter-raw-point: And all his landis, heritageis, takis, steidingis, rowmes, possessiones, coirnes, cattell, guides and geir to be ffoirfalt and inbrocht to our fouverane lordis vse, as gilltie of the saidis trefsonabill crymes. Quhilk wes pronuncet for dome.

PAPERS illustrative of MOWBRAY'S TREASON.

1. EXTRACTS from *Calderwood's MS. Church History*.

(Oct. 1602).—IN October, the King was advertit, out of England, of a Conspiracie. Ane Italian, who had been in this countrie eight years, alledged upon FRANCIS MOWBRAY, sone to the Laird of Barnbouggall, that he solicited him to take part with him in cutting of the King, by poyfone or some

other means. They were both presented before the Council of England. At the King's desire, they were sent to Scotland. The Italian affirmed constantly,¹ before the King, and offered to fight the Single-combat with Francis. Francis, being examined, being certain of the King's Council, denied; and offered to fight with the Italian.

(Jan. 5, 1603.)—It was ordained that FRANCIS MOWBRAY and the Italian, who accused him of Treason, would fight, hand to hand, in the great clove of the Abbey of Halyrudhouse. The 5 of Januar was appointed for the combat. The baraffe being made and preparation, advertisement was sent two or three dayes before, out of England, to stay the Combate; because there was certaine Scottish-men, who would verifie the Treason. Soe, upon hope of further tryell, it was delayed.

(Jan. 29, 1603.)—In the meantyme, upon the 29 of Januar, the King and Council were occupied, for the most part, all that day, in the examination of FRANCIS MOWBRAY and the Italian, and confronting Francis with other two Scottish men sent out of England, bot of light accompt, because they had spent their moyen, and wes forced to leave the country,—to witt, Mr Walter Mowbray and John Anderfone. The day following, that is to say, the Lord's day, the penult of Januar, Francis Mowbray assayed to come down the wall of the Castle upon peeces of the blanketts of his bed, sewed together on the night before. The blanketts were too short; so he fell, and falling, feld himself upon the craig, about eight houres at night. He was apprehended immediately, but was speechlesse, and dyed about three houres in the morning.

Upon Munday the last of Januar, his body was drawn backward to the Tolbooth, where the doome was pronounced, that he should be drawn backward to the gibbet, and there hang for a certaine space; and then be quartered; and the members of his body to be sett up in publick pairts of the town. It is marked, that when he was examined, he said, before the King, 'If ever I thought evill, or intended evill against my Prince, God, that marketh the secreits of all hearts, make me to fall at my enemies feett; make me a spectacle to all Edinburgh; and cast my soul in Hell forever!' And, being required, subscribed these words. He fell at his enemies feet indeed! For the Italian was above him in a Chamber. He was made a spectacle to Edinburgh. As for the third, we remit to God, who saveth and condemneth whom he pleaseth. It is reported, that he sought his supper sooner than at other tymes, as though he had some Letters to write: After supper, he rave the blanketts in four pieces, and sewed them together; and that he was minded to doe the like with the sheets. The keeper, coming to the door, and finding it close, cryed. He thrust himself, for haste, out at the window, and cometh down upon the blanketts. The blanketts being short, he falleth. Some horsemen were awaiting on, to carie him away; but finding him unable, they spoyled him and departed; and his body was brought up to the Castle. The Italian was set at liberty, and was to be rewarded.

2. EXTRACT from an Anonymous MS. History of Scotland.²

(Jan. 30, 1603.)—FRANCIS MOWBRAY, being warditt for allegit Treffoune aganis (his) Majesty, brak ward; and being aschaipitt³ be the watche of the Castell, thay schaikis him out of the claithis quihill he wes gangand doune into; quhairby he fallis, and flayis him self be the same.

3. EXTRACTS from Cecil's Secret Correspondence with King James.

(i.) MOWBRAY, to Daniel and others, did confes a purpose, in his own heart, to be made an instrument against the person of the King, whensoever he were set in hand; and to affect all persons opposite to the present carriage of your affairs, as he would demonstrate upon the first opportunity. If other *embryones*, which are yet *informes*, but yet dangerous, come any nearer to the likelihood of any formal shape, his Majesty shall be advertised; though, in the mean, we repute it a great indiscretion to reveal our uttermost, before the desire of utterance, out of a sound affection, becomes so strong as

¹ With constancy, without prevarication.

² Advocates' Library, A. 4. 35.

³ Escaped. Perhaps for espied.

the son of Cræsus would, by straining, break the strings of his tied tongue, to deliver what his love and duty binds him to.¹

(ii.) CECIL and I are very glad that the Laird of Wcemes² had no better warrant for his traffick with this busy body.³ The man is not honest, nor was drawn to this discovery of *Mowbray's Treason* by love to the King, but merely upon spleen and malice to the party, upon the fractions of old amity. In this point we will say no more, but only wish, for the good of the King's service, that he neither have encouragement to come, nor entertainment, though he should chance to come; which I do not think will happen, because Cecil's angels⁴ have him in charge, for the working out of more stuff, if it be possible; and his pension seasons him in the giddiness of his natural and habitual uncertainties.

From Francis Mowbray, Cecil did never hear word, since the last which was advertized; which makes him wonder, both at the pause, and at the motive that may cause it, after so large promises. Cecil will observe the King's direction, as well in mining, by invention and subornation, into his ends, as by continuing the pension, though he have very ill deserved it. He doth concern with the judgement of King James, touching the peril that may grow by driving him into despair, for want of provender, before the close decks be discovered. You may, in like sort, assure King James, that Cecil will take no extraordinary course with him, about King James's particular, till he take him with more meat in his mouth, and the matter be so pregnant as negatives would be found both ridiculous and impudent.⁵

Bearing, Wearing, and Shooting Hagbuts and Pistolets, &c.

Feb. 1.—SIR HARIE LYNDSEY of Carrestoun.

Perfewit be Mr Thomas Hammiltoun of Drumcaine, advocat, of the DITTAY following, product be the said prisoner.

SIR HARIE LYNDSEY of Carrestoun, Ye ar indytit and accuset, forsamekill as it is statute and ordanit be dyuerse our souerane lordis Actis of Parliament, that na maner of persone or persones tak vpone hand to beir or weir hagbuttis or pistolettis, or ony vther ingyne of fyre-wark vpone thair persones, and in thair compansis, oppinlie, outwith housis, or schute thairwith at ony persone or persones, vnder the pane of cutting af of thair rycht hand, and vtheris panis thairin contenit: Nochtwithstanding quhairof, it is of veritie, that ye, being forgetfull of your deitfull obedience and reverence, quhilk ye sould haif gevin to the saidis Actis and lawis, and of the guid exampill quhilk ye sould haif gevin to vtheris his Maiesteis leigis, in respect of your place, office and seruice in his Maiesteis houshold; ye, laithlie, vpone the . . . day of Januare lastbypast, with convocatioun of our souerane lordis leigis, to the number of ten or twelf persones, all bodin in feir of weir, with secretis, fleil-bonetis, hagbutis and pistoletis, past fra the Palice of Halyrudhous towardis Perth, quhair ye was informet Patrik Eviot, brother to Colene Eviot of Balhousie,⁶ was in the South-Inche thairfor for the tyme; and thair set vpone him, and cressallie invaidit him for his slaughter, and chaistit him to ane cok-boit, quhilk he wes compellit to tak, and enter in the watter of Tay, for saiftie of his lyfe: And he being thairin, ye and your company schot and dilaschet the number of ten or twelf schott of hagbuttis and pistolettis at him,

¹ Lord Henry Howard to Mr Edward Bruce; without date, but about Aug. 1802. See Vol. II. p. 319, Note.

² See Vol. II. p. 276, Note. ³ The Master of Gray. ⁴ Golden angels, bribery. ⁵ Lord Henry Howard to Mr Edward Bruce—probably written soon after that of the 27th August, 1602.—*Hailes*. ⁶ Although Eviot escaped this barbarous attack, he was murdered, five years afterwards, by his wife and her paramour. *Fleming* gives the following graphic account of this transaction, in his curious MS. Chronicle, preserved in the Library of the Faculty of Advocates. (8th Apr. 1608.) 'PATRIK EVIOT, brother-german to the Laird of Balhousie, wes murderit in Blelok, be his wyfe Jonet Ross, quha wes air to the Lairdship of Craigie and Kynfaunes both (also.) He wes schote with ane gun in his bed, sleipung, be James McNair. Thairrefter, they wer both taikin and execut; and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 May 1608. His heid and arme putt wp on the Castell gawill port.'

of purposis to haif flane him ; quhilk ye had nocht failz it to haif done, war nocht he lay darnet¹ on his face, in the boddome of the said boit. Be beiring, weiring and schuitting of the quhilkis hagbuttis and pistolettis, ye haif contravenit the tennour of the saidis Actis of Parliament, and incurrit the panis contenit thairin ; quhilk shuld be executie aganis yow with all rigour, in exampill of vtheris, &c.

The said Sir Harie Lyndsay declairit, for obedience of the Kingis Maiestie, and for the offence done to his hienes, mynding nawayis to vse any defenssibis be law, albeit he mycht vse thame ; he will becume in his Maiesteis Will for the Dittay producet be the Aduocat : Protesting, that his becuming in will preiudge him nocht, anent any defens that he will vse aganis any pairtie that fall happin to persue him, heirefter, for the saidis crymes : Quhairvpoun he askit instrumentis ; and lykwayis our souerane lordis aduocat askit instrumentis of his becuming in his Maiesteis will.

The samyn day, Patrik Eviot protestit, that the said Sir Harie Lyndsayis becuming in will shuld nocht preiudge him of any actioun that he had to persue aganis him.

Slaughter — Sentence of Banishment.

Feb. 2.—WILLIAME WAUCHOPE, sone to vmq^{le} Robert Wauchope of Nydris.²

Compeirit Johne Mayne, and producet ane Precept contening HIS HIENES WILL, togidder with ane delyuerance of the Lordis of Secreit Counsell, quhilk the Justice ordanit to be insert and registrit in the buikis of Adiornall ; quhairof the tennour followis.

REX,

JUSTICE, Justice Clerk and 3our deputis, We greit 3ow weil. Foramekill as Williame Wauchope, sone lauchfull to vmq^{le} Robert Wauchope of Nydris, being laidle persewit befor 3ow, to haif vnderlyne our law, for airt and pairt of pe slaughter of vmq^{le} David Edmestoun of Wommett : ffor pe quhilk slaughter he is becume in our will, in hoip of our clemencie and fauour : We pairfoir, for dyuerse consideraciones moving vs, temperand the rigour of justice with clemencie, haif declairit and declairis our will towards him, as followis : That is to say, That the said Williame fall depairt furth of our realme to quhatsumeur pairtis he pleissis, betuix pe dait heirof and pe first day of Marche nixto-cum ; and nawayis to retorne agane within pe samyn, without our Licence first had and obtenit pairto : And for pat effect, to find sufficient cautionne actit in pe buikis of Adiornall, vnder the pane of fyve hundreth pundis, to be payit to our Thesaurer in our name, in cais of failzie. And forder, in cais it fall happin pe said Williame to retorne agane within our realme, quhairvnto he can be apprehendit, be any of our Justices or ministeris of our lawis : And pat p^r presentis salbe ane sufficient Warrant and Commissioun to pat effect. Subscriuit with our hand, att Halyrudhous, pe second day of Februare, 1603.

(Sic subscribitur)

JAMES R.

Followis the Supplication and Warrant.

VNTO 3our Maiestie and Lordis of Secreit Counsell, humlie menis and schawis 3our seruitor, Williame Wauchope, sone to the Laird of Nydris : That quhair, eftir I haif remanit this lang tyme in ward, within the Tolbuike of Edinburgh, and haif cum in 3our hienes will and pleafour, for airt and pairt of the slaughter of vmq^{le} David Edmestoun of Wommett, it hes pleist 3our Maiestie, of 3our

¹ Hid, concealed.

² See Jan. 4, 1603.

hienes fauour and mercie, to grant ane Warrant for puting of me to libertie furth of the said waird, I findand cautionne actit in your graces buikis for my departing furth of the cuntrie betuix and the first day of Marche nixtocum, vnder the pane of fyve hundreth pundis, and onnawayis to retorne agane within the samyn, without your hienes Licence, vnder the pane of deid. As ye said Warrant heir present to schaw beris. Out of the quhilk waird I am nocht as yet releuit, albeit I haif done quhat in me lyis to find cantoun and fourtie, conforme to ye said Warrant, and hes offerit Johne Robiefoun, flescheour, burges of Edinburgh, cautioner for me to yat effect; and it nawayis lying in my power, as I fall answer to God, to get ony vper persone to becum cautionn for me, bot sic persones as ar nocht responfall in landis and guidis, as the said Johne is, quhairof your Maieste and lordis as yet haif had a fauourable consideratioun of me and my estait in tyme bygane; sua I maist humlie besekit your lordschipis, that ye will freith and releue me furth of the said waird; and that I may haif command to your Maiesteis Clerk of Confall or Justice Clerk, to ressaue ye said Johne Robiefoun cautionn for me: Conforme to the said Warrant and your answer.

(Sic deliberatur) APUD Halyrudhous, primo Februarij, anno tertio 1^m. Vj^e. Fiat ut petitur, Johne Robiefoun and John Mayne, coniunctlie and fenerallic, cautioneris.

(Sic subscribitur)

MONTROIS, CANAUS. M. R. YOUNG.

Conforme to the quhilk Precept and Will productet, the Justice, be the mouth of James Lowrie, dempfar, pronuncet his Maiesteis will to be, &c.¹

House-breaking — Theft, &c.

Feb. 15.—ANDRO REID in Bervie.

Dilatit for cuming to George Sincleris house, accompaneit with Johne Bennet and Thomas Welfch; breking of the said George house, streking vp of kiftis, and taking furth thairof certane abuilzementis,² clothing, and gold and siluer, pertening to Dame Agnes Sincler Lady Errole, Barbara Sincler and Thomas Sym, messinger, hir fervandis.

PERSEWARIS.

Barbara Sincler, Thomas Sym, messinger.

PRELOQUUTOIRIS for the pannell.

Mr Vmpra Blindschell, Mr George Frazer.

Compeirit the Lady Errole, and insifit in the persute of Andro Reid, according to the Dittay; and productet ane Rolment of Court.—Mr Vmpra Blindschell, for the pannell, allegit, that he can nocht be put to the knowlege of ane Assyse for the haill Dittay, except the plaittis; in respect he was put to the knowlege of ane Assyse for the samyn, befor the Scheref of Kyncairne; and the Judge hes fund him nawayis worthie of daith thairfor, as the proces productet beiris. The pannell askit instrumentis of the production of the Rolment of Court furth of the perseweris handis, quhair Andro Reid is put to the knowlege of ane Assyse be our souerane lordis Commissiounne, of the poyntis of Dittay productet, and of the Judges decreit.—It wes answert be the perseweris, to the former allegiance, that he sould be put to the knowlege of ane Assyse for the said crymes, becaus he was nather flylit nor clangit be the Assyse thairfor: And for

¹ In terms of the Warrant, which is repeated.

² Apparel, dress. Fr. *habiliment*.

the verificatioun thair of, producet the proeces subscryuit be Neillfoun, clerk thairto : And thairfor the said allegiance aucht to be repellit.

The Judge continewis Interlocutor to the morne.

Feb. 16.—The Justice continewis this mater to the morne.

Comperit the hail perfonis of Assyse, and declairit that thai haif onwaittit this tua dayis vpone thair call, and ar superexpendit ; and protestit that thai be nocht vnlawit heirefter, in cais of thair non-compeirance.—Continued to 17th, and afterwards to 18th.

PERSEWAR,¹ Mr Thomas Hammiltounne.

PRELOCUTOR for the pannell, Mr Johne Scharp.

Feb. 18.—The Aduocat askit instrumentis of the productione of the Rolment of Court, producet be the pannell, subscryuit be Mr Johne Foullertoun, and protestis (that) the samyn remane in proces ; and adheris to the alledgements, that he is ffylit of the cryme, be his awin Confessiounne, be ane Assyse alreddie ; and desyres only that dome may be pronuncet aganis him, conforme to the lawis ; and that in respect of the Rolment producet ; and consentis he pass to na Assyse.—It is ansuerit be the pannell, that na dome aucht of new to be gevin, becaus thair is a judgement alreddie gevin be the Judge, conforme to the Rolment of Court ; and that in respect of the Act of Parliament, quhair it is provydit, that a man anis being clanget, can nocht be of new perfewit for that cryme—The Justice continewis this mater to Wednisday nixt.

Jun. 10.—SENTENCE. The quhilk day, Andro Reid in Bervie, being enterit on pannell, as he that was convict be ane Assyse, in ane Justice-Court halding in Stanchyve, the xv day of September, the yeir of God I^m. sex hundreth and tua yeiris, be Johne Keyth in Coltoun, Sheref-deput of the scherefdome of Kincardin, and Capitan Andro Stewart Judge, be vertew of our souerane lordis Commiissionne, direct to my Lord Shereff of Kincardin, for cuming to George Sincleris housse, &c. ; quhairvpone na dome wes pronuncet : For the quhilk cause the Justice-depute decernit and ordanit the said Andro Reid to pass furth of this realme, betuix the day and dait heirof, and the tent day of August nixtocum ; and never to returne within the samyn ; bot to remane Banefichit during all the dayis of his lyfe, vnder the pane of deid : And all his moveabill guidis to be escheit and inbrocht to our souerane lordis vse, as convict of the said crimes ; quhilk was pronuncet for dome.

Compeirit Capitane Andro Stewart, and protestit, that the sentence and dome of Banefichment pronuncet aganis the said Andro Reid in Innerbervie, be na ways preiudiciall to the actiounne of Errour, to be intentit aganis the Assyse, for Clangeing of the said Andro Reid of the crimes confest be him.

¹ In addition to those formerly entered.
10, 1603.

² No farther proceedings are entered, until June

Slaughter.

Feb. 24.—DONALD M^cANGUS of Glengarie, John Dou M^ckeane V^cdonill voir, Donald M^ckeane V^cdonill voir, Angus M^ckeane V^cdonill voir, his brether ; Findlay M^cdonill V^cdonill voir, Alexander M^cdonill V^cdonill voir, John M^cdonill V^cdonill voir, thair brether ; Rorie M^cmurchie V^cdonill oge, Donald M^cmurchie V^cquhonchie, Tormot M^cmurchie V^ckeane, Johne Moir M^cmurchie Vic doull oige, Johne Dou M^ckeane V^cdoull oige, Inving M^cindowy, in Glengarie, and Eweyne Ockerdane Carfar.

Compeirit William Makiefoun, and producit our fouerane lordis letteris, deulie execut and indorfate, purchest be Angus M^cindowie, as brother to Donald M^ckeane V^cdoun, Johne and Dougall M^cmurdo Boweis, as nerrest of kyn to vmq^{le} Donald M^cdonald M^cvolddonich ; Johne M^cdonald V^cJok, as brother to Donald M^cdonald V^cJok, with the kyn and freindis of the faidis vmq^{le} perfones ; aganis Donald M^cangus of Glengarie, &c. ; be the quhilkis Letteris thay ar denunciit rebellis and putt to the horne, in default of finding of fouertie to haif compeirit this day and place, to haif vnderlyne the law for the Slauchter of the faidis vmq^{le} perfones : Quhairvpoune he askit instrumentis ; and proteffit for relief of Rorie M^ckenzie of Cultellan, cautioner.

Slaughter.

Mar. 3.—JAMES STEWART, sone to vmq^{le} James Stewart, Maister of Buchan.¹

Sir James Scrymgeour of Dudop, kny^t, oft tymes callit, as cautioner and fouertie for James Stewart, sone to vmq^{le} James S. M^c of Buchan, to haif enterit and presentit him to haif vnderlyne the law, for airt and pairt of the felloun and crewall Slauchter of vmq^{le} Patrik Bryfone, tailgeour, burges of the Cannogait ; committit in the moneth of October lastbypast, vpone set purpois, &c. : The Justice unlawit Sir James Scrymgeour in the pane of tua hundreth merkis, and als adjudget the faid James Stewart to be denunciit, &c., and his moveabill guidis to be escheit, &c.

Murder — Stouthrief, &c.

Apr. 28.—ALLASTER M^cKIE, Gilchrist Kittoche alias Makilmoyle,
 M^cynroyer, Fyndlaw Dow M^colean.

Dilatit of certane poyntis of Thift, and for cuming to the Laird of Luiffis

¹ ' Patrik Bryfone slaine in the Cannogate be aue James Stewart of Buquhane ; quha wes apprehendit and wardit in Sir James Ballendine's hous ; quhair he remanit still, till the 26 of November, on the quhillk day he brake ward out of Sir James Innes hous.'—*Birrel's Diary*, p. 56.

boundis, in companie with the Laird of McGregour, and airt and pairt of the Murthour and Reif committit thairon in Februar last.

DITTAYS against the Pannels.

ALLASTER McKIE, ffor airt and pairt of the thiftious Steilling, conceilling and away-taking of foure 3owis, pertening to James Galbraithe in Bolgair, furth of Barroun McEwins corrie or glen; committit about Michaelmas laft. ITEM, for steilling fra the said James of twelf fcheip furth of the said glen. ITEM, for the thiftious steilling of tua lames in Balglaß, pertening to the Lady Keir. ITEM, for the steilling of tua meirs furth of the landis of Galgerrachene; committit about Midfomer laft. ITEM, for the thiftious steilling of thre meiris or fillies furth of Campsie-mure. ITEM, for commonn thift, &c.—GILCHREIST KITTOCHE, &c., ffor being in company with the Laird of MakGregour and his complices, and airt and pairt with him of the crewall Murthour and slaughter of dyuerß the Laird of Lufes freindis, feruandis and pairtakeris, to the number of fevin fcor perfones; committit within the Laird of Lufe boundis, in the moneth of Februar laft: And for the barieing and fpuilzeing and reveing of the haill cuntrey thairabout; and thifteous steilling and away-taking with thame, of the number of aucht hundreth ky, horße, nolt, fcheip and vther beftiall; committit be thame at the tyme foirfaid.

Quhairof the faidis perfones war airt and pairt, accoirding as thair Depofitiones and Confeffiones beiris.

VERDICT. The Affyße fand, pronuncet and declairit the pannell to be flylet, culpabill and convict of the haill crymes refpectiue aboue fpecifeit.

SENTENCE. The Justice, be the mouth of James Henderfone, dempfter of Court, ordanit thame, and ilk ane of thame, to be tane to the Burrowmure of Ed', and to be hangit vpon the Galloife thairof quhill thay be deid; and all thair moveabill guidis to be efcheit, &c.

Intercommuning with the Clan-Gregor.

May 17.—AULAY McCAULAY of Ardincapill.

Compeirit Johnne Dunlop, feruitour to my Lord Duik of Lennox, and producet ane Warrant, fubferyuit be his Maieftie; quhairof the tennour followis.

REX,

JUSTICE GENERALL, 3our depuete, Justice clerk, Adnucatt and 3our deputtis, We greitt 3ow hartlie weill: fforfamekill as our louit Aulay McCaulay of Ardincapill is fsummond at þe instance of 3ow our faid Adnucat, to compeir on the xvij day of Maij nixtocum, to vnderly the law for the allegit intercommuning with *Allaßter Mcgregour of Glenfra*, and vna^{le} *Johnne Dow Mcgregour* his broþer, our rebellis, and for certane vperis crymes and poyntts of Dittay, fpecifeit and contenit in þe fsummondis raift þairanent. And We, vnderftanding that the faid Aulay McCaulay is altogidder frie and innocent of þe faidis allegit crymes laid to his charge; and that he is to accompany ws to our realme of Ingland, with our darrest coufing the Duik of Lennox, his maifter: Thairtoir, and for certane vperis guid cauffis and confiderationes moveing ws, it is our Will, and We command 3ow, to defist and ceife fra all calling or accusing of the faid Aulay McCaulay, the day foirfaid; or ony wayes proceeding aganis him or his cautioner in the matter foirfaid; bot fuffer the dyett, appoyntit to that effect, to defert in it felf, as gif ony ffe Letteris had nevir bene raift; naper 3it trubill nor moleft þe faid Aulay McCaulay, for the pretendit caufe foirfaid,¹ at ony vper dyet þairefter, quhill the returning of our faid

¹ See Note to the Laird of MacGregor's Declaration, Jan. 20, 1604.

derrest couling furth of our realme of Ingland. As 3e will answere to us vponne your obedience ; and pat nochtwithstanding of ony vper Warrant gevin or to be gevin in the contrair : Quhairnent pir presentis fall be to 3ow sufficient Warrant. Subscryuit with our hand, att Beruik, þe sevint day of Apryle 1603.

(Sic subscribitur) JAMES R.

The quhill Warrant the Justice admittit, and desertit the said dyet.

Adultery — Child-Murder.

May 18.—JOHNE RYBURNE of that Ilk.

Robert Montgomerie of Hefsilheid produceit our souerane lordis letteris, purchet at the instance of Mr Thomas Hammiltoun, aduocat to our souerane lord, aganes Johne Ryburne of that Ilk, for Adulterie and the Murthour of ane infant bairne, gottin vponn Agnes Dunlop : Be the quhill Letteris the said Ryburne of that Ilk is put to the Horne.

Murder of Seven Score Persons in the Lennox by the Clan-Gregor, &c.

May 20.—GILLESPIE M'DONALD M'INNES DOW, Donald M'clerich alias Stewart, and Johne M'coneill M'condochie.

Dilatit, accusit and persewit for being in company with the Laird of M'gregour : AND for airt and pairt of the lait grit slauchter and crewall Murthour of sevin seoir perones in the Lennox,¹ all freindis and servandis to the Laird of Lufe : AND of the thiftious Steilling and Reiffing of aucht hundreth oxin, ky² and vther bestiall, and herrieing the haill cuntrie ; committit in the moneth of Februaire lasthypast : ITEM, for the thiftious Steilling of tua horse and ane meir furth of Strabrand, fra Johnne Stewart Neilfoun and his man ; committit at Lambes³ last : AND for commoun Soirning,⁴ &c.—*Donald M'clerich* dilatit and persewit for airt and pairt of the thiftious Steilling of nine ky and oxin, tua yeir syne or thairby, fra Patrik Stewart furth of Innervaik, in Athoill ; and for commoun Thift and commoun Soirning, &c.

VERDICT. The Assyse, be the mouth of Johnne Douglas, burges (of Edinburgh), chancellor, stand, pronunceit and declairit the saidis thre perones to be culpabill and convict of the foirsaidis crymes.

SENTENCE. To be tane to the Castel-hill of Edinburghe, and to be hangit thair on ane gibbett, quhill thay be deid, &c.

¹ See Apr. 28, Jul. 5 and 14, 1603, &c. ² The 9 of Februarii, the Laird of Macgregor, with four hunder of hes name and factioun, enterit in the Lennox ; quhair he maid Spulzie and slauchter to the number of sixty honest men, belyde wemen and bairnis. He spared nane quhair he came.—*Birrel's Diary*, p. 58.

³ Kine, cattle.

⁴ Lammas-day, 1st August.

⁵ Taking free quarters by force,

(q. d. *sejournant* ?)

Invasion of a Minister, near the Tolbooth, where the Privy Council were Sitting in Judgement.

Jun. 29.—WALTER GRAHAME, seruitour to Mr Robert Williamsoun, wryter.

Dilatit, accusit and perfewit be DITTAY of the crymes following, viz.

FORSAMEKILL as it is statute and ordanit, be oure fouerane lordis Actis of Parliament, speciallie be ane Act maid in his Maiesteis ellevint Parliament, cap. 27, that quhatfumeir persone or persones Invaids ony Minister,¹ or putis ony violent handis in him for ony forget² querrell, fall be pwnest thairfoir with all rigour, and incur the payne of tynfall of all thair moveabill guidis for the said invasioun and violence allanerlie, albeit na slauchter nor mutilatioun follow thairvpoun; the ane half of the saidis guidis to be applyit to our fouerane lordis vse, and the vther to the pairtie invaidit or offendit, but preiudice of the gritter pwnesichment, gif ony heicher cryme concour with the violence and invasioun foirsaid: And als, Proclamatioun was maid, in our fouerane lordis name and auctoritie, vpon the . . . day of Junij instant, in the yeir of God, J^m. Vje. and thre, befor the Trinitie sfair, that na persone sould invaid or persew ane vther within this burch, during the tyme of the sfair, vnder the pane of deid: And forder, it is provydit be dyuerse Actis of Secreit Counfall, that na persone fall invaid ony man, be drawing of ane sword, within ane myle to the Kingis Palice, or to the hienes Counfall, vnder the pane of deid. AND trew it is, that the said Walter, in hie and manifest contempt of our fouerane lordis Actis of Parliament and Proclamations foirsaidis, vpon deidlie malice consauet be him aganis Mr Thomas Douglas of Stannypeth, Minister at Balmirrieno, and haifing forget a quarrell aganis him, for the revenge of certane injurious speiches, allegit gevin be the said Mr Thomas Douglas to the said Mr Robert Williamsoun, his maister, vpoun the xxj day of Junij instant, he, vpon the xxij day of the said moneth of Junij, preparit to him self ane grit foure-nuikic³ battoun, of aik, of purpois to haif sellit the said Mr Thomas Douglas thair: Lyk as the said Walter set vpon him, behind his bak, vpon the hie streit of the burch of Edinburghe, in the tyme of the said sfair, a lytill beneth the Stinkand-style,⁴ the Lordis of Secreit Counfall being within the said burch, and haifing sittin at Counfall in the Tolbuth of the said burch, nocht passand ane half hour befor the violence and invasioun following; and thair, maist schamefullie, barbarullie and crewallie, without regaird of the person of ane Minister, and haifing never spokin with him ane word of befor, invaidit him for his slauchter with the said batoun, strak him thairwith tua straikis vpon the heid, behind the richt lug,⁵ and hurt and woundit him thairwith, to the effusion of his bluid in grit quantitie; vpon set purpois, perswasione,⁶ precogitat malice and foirtocht felony. And efter the committing of the said crewall and schamefull invasioun, and hurting of him, as said is, the said Walter fled and gat away; and thaireftir was tane and apprehendit for the said barbarus crewallie; and he hes confessit the samyn. Quhilk batouning of the said Mr Thomas, fa neir to his hienes Counfall, meretit gritter pwnesichment, nor gif⁷ he had drawin ane sword to the effect aboue specifeit, in respect of the vyle indignitie thairof: Qubairby he hes contravenit the tennour of the saidis Actis of Parliament and Proclamatioun foirsaid, and incurrit the payne of daith, quhilk aucht and sould be execute aganis him with all rigour, in exampill of vtheris, &c.

PERSEWAR.

Mr Johne Nicolfoun of Lefwaid, Aduocat, substitute to Mr Thomas Hammiltoun of Drumcairne.

VERDICT. The Assyse, be the mouth of James Lyndesay of Dowhill, chancellor, sfand, pronuncet and declairit the said Walter Grahame to be ffylit, culpable (and) convict of the saidis crymes.

¹ Clergyman. ² Forged, feigned, simulate. ³ Four-cornered, square. ⁴ Near the Tolbooth, and almost opposite the door of Haddo's-held, to the eastward of the late New North, or 'Little Kirk.' ⁵ Ear. ⁶ In common style, this word is usually 'provision.' ⁷ Than if.

(Aug. 12.)—Mr Williame Borthuik, Justice-depute,¹ (pronounced Sentence against the pannel,) be vertew, and at command of ane Warrant of the Lordis of his hienes Secreit Counfall, quhairof the tennour followis :

APUD EDINBURGHE, vltimo Junij 1603. The Lordis of Secreit Counfall Ordanis pe Justice and his deputis to pronounce dome vpone Walter Grahame, for pe streking of Mr Thomas Douglas, Minister, with ane batoun ; in maner following, viz. : That pe said Walter fall be seurgit fra pe Castell hill to the Neper boll, throw pis bur^t, and his richt hand to be strukin af at pe Neper boll : And pairesfer, Ordanis bim to be Banisfet his Maiesteis haill dominiones, and onnawis to returne agane within pe samyn during his lyfetime, vnder pe pane of deid. And that he remove furth of pe saidis realmes betuix and pe last day of September nixtoctm, vnder pe pane foirfaid.

(Sic subscribitur) MONTROIS CANRIUS. AL. VCHILTRIE. ELPHINSTOUN. A. FYVIE. NEUBOTLE. J. COKBURNE. R. COKBURNE. JO. PRESTOUN. CRANSTOUNRIDDELL. QUITTINGHAME.

SENTENCE. The Justice, be the mouthe of Walter Peirie, dempster of Court, decernit and ordanit the said Walter Grahame to be seurgit throw the bur^t of Edr,² &c., within tua moneth nixt following, vnder the pane foirfaid : Quhilk was gevin for dome.

Slaughter.

Jun. 30.—JOSEPH BONCLE, burges of Dumbar.

Dilatit and accusit for the Slauchter of vmq^{le} James Loche, induellar in Dumbar, committit vpoun the xxvij day of Junij instant, be the straik of ane sword in the lisk³ and the wambe.⁴

Compeirit Williame Kellie, Thesaurer of Dumbar, in name of the Proveist and bailleis thairof, and producet the letter vnderwritten ; quhairof the tennour followis.

PROVEIST and bailleis of the bur^t of Dumbar. It is our will, and for findrie guid respectis and considerations moveing ws, We command 3ow, that 3e caus saidie convoy, bring and present Josephe Bonkle befor our souerane lordis Justice and his deputies, within pis bur^t of Edin^r, to vnderly the law and justice for pe slauchter of vmq^{le} James Loch, smyth, committit be bim vpoun pe xxvij of Junij instant. Quhairanent pir presentis salbe 3our Warrant : And but⁵ preiudice or ony derogation to quhatsumeiv 3our liberteis and privilegis of Schereschip, disponsit and grantit be his Maiestie in 3our fauoris, and contentit in 3our new Infeftment, maid pairvpoun. Subscriuit with our handis, at Edinbarghe, pe xxix day of Junij, 1603.

(Sic subscribitur) MONTROIS, CANRIUS. J. ELPHINSTOUN. A. FYVIE. A. VCHILTRIE. QUITTINGHAM. JO. PRESTOUNE. EDGELL. CRANSTOUNRIDDELL. R. COKBURNE. J. COKBURNE.

VERDICT. The Assyse, be the mouth of Patrik Nisbet in Dumbar, chancellor, stand, pronounceit and declarit the said Josephe to be ffylit, culpable and convict of the Slauchter of the said vmq^{le} James Loch.

SENTENCE. To be tane to ane place besyde the mercat croce of Edinbarghe,

¹ On Aug. 12, 1603.
groin or flank.

² In terms of the above Warrant of the Privy Council.
⁴ Belly.

³ The
⁵ Without.

and thair his heid to be strikin fra his body; and all his movabill guidis to be efcheit, &c.

Treason — Forging and Uttering base Money.

ROBERT DOW *alias* MEINZEIS and Allester M'claren, smyth.

Dilatit ffor airt, pairt, red and counsale, and conceilling of the tressonabill fforgeing, counterfitting and outputting of fals and adulterat coinzie, sic as fyve-pound-pecis and foure-merk-pecis, quhilkis Arthour Smyth coinzeit fyve zeir syne or thairby, in his smiddie besyde Banff: And for outing¹ of ane pairt thair of, amangis our souerane lordis liegis.

VERDICT. The Assyis, be the mouth of Williame Stalker elder, Goldsmyth, stand them to be ffylit, culpabill and convict of the tressonabill conceling of the fforgeing, prenting and counterfitting of fals coinzie, prentit and forgeit be the said Arthour Smyth, in his smiddie beside Banff, conforme to thair Depositionis.

SENTENCE. The said Allester M'claren to be tane to the gallow on the Borrowmure, and thairvpoun to be hangit quhill he be deid: And all his landis, heretageis, takis, ftedingis, rowmis and possessionis, guidis and geir, coiruis, cattell, infycht pleneiffing to be forfaltit and efcheit, &c.

Continewis dome vpon Robert Dow to the morrow quhill he anise with the Counsaill.²

Slaughter of the Laird of Russ's People by the Clan-Gregor, &c.

Jul. 5.—GILLIEMICHELL M'HISCHOK, seruand to vmq^{te} John Dow

M'gregour, and Nicoll M'pharie Roy M'gregour.

Dilatit for being ['at the ffield of the Lennox³ aganis Sir Vmphray Colquhoun: And for airt and pairt of the Slauchter of sewin scoir perfounes,']⁴ in cumpany with the Laird of M'gregour and his complices, at the ffield of the Lennox, aganis Alexander Colquhoun of Luse: And for airt and pairt of the slauchter of the said Laird of Luse freindis, servandis, affisteris and pairtakeris, to the number of sevin scoir perfones or thairby: And for reifing and herreing of the haill cuntrey, and fleilling and away-taking of ky, oxin, horfe, scheip, gaittis and vther bestiall, to the number of aucht hundreth bestiall or thairby; committit in the moneth of Februare lastbypast.

VERDICT. The Assyse, be the mouth of Robert Oisteane in Edinburghe, chancellor, all in ane voice, but⁵ variance, stand, pronuncet and declarit the saidis

¹ Uttering, putting out.

² On Jul. 5, he is ordained 'to be tane to the Castellhill of Edinburghe, and thair to be hangit quhill he be dead; and all his moveabill guidis to be efcheit, and his lands and heritageis, gif he ony has, to be forfaltit,' &c.

³ See Notice prefixed to the Trial of Allaster M'Gregour of Glenstrae, Jan. 20, 1604.

also Apr. 28 and May 17, &c.

⁵ Without.

⁴ This sentence occurs at the first entry. See

Gillie-Mitchell M^{is}chok, alias M^gilliechallum, and Nicoll M^{farie} Roy M^gregour to be flylit, culpable and convict of airt and pairt of the crymes foirfaidis.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be hangit on ane gibbet quhill thay be deid ; and thair guidis to be escheit, &c.

‘ Field of the Lennox ’ — Slaughter of the Colquhouns, &c.

Jul. 14.—JOHNE (DOW M^cANEVALICH) M^cGREGOUR, at the Kirk of Comerie.

Dilaitit for being in cumpanie with Allaister M^cgregour of Glenstra¹ and his complices, at the ffeild of the Lennox, againis the Laird of Lufe and his freindis : And airt and pairt of the Slauchteris, thiftis, robbereis committit be thame ; quhairin thair was flane vij fcoir personis ; committit the aucht day of Februare laft.

VERDICT. The Assyse, be the mouth of James Chalmer, burges of Edinburghe, chancellor, fand the said Johne Dow M^canevalich M^cgregour to be flylit, culpable and convict of the faidis crymes.

SENTENCE. To be tane to the Castel-hill of Edinburghe, and thair his heid to be strikin from his body ; and all his movabill guidis to be escheit, &c.

**Slaughter — Unmerciful Oppression — Shooting ‘ Hagbuttis,’ &c.
Cattle and Sheep Stealing, &c.**

Jul. 19.—GEORGE TRUMBILL, of Belfis.

Dilaitit, accufit and perfewit of the crymes *respectiue* following, viz.

For airt and pairt of the Slauchter of v^mq^{le} Johne Hammiltoun, callit of Cumnock ; committit the xxij day of Januare, I^m.V^c. threfcoir nyntene yeris. ITEM, of airt and pairt of the Slauchter of v^mq^{le} Williame Trumbill, sone lauchfull to v^mq^{le} Walter Trumbill of Raflat ; committit in the moneth of Apryle, I^m.Vj^c. yeris. ITEM, for Vfurpatioun of our fouerane lordis autoritie, in taking of Adame Trumbill, sumtyme fervand to the said v^mq^{le} Walter Trumbill of Raflat, he being his hienes frie subiect, and binding him with fetteris, and hinging him be the feit and schouderis, ouer ane balk, for the space of xij dayis, quhairthrow his feit rottit fra him ; without Commissioun gevin him to that effect. ITEM, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbutis, dagis and pistolettis ; and in schuiting of Walter Trumbill, younger of Raflat, betuix the toun of Jedburgh and the place of Belfis, in the airme and thie ; committit in anno I^m.Vj^c. and tua yeris. ITEM, for the thiftious Steilling of four nolt fra Johnne Donaldsoun, in Melrois ; committit thre yer syne or thairby. ITEM, for airt and pairt of the thiftious Steilling of sax ky and oxin, xx fcheip, tua horsis, with the insycht plessing and evidendis pertening to David Riddell, in St Bosuellis ; committit in the moneth of . . . I^m.V^c.lxxxviiiij yeris, or thairby. ITEM, for the thiftious Steilling of xvj nolt, pertening to the Laird of Bemerfyde ; committit in anno I^m.V^c.lxxxviiij yeris. ITEM, for the thiftious Steilling of tuentie nolt, ane yer syne or thairby, pertening to the Lady Newtoun. ITEM, for

¹ In the Verdict of the Assise, it is said to have been in company with ‘ the Laird of M^cGregour ; ’ so that Allaister of Glenstra was the Chief of this Clan, either by right of blood, or Chieftain for the time, by election, as was usual among the Clans. See Jan. 20, 1604.

the thiftious Steilling furth of the landis of Belfis, in the moneth of . . . 1^m.Vj^o. and ane yeiris of fyve feheip, pertening to ane fervand of George Davidfones. ITEM, for the thiftious Steilling and away-taking of ane meir, pertening to George Wilfoune in Langnewtoun, furth of his duelling hous in Langnewtoun; committit ane yeir fyne or thairby. ITEM, for a commone briggane¹ and notorious cawmone theif, refset of thift, outputing and inputing of thift.

PERSEWARIS, Ifobell Trumbill, as dochter (to Walter) and fister (to Williame Trumbill); George Rutherford, as kinsman; Mr Johne Nicolfoune, substitute for our fouerane lordis aduocat.

PRELOQUUTOIRIS for the pannell, Mr Johne Ruffell, Mr Thomas Craig, Mr Williame Douglas, David Ramfay.

It is allegit be the pannell, that na proces aucht to be grantit vpon the Dittay, vnto the tyme he be fummond vpon xv dayis wairning, in respect the deidis contentit in the Dittay is done xxiiij yeir fyne.—It is anfuert be the Aduocat, that he was denuncet rebell and put to the horne for ane of the flauchteris contentit in the Dittay, viz. ffor the flauchter of vinq^{le} Williame Trumbill, and ane Commissioun grantit be the Kingis Maiestie and Counfall for taking of him; be vertew quhairof he was takin and apprehendit and presentit to the Counsale, vpon the fyft day of July; att the quhilk tyme, in presens of the perfewer and defender, than present, this day (being that day xv dayis) was assignit to the perfewer to perfew him for that cryme and all vther crymes could be laid to his charge: And thairfoir, thair being xv dayis grantit to the Counsell to deliberat vpon his defence, thair aucht to be na forder citatioun grantit.—To the quhilk it is anfuert be the pannell, concerning the Hoirning, he is relaxt. *Secundo*, as to the Commissioun, na Commissioun can be grantit to preiudge him of his lauchfull defensis, *parte non citata*. As to the last, he gat na coppie of the Dittay, and thairfoir man be fummond on xv dayis wairning.

As for the flauchter of vinq^{le} Williame Trumbill, sayis he was slane be him in his awin defense, he being affageit within his awin hous. As to the flauchter of vinq^{le} Johne Hammiltoun, denyis, and offeris him to the tryell of ane Assyse. As to the flauchter of Walter of Raslat, sayis he was slane at the horne, and product the hoirning for verifeing thairof, raist at the instance of Andro Commendater of Jedburgh, quhair the said Walter, for nocht removeing fra the landis of Raslat, and half ane quarter of the toun and landis of Belfis; quhilkis letteris ar of the dait the xx day of Apryle 1581, and of our fouerane lordis regne the xiiij yeire; denuncet the xij day of Julij, anno foirsaid.—It is alleget be the Aduocat, to the last pairt, that albeit he was at the horne, the pannell aucht nocht to vsurpe the Kingis auctorite vponne him, to slay ony man at his awin hand.

THE JUSTICE continewis Interloquitour to the morne.

Jul. 20.—THE JUSTICE Remittis the hail poyntis of Dittay, except for the flauchter of vinq^{le} Walter Trumbill of Raslat, to ane Assyse.

It is allegit aganis James Waddell, burges of Jedburgh, that he can nocht pas

¹ Robber; Fr. *brigand*.

vpone this Affyse, becaus thair is deidlie feid standand betuix the haill name of Trumbill, on the ane pairt, and the Laird of Pharniherst, the haill Keris, and the haill inhabitantis of the toune of Jedburgh, on the vther pairt, for the Slauchter of Thomas Ker, brother to the (Laird of) Pharniherst.

The Aduocat protestis for Wilfull error, in caice that thay acquit George Trumbill of the slauchter of vmq^{le} Williame Trumbill, becaus he confest the committing of the Slauchter out of his hous, he being assageit, and allegeit in his defence.

The Aduocat, for instructing of the Dittay, producet ane Testimoniall, beiring the pannell to be excommunicat for Slauchteris, Murthouris, Incestis and Adultereis, &c.; subseruit be Mr George Douglas, clerk of the Presbiterie of Jedburgh.

VERDICT. The Affyse, be the mouth of Walter Eleise, in Danielstoun, chancellor (be pluralitie of voittis), stand, pronounceit and declairit the said George Trumbill to be flylit, culpabill and convict of beiring, weiring and schuiting with hagbuttis and pistolettis, contrair the tennour of our souerane lordis Actis of Parliament; committit betuix the toune of Jedburgh and the place of Belfis, in anno I^m.Vj^e. and tua yeiris: And to be Clene, innocent and acquit of the haill remanent crymes abone specifeit, mentionet in the said Dittay; and speciallie, of the slauchter of the said vmq^{le} Williame Trumbill, becaus the samyn was done in his awin defens.

Quhairvpoune the said George Trumbill askit instrumentis.

(Aug. 18.)—SENTENCE. The Justice decernit and ordanit the said George Trumbill to be tane ‘to the mercat-croce of Edinburghe, and thair his richt hand to be strukin frome his airme, as convict of the said cryme; quhilk was gevin for dome.’¹

Sorcery—Charming—Abusing the People.

Jul. 21.—JAMES REID, sumtyme serveand to George Anderfoun in Mussilbur’.

Dilatit, accusit and persewit, be Dittay, of the crymes following, to wit,

FOR ane cownone Sorcerer, charmer and abuser of Godis peopill, be geving him selff out to haill all kynd of seiknes: Quhilk craft he lernit fra the Devill, his maister, in Bynnie-craigis and Corstorphin-craigis, quhair he met with him and consultit with him to lerne the said craft; quha gaif him thrie penneis, at ane tyme, and a peice creische² out of his bag, at ane vther tyme; he haifing appeirit to the said James dyuerse tymes, quhyles³ in the liknes of a man, quhyles in the liknes of a hors: with quhome he lykwayis dyuerse tymes consultit sen his first meiting, quhilk is threttene yeir syne or thairby; quhilk lykwayis

¹ See Aug. 23, 1602.

² Grease, fat.

³ Sometimes, occasionally.

lernit him to tak fouthe-rynnand-watter¹ to cuir the saidis diseiffis. ITEM, for cureing of Sara Borthuik, be his Sorcerie and devilirie, quha was grevoullie trubillit and diseaft, be bringing of fouth-rynnand-watter fra the Schyreff-brayis-wall, and casting a certane quantitie of salt and quheit about hir bed; be the quhilk cuir scho was hailit. ITEM, sforsamekill as he, be the special persuaifoune of Jonet Cryftie, dochter to Johne Cryftie at Cryftiefounis mylne, and his mother, consultit with the Devill, for distructioun of Dauid Libbertoun, baxter, burges of Edinburghe, his spous, thair coirne and guidis; quha causit him tak a peice raw flesche, quhairvpone he maid nyne nekkis,² and inchantit the samyn, quhilk he delyuerit to the said Jonet, and causit hir lay ane pairt thair of vnder the mylne dur, and the rest vnder the stabill dur, for distructioun of his hors and cattell. And als, inchantit to him nyne stanis, quhilk the said James cuist vpone the said Dauid Libbertones landis, for distructioun of his coirnes. Lyk as, the said James and the saidis Jonet Cryftie and hir mother informet³ and maid ane pictour of walx, quhilk the Devill inchantit; and he and the wemen turnit the pictour at ane fyre, in the said Johnne Cryftiefones hous, for distructioun of the said Dauid Libbertones self. ITEM, for cureing of the said Johnne Cryftie, being diseaft of a swalling, in putting of thre silk poyntis,⁴ in his devilisch maner, about his waist, quhilk remanit ten oulkis⁵ with him; and went away fra the said Johnne, be quhat way he knew noch.

VERDICT. The Assyse, be the mouth of Johne Howie, merchand, chancellor (all in one voce), sfand, pronuncet and declarit the said James Reid to be sfylet, culpabill and convict of the haill crymes aboue specifcit.

SENTENCE. To be tane to the Castel-hill of Edinburghe, and thair to be wirreit⁶ at ane staik; and his body to be brunt in assis:⁷ And all his moveabill guidis to be efcheit, and inbrocht to his hienes vfe, as convict of the saidis crymes.

Murder — Robbery.

Jul. 27.—THOMAS HORSBURGH, burges of Peiblis.

Dilaitit and accusit of the Murthour and Slauchter of vmq¹⁰ Williame Chifholme in Peibbillis, with his awin quhinger, vnder silence and clud of nycht: And als, of the thiftious steilling of ten sax li. peces,⁸ and tuentie merkis in quhyte siluer, pertening to the said vmq¹⁰ Williame, vnder the said Williames bed-heid; committit in the moneth of Marche lastbypast: And siclyk, for the thiftious steilling of tuentie tua li.⁹ fra his guid-mother,¹⁰ committit nyne yeir syne, or thairby.

¹ This superstition still obtains, in many remote places of Scotland; where the virtues of such water are firmly believed in. ² Nicks, notches. ³ Formed, constructed. ⁴ Laces, ties. ⁵ Weeks.

⁶ Strangled. ⁷ 'The 21 of Julij, James Reid brunt, for consulting and using with Satan and Witcheis; and quha was notably knawin to be ane counfeller with Witches.'—*Birrel's Diary*.

⁸ Ten £6 pieces.

⁹ £22.

¹⁰ Mother-in-law.

VERDICT. The Affyse, all in ane voce, be the mouth of Michell Hunter of Polmwid, chancellor, ffand, pronuncet and declairit the said Thomas to be fflyet, culpabill and convict of the saidis crymes.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be hangit on ane gibbett quhill he be deid ; and thaireftir his heid and richt hand to be strukin fra his body ; and the heid to be fet vpone ane prik vpoun the stepill-heid of Peiblis ; and his richt hand to be put on the Eist-pairt thairof : And all his moveabill guidis to be escheit, &c.

Usurpation of King's Authority—Hurting and Wounding.

Jul. 29.—ALEXANDER SEYTOUN, in Boigin-Johne.

Dilatit for the taking and apprehending of Mr Johne Cardno, convoying him to his hous in Boigin-Johne, and detening him captiue and presoner, be the space of xxiiij houris ; and hurting of him with ane rapper¹ in the body, and vsurpation of our souerane lordis autoritie vpoun him, in taking of the said Mr Johne ; committit in Nouember lastbypast.

The pannell askis instrumentis of his comperance on pannell, and protestis for releif of his cautioner ; and als, he offerris him reddie to vnderly the law for the said crime, disassenting till all continewatioune.

The Justice continewis to the Justice-air of ' Abirdene, tercio Itineris, (vel super premonitione) xv dierum.' James Chene of Straloch, cautioner.

Slaughter.

Jul. 30.—GEORGE HARRETT of the Coittis.

Dilatit for the Slaughter of vmq^{le} Williame Dowglas, in Muffilburgh, seruitoure to Williame Erll of Angus, lord Douglas, &c. ; committit in the moneth of Julij, the yeir of God I^m.Vj^e. and twa yeiris.

Marionne Wilfoun, the relict, produceit our souerane lordis Letteris, dewlie execute and indorfat, &c. Thomas Harrett in Lintoune, his cautioner, vnlawit and amerciati in the panis contenit in the Actis of Parliament, viz. in the payne of ane hundreth merkis ; and als adiudget the said George Harrett to be denunceit oure souerane lordis rebell, and putt to the horne ; and all his movable guidis ordanit to be escheit.

Murder.

Jul. 30.—MARIOUN WARDLAW, spous to Johne Kennedie, gantillet maker, burges of Edinburghe.

Dilaitit of airt, pairt, red and counfall of the Murthour committit be Williame Boirthuik, tutour of Boirthuik, Johne Boirthuik his brother, and vtheris

¹ Rapier.

thair complices, in cuming to James Frammis duelling-hous in the Cannogait, vnder seylence of nycht, and strykeing of him nyne straikis in the body and heid, to the effusioun of his body; and levand him for deid.

PERSEWAR, James Framme, gantillet-maker in Edinburghe.

Continued to the air of Edinburghe, 'tercio Itineris (vel super premonitione) xv dierum.'

**'Field of the Lennox'—Slaughter of Colquhoun—
Stouthreik, &c.**

Aug. 12.—DUGALL M'GREGOUR and Neill M'Gregour Pudrache.¹

Dilatit and accusit of the crymes following; to wit, the said *Neill M'gregour* of airt and pairt of the Slauchter of vni^q^e Patrik Layng and of vni^q^e Johne Reid, wobster, servandis to the Laird of Luse; committit in December lastwas: AND siclyke, of airt and pairt of the thiftious Steilling of tuelv scoir guidis furth of the Laird of Lusses boundis, in the Lennox;² committit the tyne foir-said. AND siclyk, the said *Dougall M'gregour*, of airt and pairt of the Slauchter of foure men, servandis to the Laird of Luse, in the lait ffeild of the Lennox;³ and being in companie with the Laird of M'gregour and his companie at the same feild; and airt and pairt of the Slauchteris, reiffis, thiftis and foirningis committit that day, in the moneth of Februaire last.

VERDICT. The Assyse, be the mouth of James Broun, burges of Dumfreis, chancellor, stand, pronuncet and declairit the saidis Neill M'Gregour Pudrache, and the said Dougall M'gregour to be fylit, culpabill and convict of the hail crymes aboue specifreit.

SENTENCE. Thairfoir the said Justice-depute, be the mouth of Walter Peirie, dempster, decernit and ordanit the saidis Neill and Dougall M'gregour to be tane to the Burrow-mure of Edinburghe, and thair, vpone ane gibbet, to be hangit quhill they be deid; and all thair moveabill guidis to be efcheit, &c.

Incest—Adultery—Theft, &c.

Aug. 23.—GEORGE TRUMBILL, in Belfis.⁴

Dilaitit, accusit and persewit, be DITTAY, of the crymes following, viz.

FORSAMEKILL as it is expresse provydit, statute and ordanit be our souerane lordis Actis of Parliament, that all notorious and manifest Adultereris and Incestuous perfonis sould die the daithe, and thair hail moveabill guidis to be efcheit to our souerane lordis vse; and all sic perfonis quhar excommunicat for Adulterie, ar be Act of Parliament estemit for notorious and manifest adultereris; as the saidis Actis at mair lenth beiris: And trew it is, that the said George Trumbill hes in the monethis of Januare, Februaire, Marche, Apryle, Majj, Junij, Julij, August, September, October, November and December, in the yeiris of God I^m.V^c.lxxxvij, lxxxix, 1600, 1601, and I^m.V^c. and tua yeiris; at the leist in ane or vther of the saidis monethis and yeiris, abusit his body in the filitie cryme of Incest and

¹ Pudrache signifies of the country or district of Balquhiddar.

² See Mar. 20, 1603, &c.

³ See Jan. 20,

⁴ See Jul. 9, 1603, and Aug. 18, when he had his right hand struck off for shooting pistols, &c.

Adulterie with Marioun Trumbill, spous to Jok Trumbill in Belfis, his brother fones wyfe; for the quhill fact he is excommunicat within the Presbiterie of Jedburgh; as the sentence of excommunicatione proportis. ITEM, for the thifteous steilling of ane gray horse furth of the landis of Raslat, pertening to vmq^{le} Walter Trumbill of Raslat; committit in the moneth of September, 1577. ITEM, for the steilling of xx oxin and ky furth of the landis of Raslat, fra the said vmq^{le} Walter; committit in the moneth of September lxxix yeiris. ITEM, for the thiftious steilling and reising of foure horse, fra foure mylleris of Jedburgh; committit thre yeir syne, or thairby. ITEM, for the steilling of ane naig fra Walter Trumbill now of Raslat.

PERSEWERIS.

Sir Thomas Hammiltoun of Monkland, kny^t, aduocat to our souerane lord; George Rutherford.
PRELOCUTOURIS for the pannell, Mr Johne Russell, Mr Williame Douglas.

It is allegit be George Trumbill, that he sould nocht be putt to ane Assyis for the crymes of Thift in the Dittay; becaus, within this moneth, he was chargeit befor your lordships of findrie particuler poyntis of thift and commoun thift; comprehending all pointis of thift, except itt wer for pointis of thift committit fen his clangeing. The Aduocat alledgis it is nocht relevant.

THE JUSTICE ordanis George Trumbill to be putt to the Assyse, for all crymes contenit in the Dittay, except sic as he is alreddie clangeit of.

The Aduocat takis instrumentis of the fwering of the Inqueist; and of production of the Presbiteries Testimoniall, testifeing George Trumbill to be excommunicat for Incest and Adulterie, contenit in the Dittay: And protestis Wilfull Errour, in caice thay acquit. And further, produceis Letteris of Hoirning, to verifie the vther foure poyntis of Dittay, and of his lang remaning vnrelaxit; and protestit for Wilfull Errour, in caice thay acquit, in respect foirsaid.—The pannell takis instrumentis of Halyburtoun of Moreislaw comperance, and fwering of the twa pointis of the Dittay, viz. of the mylleris naigis, and Watt Trumbillis naig. The Aduocat askis instrument of the fwering of the Dittay, be the Guidman of Morislaw.

VERDICT. The Assise, having 'be pluralitie of voitis' chofen Williame Cokburne of that Ilk chancellor, thay stand, pronuncet and declairit the said George to be flylet, culpabill and convict of the hail crymes *respectiue* aboue writtin.

SENTENCE. And thairfoir the said Justice-depute, be the mouth of Robert Scott, dempster of Court, decernit and ordanit the said George to be tane to the Castell-hill of Edinburgh, and to be hangit on ane gibbett quhill he be deid; and his hail landis, heritageis, tenementis, annuelrentis, possessionis, coirnis, cat-tell, infycht pleniffing, guidis and geir, to be forfaitit and escheit to our souerane lordis vsê, as convict of the saidis crymes.

Slaughter — Woughing Oxen — Stouthreik, &c.

Sep. 23.—JOHNE JOHNNESTOUN, callit of Loch-hous.

Dilatit, accuset and persewit be Sir Thomas Hammiltoun of Monkland, knycht,
VOL. II. 3 H

aduocat to our fouerane lord, ffor airt and pairt of the slauchter of vmq^{le} Johnne Cunninghame, fervand to the Erle of Glencairne; committit in the yeir of God I^m.V^c.lxxxxvj yeiris, or thairby, within the burch of Edinburgh. ITEM, for airt and pairt of the slauchter of vmq^{le} Gilbert Roriesfoune. ITEM, for airt and pairt of the hocking¹ of Robert Cuninghames oxin. ITEM, for airt and pairt of the maisterfull and stouthfull reveing fra James Lichtoun, Johnne Kello, Johnne Byres, George Cuninghame, merchandis burgefslis of Edinburgh, . . . Hunter in Glesgow, and Williame Walker at Bellis-mylne, of thair purslis and money being thairin, estimat to thre thousand (and viij^o) merkis; and away-taking of thair nagis fra thame; committit in the moneth of Julij 1602 yeiris, at the Rowne-tre-barne, betuix Air and Wigtoune.

ASSISA.

Charles Campbell of Horfeleuch,
Charles Campbell of Skeringtoun,

George Campbell of Gelt,
Williame Campbell of Walwoid.²

VERDICT. The Assyse all in ane voce, be the mouth of the said Charles Campbell of Horfeleuch, chancellor, stand, pronuncet and declairit the said Johnne Johnneftoun of Loch-hous, accoirding to his awin Confessioun, maid in judgement, and Depositiones subscryuit with his hand, to be flylit, culpabill and convict of the haill poyntis of Dittay aboue reherfit.

SENTENCE. To be tane to ane scaffald at the mercat-croce of Edinburgh, and thair his heid to be strukin fra his body. And all his moveabill guidis to be escheit, &c.

[*Mr Andrew Kneilland, Justice-Depute.*³]

Diet continued owing to Plague in Edinburgh.

Nov. 8.—JOHNNE COLQUHOUN, younger of Campstradden,⁴ Dougall McFarlen, and Johnne McConell Vneill McFarlane and others.

Compeirit Antoun Whyte, wryter, and productet ane delyuerance grantit be the lordis of Secreit Counsall, subscryuit be my Lord Chancellor, &c. as follows.

MY LORDIS OF COUNSALL, vnto your lordschipis humlie menis and schawis we your feruitouris, Sir Johnne Murray of Tulliebarden, kny^t, and James Hadden of Glennageis: That quhair, we and ather of ws haif purchest lettres, quhairwith we haif causet charge *Johnne Colquhoun, younger of Campstradden*, Dougall McFarlane, Johnne McConell Vneill Makfarlane, and certane vtheris perones thair complices, specifit in the saidis letteris direct thairvpoune, to find caution, that thai fall compeir befor our fouerane lordis Justice and his deputis within the Tolbuthe of Edinburgh, the aucht day of November instant, to vnderly the law for certane crymes mentionet in the saidis letteris: At the raising of the quibilkis letteris, we and ather of ws stand caution actit in the buikis of Adionnall, for repoirting of the saidis letteris, deulie execute and indorfate, at the day foirsaid, vnder the panes contenit in the Actis of Parliament. And be reffone of the suspitioune and danger of the plaige of pestilence

¹ Hamstringing. ² James Johnstone of Lochwood beheidit at the crose of Edinburgh, for oppression, slaughter, and raising of fyre and vthir maney crymes.—*Birrel*. ³ The rest of the Assise composed of merchants. ⁴ This Judge is first noticed, Nov. 3, 1603. ⁵ See p. 432, where he is said to have been killed, 7th February preceeding!

within the said burcht of Edinburgh, quhilk hes intervenit sen the raising of the saidis letteris, we nor the personis summond on the Assyse of the persones dilaitit, may nocht guidlie repair thither, for feir of the said plague. Qubairthrow, necessar it is that the day soirsaid be prorogat and continewit to ane certane vther competent day thairefter, that (gif it pleis God to stay the said plague) we may saiflie resbirt and repair to the said burcht of Edinburgh, to the effect aboue specifeit. Heirfoir, we besekik your lordschipis, that ye will give command to our fowerane lordis Justice, Justice-clark and thair deputis, to continew the day soirsaid, to ane certane vther lauchfull competent day thairefter; and to wairne the partie and the persones summond vpon the said Assyse thairto; qubairthrow we may the mair saiflie repair to the said burcht to the effect aboue writtin: Quhairanent it will pleis your lordschipis to dispense with us, and all panes and vnlawis, qubairinto we or ather of ws, or ony of the persones summond vpon the said Assyse, may ony maner of way be vnlawit or adiudget, for our non-compeirance, at the said viij day of November instant: And your lordschipis ansuer humlie we besik. [FIAT UT PETITUR.] (Sic subscribitur) MONTROISS, CANBUS. M. R. YOUNG.

According to the quhilk Warrant, the Justice continewit the said dyet to the said xxij day of December nixtocum; and ordanit the parteis to be summond, and ane Assyse also to be summond to the said day; and the cautioner to stand obleift for repoirting of the saidis letteris, deulie execute and indorsate, agane the said day.

Slaughter.

Nov. 17.—JAMES KYNNAIRD in Inchtüre, Williame Haitlie in Balgay, and Williame Kynnaird, sone to the Laird of Kynnaird.

Patrik Bruce of Fyngask and Johnne Kynnaird, fear of that Ilk, americiated in the pane of ane hundreth merkis, for ather of the saidis James, &c. for nocht entrie of thame to haif vnderlyne the law, for airt and pairt of the felloun and crewall Slauchter of vmq^{le} Johnne Scherp, seruitour to the Laird of Ruthven; committit vpon the first day of July lastbypast, vpon set purpois, prouisioun and foirthocht felony. And James Kynnaird, &c. to be denuncet rebellis, and put to the horne, &c.

Slaughter.

Nov. 23.—JAMES CUMING, fear of Alter, Johne Cuming, his seruand.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Thomas Hay of Edinvaill; committit the xx day of July lastbypast, betuix the place of Alter and the toun¹ of Edinvaill, vpoun sett purpois, provisioune and foirthocht felony.

Williame Hay, as brother, and Robert Hay, as sone, to vmq^{le} Thomas Hay, produced the letteris, dewlie execute, &c.—Alexander Rychardfoun, Minister of Dolese, declarit vpoun his grit aith, tane vpoun ane buik, that the said James Cuming wes heavelie diseifit with ane flux of natour, and ane flux of his body, and that he wes subiect to the said seiknes: And Mr Alexander Cuming offered to prove that ‘he may nocht travell,’ &c.—Williame Cuming, fear of Ernfyde,

¹ Farm-steading.

as cautioner, was vnlawit for non-entrie of the said James Cuming, in the pane of ane thowland mark, and for nocht entrie of Johne Cuming, in the pane of ane hundreth merks; and they ordanit to be denunceit, &c.

Nov. 24.—Letters of Horning given in by Robert Hay, seruitour to Frances Erle of Erroll, to be registrate against the pannel, with executions and denouciatiounis, &c.

[CURIA tenta per Archibaldum Ergadie Comitem, Justiciarum Generalem et Magistrum Willelmum Hairt ejus deputatum principalem.]

Erason — Hamesucken — Oppression — Stouthreif, &c.

Jan. 12, 1604.—GEORGE MELDRUM, younger of Dumbrek.

Dilatit, accuset and persewit be Sir Thomas Hammiltoun of Monkland, aduocat to our souerane lord for his hienes entreis, of the crymes following, to witt.

FORSAMEKILL as the said George, haifing confauit ane deidlie feid, rancor and malice aganis Andro Meldrum, his brother, he, accompaneit with dyuerse vtheris his complices and servandis, to the number of ten persones, or thairby, all bodin in feir of weir,¹ with hagbutis, dagis and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with, be our souerane lordis Actis of Parliament, in the moneth of . . . or thairby, the yeir of God 1^m.Vc. fourfcoir nyntene yeiris, being four yeir syne, or thairby, come to the Mylnetoun of Dumbrek, quhair the said Andro was, in fober and quyet maner for the tyme, &c.; and thair fet vpone him, and crewallie inuaidit him for his Slauchter, and hurt and woundit him in his . . . hand, shoullder and face, to the effusoune of his bluid in greit quantitie: And thairestir tressonabillie tuik the said Andro captiue and prissoner, had and convoyit him to the place of Dumbrek, quhair the said George detenit him as captiue, be the space of auclit oulkis, or thairby, in strait firmance and captiuitie; and thairestir transportit him to the place of Ernesfyde, quhair the said George and his servandis keipit the said Andro in strait firmance, be the space of systene or tuentie dayis, quhill he escaipit fra thame perforce: Vfurpand thairby our souerane lordis auctoritie vpone him, in taking of the said Andro, his hienes frie lege man, but² Commissioun, and detening him in captiuitie, be the space foirsaid; committing thairly manifest Tressone: AND als, for contravening the tennour of the Actis of Parliament, in beiring, weiring and vseing of the saidis hagbuttis and pistolettis. ITEM, floramekill as the said George, haifing confauet ane deidlie feid, rancour and malice aganis Andro Meldrum of Achquharteis, laillie, in the monethis of September or October, the yeir of God 1^m.Vj^c. yeiris, being accompaneit with Patrik Scheill and Alexander Meldrum, his servandis, bodin in feir of weir, with hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament, come be way of Hamefukkin to the place of Achquharteis, vnder silence and clud of nycht, about foure houris in the moirning, befoir day; and thair, the said George darnit³ him selff and his servandis in ane out-hous, belonging to the said Andro, neir to the said place, quhair he remanit quyet, quhill about elleuin houris of the day, that the said Andro Meldrum come furth to ouerfie his awin turnes,⁴ and thair fet vpone the said Andro Meldrum, and tressonabillie pat violent handis in his persone, tuik him captiue and prissoner, and convoyit him away with him as ane malefactor, fra his said duelling-hous, and broclit him south ouer to Andro Yfyes hous, in the Burrow-mure of Edinburgh, befyde Merchintoun; quhair the said George detenit him captiue, be the space of thre or foure dayis thair-eter, quhill the said Andro ('*esfchewit*,' or '*escaipit*'⁵) furth of the said hous, by⁶ his knowlege and aganis

¹ Arrayed in warlike manner.

² Without.

³ Hid, concealed.

⁴ Concerns, business, affairs.

⁵ By the said Andrew escaped. A word is omitted in the Record.

⁶ Beside, without or contrary to his know-
ledge, unknown to him.

his will : Vfurpand thairthrow our fouerane lordis authoritie vpon him, in taking and keiping captiue of the said Andro Meldrum of Acqubarteis, his hienes frie liege man, but¹ commissiounne or auctoritie, and committing thairby manifest Tressfone : AND als, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbutis and pistolettis. ITEM, forfamekill as the said George, haifing confauet ane deidlie feid, rancour and malice aganis Mr Alexander Gibfone, ane of the Clerkis of our fouerane lordis Counsell and Sessioune, he, accompaneit with Nicoll Jardane, Robert Jardane, Johnne Johnston, callit *Seyne-fute*, Johnne Ker, sone to the Tutour of Gradane, and Alexander Bartilmo, with tua fute-bois, ane company of cowmounne and notorious thevis, brigandis and murderouris, all bodin in feir of weir, with suordis, hagbutis and pistolettis, expresse prohibeit to be borne or worne, as said is, laitleie, in the moneth of October or September, the yeir of God, I^m. sax hundreth and ane yeiris, being adverteist of the said Mr Alexanderis dyett, be ane fellow callit Craik, the said George Meldrumis awin nan, quhome he send to espy the said Mr Alexanderis dyet within the Cite of St Androis ; at the quhilke tyme, he set vpon the said Mr Alexander Gibfone, Mr Alexander Levingstoun, aduocat, and Robert Guthrie, fervand to the said Mr Alexander Gibfone, within the boundis of the scherefdom of Fyffe, besyde the Watter-syde of Dundie, quhair thay war in sober and quyet maner rydand for the tyme, dreidand na harme, iniurie, or perforce of ony persones, bot to haif leuit vnder Godis peax and our fouerane lordis : and thair crewallie Invaudit thame for thair Slauchteris, and compellit thame to rander thame selfis to the said George and his complices foirfaisdis ; and tressonabillie pat violent handis in thair persones, tuik thame captiues and prissoneris, had and convoyit thame away with him out of the way, and besyde Couper-in Fyfe, (he being ane landit gentilman,) tressonablie, be way of maisterful Stouthreif, rest fra thame thair pursis, with certane gold and siluer being thairin, extending to the quantitie of thre hundreth merkis or thairby ; and thairestir convoyit thame to the toun of Kinghorne, quhair he demittit² the saidis Mr Alexander Levingstoun and Robert Guthrie : And thairfra convoyit the said Alexander Gibfone, and brocht him with thame selfis ouer the fierrie of Kinghorne to Leyth, and convoyit him captiue to Williame Kayis house in Leyth, quhair Serjand Moffet come to thame ; and thairfra the said George maist tressonabillie convoyit the said Mr Alexander Gibfone captiue by³ the Palice zet of Halyrudhous, throw ane gritt pairt of Louthiane and throw Tueddell, to the toun of Melrois ; and befor thair entrie within the said toun, the said George, with his complices, devydit the gold that was in the tua pursis amangis thame, quhairof ilk ane of thame gat tuentie merkis, or thairby, for thair pairtis ; and fra the said toun of Melrois thay convoyit the said Mr Alexander captiue vnto Ingland, to George Ratleiffis house ; quhair thai detenit him captiue and prissoner be the space of aucht dayis or thairby : Vfurpand thairby our fouerane lordis auctoritie vpon thame, in taking the saidis persones, thay being his Maiesteis frie leigis ; haifing na power nor Commissioun to that effect ; in manifest contempt of his Maiestie : committand thairby manifest Tressfone : LYK AS, the said George, being ane landit Gentilman, committit maist tressonabill Thift and Stouthreif, in reiffing of thair pursis, and gold foirfaisd being thairin ; AND siclyk, for beiring and weiring of hagbutis and pistolettis, contrair the tennour of the Actis of Parliament. Off the quhilkis crymes *respectiue* aboue writtin, the said George was speciall actour ; at the leist, airt and pairt thairof. AND last, the said George being indytit and accusit, forfamekill as he, accompaneit with Johnne Meldrum, his brother, and dyuerse vtheris, his complices, laitleie, in the moneth of November lastbypast, being bodin in feir of weir, with hagbutis, dagis and pistolettis, prohibeit to be borne or worne, as said is, be our fouerane lordis Actis of Parliament and Secreit Counsell, come to the place of Dumbrek, pertening heritable, and being in the lauchfull possessioun of Andro Meldrum, his brother, keipit be him and his seruandis, and tuik the samyn place perforce, and held and detenit the samyn be the space of sevin oulks or thairby.⁴

¹ Without. ² Suffered to go, dismissed. ³ Past. ⁴ This latter part of the Dittay is thus shortly given in another place of the Record : And for taking of the place of Dumbrek, and keiping of the samyn aganis the Kingis gaird, quha, be vertue of ane Commissiounne, was commanded to pas to the said hous and charge him to rander the samyn ; quhilik he dissobeyit.

ASSISA.

James Tennent of Kairnes,	William Foulertoun of Arde,	Jo. Creichtounne, Y ^r of Strathurd,
J ⁿ Kynneir, younger of that ilk,	Alex ^r Falconer of Halkertoun,	Da. Haddene, tutor of Glennageis,
Mr Patrik Balfour of Pitcullo,	Johnne Veitche of Dawik,	Thomas Ker of Caveris,
George Murray of Brochtounne,	William Burnet of the Bairnes,	Geo. Hereis of Kirkstone of Eshe,
Archibald Ogilvie of Keillour,	Aulay M'caulay of Ardincapell,	Johnne Boyle of Kelburne.

For verificatioun quhairof, the said Sir Thomas Hammiltoun product the said George Depositiones, subscryuit with his hand, beiring his Confessioun of the haill crymes aboue specifeit. The Aduocat askit instrumentis, (1.) Of the fweiring of the Assyis: (2.) That George Meldrum declairis he becumis in his Maiefteis will, for the taking and hurting of his brother, and for the taking of the Guidman of Acquhariteis. (3.) Of George Meldrumis cuming in will, for the offence done to Mr Alexander Gibfoune and his company. (4.) Of the reiding of the pannellis Depositiones to the Assyse judicialle: And (5.) In respect thair-of, and of his Confessioun thairof, in judgement, and becuming in will for the haill Dittay, protestis for Wilfull Errour, in cais thai acquit.

VERDICT. The Assyse, be the mouth of the said Alexander Falconer of Halkertoun, chancellor, ffand, pronuncet and declairit the said George Meldrum, younger of Dumbrek, to be flylet, culpabill and convict of the haill crymes aboue specifeit.

SENTENCE. And thairfor, the said Justice-generall and Mr William Hairt, his principall depute foirfaid, be the advyse of John Erll of Montrois, chancellor of this realme, and dyuerse vtheris Lordis of his Maiefteis Secret Counfall and Sessioun, than sitting in judgment, as Assessoris, (ffinding the saidis crymes to be tressonable), be the mouth of Robert Scott, dempster of Court, Ordanit the said George Meldrum to be tane to ane scaffold, besyde the mercait croce of Edinburgh, and thair his heid to be strukkin fra his body; and all his laudis, heritageis, takkis, fleidingis, rowmes, possessiones, coirnes, cattell, inficht pleniffing, guidis and geir to be fforfalt, escheit and inbrocht to our fouverane lordis vse, as convict of the saidis tressonable crymes.—Quhilk wes pronunceit for dome.¹

[*Mr William Hairt, Justice-Depute.*]

'Field of the Lennox,' or 'Conflict of Glenfruin' — Slaughter of the Colquhouns — Stouthreife — Treason — Fire-raising, &c.

[THE proscription and the cruel and systematic persecution of the CLAN-GREGOR, for a long series of years, although, in the abstract, a subject familiar to every reader of Scottish History, has hitherto been very imperfectly explained. The Criminal Records, and the Acts of the Privy Council, throw much light on all the various branches of this extraordinary event. To save the necessity of future repetition, it appears to the Editor to be necessary, at the outset of these proceedings, to give a very brief sketch of the circumstances which led to 'THE FIELD OF THE LENNOX'—or 'THE RAID' or 'CONFLICT OF GLENFRUIN,' and of those events which ultimately terminated in the Execution of

¹ 'The 12 of Januar, George Meldrum of Dumbrek becheidit, for Oppression and uther odious crymes.'—*Birrel*.

the Laird of MacGregor, and of many others of his name. All the future oppression and persecution of the race of the MacGregors ostensibly take their rise from this Conflict.

The Clan-Gregor, which, from whatever causes, had been for some time looked upon as an unruly tribe, was, for some years previous to 1603, placed under the control of ARCHIBALD (seventh) EARL of ARGYLE, who, as King's Lieutenant in the ' Bounds of the Clan-Gregor,' was invested with very extensive powers, and who, by his acceptance of the office, was made answerable for all excesses committed by the Clan. In these circumstances, it might be supposed that it was Argyle's interest, as it certainly was his duty, to have done all in his power to retain the Clan-Gregor in obedience to the laws; but, on the contrary, it appears that, from the time he first, as King's Lieutenant, acquired the complete control of the MacGregors, the principal use he made of his power was artfully to stir up the Clan to various acts of aggression and hostility against his own personal enemies, of whom, it is known, COLQUHOUN of LUSS was one. It is to this crafty and perfidious system of the Earl, therefore, that we must solely trace the feud between the Colquhouns and MacGregors, which proved, in the end, so hurtful to both; a result, no doubt, all along contemplated by this powerful but treacherous Nobleman. But it is unnecessary to enlarge upon this point, as the Dying Declaration of the Laird of MacGregor places in a very clear light the cruel and deceitful policy pursued by Argyle, and which was too frequently resorted to by others, in those days, for *quieting* the Highlands. It may be remarked, that this interesting document, besides undoubtedly bearing internal evidence of truth, is corroborated, in almost every part of it, by the Public Records.

It is also to be remarked, as particularly worthy of notice, that at the period of this fatal Conflict, both of the contending parties were, in a manner, equally armed with the Royal authority; the Laird of Luss having raised his forces under a Commission, emanating from the King himself; while the Laird of MacGregor marched to invade the Lennox, under the paramount authority of the King's Lieutenant!

The popular accounts of this transaction charge the MacGregors with two atrocities, committed after the battle, viz. the Murder of Sir Humphrey Colquhoun, who had fled from the field of battle, and had taken refuge in the Castle of Bannachra; and the Slaughter of a number of defenceless boys, from the Grammar School or ' College ' of Dumbarton,¹ who, from curiosity, came to see the fight, and had, by Colquhoun's order, been put into a barn for safety; where, on the success of the Highlanders, they were said to have been murdered. In justice to the Clan-Gregor, it is but fair to mention that, on investigating this subject, it clearly appears that Sir Humphrey was murdered in his Castle of Bannachra, in July 1592, above eleven years before this Conflict, by some of the MacFarlans, under circumstances of extreme atrocity. He was succeeded by his brother Sir Alexander, who was alive *anno* 1610. The then Laird of Luss must therefore have fled from the field of battle, leaving his vassals to be cut to pieces by their victorious antagonists. As to the Slaughter of the schoolboys, it is enough to state that this circumstance forms no point of any of the Dittays against those of the MacGregors who were tried for their share in this battle, although every criminal act which could possibly be adduced against each of them is carefully inserted in their Indictments. Such an atrocious fact could not have escaped the notice of all his Majesty's Advocates, for such a length of time—and there was no lack of informers. It is thought that this massacre is alluded to in the Records of the Privy Council, Jan. 5, 1609, where it is stated, that ' Allan Oig M^cIntnach, in Glenco,' when aiding the Clan-Gregor at Glenfrune, ' with his awne hand, murdered, without pity, the number of forty poor perfons, who were naked and without armour.'

According to the Editor's usual plan, some passages from contemporary MSS. are appended, in illustration of the facts.]

¹ So called, probably, from their education being conducted in the Collegiate Church there, or under the auspices of the Clergy of that establishment, by virtue of some charitable endowment.

Jan. 20.—ALLASTER M'GREGOUR of Glenstra, Patrik Aldoche M'gregour, Williame M'neill his seruand, Duncan Pudrache¹ M'gregour, and Allaster M'gregour M'kean.

Dilatit, accusit and perfewit, at the instance of Sir Thomas Hammiltoun of Monkland, knycht, aduocat to our fouerane lord, &c. off the crymes following: FORSAMEKILL as thay and ilkane of thame, accompaneit with vni^{le} Johnne Dow, brother to the said Allaister M'gregour of Glenstra, and vtheris thair kin, freindis, and of thair counfall, haifing concludit the distructioun of Alexander Colquhoun of Lufe, his kyn, freindis and alya, and the hail surname of the Balquhannanis, and to herrie² thair landis; thay convenit to thamefelfis the Clanhamrone,³ the Clanauverich,⁴ and dyuerse vtheris brokin men and soirneris,⁵ to the number of foure hundreth men, or thairby, all bodin in feir of weir, with hagbuttis, pistolettis, murrionis, mailzie-coittis, pow-aixes,⁶ tua-handit-swoirdis, bowis, darloches, and vtheris wappones, *invasiue*, incontreia the tennour of the Actis of Parliament: And, for the performance of thair wicked conclusioun, vpone the sevint day of Februare lastbypast, come fordward, in arrayit battell, to the Landis of Glenfrwne, pertening to the Laird of Lufe; quhair the said Laird of Lufe, accompaneit with certane of his freindis, war convenit, be vertew of our fouerane lordis Commissioun, to resist the saidis persones crewall interpryses; and thair set vpone him, his kyn and freindis, and crewallie invaidit thame for thair slauchteris, schamefullie, crewallie and barbaruslie muredreift and slew Peter Naper of Kilmahew; Johnne Buchannane of Buchlyvie; Tobias Smallet, bailzie of Dumbarten; David Fallefdaill, burges thair; Thomas and James Fallafdaillis, his fones; Walter Colquhoun of Barnehill; Johnne Colquhoun, fear thairof; Adam and Johnne⁷ Colquhounes, fones to the Laird of Campstradden; Johnne Colquhoun of Dalmure, and dyuers vtheris persones, our fouerane lordis leigis, to the number of sevin scoir personis or thairby; the maist pairt of thame being tane captiues be the saidis M'gregouris befor thai pat violent handis in thame, and crewallie slew thame: And treffonabillie tuik Williame Sempill and dyuerse vtheris, our fouerane lordis frie legis, and convoyit thame away captiue with thame, and be way of maisterfull Stouthreif, staw, rest and away-tuik sax hundreth ky and oxin, aucht hundreth scheip and gait, fourtene scoir of horse and meiris, with the hail pleniffing, guidis and geir, aff the fourfcoir pund land of Lufe; and at the samyn tyme, treffonabillie raisit ffyre in the houffis and barne-zairdis thairof, brunt, waistit and distroyit the samyn, with the coirnis being thairin. And the foirlaidis persones and ilk ane of thame ar airt and pairt

¹ Of the country of Balquhider.

² Spoil, plunder and devastate.

³ Clan Cameron.

⁴ Quere, the Clan Ian Averiche (Abroch), viz. the MacDonalds of Glencoe?

⁵ Sorners, persons

who violently took free quarters, and committed acts of violence, having no fixed home.

⁶ Morions,

coats of mail, poll-axes.

⁷ See Note, Vol. II. p. 426.

of the faidis crewall, horrible and tressonabill crymes; the lyk quhairof was nevir committit within this realme: Committing thairby manifest Tressone, in hie and manifest contempt of our souerane lord, his hienes auctorite and lawis.

ASSISA.

Sir Thomas Stewart of Garnetullie, Johnne Blair younger of that Ilk, Thomas Falladail burgess of Colene Campbell younger of Johnne Grahame of Knockdoliene, Dumbartene, Glennorchie, Moyse Wallace burgess of Ed', Johnne¹ Herring of Lethindie, Alexander Menzeis of Weyme, Sir Robert Creychtoun of Clwny, William Stewart, Capitane of Robert Robertsfoun of Strowane, kny', Dumbartene, J^{no} Naper fear of Merchintoun, Robert Robertsfoun of Faskelzie, Harie Drummond of Blair, Johnne Blair elder of that Ilk.

For verificatioun quhairof, the said Sir Thomas Hammiltoun of Monkland, aduocat, producet the saidis persones Depositiones and Confessiones, maid be thame in prefens of dyuerse lordis of his hienes Secret Counfall and Sessoun, subseruit with thair handis.—The Aduocat askit instrumentis, (1.) Of the sweiring of the Assyse, and protestit for Wilfull Errorr aganis thame, in cais thay acquit. (2.) Of the sweiring of the Dittay be the Laird of Lufe. (3.) Of the productione of the pannellis Depositiones to the Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Blair, elder of that Ilk, stand, pronuncet and declairit the saidis Allaster M'Gregour of Glenstra, &c. to be fylet, culpable and convict of the crymes aboue specifit.

SENTENCE. And thairfor, the Justice-depute, finding the saidis crymes to be tressonabill, be the mouth of James Henderfoun, dempstar of Court, Ordanit the saidis persones to be tane to the mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet quhill thay be deid; and thairefter thair heidis, legis, airmes and remanent partis of thair bodeis to be quarterit and put vpone publict places, and thair haill landis, heritageis, annuallrentis, takis, fteidingis, rowmes, possessiones, coirnes, cattell, guidis, geir and fowmes of money pertening to thame, to be sforfaltit, efcheit and inbrocht to our souerane lordis vse, as convict of the saidis tressonabill crymes.

DOCUMENTS *illustrative of 'THE FIELD OF THE LENNOX,' or 'CONFLICT OF GLENFRUXE,' and of the Proceedings against THE LAIRD OF MACGREGOR and his CLAN.*

(1.) EXTRACT from *Calderwood's MS. Church History, Advocates' Library*, (Vol. V. p. 677.)

UPON the eight of Februar, a great company of forners and brocken Highland men of the CLANE of MACKGRIGORE, the number of 400 men, came down to Lennox, to reave and spoyle. The people of the country conveyed to make impediment. There were slaine of the country people, specially of the surname of COLQUHOUN, to the number of fourscore persons or therby; of which number were landed men of good rank.² The Laird of Luce himself, Chief of the Colquhouns, escaped narrowly.

¹ In another place called *David*.

² The matter is thus noticed by Birrel and Fleming. 'THE 9 of Februar (1603,) the Laird of Macgrigour, with four hunder of his name and sectioun, enterit in the Lennox, quhair he maid spillzie and slaughter, to the nember of 60 honest men, besyd wemen and bearnis. He spairit nane quhair he come.'—*Birrel's Diary*. ('Apr. 9.) Proclamatioun sumounding all the M'Gregouris to comper and wadely the law for the slaughter of the Laird of Luss, and the men of Dumbartane.'—*Fleming's MS. Chronicle*.

They carried away a thousand head of cattell, beside other infight and plenifhing. It was reported, that that was done at the infight of the Duke of Lennox his lady, seeking the wrack of the Laird of Luce, who held of the King, and not of the Duke !

(II.) EXTRACT from *MS. History of Scotland, Anon. Advocates' Library*, (A. 4. 35.)

Now, on the secund day of October (1603), THE LAIRD OF ARKINLES takis in hand to THE ERLL OF ARGYLL, to tak THE LAIRD OF MACGREGOUR; and callis him to ane hankatt¹ in his hous, quhill hous fluid within ane Loche; and thair takis him prifoner, to fend him to Argyll. And putting him in ane boitt, with fywe menne with him, by² thame that rowit the boitt; he, feing him selff betreisfit, gettis his handis lowfe; and striking him our burd that was narrest him, he lowpis in the watter, and out-fowmis³ to the land. And so escheappis wntene,⁴ for the presentt. Now the Erll Argyll, perseaffing that he was eschapitt, he fendis to him, desyring him to cum to him, that he mycht confer with him, wnder promise to lett him gang frie, gif thay culd nocht agrie. Wpoun the quibill, the Laird McGregour come to him; and, at his cuming, was weill ressaunt be the Erll; quha schew him, that he was commandit be the King to bring him in; bot he had no doubt bot his Majesty wald, at his request, pardoun his offence; and he fuld, with all diligenfe, fend tua Gentill menne to Ingland with him, and fuld with all diligenfe follow him selff. Wpoun the quibill fair promiseffis he was content; and come with the Erll of Argyll to Edinburgh; quhair, on the 10 day, he was be the Gaird convoyit to Berwick, within Inglis grund, and syne brocht back to Edinburgh. And on the 20 day was hangitt at the Corse, with tenne of his kin and freindis hangit with him; to the gritt discreit of the Erll Argyll, quha wes the doare of the famin.⁵

(III.) EXTRACT from *Robert Birrel's Diary, MS., Advocates' Library*, (p. 138.)

THE 2 of October (1603), ALESTER MCGREGOUR of Glainfretane be the Laird of Arkynles, bot escapit againe; bot efter, taken be the Earle of Argyll the 4 of Januar; and brocht to Edinburgh the 9 of Januar 1604, with 18 mae of his freindis, M^cGregouris. He wes convoyit to Berwick be the Gaird, conforme to the Earlis promise; for he promiseit to put him out of Scottis grund. Swa he keipit ane Hieland-manis promes; in respect he sent the Gaird to convoy him out of Scottis grund: Bot thair wer not directit to pairt with him, bot to fetch him bak agane! The 18 of Januar, at evine, he come agane to Edinburgh; and vpon the 20 day, he wes hangit at the Croce, and ij (*eleven*) of hes freindis and name, upone ane gallous: Himselff, being chieff, he wes hangit his awin licht above the rest of hes freindis.

(IV.) EXTRACT from *Calderwood's MS. Church History*.

UPON the 18 of Januar, MAKGREGORE was conveyed be the guard who attended upon the Counsell to Berwick, because Argyle promised to him, when he rendered himself, that he should be carried to Ingland: But a post was appointed to meet him to cause bring them back againe, which was done! Immediately, upon the 20 of Januar, he and sundrie of his Clane were hanged in Edinburgh. Sevine of their number came in, long before, as pledges for performance of certaine conditions, which were to be filled by their chief; but they were hanged with the rest, without the knowledge of ane Assyse. They were young men, and reputed honest, for their own parts. The Laird of Makgrigore was hanged a pinne above the rest. A young man, called James Hope, beholding the execution, fell down, and power was taken from the half of his body. When he was carried to ane house, he cryed, that 'one of the Highland men had thott him with ane arrow!' He died upon the Sabbath-day after.

¹ Invites him to a banquet.

² Forbye, over and above, besides.

³ Swims out, outstrips the boat by his

swift swimming.

⁴ Untaken.

⁵ *Fleming*, in his Chronicle, (MS. Adv. Library,) thus records the event.

⁶ The Laird of McGregour hangit at Edinburgh and xj of his onhappy kin. They hang all night on the gallous. "This almost unexampled act of perfidy, on the part of Argyle, the King's Lieutenant, and the Justice-General of Scotland, gives a lamentable picture of the features of those unhappy times; and it would appear that the government seemed to think it no discredit to take advantage of such an infamous breach of trust."

(V.) THE LAIRD OF MCGREGORS DECLARATION, *producit the tyme of Conviction*.¹

I, ALLESTER MAGRIGOUR of Glenstra, CONFESSE heir before God, that I have bein persuaidit, movit and intyfit, as I am now presentlie accusit and trublit for; als, gif I had uth counsall or command of the man that hes Intyfit me,² I wald have done and committit findrie heich Murthouris mair; sfor trewlie, sen I was first his Majesties man,³ I culd never be at ane eise, by my Lord of Argylls falschete and inventiones; for he causit M^cClaine and Glenchamrowne⁴ committ herfchip and slauchter in my roum of Rennoche, the quhilk cansit my pure men thereafter to bege and steill: Also, thereafter, he moweit my brother and sum of my freindis to commit baith herfchip and slauchter upone the Laird of Lufs: Also, he persuaidit myfelfe, with message, to weir⁵ aganis the Laird of Boquhanene, quhilk I did refuse; for the quhilk I was contenowalie hostit⁶ that he sould be my unfreind; and quhen I did refuse his desire in that point, then he intyfit me with uther messingeris, as be the Laird of M^cknachtane and uthers of my freindis, to weir and truble the Laird of Lufs; quhilk I behuist to do for his fals boutgaitis:⁷ Then, quhen he saw I was at ane strait, he cawit me trow⁸ he was my guid freind: bot I did persave that he was slaw⁹ therin: Then I made my moyan¹⁰ to pleis his Majestie and Lords of Counsall, baith of service and obedience, to puneishe faultouris and to saif innocent men;¹¹ and quhen Argyll was maid foresein¹² thereof, he intyfit me to stay and start fra thay conditionis, causing me to understand, that I was dissavit; bot with fair wordis, to put me in ane snair, that he mycht gett the lands of Kintyre in feyell¹³ fra his Majestie, begane to putt at me and my kin:¹⁴ The quhilk Argyll inventit, maist schamfullie, and persuaidit the Laird of Ardkinlaifs to dissave me, quha was the man I did maist trest into; bot God did releif me in the mean tyme to libertie, maist narrowlie.¹⁵ Neuertheless, Argyll maid the oppin brutt,¹⁶ that Ardkinlaifs did all that falsheid by¹⁷ his knowlege; quhilk he did intyfe me, with oft and findrie messages, that he wald mak my peace and saif my lyfe and landis, only to puneis certane faltouris of my kin, and my innocent freindis¹⁸ to renunce their surname, and to leif peaseable. Vpone the quhilk conditionis, he was suorne be ane ayth to his freindis; and they suorne to me; and als, I haif his warrant and handvrytt therevpon. The quhilk promeis, gif they be honestlie keipit, I let God be Judge! And at our meting, in oure awin chalmere, he was suorne to me, in witnes of his awin freind. Attour,¹⁹ I Confess, befor God, that he did all his craftie diligence to intyfe me to slay and destroy the Laird Ardkinkaippill, M^ckallay,²⁰ for ony ganes kyndnes or freindschep that he mycht do or gif me.²¹ The quhilk I did refuse, in respect of my faithfull promeis maid to M^ckallay of befor.²² Also, he did all the diligence he culd, to mowe me to slay the Laird of Ardkyndlas, in lyk

¹ The Original of the very interesting and Important Paper now given, is preserved in the General Register House, and is in the hand of the then Clerk of Secret Council, James Primrose. It is marked as—'PRESENTIT BE MA WILLIAM HAIET,' (of Leivlands) as an article of evidence of his guilt, at his Trial. It will be recollected that this person officiated as Justice Depute on the occasion. Glenstray had surrendered to Argyll, on condition of his being permitted to go to England; by which the former meant that he should visit the English Court, and have, if possible, access to the King. It was obviously Argyll's policy to prevent this; but, that he might fulfill his promise, he sent him, under a strong escort of troops, to beyond the river Tweed, at Berwick, where the soldiers, wheeling to the right about, made MacGregor retrace his steps. He was two days only in Edinburgh, after his return from England, when he was executed.—See *Sir James Balfour's Annals*, and Nos. II. and IV. of these illustrative documents. ² The Earl of Argyll, King's Lieutenant in the Bounds of the Clan-Gregor, since July, 1596.—*Records of Secret Council*. ³ He had taken the usual oath to be his Majesty's 'household-man,' 27th July 1596, as appears from the Record of Secret Council. ⁴ Clan-Cameron. ⁵ Wage war. ⁶ Threatened. ⁷ Deceitful courses; literally, 'round-about ways.' ⁸ Believe. ⁹ Slow, slack. ¹⁰ Did my endeavour, moyen. ¹¹ This point is illustrated by an *Original Paper*, preserved in the General Register House, of date Jul. 24, 1599. ¹² Advertised, informed. ¹³ Fee, feudum. ¹⁴ This refers to the Royal promise of reward to Argyll, after Feb. 7, 1603, for apprehending Glenstray; which reward, as he had earned it, he afterwards received; and it was confirmed to him by the Parliament, 1607. ¹⁵ This refers to that escape from Campbell of Ardkinglass, hereditary Sheriff of Argyllshire, mentioned by *Sir James Balfour* and by *Birrel*. ¹⁶ Report. French, *bruit*. ¹⁷ Without, contrary to his knowledge. ¹⁸ Such of them as were innocent of the crimes charged against the Clan generally. ¹⁹ Moreover. ²⁰ Awlay MacAwlay. ²¹ In the *Lord Treasurer's Books of Scotland*. Nov. 1602, is the following entry: 'Item, to Patrik McOmels, messenger, passand of Edinburgh, w^t Lettres to charge Ar^d Earle of Argle to compeir personallie befor the Counsall, the xvj day of December next, to answer to sic thingis as salbe inquirit at him, touching his lying at await for the Laird of Ardkinapill, vponne set purpois to have slane him, xvj li.'

²² GLENSTRAY and MAC AWLAY had entered into a Bond of Clanship, May 27, 1591, in which the latter owns his

maner; bot I neuer grantit therto!¹ Throw the quhilk he did invy me grettumly.² And now, seing God and man seis it is greidenes of warldlie geir quhilk causis him to putt at me and my kin, and not the weill of the realme, nor to pacifie the samyn, nor to his Majestie honour, bot to putt down inno-sent men, to cause pure bairnes and infantis bege, and pure wemen to perish for hunger, quhen they ar hereit of thair geir: The quhilk, I pray God, that thais falsis lycht not upon his Majestie heirefter, nor upon his successeione. Quherfor, I wald besek God that his Majestie knew the weratie, that at this hour I wald be content to tak Baneifment, with all my kin that was at the Laird of Lufis slauchter, and all utheris of thame that ony falt can be laid to thair charge: And his Majestie, of his mercie, to lat pure inno-sent men and young bairnes pas to libertie, and lerne to leiff as innocent men: The quhilk I wald fullill, but ony kynd of fail!³ quhilk wald be mair to the will of God and his Majestie honour, nor⁴ the greidie, cruell forme that is devyfit, only for leuf of geir, haeing nether respect to God nor honestie!

Field of Glenfrune — Murder — Fire-raising, &c.

Feb. 17.—JOHNNE DOW M^cEWIN M^cGREGOUR, Patrik M^cIlvarnoch, his man, Duncan M^cenham M^cgregour, Duncan M^cAllester Vrek, Allester M^cEwin V^ccondochie, Johnne M^cean V^cgregour, Ewin M^ccondochie clerich, Johnne Ammonoche M^cgregour, Duncan Beg M^cgregour V^ccoull chere, Gregour M^cNicoll in Dalveich, Johnne Dow M^ccondochie V^cewin.

Dilatit of certane crymes of Murthour, Thift, Soirning; and for being at the feild of Glenfrune, in companie with vmq^{le} Allaister M^cgregour of Glenftra,⁵ his kyn and freindis; and of the Slauchteris, flyre-raising, Reif and Herfchippis committit in the moneth of ffebruare 1603 yeiris, aganis the Laird of Lufe, his freindis and pairtakeris, viz. (1.) *Johnne Dow M^cewin M^cgregour*, for his intercowmoning with vmq^{le} Allaister M^cgregour of Glenftra, vmq^{le} Patrik Aulauch M^cgregour and vtheris thair complices, quha war at the tressonabill burning of Robert Watterfones barne of Kallechoit, and at the steilling of the Laird of Merchinstounes oxin; committit in September last. ITEM, of airt and pairt of the thiftious steilling, furth of Andro Allaues housie in Kipine, of fyve ky; committit in October last. ITEM, for airt and pairt of the slauchter of vmq^{le} Johnne Drummond in Drony of Cowgask; committit in August last. ITEM, for airt and pairt of the steilling of ane milk zow⁶ fra Patrik M^cboricht, furth of his duelling-hous of Glenmawak; committit in September last. AND ficylk, of cowmone Thift and cowmone resset of thift.—(2.) *Patrik M^cilvarnoch*, servand to the said Johnne Dow, of airt and pairt of the haill crymes aboue writtin; as being in companie with his said maister thairat.—(3.) *Duncan M^cinham V^cgregour*, for airt and pairt of the thiftious steilling fra Eduard Reidochie of

being a Cadet of the House of the former, and promises to pay him 'THE CALP'.—*Paper in the General Register House*. This instrument had, as would seem, been discovered by the Government, and led to the suspicion, alluded to in a former part of this work (See May 17, 1603), that MacAulay had aided Glenstray in the feud of Glenfruin. MacAulay seems to have escaped death, by being under the protection of the Duke of Lennox, and forming one of his train or 'Tail,' in the King's journey to England, to take possession of the English Throne.

¹ Ardkinglass, as appears from the *Book of Taymouth*, was Glenstray's near kinsman.

mortal grudge at me.

³ Without failure or evasion.

⁴ Than.

⁵ See Jan. 20, 1604.

⁶ Ewe.

fyve horſe and meiris ; committit in the moneth of I^m.V^c. fourſcoir and fourtene yeiris. ITEM, of airt and pairt of the thiftious ſteilling fra Allaſter M^ccondochie Vic James Robieſone, in Callewin, of ten horſis and meiris ; committit in the moneth of yeiris.—(4.) *Duncane M^cAllaſter Vrek* in Farne, ſfor airt and pairt of the thiftious ſteilling furth of the landis of Air-liewicht of fourtie ky, pertening to the Laird of Bandrane ; committit ten yeir ſyne or thairby. ITEM, for the thiftious ſteilling furth of the Laird of Strowanes crandoche¹ of his haill inſicht, worth I^m. lib.² ITEM, for airt and pairt of the ſlauchter of vmq^{le} Donald Dereif. ITEM, for airt and pairt of the thiftious ſteilling furth of the landis of Downance in Menteith, of fourtie ky, tuelf horſis ; committit in the yeir of God I^m.V^c. fourſcoir aucht : And for intercowmoning with the Laird of M^cgregour : And for cowmone Thift and cowmone reſſet of thift.—(5.) *Ewin M^ccondochie Clerich*, ſfor his treſſonabill intercowmoning with the Laird of M^cgregour, and ſchawing of fauour and ſupplie to him : And for cowmone thift, and cowmone reſſet of thift.—(6.) *Johanne Dow M^ccondochie V^cewin*, ſfor treſſonabill intercowmoning with vmq^{le} the Laird of M^cgregour, and geving him ſupplie and conforte.—(7.) *Johanne Ammonache M^cgregour* in Kingart, ſfor airt and pairt of the thiftious ſteilling of ſax ſcheip furth of Schandballie ; committit aucht yeir ſyne or thairby. ITEM, for cowmone Thift and cowmone reſſet of thift.—(8.) *Allaſter M^cewin V^ccondochie*, in Couldar, ſfor airt and pairt of the heirſchip of the Downance in Menteith ; and of the ſlauchteris than committit ; and ſpeciallie of the ſlauchter of vmq^{le} Andro Grahame.—(9.) *Gregour M^cneill* alias *Cowanache*, ſfor airt and pairt of the crewall Murthour and Slauchter of vmq^{le} the ſidler M^ckillope, within his awin hous in Dalvey ; committit at Anderſines,³ I^m. ſax hundreth and tua yeiris. ITEM, ſfor the thiftious reſſetting and treſſonabill intercowmoning (of vmq^{le} the Laird of M^cgregour ?) eftir he wes diſcharget be proclamatioune.—(10.) *Johanne M^ckean V^cgregour*, in Glenogill vnder Tawie-barne, ſfor the crewall Murthour, ſlauchter and drowning of M^ckillopis wyfe, that duellt in Glenartnay, being in company with vmq^{le} Patrik Aulach ; committit in harveſt laſt. ITEM, for reſſet of the brokin men of the M^cgregouris, within his duelling-hous, and treſſonabill intercowmoning with thame, aganis his hienes Proclamatioun.—(11.) *Duncan Beg M^cgregour V^ccoull Chere*, ſfor airt and pairt of the crewall Murthour and ſlauchter of ſevin ſcoir perſones flane at Glenfrwne ; and heirſchip than committit thairin, in the moneth of ſſebruarye 1603. ITEM, for cowmoun thift and cowmoun reſſet of thift : And for the treſſonabill intercowmoning with vmq^{le} the Laird of M^cgregour, eftir he was diſcharget be proclamatioune.

¹ Or *crandoche*, a Highland gentleman's dwelling-house.
Andrew's-mass, the 30th day of November.

² £1000.

³ St Andrew's day,

ASSISA.

Mr Moreis Drummond of Cul-Mungo Buchannane in Tullie-Jacobi¹ Edmestoun of Newtown,
 cherie, chewin, David Drummond in Drymmen,
 James Spreull ffeiar of Cowden, James Dennyftoun of Cowgrane, Johnne Naper of Kilmahew,
 Colene Campbell of Aberuchill, Thomas Falladail in Ardoche, Johnne Muschet at the mylne of
 Mungo Lyndsay of Ballull, David Muschet of Orcheardheid, Tor,
 Robert Naper of Blakzairdis, Johnne Buchannane of Ibert, Harrie Mitchell in Darra.

The Aduocat askit instrumentis of the fweiring of the Assyse; of Johnne Dowis Declaratioune, that Patrik M'ilvernoch his man hes bene with him this tua yeir bygane, and is pairtaker of all his factis. The Aduocat, for verifeing the poyntis of Dittay, producet the Kingis Proclamatioune, Actis of Secreit Counfall, contenit in the buik of Secreit Counfall producet, and askit instrumentis thairvpone: And protestit for Wilfull Errour aganis the Assyse, in caise thai acquit.

VERDICT. The Assyis, be the mouth of David Drummond, chancellor, ffind, pronuncet and declairit the saidis perfonas to be ffylet, culpable and convict of the perticuler poyntis of Dittay aboue writtin.

SENTENCE. The Justice-depute decernit and adjudget the said John Dow, &c. to be tane to the mercait-croce of Edinburgh, and thair to be hangit vpoun ane gibbet quhill thai be deid; and all thair moveabill guidis to be efcheit and inbrocht to our fouverane lordis vfe, as convict of the saidis crymes.²

'Field of Glenfrune' — Slaughter of the Colquhouns, &c.

Mar. 1.—NEILL M'GREGOUR in Meirie (Mewie,) Patrik Gair M'gregour, Donald Roy M'gregour, Duncane M'gregour, Donald Graffiche M'Cadaneich.

Dilatit, accuset and persewit for being in company with vmq^{le} Allaster M'gregour of Glenstra and his complices, at the ffeild of Glenfrwne,³ and of airt and pairt of the slauchter of sevin fcoir perfonas, being all freindis, fervandis, affisteris and pairtakeris with the Laird of Lufe at the said ffeild, and of the heirschipis thair committit be the said Laird of M'gregour and his complices: And of the tressonabill raising of fyre and burning of dyuerse houffis, within the boundis foirfaid; committit in the moneth of Februare, the yeir of God I^m.Vj^e. and thre yeiris: And ficylk, for intercowmoning with the said Laird of M'gregour and perfonas foirfaidis, his complices, that war at the said slauchter and heirschip, fen the committing thair of.—AND als, the said *Patrik Gair M'gregour* being indyttit and accuset for the hounding out of his thre fones to the said ffeild, and murthouris and slauchteris than committit vpone the said Laird of Luffis freindis: And of airt and pairt, red, counfall, foirknowledge, assistance and rathabitionne

¹ This person is so named in various places of the Record. ² 'The 18th of Februar, 9 of the name of MacGregor hangit, quho had lain lang in the Tolbuith.'—*Birrel*. ³ See Jan. 20, 1604.

of the said murthouris and heirschippis : And siclyke, for the ressett and intercowmoning with the Laird of M^cgregour and his complices that war at Glenfrune, and ressetting of thame with the bludie hand, sen the tyme foirlaid of the said heirschip and slauchteris.

ASSISA.

Mungo Lyndsay of Ballull,	Constene Moirtoun,	Robert Buchannane in Kippen,
Johnne Buchannane, burges of	Hew Glen of Lynthillis,	Robert Buchannane Walterfoune,
Dumbarten,	Johnne Buntene of Ardoche,	Dougall M ^c farlen in Murnagane,
George Buchannane in Ladrifsch,	Thomas Naper of Barriekynrayne,	Walter Blair of Fynnech,
Thomas Fallafdaille, burges of	Johnne Naper of Kilmahew,	Dauid Hadden (Haldene,) Tatour
Dumbarten,	Johnne Sempill of Foulwoid,	of Glennageis.

VERDICT. The said Assyse, all in ane voce, be the mouth of the said Robert Buchannane Walterfoune, stand, pronuncet and declairit the saidis fyve persones to be fylet, culpable and convict of the haill crymes aboue specifit.

SENTENCE. And thairfoir, the Justice-depute, be the moutin of Robert Scott, dempstar of Court, decernit and ordanit the saidis persones to be tane to the gallowse of the Burrow-mure of Edinburghe, and thairupoun to be hangit quhill thay be deid ; and thair haill moveable guidis to be escheit and inbrocht to his hienes vse, as convict of the saidis crymes.

Thett — Reset of Laird of MacGregor — ‘ Field of Glenfrune,’ &c.

Mar. 2.—MALCOLME M^cCOULL CLERICH (M^ccherich,) in Innerlochlarg ; Duncan M^cfadrik V^ccoull Chere, in Innerlochlarg, vnder the Laird of Tulliebardin ; Johnne M^ccoull Chere, in the Bray of Balquhiddel, and Neill M^cWilliamme V^cNeill.

Dilaitit of certane poyntis of Thift ; and for Intercowmoning with vmq^{le} the Laird of M^cgregour, sen the Raid of Glenfrune, viz. (1.) *Malcolme M^ccoull Cleriche (Cheriche)*, ffor airt and pairt, and being on the grundis at the crewall Slauchter of vmq^{le} Hew Stewart, serveand to my Lord Athole ; committit threttie yeir fyne, or thairby. ITEM, for airt and pairt of the slauchter of vmq^{le} Patrik M^cgregour, in Glenbokie ; committit in the moneth of September, the yeir of God Ith.V^c. threfcoir faxtene yeiris. ITEM, for geving of counsall to vmq^{le} the Laird of Makgregour, his kyn and freindis, to pas forward aganis the Laird of Lufe to Glenfrune ;¹ and for convoying² the said Laird of M^cgregour agaitwart³ to the fyd of Lochloun, afoir the ffeild : And for airt and pairt of the slauchteris and heirschipis committit at Glenfrune be the said Laird of M^cgregour and his complices, in the moneth of Februlare 1603 yeiris. ITEM, for the tressonable Intercowmoning with the said Laird of M^cgregour, and Ressett of him and his freindis and pairtakeris that war at the ffeild of Glenfrune, and geving of thame herbrie, help and supplie, in meit, drink and bedding, wittinglie and willinglie,

¹ See Jan. 20, 1604.

² Escorting.

³ On the way or *gait*.

at dyuerse tymes, sen thai war denuncet our souerane lordis rebellis and declairit tratouris, and sen his Maiesteis Proclamatioune, inhibeiting all our souerane lordis leigis to intercowmone, ressett or gif countenance or schaw fauour to the saidis rebellis.—(2.) *Duncan M^cfadrik V^ccoull cheir*, ffor airt and pairt of the Slauchter of the said v^mq^{le} Patrik M^cgregour; committit in September 1576 yeiris. ITEM, for geving of counsall to the Laird of M^cgregour to pas fordward to the ffeild of Glenfrune aganis the Laird of Lufe, and conveying him to the fyde of Lochlounne, agaitward, to the said ffeild. ITEM, for wilfull Intercomoning and geving of counsall to the Laird of M^cgregour, and convening with him in dyuerse meittingis and conventiounes, had and keipit be him and his freindis, sen thai war denuncet his Maiesteis rebellis, for the Murthour, Slauchteris and heirschipis committit be thame at the said ffeild of Glenfrune, incontrair to his Maiesteis proclamatioune.—(3.) *Neill M^cWilliamne V^cNeill*, ffor the tressonabill Intercomoning with the Laird of M^cgregour, his kin and freindis that war at the murthour and heirschipis in Glenfrune, and ressett of thame within his hous, and geving meit and drink to thame wittinglie and willinglie, at dyuerse tymes sen thai war denuncet rebellis, &c.—(4.) AND siclyk, *Johnne M^ccoull Cheire*, ffor airt and pairt of the crewall Murthour and Burning of auchtene houshalderis of the Clanlawren,¹ thair wyves and bairnis; committit fourtie sax yeir syne, or thairby. ITEM, off airt and pairt of the Slauchter of v^mq^{le} Hew Stewart, serveand to my Lord of Athole; committit threttie yeir syne, or thairby: And in taking pairt with the Clan-Gregouris at the Heirschip, committit the tyme foirsaid, aganis the Tutour of Bofrak. ITEM, for Intercomoning with the Laird of M^cgregour and his complices that war at the ffeild of Glenfrune, sen thair denunciatioune; and geving of conforte, supplie and freindschip to thame, contrair the tennour of the Proclamatioune. ITEM, for cowmone Thift, cowmone ressett of thift, outputing and inputing of thift fra land to land, fra cuntrey (to cuntrey), baith of auld and new.

VERDICT. The Assise, be the mouth of Mungo Lyndsay of Ballull, chancellor, stand, pronuncet and declairit the saidis Malcolme, Duncan and Neill to be ffylit, culpable and convict of the haill crymes and poyntis of Dittay aboue writtin: And the said Johnne M^ccoull Cheire to be Clene, innocent and acquit of the saidis crymes.

SENTENCE. And thairfoir the said Justice-depute, be the mouth of Robert Scott, dempstar of Court, decernit and ordanit the saidis Malcolme M^ccoull and Duncane M^cFadrik to be tane to the gibbet at the mercat croce of Edinburgh, and thair to be hangit quhill thay be deid; and all thair moveabill guidis to be efcheit and inbrocht to his Maiesteis vse, as convict of the saidis crymes.

¹ The M^cLawrens, or Maclarens, a Clan residing in Balquhiddier.

Slaughter — Fire-raising.

Mar. 2.—DAVID ARMESTRANG, sone to *Sandeis Niniane*.

Dilaitit, accuset and persewit of airt and pairt of the Slauchter of vinq^{le} Johnne Johmestoun, Persone of Tunnergarth. ITEM, for airt and pairt of the Slauchter of Robert Currie, servand to the Baillie of the Watter of Leyth, and thre mafones with him, at the Oisleris-hous in the Lwn : And for the tressonabill Raifing of fyre, and Burning of the said Oisleris-hous.

VERDICT and SENTENCE. The same Assise, as in the above case, pronounced a similar Verdict of Guilty against Armstrang, who was hanged along with Mc'eoull and M'fadrik.¹

Masterful Stouthreif — Theft, &c.

Mar. 10.—THOMAS HARDIE, sone to James Hardie of Bounmylnerig.

Dilaitit of the crymes following, viz. Forfamekill as he, with his complices, laitie, in the moneth of Apryle lastbypast, vnder sylence and cloud of nycht, betuix nyne and ten houres att ewin, vmbesett the hie way and passage, betuix Leith and Edinburghe, to Jaques De la Berge, ane Fleming and strangear, he being rydand, in peceabill maner, vp fra Leith to the burgh of Edinburghe ; and thair sett vpon him, tuik his horse be the heid, and caust him lycht fra his horse, and thaireftir rypeit him ; and thisteoullie, be way of maisterfull stouthreif, stall, rest and away-tuik fra the said Jaques De la Berge twa pursis, ane mair and ane vther less, with ane grit quantitie of gold and siluer contenit thairin, being for the maist pairt Inglis money : togidder with ane gold ryng, sett with ane dyamond, with ane broun naig quhairon he raid : And he wes airt and pairt of the thifteous steilling, reiffing, ressetting and away-taking thairof. ITEM, ffor the thifteous steilling, conceiling, ressetting and away-taking of ane blak horse fra James Libbertoun, in Nethir Libbertoun ; quhilk horse he faultd thaireftir in Bow-castell, in Ingland.

VERDICT. The Assise, be the mouth of . . . Cokburne of Choullie, chan-celler, stand, pronounceit and declarit him to be ffylit, culpabill and convict of the poyntis of Dittay, &c.

SENTENCE. To be tane to ane gybbet, standand beneath the mercat croce of Edinburghe, and thairvpoun to be hangit quhill he be deid ; and all his moveabill guidis, takis, steidingis, &c. to be escheit, &c.

Horse, Cattle, and Sheep-stealing.

Mar. 10.—WALTER DAUIDSOUN, callit of Callelie.

Convicted by the same Assise, and ordained to be hanged along with Hardie,

¹ *Birrel* remarks, ' 7 MacGregors and Armstrangs wer hangit at the croffe.'

for stealing of horses, oxen and sheep, &c. from lands of Pittalisheuch, belonging to Dickfoun of Buchtrig, Sir Johnne Cokburne of Ormiston, kny^t, Justice clerk, &c.

[*Mr Williame Borthuik, Justice-Depute.*]

Slaughter.

Mar. 15.—HECTOR TRUMBILL of Stanyledge; Hector Trumbill of Barnehillis; George Trumbill, his brother; and Gawin Trumbill, thair father-brother.

Dilatit for airt and pairt of the Slauchter of vmq^{le} Williame, James, Robert, Johnne, Andro and Thomas Grameslawis, sones to vmq^{le} Johnne Grameslaw of Lytill Newtown.

Mr Robert Home of Carolfyde, Hectour Trumbill of Belfis and James Douglas of Caveris, as cautioners, amerciati for non-entry of the pannels, viz. the two first in 400 merks; and Douglas of Cavers, along with Trumbell of Barnehillis, in 1000 merks, 400 merks, and 400 merks. The pannels ordained to be denounced rebels, &c.

Cattle-stealing — Stouthreif, &c.

Mar. 20.—JOHNNE RENTOUN of the Scheillis.

Dilaitit of airt and pairt of the Steilling of flourtene nolt fra James Burnet, &c. LYK AS, in the moneth of September, the yeir of God I^m.V^e. fourfoir aucht yeiris, or thairby, vmbefet the hie way and passage to certane cadgeris at the Brokin-mofs, quha war dryveand thre or four pakis of Inglis clayth, pertening to certane merchandis, inhabitantis of the burgh of Edinburghe, and thair, be way of Maisterfull stouthreif, staw, rest and away-tuik fra the saidis cadgeris foure pakis of Inglis clayth, and speciallie ane pak of Inglis clayth, pertening to Gray, mercheand burges of Edinburghe, estimat worth the fowme of Thre thousand merkis, money of this realme, &c. &c.

VERDICT. The Assyse, be the mouth of Mr James Home of Goddiscroft, all in ane voce, ffind the said Johnne to be Cleane, innocent and acquit of the hail crymes.

Willfully hearing Mass celebrated.

May 9.—ARCHIBALD MACBEEK, burges of Perth.

Dilatit, accuset and perfewit, be Mr Robert Lyntoun, Aduocat substitute to Sir Thomas Hanmiltoun, &c. for the crymes contenit in the DITAY following.

ARCHIBALD M^cBEEK, burges of Perth, Ye ar indyttit and accuset; forsamewill as it is statute and ordanit, be our fowerane lordis Actis of Parliament, and speciallie, be ane Act of his hienes fourtene

¹ The 10 of Marche, twa notabill thieves hangit at the crosse, ane Thomas Hardie, and ane Davidson.—Birrel.

Parliament, haldin and begwn at Edinburghe vpon the aucht day of Junij, the yeur of God 1^m. Vc. fourfcoir fourtene yeiris, that in all tymes cuming, all wilfull heiraris of Mefs and conceillaris of the fame fall be execute to the death, and thair baill guidis and geir escheitit to his hienes vse, as thay fall be fund gilty and convict thairof, or declairit fugitiue for the same, befor the Justice or his deputis, or the lordis of his Maistieis Previe Counfall, as the said Act at lenth beris : And trew it is, that Mr Robert Abercrombie, ane Jesuite and Preist, in the moneth of Marche lastypast, in the oulk (*week*) befor Palme Sunday last, being resset and ludget, with his inan, in the said Archibaldis duelling hous in Perth, ane haill nicht ; the said Mr Robert maid the said Archibald foirsene, that he was to say ane Mefs vpon the morne, airie in the moirning, in George Bosuallis hous in Perth, quhair my lord Inchaffray and his famelie war ludget, and persuaidit the said Archibald to cum and heir the samyn : Lykas, vpon the morne, airie in the moirning, in ane of the dayis of the oulk befor Palme Sunday, the said Mr Robert past first over to the said George Bosuallis house ; and the said Archibald followit him, and past vp to the vpper Eister chalmere of the said ludgeing, quhair the said Mr Robert Abircrombie said ane Mefs : And ye, the said Archibald, wilfullie and willinglie (being of the trew Religioun befor your away-passing furth of this cuntrie, and in your absence furth of the samyn, made defection thairfra to Romisch Religioun), hard the said Mefs, and ressauit the Communion after the Romane maner ; and conceillit the saying and heiring thairof, quhill ye was challanget. For the quhilk wilfull heiring of the said Mefs and conceilling thairof, ye, the said Archibald, being convict of the samyn, befor the Justice-generall and his deputis, be Act of Parliament, ye aucht to be pwneischet to the daith ; and your haill moveabill guidis and geir escheit to our souerane lordis vse : To the takin,¹ ye haif confessit the haill premiffes to be of veritie, be your Depositiones, subferyuit with your hand ; quhill ye can nocht deny.

VERDICT. The Assyse, be the mouth of James Nicolfoune, tailgeour in Edinburghe, chancellor, stand, pronuncet and declairit the said Archibald to be ffylet, culpabill and convict of the Wilfull heiring of Mefs, wittinglie and willinglie, but² compulsioun ; and conceilling of the same, quhill he was challanget ; accoording to the said Dittay, and according to his Confessioun maid thairof in judgement, and Depositiones product, subferyuit with his hand.³

[*Mr William Hairt, Justice-Depute.*]

Slaughter—Horse and Cattle-stealing, &c.

May 15.—**JOHNE BATIESOUN**, alias *Jok of the Scoir* ; Archibald Batiesoun, alias *Priket vp Archie*, brother to the said Johnne ; and Adie Batiesoun, brother to the said Johnne and Archie.

JOK OF THE SCOIR, dilatit, ffor airt and pairt of the slaughter of vniq^{le} William Tuedie of Olipher and thiftious steilling of ane grit number of ky, oxin and naigis furth of Tueddell ; committit threttie yeur syne, or thairby. **ITEM**, ffor airt and pairt of the steilling of foure naigis furth of Sandiehillis ; and of threfcoir nolt furth of Langvrd. **ITEM**, ffor airt and pairt of the steilling of four ky and tua horse, with certane insicht, furth of Bankend in Craufurd-Johnne, pertening to Thomas Weir ; committit tua yeur syne. **ITEM**, ffor airt and pairt of the steilling fra William McCalla, in Glenbaithe, of ane meir, and certane insicht

¹ In evidence, or testimony whereof.

² Without.

³ The sentence is not recorded.

of his hous; and hurting and wounding of the said Williame. ITEM, for airt and pairt of the steilling of tua naigis fra ane servand of Sir Johnne Keris, furth of the Spittellis. ITEM, for airt and pairt of the steilling of fyftene scoir of ky and oxin, with ane grit number of vther guidis, furth of my Lord zesteris boundis; committit a xvij yeir syne, or thairby. ITEM, for steilling and away-taking of tua naigis fra Johnne Symfoun, with his cloik, quhinger and purse, quhairin thair was xxx f. ITEM, for cowmoun thift and cowmoun resset of thift. —PRIKIT VP ARCHIE, dilaitit of airt and pairt of the thiftous steilling of fourtie nolt, furth of the Schereff of Airis boundis; and hurting and wounding of ane servand of the Schereffis, in redding thair of. ITEM, for airt of the steilling of tuentie naigis furth of Sandichillis fra the puir cadgeris;¹ committit a thre yeir syne: And for airt and pairt of the Slauchter of ane of the puir cadgeris, at that samyn tyme. ITEM, for airt and pairt of the steilling of sax nolt furth of the Nethir Snab; committit aucht yeir syne, or thairby. ITEM, for airt and pairt of the steilling of ane grit number of scheip furth of Brigend, pertening to the Laird of Fawfydes servandis. ITEM, for airt and pairt of the steilling of xxxij oxin furth of Lammermure, pertening to the Laird of Innerleith. ITEM, for cowmoun thift and cowmoun resset of thift, &c.—ADIE BATTIESOUN, dilaitit for airt and pairt of the Slauchter of vmq¹² Johnne Naper, in company of the said Johnne his brother; and steilling of ane grit number of ky and oxin furth of Clydheid. ITEM, for airt and pairt of the steilling of the said Williame Mcall his meir, and haill inficht of his hous; and hurting of the said Williame. ITEM, for airt and pairt of the steilling of ten scheip furth of the Hill-hous of Clyde, fra Gilbert Johnnestones men; committit a yeir syne. ITEM, for the steiling of tua naigis a foure yeir syne, furth of Sandiehillis, fra certane puir cadgeris. ITEM, for cowmoun thift, cowmone resset of thift, outputing and inputing of thift, fra land to land, fra cuntrey to cuntrey, baith of auld and of new.

VERDICT. For the quhilkis crymes, the saidis thre perfonis wer put to the knowlege of ane Assyse, and thai all, in ane voce, be the mouth of Donald Thornetoun, burges of Edinburghe, chancellor, ffand, pronuncet and declairit the saidis Johnne, Archie and Adie Batiefones to be ffylit, culpabill and convict of the crymes aboue specifeit, according to thair Depositiones, gevin vp be thame thair of, and Confessioun of the samyn in Judgement.

SENTENCE. To be tane to the mercait croce of Edinburghe, and thair to be hangit on ane gibbet, quhill thai be deid; and thair haill moveabill guidis to be efcheit and inbrocht, &c.

¹ The Carriers, who, for hire, transported goods on pack-saddles, &c. By means of this useful class, most part of the merchandise and heavy carriages were conveyed to all parts of the kingdom. They usually travelled in companies, for mutual protection; but were often overpowered, and in many cases slain, in faithfully defending the property committed to their charge.

[*Mr Williame Borthuik, Justice-Depute.*]

Slaughter — Bearing and Weiring of Pistolets.

May 16.—HECTOUR TRUMBILL of Lylslie (Lilliesleaf.)

Dilaitit for airt and pairt of the Slauchter of vmq^{le} Thomas Ker (of Craling), brother to the Laird of Farnihirst, and George Glaidner, his servand : And for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of Pistolettis : And vtheris crymes contenit in our fouerane lordis letteris direct thairvpoun.

Hectour Trumbill of Belsis vnlawit and amerciati, as cautioner, for nocht entrie of the said Hectour, in the panes contenit in the Actis of Parliament ; and the pannel adiudget to be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, as fugitiue fra his hienes lawis for the saidis crymis.

Slaughter.

May 18.—WILLIAME STEWART, brother to my Lord Vchiltrie, Williame Stewart, sone to Sir Williame Stewart of Carstairs, kn^t.

Dilaitit for the Slauchter of vmq^{le} Robert Cathcart, wryter.¹

Mause Aikman, relict of the said vmq^{le} Robert, product our fouerane lordis letteris, deulie execute ; and offerit hir selff reddie to perfew.

THE JUSTICE continewis to the thrid day of the nixt Justice-air of Air, quhair thay duell, or soner vpon xv dayis wairning. Andro Lord Stewart of Vchiltrie and James Stewart of Lekprevik, become pleges and fouerties, coniunctlie and feuerallie. Johnne Grahame of Knokdoliane relieved of his caution.

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

Slaughter.

Jun. 6.—WILLIAME MYDDILMEST of Lilslie-Chappell and James Myddilmeft, his brother-germane.

Dilaitit for airt and pairt of the Slauchter of Thomas Ker of Craling, &c.²

Thomas Trumbill of Mynto, as cautioner, vnlawit in the pane of ane thousand merkis and four hundreth merkis for nocht entrie of the saidis pannels. The Justice ordainit thame to be denuncet rebell and put to the horne, and all thair moveabill guidis to be escheit, &c.

Murder of the Laird of Warristoun — Punishment of breaking on the Wheel.

[FEW Cases of MURDER have excited so lively an interest in the public mind, at the time of their occurrence, as that of THE LAIRD OF WARRISTON. He was a person of considerable note in Edinburgh, and nearly connected with the ancient family of Kincaid of that Ilk in Stirlingshire, then in

¹ See Mar. 4, 1600.

² See May 16, 1600.

possession of extensive estates in the counties of Edinburgh, Linlithgow, &c. JEAN LIVINGSTOUN, the young and beautiful murrress, was likewise a person of considerable rank, being a daughter of John Livingstone of Dunipace, and related to many of the first Families in Scotland.

The property of Warristoun being situated about a mile from the City of Edinburgh, news of the Murder instantly reached the proper authorities. Officers were dispatched, who succeeded in taking, 'red-hand,' 'THE LADY WARRISTOUN,' 'the faule nourish,' as usual, the prime mover of this deed of darkness and treachery, and her two 'hyred women.' Weir alone, the actual perpetrator, escaped for a time, having refused to take the Lady along with him, in his flight; saying, 'You shall tarry still; and if this matter come not to light, you shall say, "he died in the gallery," and I shall return to my Master's service: But if it be known, I shall fly, and take the cyme on me; and none dare pursue you!' Being taken 'red-hand,' the parties were immediately put to the knowledge of an Assise (without the formality of serving a Dittay, &c., as in ordinary cases), before the Magistrates of Edinburgh; or the Trial may have perhaps taken place before the Baron-bailie of the Regality of Broughton, within whose jurisdiction the property of Warristoun was situated, and sentence of death was passed upon them. Unfortunately, the greater part of the Criminal Records of the City of Edinburgh are lost; and, after many fruitless searches, no trace of the proceedings in these Cases can now be elsewhere obtained. The result is thus briefly and quaintly stated by two contemporaneous writers:— 'JOHNE KINCAID of Waristoun murderit be his awin wyffe and servant man; and her nurisch being also upone the conspiracy: The said gentilwoman being apprehendit, scho was tane to the Girth-cross,¹ upon the 5 day of July, and her heid struk fra her bodie, at the Cannagait-fit; quha deit very patiently. Her nurische wes brunt at the same tyme, at 4 houres in the morninge, the 5 of July.—*Birrel's Diary*. 'UPON Fryday the 4 (5) of July,'² (1600) THE LADY WARRISTOUN, daughter to the Laird of Dunipace, was beheaded in the Cannogate, for the Murder of her husband. The Nurse and ane hyred woman, her complices, were burnt in the Castlehill of Edinburgh. The horse-boy fled, being guiltie.'—*Calderswood's Church History*, MS. Advocates' Library.

An authentic and extremely interesting 'MEMORIAL' of her 'Conversion,' 'with an account of her carriage at her Execution,' was privately printed, in small Quarto, pp. 48, Edinburgh, 1827, from a paper preserved among Wodrow's MSS. in the Advocates' Library, by Charles Kirkpatrick Sharpe, Esquire, to whose learning, ingenuity, and high accomplishments, the Public has been so often indebted. The very limited impression of this *manuscrit recherché*, may plead the Editor's apology for stating, as briefly as possible, that this 'Tractate' is entitled, 'A Worthy and Notable Memorial of the great Work of Mercy, which God wrought in the Conversion of Jean Livingstone Lady Warristoun; who was apprehended for the vile and horrible Murder of her own husband, John Kincaid; committed on Tuesday, July 1, 1600; for which she was execute, on Saturday following: Containing an Account of her obstinacy, earnest repentance, and her turning to God; of the odd speeches she used, during her imprisonment; of her great and marvellous constancy; and of her behaviour and manner of her death: Observed by one who was both a seer and hearer of what was spoken.' From internal evidence, the writer seems to have been Mr James Balfour, the colleague of the notable Mr Robert Bruce. They were the appointed Ministers, in the North-west part of Edinburgh.

¹ The Cross, situated near the *girth*, or sanctuary of Holyrood, an ancient place of refuge, and still affording protection to debtors, when properly registered; who have liberty to walk within the precincts, free from the molestation of their creditors.

² It is probable that the sentence bore, that the pannels should be executed on the evening of Friday the 4th day of July. The subsequent early execution, at sunrise next morning, was effected, at the solicitation of the family of Dunipace, who indecently urged the Magistrates precipitately to lead Lady Warristoun to the scaffold, before sunrise, shortly after three o'clock in the morning. Owing to a plan, evidently preconcerted, the 'nurische' and 'hyred woman' were burnt on the Castlehill at four o'clock, so that the populace, who might be so early astir, should have their attentions distracted at two opposite stations, nearly a mile apart from each other, and thus, in some measure, lessen the disgrace of the public execution. It is recorded that the Laird of Dunipace behaved with much apathy towards his daughter, whom he would not so much as see previous to her execution; nor yet would he intercede for her, through whose delinquency he reckoned his blood to be for ever dishonoured.

A great portion of this Memorial is occupied with a very affecting account of the state of her mind, and a faithful and striking delineation of its gradual opening and developement, through the patient and affectionate attentions of her spiritual advisers, from a state of perfect callousness and indifference to every thing connected with Religion and the awful situation in which she was placed, to perfect resignation to her fate, and a cheerful, but unfeigned repentance for all her past offences and crimes. So far as relates to her CONFESSION, it cannot be better related, than by quoting her own energetic words.—‘ I think I hear presently the pitfull and fearfull cryes which he gave when he was strangled! And that vile sin which I committed, in murdering mine own husband, is yet before me. When that horrible and fearfull sin was done, I defyled the unhappy man who did it, (for my own part, the Lord knoweth I laid never my hands upon him to do him evil; but as soon as that man gripped him and began his evil turn, so soon as my husband cryed so fearfully, I leapt out over my bed, and went to the Hall; where I sat all the time, till that unhappy man came to me and reported that mine husband was dead;) I desired him, I say, to take me away with him; for I feared Tryall; albeit flesh and blood made me think my father’s moen¹ at Court would have saved me!’ ‘ As to these weemen who was challenged with me, I will also tell you my mind concerning them. God forgive the Nurse, for the helped me too well in mine evil purpose; for when I told her that I was minded to do so, she consented to the doing of it; And upon Tuesday, when the turn was done, when I sent her to seek the man who would do it, she said, “ I shall go and seek him; and if I get him not, I shall seek another! And if I get none, I shall do it myself!” (This the Nurse also confessed, being asked of it before her death.)’ ‘ As for the other two weemen, I request that you neither put them to death, nor any torture, because I testify they are both innocent; and knew nothing of this deed before it was done, and the mean time of doing of it: And that which they knew, they durst not tell, for fear; for I had compelled them to dissemble. As for mine own part, I thank my God, a thousand times, that I am so touched with the sense of that sin now: for I will confesse this also to you, that when that horrible Murder was committed first, that I might seem to be innocent, I laboured to counterfeit weeping; but do what I could, I could not find a tear: And so now I suffer; for the Lord would not have that high sin concealed, but would have it manifest, as it is his gracious will to be done.’

Owing to the rank of Lady Warristoun, and the powerful influence of her father and his friends, the *manner* of her death was, on their intercession, mitigated to decapitation by the well-known ‘ Maiden.’ The usual form of death, for females, in such cases, was of the most ignominious and shocking description,—burning, after being strangled at a stake,—and in atrocious instances, the Criminal was ‘ brunt quick!’ A very unbecoming zeal was displayed by her relations, to have her executed as *privately* as possible, and at such a time as would be unknown to the populace. They had first intended and applied for the unusual hour of 9 o’clock on Friday evening, as the time for her execution; which, however, was overruled. The ‘ Memorial’ states, that, ‘ After 3 o’clock in the morning, upon Saturday, the Magistrates wer brought into prison by her friends,³ to take her forth to suffer. Amongst them, some were too earnest to hast her away, that the might be execute, before any should know of it; albeit she was far otherwise minded, herself; for she purposed not to have gone furth till between 5 and 6 in the morning. On this, many, whom I will not name, came and said, “ Will you deprive God’s people of that comfort which they might have, in that poor woman’s death? And will you obstruct the honour of it, by putting her away, before the people rise out of their beds? You do wrong in so doing; for the more publick the death be, the more profitable it shall be to many; and the more glorious, in the sight of all who shall see it,” &c. The Magistrates granted also, that the might stay till sun-rising; but her friends⁴ were so importunate that it was not granted!’

The youth and beauty of Lady Warriston have been much expatiated upon, in the whole of the

¹ Fr. ‘ *moyen*,’ influence, interest. ² This is remarked by the writer, for the Lady Warriston was beheaded before the burning of the Nurse.

³ Relations.

⁴ Blood-relations.

numerous popular ballads which were made on this occasion; several of which are *still* sung and recited in various parts of Scotland! To those who feel curiosity in such matters, reference may be made to *Jamieson's* Ballads, l. 109, *Kinloch's* Ancient Scottish Ballads, p. 49, *Buchan's* Ballads, l. 1, 56, &c.—Although, as the 'Memorial' expresses it, she was 'but a woman and a bairn, being the age of 21 years,' 'in the whole way, as she went to the place of Execution, she behaved herself so cheerfully, as if she had been going to her wedding, and not to her death! When she came to the scaffold, and was carried up upon it, she looked up to the Maiden with two longsome looks, for she had never seen it before, &c. This I may say of her, to which all that saw her will bear record, that her only countenance moved,¹ although she had not spoken a word! For there appeared such a majesty in her countenance and visage, and such a heavenly courage in her gesture, that many said, "That woman is ravished with a higher spirit than a man or woman's!"'

'The *summ* of her CONFESSION, which almost was in a form of words, upon the four parts of the scaffold, to which she presented herself, was this.²

"THE occasion of my coming here, is to shew that I am, and have been a great sinner, and hath offended the Lord's Majesty; especially, of the cruell murdering of mine own husband; which, albeit I did not with mine own hands, for I never laid mine hands upon him all the time that he was murdering; yet I was the diviser of it, and so the committer! But my God hath been alwise mercifull to me, and hath given me repentance for my sins; and I hope for mercy and grace at his Majesty's hands, for his dear son Jesus Christ's sake. And the Lord hath brought me hither to be an example to you, that you may not fall into the like sin as I have done: And I pray God, for his mercy, to keep all his faithfull people from falling into the like inconvenient as I have done! And therefore, I desire you all to pray to God for me, that he would be mercifull to me!"'

Her conduct on the scaffold appears to have been most heroic. After her devotional exercises were completed, 'then came to her one of her friends, with a clean cloath, to bind about her face.' To the fastening thereof, she took out of her mouth a pin, and gave it out of her own hand. The minister, after receiving her last farewell, 'could not abide longer beside her; but immediately left the scaffold and departed. But she, as a constant saint of God, humbled herself on her knees, and offered her neck to the axe, laying her neck, sweetly and graciously, in the place appointed; moving to and fro, till she got a rest for her neck to lay in. When her head was now made fast to the Maiden, the Executioner came behind her, and pulled out her feet, that her neck might be stretched out longer, and so made more meet for the stroak of the axe; but she, as it was reported to me by him who saw it, and held her by the hands at this time, drew her legs twice to her again, labouring to sit on her knees, till she should give up her spirit to the Lord! During this time, which was long, for the axe was but slowly loosed, and fell not down hastily; after laying in of her head, her tongue was not idle, but she continued crying to the Lord, and uttered with a loud voice, those her wonted words, "Lord Jesus, receive my spirit! O, Lamb of God, that taketh away the sins of the world, have mercy on me! Into thy hands, Lord, I commend my soul!" When she came to the middle of this last sentence, and had said, "Into thy hand, Lord," at the pronouncing of the word "LORD," the axe fell; which was diligently marked by one of her friends, who still held her by the hand, untill this time, and reported this to me.']

Jun. 26.—ROBERT WEIR, sumtyme servande to the Laird of Dynniepace.³

Dilaitit of airt and part of the crewall Murthour of vmq^{le} Johnne Kincaid of Warieftoun; committit (on Tuesday) the first of Julij, 1600 yeiris.

PERSEWERIS.

Patrik Kyncaid, tutour of Warieftoun, Thomas, Archibald and Adame Kyncaid, all brether to the defunct.

¹ Her countenance alone would have excited emotion, although, &c.

² That is, she repeated her Declaration or Confession at each of the four corners of the scaffold; which was a stage or platform erected in the centre of the street, at the foot of the Canongate, near the Girth-cross.

³ On the margin, 'Convict and brokin on the row' (*wheel*.)

ASSISA.

George Dewer in Plesance,
Johnne Gairdner thair,
Johane Henderfoun thair,
James Nicolfoun tailseour,
Johnne Airmour merchand,

Dauid Hoipis smyth,
Henrie Kello in Leyth-wynde,
Johnne Roger, Maister of fence,
Robert Taillseir maltman,
Thomas Galloway of Cairnehill,

John Couttis skynner,
William Chalmer in Brochtoun,
John Myller in the Canno-mylne,
William Bannatyne thair,
George Roife thair.

The Assyse cheiffis Thomas Galloway chancellor.

QUHILKIS perfonos of Assyse, being chosin, sworne and admittit, efter accusatioun of the said Robert Weir, be Dittay, of the crymes following, to witt : FOR-SAMEKILL as vmq^{le} JEANE LEVINGSTOUNE, Guidwife of Wariestoun, haifing consauet ane deidlie rancour, haitrent and malice aganis vmq^{le} Johnne Kincaid of Wariestoun, for the allegit byting of hir in the arme, and streking hir dyuerse tymes, the said Jeane, in the moneth of Junij I^m. Vj^e. yeiris, directit Jonet Murdo hir nwreife to the said Robert, to the Abbay of Halyrudhous, quhair he was for the tyme, desyreing him to cum doun to Wariestoun, and speck with hir, anent the crewall and vnnaturall taking away of hir said husbandis lyfe. And the said Robert haifing cum doun twyse or thryse to the said vmq^{le} Jeane, to the said place of Wariestoun, he could get na speich of hir. At last, the said vmq^{le} Jeane, vpone the first day of Julij, 1600 yeiris, directit the said Jonet Murdo hir nwreife to him, desyreing him of new agane to cum doun to hir ; quhairto the said Robert grantit : Lykas, at eftir none the said day, the said Robert cam to the said place of Wariestoun, quhair he spak with the said vmq^{le} Jeane, and conferrit with hir, concerning the crewall, vnnaturall and abhominable murthering of the said vmq^{le} Johnne Kincaid. And for performance thairof, the said Robert Weir was secreitlie convoyit to ane laich feller, within the said place, quhairin he abaid quhill mydnycht : About the quhilk tyme, he, accompaneit with the said vmq^{le} Jeane Levingstoun, cam furth of the said laich feller vp to the hall of the said place, and thairfra cam to the chalmer quhair the said vmq^{le} Johnne was lyand in his bed, takand the nychtis rest ; and haifing enterit within the said chalmer, persaveing the said vmq^{le} Johnne to be walknit out of his sleip, be thair dyn, and to preise ouer his bed stok, the said Robert cam than rynnand to him, and maist crewallie, with thair faldit neissis gaif him ane deidlie and crewall straik on the vane-organe,¹ quhairwith he dang the said vmq^{le} Johnne to the grund, out-ouer his bed ; and thaireftir, crewallie strak him on his bellie with his feit ; quhairvpoun he gaif ane grit cry : And the said Robert, feiring the cry sould haif bene hard, he thaireftir, maist tyrannoulie and barbaroulie, with his hand, grippit him be the thrott or waifen, quhilk he held fast ane lang tyme, quhill he wirreit him ; during the quhilk tyme, the said Johnne Kincaid lay struggilling and fechting in the panes of daith vnder him.² And sa, the said vmq^{le} Johnne was crewallie

¹ The jugular vein. It has often, but improperly, been supposed to signify the flank or iliac vein.

² This is precisely the mode which was, more than two centuries afterwards, adopted by the infamous
VOL. II. 3 L

murdreift and flaine be the faid Robert; and he is airt and part thairof: As at mair lenth is contenit in the faid Dittay.

VERDICT. The Affyfe, all in ane voce, be the mouth of the faid Thomas Galloway, chancellor, chofin be thame, ffand, pronuncet and declairit the faid Robert Weir to be fyllit, culpable and convict of the crymes aboue fpecifeit, mentionat in the faid Dittay; and that in refpect of his Confefsioun maid thairof, in Judgement.

SENTENCE. The faid Juftice-depute, be the mouth of James Sterling, dempfter of Court, decernit and ordanit the faid Robert Weir to be tane to ane fcaffold, to be fixt beyde the croce of Edinburgh, and thair to be brokin vpoun ane Row,¹ quhill he be deid; and to ly thairat, during the fpace of xxiiij houris. And thaireftir, his body to be tane vpone the faid Row, and fet vp, in ane public place, betuix the place of Wareftoun and the toun of Leyth; and to remane thairupoun, ay and quhill command be gevin for the buriall thairof. Quhillk was pronuncet for dome.

Burning of Houfe of Langholme — Horfe and Cattle Stealing, &c.

Jan. 11, 1605.—INGRIE AIRMESTRANG, in Inzieholme; Archie Airmeftang, *the Mercheand*, in the Hoilhous; Niniane Airmeftang, in Tortwne; Johnne Airmeftang, in the Hoilhous; Johnne Michelfoun, in Tortwne; Cristie Airmeftang, thair, callit *Nanfè Criftie*; Johnne Thomefoun, in Dwmeffcheilburne; Archibald Airmeftang of Flafkholme; Archibald Airmeftang, callit *Nanfè Archie*; Niniane Airmeftang, callit *Roweis Niniane*, in Murthome; Cristie Airmeftang, fone to the Guidman of Langholme (Johnne Airmeftang;) Mathow Twrnour in Hoilhous, and Johnne Couthird.

Dilaitit for airt and pairt of the treffonable Burning of the Houfe of the Langholme; and taking of Harbert Maxwell of Cavenfe captiue and priffoner: And for the thiftious fleilling of certane horfe, nolt, fcheip, gait: And burning of certane coirnis, pertening to the faid Harbert, Alexander Bell in Eikinholme, Williame Bell in Gallofyde and George Irwing in Holmeheid; committit in the

Burke and his gang, at the West-port of Edinburgh, to fuffocate the wretched victims of their hellifh traffic. The quaintness of the ancient ftyle even aggravates the horror of the fcene.

¹ The cruel and horrible punifhment of death on the wheel, has ever been very infrequent in Scotland. Weir was literally broken upon a *cart-wheel*, as appears by the following entry in Robert Birrel's Diary: 'Robert Weir broken on ane cart-wheel, with ane couler of ane pleuch, in the hand of the hangman, for murdering the Laird of Warrifton, quhillk he did, 2 Julii 1600.' The cafe of Weir is the firft recorded inftance of fuch punifhment having been inflicted. This lingering and agonizing manner of execution, borrowed from the practice of France, Germany, &c. had perhaps been fuggested by the unprovoked and barbarous nature of the murder. It was well calculated to make a deep impreflion on the minds of the people, correfponding in fome meafure to the great excitement created in the public mind, by the occurrence of a deed of fo deep a die, and perpetrated fo near to the metropolis.

moneth of September, 1^m.V^c. fourfoir ane yeiris ; and vtheris crymes specifeit in our fouerane lordis letteris.

PERSEWARIS, Harbert Maxwell of Kavenfe, Alexander Bell in Ekieholme, Williame Bell in Gslofyde, George Irvving in Holmeheid.

PRELOCUTOR for the pannell, Mr Johne Ruffell, (advocate.)

It is allegit be the pannell, that be the lawis and Actis of Parliament, in all criminall actiones, the pairtie defender aucht to haif ane autentik coppie of the Dittay and contentis of the fummondis : Bot trew it is, that thair is na coppie delyuerit to the defenderis, bot only tikkettis ; and for verifeing thair of, productet the saidis tikkettis, viz. four in number : And thairfoir na proces.

THE JUSTICE repellis the allegiance, in respect of the executiones.

The pannell askis instrumentis, that the Guidman of Kavenfe abydis at the letteris and executionis, and of the vsing thair of.—It is allegit, that Johnne and Cristie Airmestrangis, defenderis, the tyme lybellit of the crymes lybellit, war within yeiris (*in minority*;) the said Johnne of the age of viij yeiris, and Cristie of the age of foure yeiris ; and sa war nocht *doli capaces* ; and be the law of this realme, can nocht be put to the tryell of ane Assyse.

The haill persfweris, vnderstanding that Archie Airmestrang *the mercheand*, Agnes Cristie Airmestrang and Anneis Archie ar Innocent of the crymes lybellit, passis fra thame: Quhairupoune thay askit instrumentis. The persfweris also passis fra Roweis Niniane Airmestrang *simpliciter* ; quhairupon he askit instrumentis.

Mr Airthour Scott of Newburcht and Gemilscleuch become pledge and fouertie that Harbert Maxwell, his wyfe, bairnis, &c. fall be harmeles and skaythles in thair bodeis, landis, guidis and geir of the saidis Johnne and Cristie A., sones to Johnne A. of the Langholme ; the said Johnne vnder the pane of ane thowland pundis, and the said Cristie vnder the pane of fyve hundreth pundis.

Continued to the air of ‘ Dumfreis, tertio Itineris, (vel super premonitione) xv dierum.’ (See Vol. II. p. 479.)

Burning the Castle of Langholme, &c.

Jan. 11.—JOHNE AIRMESTRANG of Langholme.

Dilaitit of airt and pairt of the tressonabill Raifing of fyre about Harbert Irwingis hous in Murthholme, and burning ane grit pairt thair of : And lykwayis for airt and pairt of the tressonabill Raifing of fyre at the Castell of Langholme, and burning of ane grit pairt of the barnes, byres, stables and vther office-houffis of the said Place of Langholme : And burning of the haill insicht pleneiffing being thairin ; togidder with thre barnes full of beir and corne ; and xxiiij stakkis of corne, standing in the barne yaird ; and fourfoir dargis¹ of hay, with

¹ Darg usually signifies a day's work, as much as one man can accomplish in a day, or ‘ *dayis-work*.’

ane kilfull¹ of malt : And for airt and pairt of the thiftious steilling of threttie nolt, with sax or fevin horfe and naigis, furth of the said Place of the Langholme : Quhilkis all and findrie guidis, geir, coirnes, horfe, nolt and remanent guidis, pertenit to Harbert Maxwell of Kavenfe : committit be the said Johnne, the moneth of September, I^m.V^c. fourfcoir ane yeiris : And ficylk, for airt and pairt of the treffonabill vſurpation of his Maieſteis authoritie vpone him, in taking in of the ſaid Harbert Maxwell of Kavenfe captiue and priſſoner ; and tranſporting him in Ingland, at the tyme foirſaid. ITEM, for Burning of Williame Bellis houſe in Gallowfyde, with tua barnes full of beir, and tua ſlakkis of aittis ſtanding in his barne-zaird : AND for the thiftious ſteilling fra him of tuentie nolt, threfcoir ſcheip and tuentie gait, &c. ITEM, for Burning of Alexander, Richerd and Fergie Bellis houffis in Dikinholme, and ſteilling threfcoir nolt, tua hundredreth ſcheip and threfcoir gaittis : ITEM, for Burning and deſtroying of David and George Irwingis duelling houffis in Holmeheid, with ſax barnes full of beir and corne, and aucht rowkis of corne, ſtanding in their corne-zaird, and tuentie dargis of hay ; committit the tyme foirſaid ; vpoun ſet purpois and prouiſioun.

Sir James Johnneſtoun of that Ilk of Dumkellie, kny^t, as cautioner, vnlawit and amerciati in the pane of ane thouſand merkis money.—The Juſtice adjudget the ſaid Johnne Arneſtrang of Langholme, to be denuncet our ſouerane lordis rebell, and put to the horne ; and all his moveabill guidis to be eſcheit, &c.

Reſetting Denounced Rebels, &c.—Reſiſting his Maieſty's Guard.

Mar. 12.—RINGANE² AIRMESTRANG, callit *New-maid Ringane*, and Will Airneſtrang of Rowan-burne.

Dilaitit of contravening the Actis of Parliament, in Reſetting and aſſiſting the Kingis Maieſteis rebellis, &c.

DITTAY at the inſtance of Sir Thomas Hammiltoun of Monkland, knycht.

FORSAMEKILL as it is ſtatute and ordenit be our ſouerane lordis Actis of Parliament, that nane rebell aganis his Maieſteis perſonne nor his authoritie ; and quha ſa makis the ſaid rebellion, ſalſe pwnieft thairfore, eſtir the quantitie³ of that rebellion ; As the ſaid Act beris. And als, be ane vther Act of Parliament, it is ſtatute and ordanit, that na maner of man, within this realme, wittanlie or wilfullie reſett, ſupplie, mantene, defend or do favouris to any of our ſouerane lordis rebellis, and att his hienes horne, vnder the pane of deid and confiscation of all thair moveabill guidis ; and to be accuſit heirvpoun att particuler dyettis ; as the ſaid Act beris. And trew it is, that Johnne Murray of Stable-Gortounne, Cuddie of the Bankhous, Criſtie of Langholme, Andro of the Langholme and Johnne Baillie of the Scheill, fugitiues and outlawis, being denunceit rebellis and att the horne, att the inſtance of Bernard Lyndſay of the Grange, for nocht making redres and payment to the ſaid Bernard, of the particuler guidis contenit in the Decreit obtainit be the ſaid Bernard aganis thame, for thair maifterfull Stouthreiff and Murthoure, committit be thame, viz. For the maifterfull ſtouthreiff fra Archbald Lyndſay of his horſe and armour ; and fra Williame Lyndſay, brother to the Laird of Co-

¹ Kilufull.

² Niuian.

³ Extent, meauſure.

vintoune, of his hors and armour; and ffra James Baillie, guid-fone to the Laird of Covintoune, of his hors and armour; and ffra James Lyndfay, of his hors and armour; ffra Jok Braidwod, of his hors and armour; ffra Thomas Fischer, of his hors and armour; ffra Robert Gybloun, of his hors and armour; ffra Williame Thomfoun, his hors and armour; Jok Fischer, his hors and armour; Jok Kay, his hors and armour; ffra Alexander Lyndfay, his hors and armour; Johne Tod, his hors and armour; Robert Kay, his hors and armour; George Brown, his hors and armour; Cuthbert Boyd, his hors and armour; Andro Haddo, his hors and armour; Jok Lyndfay of the Myll, his hors and armour; vmq^{le} Johnne Lyndfay and Edward Tynto, thair horffis and armour: Quhilkis vmq^{le} Johnne Lyndfay, Edward Tynto, togidder with Symone Fischer, feruitour to Sir James Hammiltoune of Libbertoune, wer crewallie slayne be the saidis perfones, in following of thame, to red^l leill mennis guidis, in oppin day-lycht; the saidis rebellis being rynnand ane day forrow² and heirfclip throw the country: AND Robert Hepburne of Alderftoune, Leutenent of his Maiefteis Gaird, accompaneit with ane number of the said Gaird, being direct to affist and concur with the said Barnard Lyndfay, vpoune the . . . day of Nouember lasthypast, to poynd and distreingie the saidis rebellis guidis and geir, for the valour³ of the saidis hors and armour, conforme to ane Decreit gewin aganis thame be Andro Lord Stewart of Vchiltre, Leutenent and Warden of the West Marchis of this realme, in ane Court of Redres, hauldin in the Tolbuith of Drimfreis, the xxix day of December, 1^m.Vc.lxxxvij yeiris: IT IS of veritie, that thay and ather of thame, being foirfene of the said Robertis cuning, thay being accompaneit with the saidis rebellis, with convocatioun of our fouerane lordis liegis, all bodin in feir of weir, with jakis, lanceis and vtheris wappinis, *invasiue*, raise in hostile maner foirsaid, vpon the day foirsaid, at aucht houris before sone ryfing, within the boundis of Esk,⁴ and thair mantenit, defendit, suppleit and affistit the saidis rebellis, and sett upoun the said Robert Hepburne and remanent his Maiefteis Gaird, in executioun of our fouerane lordis authoritie, in poynding of the saidis rebellis guidis; perfewit thame of thair lyves, and chaiffit thame be the space of aucht myles for thair flaucliteris: And sua, thai and ather of thame hes committit manifest rebellioun aganis his Maiefteis authoritie; and he (they) oppinlie mantenit and defendit the saidis rebellis, being at his Maiefteis horne, for the saidis crymes: And thairthrow, hes contravenit the tennour of the saidis Actis of Parliament; and the panis thairin contenit aucht to be execute aganis (them.)

The Aduocat takis instrumentis of the sweiring of the Assyse, and protestis for Wilfull Errour, in cais they acquit. The Assyse takis instrumentis of the pannellis Confessioun maid be thame, that thai arraise and perfewit the Gaird.

VERDICT. The Assyse, be the mouth of Johnne Weir of Clowburne, chan-cillar, stand, pronunceit and declarit the saidis Ringan and Will to be culpabill, ffylit and convict of the crymes aboue writtin.

SENTENCE. The Justice-depute, be the mouth of James Henryfoun, demp-star of Court, decernit and ordenit the saidis Ringan and Will to be tane to ane gibbet besyde the mercat croce of Edinburgh, and thair to be hangit quhill thay wer deid; and all thair movabill guidis to be escheit, &c.

‘Falset’ — Perjury — ‘Man-swearing’ — Cruel Oppression.

Mar. 15.—ALEXANDER CHENE, in the Haltoun of Balhalvie, Alexander Wastland, his serveand, and Alexander Croy, feruitour to the Laird of Auchterallane.

¹ To get restoration, &c. ² Literally, running a day-foray through the country, openly carrying on their violence and depredations in broad daylight. ³ Value, ‘*avail*’ Lat. *valor*. ⁴ Eskdale.

Dilaitit of Periurie and menfweiring of thame felffis, in prefens of the Lordis of Secreit Counfall.

DITTAY, at the instance of Sir Thomas Hammiltoun of Monkland, Advocat.

FORSAMEKILL as thay and their complices, being perfewit befor the Lordis of his hienes Secreit Counfall, ffor cuming vpoun the xxvj day of December laft, att mydnycht, to George Duncanis duelling hous in Ardo, quhair he, with his wyffe and famelie, wer in peciabil and quyet maner for the tyme, takand the nychtis rest, lipning¹ for na iniurie nor oppreffiou to haif bene offerit to thame; and thair, violentlie brak vp the dur of the said Georgis duelling hous, enterit thairin, and tuik the said George and his wyffe, scho being grit with chyld, out of thair naikit beddis, band thame with coirdis, and maist crewallie and vnmmercifullie, but² pitie or compaffioun of the said Georgis wyffis eftait, scho being grit with chyld, as faid is, ftrak and dang thame with rounGIS³ and batounis brocht with thame for the purpoife; fa that the said George wyfe almaist pairtit with bairne; and haifing maist fchamefullie ftrukin and leifchit the said George him felff with beltis: Committing thairby maist oppiu Oppreffioune. For the quhilk Oppreffioune, the said George, haifing rafit oure fouerane lordis Letteris, and thairwith fummoud the said Alexander Chene to compeir before the Lordis of his hienes Secreit Counfall, the fourtene day of March instant, to anfuer to the said Complaint; and haifing, be vertew of the saidis Letteris, lykwyfe fummoud the said Alexander Waffland and Alexander Crag to beir witneffing in the said mater; quhom the said Alexander Chene, haifing fallie fubornit to periure and menfweir thame felffis, to depone fallie aganis thair knowledge and confcience in the said mater, and to conceill the treuth thairof: The faid Alexander Chene and remanent perfoues, compeirand before the Lordis of Secreit Counfall, the said xiiij day of March instant, and being deiplie fborne, be thair grit aithis, to depone and tell the treuth in the said mater, and to beir leill and faithfast witneffing thairin; being vmyndfull of thair dewtie towardis God, and haifing na regaird nor reverence to our fouerane lordis auctoritie and lawis, and his hienes maist honorabill Counfall, fallie, be thair Depofitiounes, Periureit and Menfweir thame felffis; the said Alexander Croy and Alexander Waffland deponing, that thay wer nather present att the said deid, nor knew nathing in the said mater; and the said Alexander Chene, be his Depofitiounis, declairit, that he fould be content to be hangit,⁴ in caice it fould be provin or tryit that he ftrak the said George Duncan or his wyffe: And lykewyfe denying that he had fubornit the saidis witneffis, or instructing thame to deny or conceill the treuth: AND nochtwithftanding thairof, the said Alexander and the saidis witneffis being re-examinat, hes all deponit that thay wer all present att the said fact and Oppreffioune, and that the said Alexander Chene ftrak the said George Duncane with ane rung, and belut him naikit with ane sword-belt; and wer all present att the said manifest Oppreffioune: And als confeffit, that the said Alexander Chene had instructit, seducit and fubornit the saidis Alexander Croy and Alexander Waffland to Periure and Menfweir thame felffis, and depone before the Lordis of Secreit Counfall, that thay wer nocht present with him att the said fact, and knew na thing thairof: AND SA, thay and ilk ane of thame hes nocht only committit manifest Oppreffioune be the said fact and hes Periureit and Menfborne thame felffis: bot als, hes committit manifest ffalfet; and as periureit and fals perfonis ar nocht worthie to leve; aucht and fould be pweiff, conforme to the Lawis of this realm and to the Common-Law; in terrour and example of vtheris faull-les⁵ perfoues, to committ the lyke Periurie and ffalfet in tyme cuming.

ASSISA.

Robert Hog, fumtyme feruitour to my Lord of Marfchell, Johnne Ramfay of Quhytehill,

David Wod, brother to the Laird of Balbegnocht,

James Stewart, agent for my Lady Atholl,

Robert Crawford of Caverhill,

Johnne Mowbray, portioner of Crawford.

The remainder are burgefles, &c.

¹ Truſting that no injury, &c.

² Without.

³ Cudgels.

⁴ Other inſtances are on record of witneſſes per-juring themſelves, and making this awful aſſeveration, being taken at their word.

⁵ Soul-less, devoid of conſcience.

VERDICT. The Affise, be the mouthe of the said Johnne Ramfay, chancellor, stand, pronounceit and declairit the pannell to be flylit, culpable and convict of the crymes aboue writtin, conforme to thair Depositionnis and Confessioun.

SENTENCE. The Justice-depute, be the mouth of James Stirling, dempstar of Court, decernit and ordained the said *Alexander Chene* to be tane to the mercat croce of Edinburghe, and thair his heid to be strikin fra his body: And the said *Alexander Wajlland* to be tane to ane gibbet beyde the mercat croce of Edinburghe, and thair to be hangit quhill he be deid: And the said *Alexander Croy* to be skurgeit throw the toune; as he that fyrst confest the veritie: And all thair movable guidis to be escheit and inbrocht to our souerane lordis vse, as fugitiue fra the lawis for the saidis crymes.

Slaughter.

Mar. 28.—JOHNE SPOTTISWOID OF THAT ILK.

Dilaitit for airt and pairt of the felloun and crewall Slauchter of vni^{le} Thomas Quhippo of Leyhouffis; committit in the moneth of Junij, the year of God I^m.V.lxxxxv yeiris; vpoun set purpois, provisioun and foirthocht felony.

James Tennant of Lynhous, as fouertie, ordanit to be vnlawit and amerciati in the pane of fyve hundreth merkis for nocht entry of the said Johnne, to vnderly the law, &c.; and als, adiudget the said Johnne to be denunceit our souerane lordis rebell and put to his hienes horne, and all his moveabill guidis to be escheit, &c.

Messenger Forgeing and Signeting False Letters and Executions, &c.

Mar. 28.—WILLIAME STRAUCHANE, messinger.

Dilaitit ffor the falsifieing, forgeing, Counterfuteing, devyfeing, subscryveing and signetting of foure fals Charges and Executiones, with the Denunciatioun of Hoirning following thairupoune, falslie vset and execute be him. Quhillkis charges and denunciatioun, and everie ane of them, are, be Decreit of the Lordis of Sessioun, of the dait the sevint day of Marche instant, civille and lauchfullie Improvin, and fund be the saidis Lordis to be fals and feingeit in thame selfis, &c.

VERDICT. The Affise, be the mouth of Peter McDowell of Machernmoir, chancellor, stand, pronuncet and declairit the said Williame (in respect of the said Lordis Decreit, producet aganis him, finding the saidis Executiones to be falshe and ftengeit) to be Flylit, culpabill and convict thairof.

SENTENCE. The Justice-depute, be the mouth of James Henderfoun, dempster, decernit and ordanit the said Williame to be scourget throw this burgh; and to be depnyet of his office of messingerie and notarie, and nevir to vse the samyn in any tyme cuming; vnder the pane of hanging, but (*without*) fauour; as he that was convict of the crymes aboue writtin.

Hurting — Wounding — Mutilation.

Apr. 9.—PATRIK CARKEITTILL of Markill, George Carkeittill, his brother, Johnne Broune, brother to the Laird of Colstounne, and Robert Smyth, servand to the said Patrik.

Dilatit of airt and pairt of the Hurting, Wounding and Mutilatioun of James Libbertoun, servand to James Lord of Balmirrienoche of his left eie; and remanent crymes contenit in the Letteris.

PERSEWARIS, James Libbertounne, Mr Thomas Hoip, Aduocat-substitute.

PRELOCUTORIS for the persewer.

The Laird of Henderfoun, Mr Robert Lyntoun, Aduocat-substitute for the Kingis Aduocat.

PRELOCUTORIS for the pannell, the Laird of Wauchtown, the Laird of Innerleyth, the Laird of Craigmiller, Sir Johnne Prestoun of Valafield, Mr Johnne Russell, Mr Alexander King, Aduocattis.

My Lord President¹ producet the Kingis Maiesteis Warrant; quhair of the tennour followis.

JAMES R.

JUSTICE, Justice Clark and 3oure deutes, We greit 3ow weill. In pe tryell of pe particular mater persewit before 3ow, at pe instance of James Libbertoun in Neper Libbertounne aganis Patrik Carkeittill of Over Libbertoun and his complices, for pe mutilatioun of pe said James; committit be pame in pe moneth of . . . lastbypast: In cais (it) be fund be 3ow that 3e can nocht, for pe present, reffraue pe tryall of pe said mutilatioun, in respect of pe schortnes of tyme intervening, and before the expyryng of 3eir and day eftir pe committing of pe fact; and swa 3e salbe forceit to continew 3our proceeding in pe mater: In quhilk cais, it is our speciall will and pleasour, that 3e fall command the saidis persones to enter pair persones in waird, within pe Castell of Blaknes, thairin to remane, quhill thay be ffynit be our Counsell pair, for pair cryme and offence committit be pame; and frome pame obtene Warrant for pair releif. Quhairanent thir presentis salbe 3our Warrant. Gewin att Grenewiche, this tuentie day of March, 1605.

THE Justice continewis this dyet to the saxtene day of Maij nixtocum; and ordanis the persones on pannell to entir in waird, within the Castell of Blaknes, within xlvijj houris; and to find cautioun to that effect.²

Sir George Prestoun of Craigmiller, kny^t, become pledge and fouertie, &c.; and that thay fall enter in waird, &c. thairin to remane, and onnawayis to depairt furth thair of, quhill thay be fred be ane Warrant; and that vnder the panes following, viz. ffor the said Patrik ane thousand merkis, the saidis George and Johnne ffyve hundreth merkis, and the said Robert tua hundreth merkis.

Intercommuning with MacGregors.

Apr. 26.—COLENE BRUCE in Middilhauch of Ruthven (Huntingtoun), Patrik Bruce thair and Alexander Bruce thair.

Dilatit ffor the tressonable Reffet, Supplie and Intercowmoning with Johnne Dow Galt M'gregour, Johnne Dow M'ewin M'gregour and Gregour M'ewin,

¹ James Lord Balmerinoch, President of the College of Justice.

² The case was farther delayed to May 29, but no entry occurs of that date; so that it is likely the parties compounded with the Treasurer and private party, by payment of a stipulated fine.

cowmone theivis, tratouris and rebellis to his Maiestie; and that within their houffis in the Middill-hauch of Ruthven and dyuerfe vtheris places, mony and dyuerse tymes, in the yeiris of God, I^m.Vj^e. and thre and foure yeiris; eftir the Murthour of Glenfrwne,¹ and eftir the faidis perfones war declairit rebellis and tratouris, and all our fouerane lordis leigis war lauchfullie prohibeit and difcharget to reflett, fupplie, affist or intercommown with the faidis M^ggregouris, rebellis and fugitiues, as faid is, vnder the pane of Treffone.

For the quhilkis crymes aboue writtin, the faidis perfones on pannel becum in our fouerane lordis will. Quhairupone Sir Thomas Hammiltoun (of Monkland, kny^t, Aduocat to our fouerane lord) askit instrumentis.

Aug. 6.—THE KING'S WILL was this day declared against the pannels, as follows.

JAMES R.

JAMES, be pe grace of God, King of Gritt Britane, France and Ireland, defender of the faith. To our Justice, Justice clerk and 5 our deputis, gretting. Forfamekill as Colene, Patrick and Alexander Bruces in the Mydilllauch of Huntingtoun, being callit and convenit befor 30w, for the Affisting, Reflett, Supplie and Intercommowning with the CLANGREGOUR, aganis the tennour of our Proclamations maid pairanent; thay ar becum in our will for the same: And albeit thay haif incurrit and meriet the pane of deathe, for that cryme, 3it We, of our speciall grace and mercie, ar content to difpenfe with the rigour of the law; and haif declairit and declares our Will as followis, to witt: That pe faidis perfones fall be Banefit the haill boundis of our dominiones, during pe haill dayis of pair lyftymes; vnder the pane of deid, and to be hangit but forder proces: And that thay find fufficient and refponfall cautioneris and fouerteis, actit in the buikis of our Adiornall or Secreit Counfall, that betuix the day and dait heirof, and the tuentie day of Auguft nixtocum, thay fall depairt and pafs furth of our dominiones; and nocht retorne agane within pe samyn, during thair lyftymes, vnder the pane of fyve thoufeand merkis, to be payit be the faidis cautioneris coniunctlie and fenerallie, in cais pe faidis perfones or any of thame failzie in the premisses; the ane half of the faid pane to ws and our Thefaurer in our name, and pe vper half to David Lord Scone,² our Comptroller, befydis the pane of deid to be incurrit be pe criminalis jame felfis; with this pronifoun, that in caice the faidis criminalis or any of thame fall happin to retorne within our dominiones, and nawayis commit ony violence, harme or iniurie aganis ony of our fubiectis afor pair apprehenfoun, in that caice pair cautioneris perfeward and apprehendand thame, and prefenting thame to Justice, the executionne of pe faidis criminalis fall liberat pe faidis cautioneris of all payment of the pecuniall fowme foirfaid: And gif thay fall happin to commit ony violence or harme aganis ony of our fubiectis, eftir pair retorning withia our dominiones; in that caice, pair cautioneris to be fubiect to the payment of the pecuniall fowme foirfaid, and the criminalis thame felfis to vnderly the perfonall pwneifchment foirfaid: Commanding heirby 30w our faid Justice to pronounce this our Will judiciallie; and to cais thir prefentis be inferit in the buikis of our Adiornall. Gevin att Grenewiche, the . . . day of Junij, 1605.

(Sic fubfcribitur)

MONTROIS, Commiffionar. AL. Cancell.³

Patrik Bruce of Fingask and Mr Alexander Bruce, fear of Cultmalindie, become cautioners, and the Bond is regiftered at length; the witneffes are George Bruce of Carnok, Sir Johnne Bruce of Airthe, knycht, Johnne Kincaid, writer, and Johnne Kemp, his feruitour.

¹ See Jan. 20, 1604.

² Sir David Murray of Gospertie, afterwards Viscount Stormont, whose name so frequently occurs in the matter of Gowrie's Conspiracy.

³ Alexander Lord Fyvie, Chancellor, afterwards Earl of Dunfermline.

Hurting and Wounding — Mutilation.

May 9.—GEORGE FORRESTER, sumtyme servand to my Lord of Roxburcht.

Dilaitit, accusit and persewit be James Skirving in Gilkerstoun of the DITTAY following, viz.

FORSAMEKILL as the said George, haifing consauet ane deidlie feid, rancour and malice aganis the said James Skirving, sumtyme in Humbie and now in Gilkerstoun, for the allegit hurting of him ; the said George, to be revenget thair of, without regaird of justice, in the moneth of Januar, the yeir of God 1^m.V^c. fourfoir fyftene yeiris, vnderstanding that the said James was to cum furth of the Place of Humbie, and to pas hame to his awin duelling-hous, than in Humbie mylne, he darnit him self in ane bourtrie bus,¹ at the heid of Wolfatt ; and in the said James bycuming, sett vpon him, and be way of brigancie,² vnder silence and clud of nycht, betuix aucht and nyne houris at evin, with ane swoird and quhinger in his hand, maist crewallie persewit him for his slauchter, hurt and woundit him in his richt airme and richt hand, and bes mutilat and made him impotent of the samyn ; and gaif him auchtene bludie and deidlie woundis ; and left him lyand for deid vpon the grund : And the said George was airt and pairt of the hurting, wounding and mutilatioun of the said James Skirving ; committit in maner and at the tyme foirsaid, vpon set purpos, prouisioun and foirtocht felony.

PERSEWER, James Skirving, sumtyme in Humbie, and now in Gilkerstoun.

PRELOCUTOR for the persewer, Mr Walter Bellenden.

PRELOCUTORIS for the pannell.

Mr Johnne Ruffell, Sir Jedione Murray, My Lord Cranstonne, Mr Laurence Mc Gill.

It is allegit be the persewer, that the pairtie defender is at the horne ; and thairfoir na prelocutouris can compeir and defend in this persute.—It is answert be Mr Johnne Ruffell, that albeit he be at the horne, and lauchfullie at the horne, yit he may compeir for the rebell. *Secundo*, the Hoirning is null, becaus the pannell being than servand to my Lord of Roxburcht,³ the denunciation at the mercat croce of Edinburghe, and registratioun in the Schereffis buikis of Edinburghe is nocht lauchfull, nor accoirding to the Act of Parliament, bot sould haif bene denuncet at Jedburcht, and registrat in the Schereffis buikis of the Scheref-dome of Roxburcht.—It is replyt be the persewer, that my Lord of Roxburcht duelt, the tyme of the denuntiatioun, within the burgh of Edinburghe ; and thairfoir the Hoirning, in the haill poyntis thair of, is sufficient ; and the Hoirning standis vnreduet, quhairin he was charget, personallie apprehendit, to haif fund cautione for his compeirance, vpon xv dayis wairning.

It is allegit be the pannell, that this matter can nocht be put to ane Assyse, becaus he is persewit for Mutilatioun, and nocht tane *in recenti crimine*, and nocht charget vpon xv dayis wairning, nor na coppie of the Dittay is geuin him. Answert be the persewer, that he is summond alreddie, vpon xv dayis wairning, personallie apprehendit, and a coppie delyuerit, and put to the horne, and be vertew of Letteris of Captioun, tane and apprehendit and presentit to pannell.—It is allegit that he is nocht summond to this day vpon xv dayis wairning ;

¹ Concealed himself in an elder bush.

² Robbery. Old Fr. *briganderie*.

³ Sir Robert

Kerr of Cessford was created Lord Roxburghe, anno 1600 ; and Earl, in 1616.

and gif he was fummond of befor for this cryme, be vertew of vther letteris, and put to the horne, the samyn Hoirning is null ; for the causis aboue writtin. It is anfuert, the Hoirning standis vnreduet.—It is forder allegit be the pannell, that befor this matter pafs to ane Assyse, this mutilatioun man be tryit be Chirurganes. It is anfuert be the defender, that he referris the cognitioun of the Mutilation to the Assyse.

THE JUSTICE findis this matter to be be put to ane Assyse, nochtwithstand- ing the former allegances.

It is allegit, that my Lord Justice Clerk and his deputis can nocht be Clerkis in this proces, becaus this perfewer is Tennent to my Lady Humbie, spous to my Lord Justice Clerk,¹ to quhome he payis mail and deutie, and thairfoir na proces ; and Mr Walter Bellenden, as prelocutour for the perfewer, is brother-in-law to my Lord Justice Clerk ; and thairfoir my Lord Justice Clerk can nocht be Clerk in this proces.—It is allegit be Mr Johnne Russell, that, in respect Mr Walter Bellenden, prelocutour for the perfewer, compeiris and perfewis, and the perfewer is Tennent to my Lady Humbie, his lordshipis spous, my Lord Justice Clerk can nocht be Justice Clerk in this proces. It is anfuert, that Mr Patrik Bannatyne is ordiner clerk to the Justice, to all the legis.

THE JUSTICE Ordanis Mr Patrik Bellenden, ordiner Clerk, to proceed as Clerk in this proces.

Forder, it is allegit that na proces can be grantit, becaus my Lord Justice Clerk can nocht be Clerk in this proces, seing Mr Walter Bellenden, the prelocutour for the perfewer, is his brother-in-law ; as also, the perfewer is Tennent to my Lady Humbie of the landis of Gilkerstoun and Gilkerstoun-mylne ; as also, is tennent to my Lord him selff. Anfuert, thair is ane ordiner clerk, viz. Mr Patrik Bannatyne, aganis quhome thair is na exceptione, quha is ordiner Clerk to all our souerane lordis leigis.—The anfuertis foirsaid meittis nocht the declinatour, becaus the alledgeance is proponit aganis the Justice Clerk, without any mentioun of Mr Patrik Bannatyne.

THE JUSTICE findis proces, and Mr Patrik Bannatyne to be clerk, vnles he propones a relevant alledgeance aganis him as ordiner clerk.

Thaireftir the pannell and prelocutouris declairit that thai only propone the declinatour foirsaid aganis my Lord Justice Clerk, quhy he sould nocht be clerk ; and ar content, that quhan his lordship is remouet furth of Jugement, in respect of the declinatour foirsaid, gif sa be fund, Mr Patrik fall remane as clerk ; but² preiudice of sic lauchfull exceptiones as may be proponit aganis him, the said

¹ Sir John Cockburn of Ormistoun, Lord Justice Clerk, married Elizabeth, the eldest daughter of Sir John Bellenden of Auchnoule (by his second wife, Janet Seton), and widow of James Lawson of Humbie.

² Without.

declinatour being first discussit. It is allegit be the pannell and his prelocutouris, vnder protestatioun that the former declinatour be first discussit, and na vtherwayis, that Mr Patrik Bannatyne can nawyis be admittit to be clerk in this proces, for tua caussis; first, becaufe he is Depute to my Lord Justice Clerk, aganis quhome the former exceptionne declinatour is proponit, and hes his office only of his lordship presentlie; and sua the exceptionne competent aganis the Clerk-principall, man be also competent aganis his Depute: Nixt, becaus Mr Walter Bellenden, quha is prelocutour, and Mr Patrik is thridis or ferdis of kyn to Sir Johne Bellenden of Auchnoul, and James Bannatyne of Newtyle ar thridis or ferdis of kyn; and declairis that Sir Johnne Bellenden,¹ father to Mr Walter, and James Bannatyne, father to Mr Patrik, ather thair guidfchiris or grandfchiris war brether.—And Mr Patrik Bannatyne being sworne, declairit that the former alledgeance of kynreid was nocht trew.

THE JUSTICE findis proces; and ordanis Mr Patrik Bannatyne to be Clerk to this proces, quha is ordiner Clerk to all our souerane lordis leigis, to the Justice.

The pannell takis instrumentis of the Justice Interlocutour; and protestis for remeid of law.

The Defender declairis he will nocht feik the perfeweris ayth, vpon the verificatioun of the Dittay; bot only craves quhat the perfewer produces to verifie. The perfewer declairis that he fall schaw his mutilatioun to the Assyse.

VERDICT. THE ASSYSE, be the mouth of William Johnnestoun in Over Keyth, chancellor, be pluralitie of voittis, stand, pronuncet and declairit the said George Forrester to be ffylit, culpable and convict of the Hurting, Wounding and Mutilatioun of the said James Skirving of his richt airme and richt hand, in maner specifeit in the said Dittay.²

Slaughter.

May 22.—WILLIAME THOMESOUNE in Reddene.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Niniane Edzer.

Sir Andro Ker of Hietoun, knycht, become pledge and souertie that he fall compeir befor the Justice or his deputis in the Tolbuth of Edinburgh, the tuentie-fye day of July nixtocum, to vnderly the law, &c. vnder the pane of Ten thousand markis; quhairof the ane half fall be payit to the Kingis Maiesteis Thesaurer, and the vther half to the pairtie perfeweris.—On Jul. 25, the Justice continued the case to the air of Roxburcht, 'tertio Itineris (vel super premonitione) xv dierum, Plegio, Joanne Ker de Bowdene.'

Slaughter — Shooting with Pistolets and Guns.

May 31.—JOHNNE MURE of Auchindrane,³ Johnne Mure of Craigkene,

¹ Of Auchnoule. ² The Sentence is not contained in the Record. ³ See the Trial of this infamous man, Jul. 7, 1600, &c., for the atrocious Murder of Sir Thomas Kennedy of Culzeane, &c.

Moyfes Lokhart, brother to the Laird of Bar, James Bannatyne in Chapel-Donall, David Kennydie, younger of Maxwalltown, Charles Dalrunpill, burges of Air, George Campbell, younger of Schankfoune, and Gilbert Kennydie in Machar.

Dilatit, accusit and perfewit, be Richart Spens, in Vgffoune, as father to vmq^e Richart Spens, feruitour for the tyme to Johnne Erll of Caffillis, and Sir Thomas Hammiltoun of Monkland, Aduocat to our fouerane lord, for his hienes interes, ffor airt and pairt of the Slauchter of the said vmq^e Richart Spens; and for bering, wering and fchuteing of piftolettis and gunnis,¹ contrair the tennour of the Actis of Parliament; committit vpoun the nynt day of December, the yeir of God I^m.Vj^e. and ane yeiris, vpoun the landis of Pennyglenne.

PERSEWER, Richerd Spens in Vgffoune, Sir Thomas Hammiltoun of Monkland, Aduocat.

PRELOCUTORIS for the pannell, My Lord Vchiltre, The Laird of Drumlanrig, The Laird of Rowallane, Jofias Stewart (of Boningtoun), Mr Johnne Ruffell, Mr Williame Oliphant.

(The two Mures, Lokhart and Bannatyne,) tuik thame to our fouerane lordis Respett,² produceit, vnder the Prewie Seil, of the daitt, att Falkland, the tuelff day of Junij, the yeir of God I^m.Vj^e. and tua yeir, for the faidis crymes. Quliik Respett the Justice admittit; and ordanit thame to find caution and fouertie to fatisfie the partie, for airt and pairt of the said slauchter: Lyke as, Matho Stewart of Dunduff, Jofias Stewart of Boningtoun, and George Campbell younger of Schauleftoun become cautioneris and fouerteis with thame felffis, coniunctlie and feuerallie, to fatisfie the partie, for airt and pairt of the Slauchter of the said Richard Spens.

George Campbell also obtained 'oure fouerane lordis Respett, produceit, vnder the Prewie Seill; of the dait, at Halyruidhous, the last day of November, 1602.' Matho Stewart of Dunduff, Jofias Stewart of Boningtoun and Johnne Mure of Auchindrane become pledgeis, &c.

The case was continued, as to the remainder of the perfons on pannel, to the Justice-air of 'Air, tertio Itineris (vel super premonitione) xv diernum.'

[*Mr William Hairt of Levelandis and Mr William Borthuik, Justices-Deputes.*]

Mutilation and Demembration.

JUN. 11.—EDUARD JOHNNESTOUNE, younger, merchand burges of Ed^r.

Dilatit of airt and pairt of the Demembring of Johnne Broun, goldfmyth, of the thombe of his left hand; committit vnder nycht, the sevintene of May last.

PERSEWERIS, Johnne Broun, goldfmyth, Sir Thomas Hammiltoun of Monkland, Aduocat.

PRELOCUTORIS for the pannell, The Laird of Johnnestoune, The Laird of Waffraw, Mr Alexander King, Mr Thomas Gray and Mr Johnne Johnnestoune (Advocates.)

It is allegit be the pannell, that this matter can nocht be put to the knowlege

¹ This is the first instance in the Record of the term '*gun*;' 'hagbut' being the prevalent name for that weapon.

² Remission, respite.

of ane Affyse ; becaus the fact lybellit is committit vnder seilence of nicht, and the said Johnne Broune, being convenit befor the Lordis of his hienes Secreit Counfall, he is convict on ane manifest Ryote, for the wrangus invading, trub-billing and molesting of the defender, his wyf and fervand, vnder silence of nycht, and sua, quhatsumeur fell out be that occasioun, the falt was in the persouer ; and of the law, albeit he had been flane, the said defender had bene in na danger : In respect quhairof, the samyn aucht nocht to be put to the knowledge of ane Affyse. For verifiicationne quhairof, producet the Lordis of Secreit Counfellis decreit, daitit the xxij day of Maij last, 1605. It is anfuert, that the allegiance nawayis meittis the Dittay ; seing the Dittay is the said Johnne Brounes persute, for redrefs and pwneischment of the Mutilationne and Dismembring of him, quhairof thair was nather complent nor tryell, befor the Secreit Counfall ; nather can ony thing, done in that judgement, stay the puting of ane relevant Dittay to ane Affyse, befor the Justice ; seing, the Counfall could nocht be Judges to the samyn ; and the matter being put to ane Affyse, the Affysours will try, quhither the fact was done in lauchfull defense of the pannell or nocht.

THE JUSTICE continewis this Interlocutour to the xvij of this instant. ‘ Plegio, Waltero Ker, portionario de Diriltoun.’

(Jun. 18.)—On xvij June,¹ The Justice ffindis proces, nochtwithstanding of the allegiance proponit the last dyett, and left at Interloquoutour. And eftir the pronouncing of the said Interloquoutour, of consent of bayth the parteis, continewis this persute (quhill the) xxvij day of Junij instant. ‘ Plegio, M^{ro} Joanne Johnnestoun, aduocato.’

DITTAY against Edward Johnnestoun, Younger.

FORSAMEKILL as, vpon the seuintene day of Maij lastbypast, vnder nicht, thair fell out ane debait² betuix the said Eduard Johnnestoun and Patrik Robertoun, seruitor to George Cuninghame, goldsmith, burges of the Cannongait, vpon the hie streit of the burgh of Edinburgh, aboue the Stink-and-style³ thairof : and for eschewing of hurt that micht haif fallia to either of the saidis parteis, the said Johnne Broune, amangis vther honest nichtbouris, preissit to red⁴ thame : Nochtwithstanding, it is of veritie, that the said Eduard Johnnestoun, persaveing the said Johnne Broun to cum and resist and stay his furie, he left the said Patrik, and but⁵ offence gevin be the said Johnne Broun to him, ather be word or deid, he sett vpon the said Johnne with ane drawin fwoird, and maist crewallie invaidit him for his slauchter, hurt and woundit him in his left hand, to the effusione of his bluid in grit quantitie ; and hes Mutilat and dismemberit the said Johnne of the thombe of his said left hand, and cuttit the samyn away ; and sa hes maid him alluterlie vnhabill to wyn his leving, in his airt of goldsmith-craft ; to his vtter wrak, and to the grit contempt of our souerane lord, his hienes autoritie and lawis : And the said Eduard Johnnestoun is airt and pairt of the said Mutilationne, demembring and cuting away of the said Johnne Brounes thombe of his said left hand. For the quhilk he aucht and could be pwneishet, conforme to the lawis of this realme, in exampill of vtheris to commit the lyk, in tyme cuming.

¹ Mr William Oliphant is added to the *Preloctours*, and on 27 June, Mr Thomas Craig. ² An altercation and scuffle.

³ A narrow passage to the eastward of the entrance to Haddo's-hold, New North Church, and celebrated for similar rencontres. ⁴ Separate.

⁵ Without provocation, excepting the proverbial fate of those who indiscreetly interfere in such matters. The ‘ *redding-straik*’ was no child's play in those days, when sword and dirk were the swift ministers of vengeance !

VERDICT. The Assyse, be the mouth of David Fairlie, merchand burges of Edinburgh, chancellor, for the maist pairt, ffind, pronounceit and declaireit the said Eduard to be Clene, innocent and acquit of airt and pairt of the Mutilationne, &c.; in respect, vpon thair consciences, as thay haif tryit and considderit, the famin proceidit vpon the said Johnne's awin default; and was committit and done be the said Eduard, the tyme foirsaid, in defence of him self, his wyfe and fervand, quha war invaidit and molestit be the saidis Johnne Broune and Patrik Robertsoune, vnder nycht. Quhairupoune the said Eduard askit instrumentis.

'Umbesetting'—Rape—Child-murder.

Jun. 18.—**JOHNNE BROUNE**, goldfynth, burges of Edinburgh.

Dilatit for Umbesetting of Katherine Rac, spous to Eduard Johnnestoune, younger, merchand burges of Edinburgh, and preissing to fforce hir; and caussing hir to pairt with bairne.

PENSEWAR, Eduard Johnnestoune, younger, merchand burges of Edinburgh.

PRELOQUUTOIRIS for the pannell, The Laird of Phillorth, Mr Johne Russell, Mr James Donaldsoune.

THE JUSTICE continewis this matter to the xxvij day of Junij instant.

DITTAY against Johnne Broune.

(Jun. 27.)—**FORSAMEKILL** as, vpon the sevintene day of May lastbypast, the said Katharene and Eduard, hir husband, haifing souppit in pair saperis hous, and being returning eftir supper, about ten hours at evin, fra pair said saperis hous to pair awin ludgeing, in peceable and quyet maner, lipning for na harme, iniurie or persute of ony persones, bot to haif past in peceable maner throw the Hie-streit of pe said burgh of Edinburgh to pair said ludgeing, vnder Godis peax and our souerane lordis; it is of verritie, that pe said Johnne Broun, goldfynth, accompaneit with Patrik Robertsoune, burges of Aberdene, persuaucing the said Katharene to be hir self, allane, accompaneit allanerlie¹ with ane fervand woman; and finding pe gait² to be quyet, sa that nane was pairupone, to mark pair doingis, or to stay thair intentid schamefull and villanouse interpryse; the said Johnne Broun and Patrik Robertsoune resoluēt violentlie to haif forcet pe said Katharene and hir fervand woman: And for pis effect, the said Johnne come to the said Katharene, and brak furth in findrie vncumlie and vnihonest speiches to hir, beleifing to haif perswaidit hir to haif yeildit to his filthie lust and beistlie appetite; and finding him self disapointit of pat meane, he, in his beistlie rage and furie, as ane possēt with ane wikket spreit, maist schamefullie and crewellie grippit pe said Katharene lae be the gorget, and violentlie drew hir aff pe hie streit to ane cloiseheid,³ vnder ane stair; and pair crewellie, with his seldit neissis, strak and dang hir in the face, and causet hir to bleid at mouth and neise in grit quantitie; rais hir couche⁴ and remanent ornaments of hir heid, and cuist pe samyn vnder his feit; and, with his kneis, punchet pe said Katharene in the bellie, scho being grit with chyld; and had nocht faillit to haif abusēt hir chastitie, gif pe said Eduard, hir husband, and vperis nyctbouris (heiring hir and hir said fervand gif pe sprache and cry⁵) had nocht cum, with diligence, and releuit hir furth of his cruell grippis. BE occasione quhairof, the said Katharene was led hame to hir awin hous, quhairin scho hes layne continuallie bedfast sensyne, in grit pane and dollour, vnder pe cuir of Doctouris and chirurganes; sa that, vpon the xxj day of May lastbypast, or pairby, scho pairtit with ane deid bairne; and scho hir self hes bene, and as

¹ Only. ² Street, way. ³ The numerous narrow alleys running downwards from the north and south sides of the High-street of Edinburgh, are termed *cloises*; the closeheid signifies the entrance to one of these passages.
⁴ Tore her curche, a sort of cap or head-dress. Old Fr. ⁵ Give the alarm; the hue and cry.

zit is, in grit haizard and danger of hir lyfe: Committing pairthrow manifest villany, vnder nycht, within the said burch of Edinburghe, vpon þe Hie-freit pairrof, quhilk fould be ane faistie and place of refudge to all honest men and women; speciallie, to the honest nychtbouris, inhabitantis pairintill; Lyk as, þe said Johnne Broune is airt and pairt of the samyn villany and barbarus cryme: As also, is airt and pairt of the Slauchter and destructione of the said Katharenes infant bairne, quhairwith scho hes pairtit, be occasionne foirsaid. For the quhilkis, the said Johnne aucht and fould be pwneschet, conforme to the lawis of þis realme, as ane brigane¹ and Murtherour vnder nycht; to the terrour and exampill of vtheris to commit the lyk, in tyme cuming.

It is allegit that the Summondis is nocht relevant; in respect the fact lybellit is only ane naikit intentione. It is anfuert be the persfear, that he conioynis the haill crymes lybellit togidder, to be tryit be the Assyse.

THE JUSTICE findis the summondis relevant, in respect of the anfuert.

It is forder alledgit, that this matter can nocht pass to ane Assyse, in respect it is tryit alreddie, befor the Secreit Counfall, and ane Sentence gevin thairin alreddie. It is anfuert be the persfear, that the Secreit Counfall ar nocht Judges Criminall, and that na Precognition tane be thame can be in preiudice of decisioun to the Justice, to put crymes to ane Assyse; as was lattie decydit betuix Johnnestoune of Newbie contrair Williame Maxwell.²

THE JUSTICE remittis this matter to the tryall of ane Assyse.

VERDICT. The Assyse, be the mouth of David Fairlie, merchand burges of Edinburgh, fand, pronuncet and declairit the said Johnne Broune to be flylet, culpable and convict of the Invaiding and molesting of the said Katharene Rae, vnder nycht; committit the tyme foirsaid, contenit in the said Dittay: And declairit the said Johnne to be Clene, innocent and acquit of the Murthour and destruction of the said infant bairne, committit the tyme foirsaid; in respect thair was nathing productit for verifeing thair of: Quhairupoun aither of the saidis parteis askit instrumentis.³

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

**Jamesucken — Besieging the Tower of Newbie — Shooting Pistolets
— Taking Captive, &c.**

JUN. 21.—WILLIAME MAXWALL of Gribtounne, Barbara Johnnestoune, his spous, Elizabeth Johnnestoune, relict of vinq¹⁶ Johnne Johnnestoune, appeirand of Newbie (mother to the said Barbara.)

Dilaittit, accusit and persfuit, be vertew of THE DITTAY following, viz.

FORSAMEKILL as, albeit be dyuerse guid Actis of Parliament and Secreit Counfall, *respectiue*, our foreane lord hes prohibeit and dischargit the beiring and weiring of hagbuttis and pistolettis vnder certane panes mentionet in the saidis Actis; nochtwithstanding, it is of treuth, that sic is the wikket dispositioun of sum persones, quha preferring thair awin inordinat appetite and revenge, to the dew reuerence and obedience of his hienes saidis lawis, thay and thair domestik servandis daylie and conti-

¹ Fr. *brigand*.

² See Jun. 21, the following Case.

³ The Sentences are not Recorded.

nualle beiris and weiris hagbuttis and pistolettis, as thair ordiner and accoustomet wappones; of fet purpois and prouisiounne to put thair vngodlie determinatioun to executiounne, aganis sic of his hienes peceable subiectis, aganis quhom thay beir ony querrell or haittent: As namelie, the saidis William Maxwall of Gribtoun, Barbara Johnnestoun his spon, and Elizabeth Stewart hir mother, haifing, this langtyme bygane, borne ane fecreit and hid malice aganis the said Robert Johnnestounne of Newbie, in respect of the dependance of certaine actiones, depending befoir the Lordis of Counfall and Sesssioun, movet be either pairtie aganis vtheris; and speciallie, ane actionne of Reductioun intentit, and the Summondis thairof lauchfullie execute, at the instance of the said Robert aganis the said William Maxwall, Barbara his spon, and the said Elizabeth hir mother, for Reductioun of the Retour of vmq^{le} Johnne Johnnestoun of Newbie, that last deceissit, spon to the said Elizabeth, and for Reductioun of his Seafing following thairupoun, and of certane vtheris pretendit Infestmentis, allegit maid be him to the said Elizabeth his spon, and to the said Barbara his dochter: And ane vther action and cause, perfwit be the said Barbara and the said William hir spon, for his entreis, aganis the said Robert Johnnestoun, for randerig to thame the Toure and ffortalice of Newbie: And the samyn action being oft and dyuerse tymes callit, in presence of the saidis Lordis, and dyuerse guid exceptions and defens-
is proponit be the said Robert and his procuratouris in his name, quhilk as yit ar vndiscussit, the saidis William, Barbara his spon, and the said Elizabeth hir mother, nocht being content to abyde the event of the saidis Lordis Judicatorie in the saidis causis, bot rather to contempne our souerane lordis authoritie and lawis, and to tak Justice at thair awin handis, as gif thair war na ordiner justice within this realme; thay, during the saidis dependances, and eftir raising and lauchfull executioun of the saidis Summondis, in maner aboue writtin, haifing consultit and devyfit with Johnne McBrair, Robert Johnnestounne callit of Brwrne, feruitouris to the said William Maxwall, Thomas Jardane callit of Birnok, Eduard Maxwall, brother to the Laird of Conhath, and Thomas Jardane, servitour to Johane Lord Hereifs; the saidis fyve perfoes immediatlie befoir namet, being all bodin in feir of weir,¹ with jakis, suordis, steilbonnetis, lang gwnes, pistolettis, and vtheris wappones *invafue*, prohibeit to be worne in maner soirfraid, laitlie, vpon the xix day of Merche lastbypast, be directiounne, causing, command, bounding and convoy, ressett, assistance and ratihabitoun of the saidis William Maxwall, Barbara Johnnestoun his spon, and Elizabeth Stewart hir mother, come ryding to the place of Neubie, per-
tening to the said Robert Johnnestoun, and being in his peceable² possesioun, than, and dyuerse monethis ofbefoir; quhair the said Robert was deidlie feik for the tyme: Eftir thay had send bak thair boris fra thame, quhairby thay being thair sould nocht be knawin, thay privatlie, be the moyane of the said Elizabeth Stewart and Barbara Johnnestoun, convoyit thame selfis, vnder clud and silence of nycht, within the laiche³ hall and houffis of the said place of Neubie, inhabeit be the said Elizabeth Stewart and Barbara Johnnestoun, be quhome thay war ressett within the saidis houffis; and thair, the saidis perfoes, awaiting thair awin opportunitie, be way of foirthocht ffellony and hamefukin, and vsurping vpon thame our souerane lordis authoritie, besaiget and invadit the said Tour,⁴ thay being in the said Robert Johnnestounis possesiounne, as sone and appeirand air mail and of tailzie⁴ to the said vmq^{le} Johnne Johnnestoun of Neubie, his faither: And the saidis fyve perfoes maist schamefullie, crewallie and vnmercifullie preiffand, be violence and vnlawfull force, to asslage and tak the said Tour and ffortalice, invadit and hurt the said Eduard Johnnestoun, brother to the said Robert, and maist crewallie schot him throw the body with ane pistolet; and also maist crewallie invadit, hurt and woundit the said Airthour Johnnestoun, servand to the said Robert, in the face, with the schot of ane vther pistolet; to the effusiounne of thair bluid in grit quantitie, thay being in company and service with the said Robert, and in defence of him and his Tour and ffortalice of Newbie; and than, per force, be way of foirthocht ffellony and Hamefukkin, as said is, and vsurpeand and takand vpon thame our souerane lordis authoritie, thay enterit within the said Robertis Tour and ffortalice of New-

¹ In warlike array.² Low or under-hall.³ Tower.⁴ Son and apparent heir-male and of entail.

bie, and tuik the said Robert and the said Airthour, his servand, captiues and priffoneris; the said Robert being lyand deidlie seik and bedfast within the samyn; crewallie invaidit thame, band thair handis behind thair bakis, and violentlie and perforce schot¹ thame and thair hail cumpanie furth of the said Tour, thay being our souerane lordis frie subiectis. QUHILKIS crewall, schamefull and abhominable crymes aboue writtin, viz. Vfurpatioune of our souerane lordis auctoritie, Hamefukkin, Beiring and weiring of pistolettis, and remanent Invasiones, factis and deidis *respectiue* aboue specifeit, was done and committit be the foirsaidis fyve persones, of the speciall command, hounding out, directione, consulting, devyse, reffett, assistance and ratihabitoune of the saidis Williame Maxwell, Barbara Johnnestoun his spous, and the said Elizabeth his moder: And thairby, thay, and everie ane of thame, ar airt, pairt, red and counfall, and ratiuefearis of the saidis hail crymes aboue expremitt, and everie ane of thame, viz. Vfurpatioune of our souerane lordis authoritie and Befageing and taking of the said hous, Convocationn of his Maiesteis leigis, Beiring and weiring of lagbuttis and pistolettis, contrair the tennour of the saidis Actis, Invaiding, schuiting, hurting and wounding of his bienes frie lieges and subiectis, and Invaiding and taking of thame captiues and priffoneris, be way of Hamefukkin and floirthocht sfelloun, binding of thair handis behind thair bakis, schuiting and expelling of thame violentlie furth of thair avin houffis, but² Commiffioune; thay being our souerane lordis frie legis and subiectis, in maner foirsaid.

PERSEWARIS.

Robert Johnnestoun of Newbie, Eduard Johnnestoun his brother, Airthour Johannestoun, servand to the Laird of Newbie, Sir Tho⁴ Hammiltoun of Monkland, kny³, Aduocat to our souerane lord.

PRELOCOUTOURIS for the pannell.

The Laird of Gairleis,
Mr Alexander King,

The Laird of Hempisfeild,
Mr Robert Lyntoun,

Andro Ker of Fentoun,
James King.

It is allegit be Mr Alexander King, prelocoutour for Barbara Johnnestoun, that na proces can be led aganis hir, becaus scho being convenit ofbefoir, befoir the Lordis of Secreit Counfall, vpone the hail contentis of this lybell, factis and deidis lybellit, at the instance of my Lord Aduocat and Robert Johnnestoun, persfeweris, scho is assilzeit⁵ *simpliciter*, be Decreit of the Lordis of Secreit Counfall; and that thairefter the said Lybell was admittit to the said Aduocat and Robert Johnnestoun's probatioune, and thai succumbit⁴ thairintill: For verificatioune quhairof, thay product the said Decreet-absolutour, of the dait, at Edinburgh, the secund Maij last.—It is answert be the persfeweris, the allegiance aucht to be repellit, becaus nathing done befoir the Secreit Counfall, ather be Sentence absolutour or condampnitour can stay the Justice to proceed in ane Criminal cause; as was practiket⁵ betuix Eduard Johnnestoun Younger and Johnne Broune.⁶ And gif the Counfall can nocht judge vpone sa heich crymes as ar lybellit, or geve ony penall sentence vpone the samyn, conforme to the law, thair precognitioune can nocht stay the proceeding of the Justice. Last, the summondis befoir the Counfall was fund relevant, and the absolutour proceedit vpone nocht probatioune; and as crymes capital can nocht be provin be Wit-

¹ Thrust, ejected. ² Without.
made matter of precedent or pratique.

³ Absolved, acquitted, freed.

⁴ Yielded.

⁵ Decided,

⁶ See the preceding Case, Jun. 18 and 27, 1605.

nesses, bot be the tryell of an Assyse, sa the nocht probatioune of the samyn, befoir the Counfall, can nocht stay the same to pas to ane Assyse.

It is ansuerit be the pannell, that the absoluitour befoir the Lordis of Secreit Counfall will stay the Justice of ony forder proceeding: And as to the Practique betuix Eduard Johnnestoune and Johnne Broune, the samyn militatis nathing in this caice. That in that caice, Johnne Broune was convenit befoir the Counfall, for the wrangus Invaiding of Eduard Johnnestoune's wyfe, vnder clud and silence of nycht; and the proces befoir the Justice was ane persute, persewit at the instance of Johnne Broune aganis Eduard Johnnestoune, for Mutilatioune; sua that the Decreit of Secreit Counfall nawayis met that persute befoir the Justice: And als, as for the authoritie and power of the Lordis of Secreit Counfall, the perseweris can nevir be hard to oppone the samyn; in respect thay authorizet that judgement, callit and persewit befoir thame, as Judge-ordiner, for the factis lybellit, led and deducet probatioune eftir that the summondis was fund relevant in their fauouris, and thaireftir succumbit, as said is; and thairby, can nevir be hard to impunge the said Decreit and sentence. In respect quhairof, the allegiance standis relevant.—The Aduocat adheris to his former ansuer.

The Justice findis proces. Quhairupoune the Aduocat askis instrumentis.

It is forder allegit, that we ar nocht disputing heir vpon the authoritie of the Counfall or of the Justice, bot insistis only on this poynt, that thai ar maid fré of the fact afoir the Counfall.—It is ansuerit be the Aduocat, he is nather acquit be ane Assyse, nather yit be ane Remissioun.

The Justice Repellis theallegiance, *locoquo*; reserving the pannellis informatioun thairof to the Assyse.—The Aduocat takis instrumentis of the Justice interlocutour.

It is allegit that the Summondis is nocht relevant, in respect that the factis and deidis lybellit ar nocht capital, and can nocht be put to the knowlege of ane Assyse.—The Aduocat ansueris, aucht to be repellit, in respect of the Summondis.

The Justice findis the summondis relevant; and ordanis the samyn to be put to the knowlege of ane Assyse.—The Aduocat takis instrumentis of the Interlocutour.

ASSISA.

George Hadden of that Ilk,	Robert Frenche younger of	William Hay of Lynplum,
Thomas Portious of Glenkirk,	Frencheland,	Johnne Tennant of Kairnis,
William Twedie of the Wrae,	James Flemyng of Spittel,	William Sincler of Roisling,
Mr Alex ^r Menzies of Culterrawis,	James Crawford, goldsmith, bur-	George Hay of Monktonne,
Patrik Lanctoun elder of Erle-	ges of Edinburgh,	Ja ^r Cranstoun of Monktonhall,
bauch,	Alex ^r Fairlie elder of Braid, Sydseiff of Ruchlaw.

The Aduocat takis instrumentis of the sweiring of the Assyse; and Protestis for Wilfull Errorr, gif thay Acquit.

The Pannell repeitis the allegiance proponit of befoir to the Assyse; and in respect that the Decreit of Secreit Counfall gevin aganis the perseweris, efter probatioun

led be thame, *in foro contradictorio*, vpoun thair awin perfute, Barbara Johnestoune is declairit frie of the haill factis lybellit, the Assyse can nawayis fyle hir. As lykwyis, Williame Maxwell and Elizabeth Steuart are fund Clene and innocent of the deidis and factis lybellit; that the samyn was nocht done of thair causing, command, (or) assistance, but only of ratihabitoun,¹ eftir the committing of the factis: That thai can nawayis be convict, be the Assyse, of the deidis lybellit, as done be thair causing, command and assistance, airt and pairt: And gif thai be claget, as thai man be of necessitie, of the premiffis, thay can nawayis be convict of this lybell, because ratihabitoun *per se* nather is relevant, nor induces a cryme: And forder, befor the Stewart² of Annandaill, the haill pannel being accuset, as culpable of the factis and deidis lybellit, and thairfoir to haif incurrit the vnlawis for scheddung of bluid; thay ar Claget be ane condigne Inqueist, and fund innocent, baith of the bluid and bludwyte;³ as the Decreit, heirwith producet, beiris. In respect quhairof, the Assyse nawayis can fyle or convict thame; and in cais thay do, Protestis for manifest and Wilfull Errour.

The Aduocat, for informatioun of the Assyse, and to the effect thay be nocht led and inducet to commit Errour, acceptis the Decreit of Secreit Counfall producet be the pannell, togidder with the Testimoniall of the clangeing of the pannell befor the Stewart of Annandaill, in sa far as the samyn makis for the perfewaris, and na vtherwayis: And first, allegis that the summondis perfewit befor the Lordis of Secreit Counfall was fund relevant be the Lordis thairof, and the samyn fund provin, in effect and substance, aganis the said Williame Maxwell and Elizabeth Stewart; and gif ony appeirance be of absolutour gevin in fauouris of ony of the defenderis, the samyn proceedit vpoune the Depositiones of the Witneses; becaus Depositiones of Witneses can haif na forder fayth nor⁴ thay depone to know of thair certane knowlege; and thairfoir, that quhilk is nocht deponit be the Witnesis to be done, in thair presence, sicht and certane knowlege, is nocht fund provin, quhairupoune absolutour may be gevin: Bot becaus crymes, as thai ar vnawabill of thame selfis, sa thai are devyset and done secreteilie, in sic maner as na Witnesis can know the samyn; and thairfoir, can nocht depone thairintill; thairfoir, be the lawis of this cuntrie, it is provydit, that crymes neidis nocht, nor may nocht be provin be Witnesis, bot are referrit to the knowlege of ane suorne Assyse; quhais determinatioun, according as thay ar persuadit in thair consciences, is ane sufficient warrand to thame selfis, and ane just cause of convictioun of the pannell; and it is sufficient to thame to convict, gif thai find nocht cleirlye, thay can iustlie quyte⁵ And thairfoir, albeit⁶ the Witneses knew nathing, that was first vlet, and thairby thair Depositiones

¹ Confirmation or approval; from the Law Lat. *ratihabere*.
bloodwit was a fine paid for the shedding of blood.

⁴ Than.

² Steward, *Senescallus*.

⁵ Acquit.

³ The
⁶ Although.

gaif occasioun of fume abfoluitour, for laik of probatioun be thame; yit that warrandis nocht the Affyse; bot thai man ather fyle, or commit Wilfull Errour, in respect of the notorietie of this Dittay; to witt, that the Houfe of Neubie was tane, in maner contenit in the Summondis, be the perfonis quha for the famyn hes bene continuallie fugitiue fenfyne; tua of thame being Williame Maxwellis feruands, and the vther thre his fpeciall freindis, haifing na entreis nather to tak nor keip the houfe for thame felffis, on thair awin respect, bot only at the defyre and be the caufing and to the behuif of the faid Williame and haill remanent defenderis: Quhilkis defenderis, pretending rycht to the faid houfe and landis; as the verificatioun of tua feuerall dependances for the famyn befor the Lordis of Seffion, heirwith producet, beiris. The faidis defenderis, expreflie aganis the Act of Parliament maid anent the flauchter and trubbilling of parteis, in perfute and defence of thair actiones, being the 219 of the Kingis xiiij Parliament, and vtheris Actis maid thairanent, intyfet and caufet the faidis fflugitiues violently to Affage and tak the faid houfe, perfew, invaid and demane¹ the faid Robert Johnestoun and his affiftaris being thairintill, in maner contenit in the summondis; quhilk being committit be thame, thay nather pretendit nor retenit ony richt or poffeffiounethairof; bot only keipit the famyn, quhill² Williame Maxwell come to thame in all haift; to quhais behuif thay haifing tane the faid houfe, thay incontinent delyuerit the famyn to him; quha fend thame away vpone his awin horfe, and his freindis that come with him. And as to the Gentilwomen, the faid fact being lykwayis done to thair behuif, thay refset and hid the committeris, being of intentioun and preparatioun to commit the famyn; and thai ran out of the ane into the vther; and thairby fuppryfet the faid Tour, vpone the occasioun, to the behuif, and of the ratificatioun foirfaid: Lykas, be the Decreit, it is fund to be done of the ratificatioun of the faid Williame Maxwell and Elizabeth Stewart; quhilk ratihabitoun, of Law, in ane matter done to the behuiff of ony man, is compairit and pwneifchet as ane preceeding command, be the first Law *de vi et vi armata*, in the xiiij paragraph, in thir wordis: ‘*rectius enim dicitur in maleficio ratihabitionem mandato comparari*,’ to wit, it is richtlie faid, that ratihabitoun in crymes is richtlie comparet to ane preceeding command: And the thrid Law of the faid Tit. in the tent paragraph, in thir wordis, ‘*cum procurator armatus venit, et ipse dominus armis dejecisse videtur, siue mandavit, siue ut Julianus ait, ratum habuit*,’ that is to fay, quhan ane mannis fervand cumis airmit, his maister is reput to haif expellit or reiectit with airmes, quhither he commandit, or, as Julian sayis, he ratifeit the famyn. And thairfoir, feing thir fervandis and freindis come airmet and did this violent deid, be ratihabitoun of the pannel, togidder with the

¹ Treat, use, handle.² Until.

Decreit finding the samyn, makis thame giltie thairof. Lyk as, the Act 151 of the Kingis 12 Parliament, makis ane criminall Summondis to be relevant, gif it beiris that the defenderis ar airt and pairt of ane relevant cryme; and it is trew that that cryme is fund relevant be the Justice, and remittit to the Assyse; and the notorietye of the pannellis being airt and pairt thairof is befor deducet, feing thair knowlege of the said fact, thair benifeit ryper¹ thairby, and ratihabitoune thairof, is manifest. And as to the clengeing product, the samyn makis aganis the producer; becaus the perseweris, as pairtie grevit, and the Kingis Aduocat, for his hienes entreis, being necessar and only parteis, and the defenderis knawing thair awin giltines, purchest and deducet ane led Tryell, befor thair awin freindis, being bayth Judges and Assysouris; na pairtie haifing entreis being present nor wairnit thairto. In respect quhairof, gif the Assyse Clenge, the perseweris protestis for Wilfull Errour.—The Aduocat askit instrumentis of the sweiring of the Dittay be the perseweris, in prefens of the Assyse; as lykwyis the taiknis² product, also fuorne be thame.

It is answert for the pannell, to the alledgeance immediatlie preceeding, that the Aduocat wald haif the Assyse, quha kennis³ nathing of the factis and deidis lybellit, bot the commone bruit,⁴ and be thair awin allegeance, to ffyle, nochtwithstanding that the multitude of the Witnessse product be the perseweris could nawayis preve the fact; thay being Witnessse, duelleris vpone the landis, and round about the samyn; and ane grit number of thame come to the deid, and yit thay wad nocht tak it vpone thair consciences to depone ony thing by⁵ the verritie; sua, the Assyse, quha kennis far less, can nocht convict vtherwyis nor⁶ according to the first probatioun. As to the secund pairt of the allegeance, the samyn contenis only ane repetitioun of the Dittay and taikinis, and mereitis na forder answert nor is answert of befor. As to the thrid pairt, beiring that Ratihabitoune *equo paratur mandato*, and allegeing the first and thrid lawis *de vi et vi armata*; to that, it is answert, that as, *in criminalibus*, Ratihabitoune is never relevant *per se*, sua the samyn can be comptit na cryme, nor na grund to convict the pannell; ffor in crymes, thair is thre thingis to be considerit, airt, pairt, and ratihabitoune: *Airt*, is command, or devyse, or counsell of doing of the deid; quhairof we ar declarit innocent: *Pairt*, is participant of the fact; quhairof we ar lykwyis declairit innocent: *Ratihabitoune*, is allowing of the fact, eftir the samyn be committit; quhilk is nawayis drawin bak to ony of the premisses, in criminall matteris: And albeit the said Williame had allowit in taking of the houe, eftir it was tane and the deid committit, yit that makis thame nocht giltie of the factis or deidis committit be the peronis takeris of the houe, the tyme befor or eftir the taking thairof. And feing the Witnessse

¹ Reaped. ² Tokens, evidence. ³ Knows. ⁴ Excepting the common report or talk of the country. Fr. *bruit*. ⁵ Past, besides. ⁶ Than.

examinat, be thair grit ayth, hes maid the pannell Innocent and elene of the factis lybellit; as lykways, thay ar declairit Innocent, be ane condigne fuorne Inqueist, befor thair Judge-ordiner; the Assyse can nawayis fyle thame, except thay commit manifest Errour, and declair contrair to the probatioun alreddie led and deducet, and depone contrair to thair awin conscience and knawledge.

SPECIAL VERDICT of the Assysè.

THE ASSYSE removet altogidder furth of Court to pe Counfall-hous, quhair pai, be pluralitie of voittis, electit and choisit the said Alexander Fairlie of Braid in¹ Chancellor of the said Assysè; and pairafter reffonit and voittit vpon the haill heidis and poyntis of the said Dittay; and being ryplic and at lenth advyset pairwith, and with the haill talkines and writtis product for verificatioun pairof, allegiances and answers maid, *hinc inde*, in the said matter; thay re-enterit agane in Court, quhair thay, be pe mouth of pe said Alexander Fairlie, stand, pronuncet and declairit the saidis William Maxwell, Barbara Johnnestoun his spous, and pe said Elizabeth Stewart hir mojer, to be fylet, culpabill and convict, as followis, viz. THE said *William Maxwell* of Gribtoun, to be fylet, culpabill and convict off air and pairt with the saidis Eduard Maxwell, broper to pe Laird of Couhaithe, Thomas Jardane callit of Birnuk, James Jardane, servand to the said Johnne Lord Hereis, Johnne McBrair and Robert Johnnestoun callit of Brwme, of the violent taking of the said Tour and ffortalice of Newbie; committit be the saidis fyve perfonas, the tyme contenit in the said Dittay. THE said *Elizabeth Stewart*, to be fylet, culpable and convict off pe reffet of the saidis fyve perfonas, quha committit pe crymes specifeit in the said Dittay, and of the Ratihabitounne of pe violent taking of pe said Tour and ffortalice of Newbie: AND pe said *Barbara Johnnestoun* to be fylet, culpable and convict of the Ratihabitounne of the violent taking of pe said Tour and ffortalice of Newbie, be pe saidis fyve perfonas takeris pairof. AND siclyk, stand and declairit pe saidis William Maxwell, Barbara Johnnestoun his spous, and pe said Elizabeth Stewart hir mojer, to be Clene, Innocent and Acquit of the haill remanent crymes and poyntis contenit in the foirsaid Dittay, viz. of air and pairt of pe vsurpation of our sone-rane lordis authoritie, in besageing of the said hous, convocation of his Maigesteis leigis, beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament, Invaiding, schuitting, hurting and wounding of pe saidis Robert Johnnestoun, Eduard Johnnestoun and Airthour Johnnestoun, his hienes frie subiectis; and Invaiding and taking of thame captives and prissoners, be way of Hamefukkin and ffoirthocht ffellonie, binding of pair handis behind pair bakis, and schuitting and expelling thame violentlie furthe of the house and ffortalice foirsaid; committit be pe saidis fyve perfonas, takeris pairof, pe tyme and in maner aboue writtin, mentionet in the said Dittay.

Jun. 25.—The Justice continued the case to the 28th of Junij. ‘Plegio, Alexandro Stewart de Gairleis, sub pena in Acto predict.’

Jun. 28.—Alexander Stewart of Gairleis become pledge and fouertie for William Maxwell of Gribtoun, &c. to enter and present thame befor the Justice and his deputis, in the Tolbuth of Edinburgh, the thrid day of Julij nextocum, in the hour of cause, to heir dome pronuncet vpon thame; vnder the panes following, viz. ffor the said William, vnder the pane of V^m li. (£5000,) and for the saidis Elizabeth and Barbara coniunctlie, vnder the pane of vther fyve thousand pundis.

Jul. 3.—Alexander Stewart of Garleis of new becomes pledge and fouertie, that thai and ilk ane of thame fall compeir befor the Justice or his deputes,

¹ To the office of.

quhair evir thay or ony of thame fall be charget, vpone xv dayis wairning, to heir and fie dome pronuncet, &c. ilk ane of thame vnder the pane of tua thousand merkis. Maxwell binds himself to 'warrant releif and keip skaythles' the said Alexander Stewart.

Slaughter.

Jun. 26.—JAMES GLEDSTANES of that Ilk.

Dilaitit ffor airt and pairt of the Slauchter of vmq^{le} Thomas Peiblis, burges of Peiblis; committit in the moneth of Februarie, I^mV^c.lxj yeiris, vpone the landis of Kaidmure, besyde the said burgh of Peiblis; vpone set purpois, proouisioun and foirthoch fellony.

PERSEWERIS.

Thomas and Johnne Peiblis, as sones; Johnne and David Peiblis, sones to the said Thomas, (Junior.) PRELOCUTORIS for the pannell, Laurence Scott.

The pannell tuik him to our souerane lordis Respett, producet be him, vnder his Maiesteis Priuie Seill, of the dait the . . . day of Junij instant.

It is allegit be the perseweris, that the Respett producet be the pannell aucht nocht to be admittit, in respect the samyn is grantit contrair to the Act of Parliament; na Letter of Sianes being grantit be thame, for Assythement of the partie.—It is anferit be the pannell, the allegiance aucht to be Repellit, in respect of the Respett; and that thai ar willing to satisfie, conforme to the lawis of this realme, and offeris Cautiounne to that effect.—Quhilk Respett the Justice admittit, and ordanit the said James to find cautiounne, &c.: Lyk as, Johnne Gledstanes of Wynnigtoun-hauch and Mr Johnne Rutherford, bailzie and burges of Jedburgh, become bundin and obleift, coniunctlie and feuerallie with the said James Gladstanes of that Ilk, his self, to satisfie the partie for the Slauchter of the said vmq^{le} Thomas Peiblis.

Murder under Trust.

Jun. 27.—JAMES KYNNAIRD, sone to the Laird of Incheture,¹ Williame Hattlie in Balgawie, Williame Kynnaird, sone to the Laird of Kynnaird.

Dilaitit, accuset and persewit be Siluefter Chopman in Kinlevin, conforme to our souerane lordis Letteris, raifit and direct at the instance of Marioun Chopman, as mother, Margaret Scherp, as sifter, the said Siluefter Chopman and Thomas Chopman in Ragolny, as mother-brether,² with the remanent kyn and freindis of vmq^{le} Johnne Scherpe, seruitor to the Laird of Ruthven, aganis the saidis Williame, &c. and als aganis James Ramsay in Flacraig-mylne; as thay that war culpable and giltie of the crimes contenit in the DITTAY following.

¹ Vmq^{le} Patoun Kynnaird.

² Maternal uncles, mother's brothers.

FORSAMEKILL as the saidis Williame Kynnaired, &c. haifing laitle, vpon the ffyft day of July, the yeir of God, 1^m. fax hundreth and thre yeiris, conuenit thame felfis within the toune of Rait, quhair the said vmq^{le} Johnne Scharp was for the tyme, attending¹ the cuming of certane his freindis and gentiltimen that war at the buriall of the Laird of Bandane, and doand vtheris his lauchfull effairs and buffines, lipning for na harme, iniurie or perfute of ony perfonen, bot to haif leuit vnder Godis peax and our fouerane lordis : And thair, in all hamelie and freindlie maner, come to the said vmq^{le} Johnne, and requeistit him to pas with thame to the drink ; quha, vpon meir simplicite and beneuolence, past to ane drinking hous with thame, and haifog fallin in reffoning with the said vmq^{le} Johnne, anent funi speiches that past betuix him and the said James Ramfay in Flacraig-mylne a few dayis befor ; the saidis perfonen in the meane tyme directit one of thair companie for the said James Ramfay, defyering him to cum to thame, and thay fould affist him to be reuenge on the said vmq^{le} Johnne : At quhaus cuming, the foirsaidis perfonen, togidder with the said James Ramfay, being all bodin in feir of weir, with fuordis, quhingeris, gantillettis, plait-flevis and vtheris wappones, *inaufine*, incontrair the tennour of the Actis of Parliament, sett vpon the said vmq^{le} Johnne Scherp, vnder trest, and maist trateruslie and barbaruslie, everie ane of thame with thair drawin wappones foirsaidis, perfewit him for his slauchter ; and as murthereris, thevis and brigganis, haifing drawin the said vmq^{le} Johnne to drink, as said is, strak the said vmq^{le} Johnne in dyuerse paitis of his body, and gaif him nyne bludie and deidlie woundis, viz. thre straikis in his heid, thre in his bak, ane throw his wambe, ane vther vnder his okter, and tua vpon his schoulder blaid : Off the quhillis straikis and crewall woundis the said vmq^{le} Johnne immediatlie deceffit amangis thair handis. And the saidis perfonen, and ilk ane of thame, ar airt and pairt of the said crewall Murthour and Slauchter, commitit vnder trest, vpon set purpois, promiffoun and foirtrecht felony ; in hie and manifest contempt of our fouerane lord, his hienes auctoritie and lawis ; and to the evill exampill of vtheris, his Maiesteis obedient subiectis, to commit the lyk schamefull and barbarus crueltie and Murthour, in tymes cuming, gif the foirsaidis perfonen committeris thair of be sufferit to remane vnpwneifchet.

VERDICT. Lauchfull tyme of day biddin, and (the perseweris) nocht compeirand,² the Justice-depute patt the saidis Williame, &c. to the knowlege of ane Assyse, who all in ane voce, be the mouth of Robert Hog in Gally, sumtyme fervand to my Lord Marfchell, chancellor, ffand the saidis Williame, &c. to be Clene, innocent and acquit of airt and pairt of the felloun and crewall Slauchter of the said vmq^{le} Johnne Scherp, and haill circumstances aboue writtin. Quhair-upoune the saidis defenderis askit instrumentis.

[*Mr Williame Hairt and Mr Williame Borthuik, Justices-Deputes.*]

Masterful Theft — Stouthreik — Lifting of Cattle, &c.

JUN. 28.—JOHNNE ELLOTE of Copfchaw, Robert Ellote, his sone, Johnne Rutledge and Adam Rakefe, fervandis to the said Johnne.

Being enterit on pannell, quha war summond be vertew of our fouerane lordis letteris, purchest at the instance of Hectour Trumbill of Wauchope, Thomas Trumbill, younger of Wauchope, George Trumbill, secund lauchfull sone to the said Hectour, George Trumbill in Wauchope, Thomas Scheill thair, Hob Olipher thair, Harie Trumbill thair, Pait Trumbill thair, Gawin Trumbill in Bullerwall,

¹ Waiting. Fr. *attender*. ² The matter had been compromised with the relations of the deceased, &c. and by the absence of the pursuer, and no evidence being produced, the Jury acquitted the pannell.

Adame Trumbill in Wauchope, and Eduard Scheill in Langhauch : And perfewit be the saidis Thomas T. younger, and George his brother, for thame selffis, and in name and behalf of the said Hectour Trumbill of Wauchope thair fader, and haill remanent perfoness aboue writtin, thair tennentis, of the crymes following.

DITTAY against the Pannels.

FORSAMEKILL as the saidis Johnne Ellote, &c. with their complices, to the number of ane Hundreth perfoness, alswell brokin-men and borderaris of Ingland, as of Scotland, all bodin in feir of weir, with jakis, speiris, steil-bonnettis, lances, lang-hagbuttis, daggis and pistolettis, exprellie prohibeit to be borne, worne, vslet or schote with, be the Actis of Parliament, laitlie, in the moneth of September, the yeir of God, I^m. fax hundreth and tua yeiris, come opinlie, in the day lycht, to the landis of Wauchope ; and thair, be way of Maisterfull thift and Stouth-reif, staw, reft and away-tuik, af the saidis landis, fourfcoir of ky and oxin, ane hundreth scheip, and tuelf horfe and meiris, pertening to the saidis perfeweris ; had and convoyit the samyn away with thame, and disponit thairupoun at thair pleafour : And thay and ilk ane of thame ar airt and pairt of the saidis crymes of Thift and Stouth-reif ; for the quhill thay aucht and could be pwneifhet, conforme to the lawis of this realme, in exampill of vtheris.

PERSEWERIS, Thomas Trumbill, younger of Wauchope, George Trumbill, his brother.

PRELOCUTOURIS for the pannel, Mr Alexander King, Robert Elliot, Mr Thomas Henderfoune.

The perfeweris protestis for Wilfull Errour, in caice thay acquit ; in respect of the notorietye of the fact, and that thay haif gewin thair aithes thairvpoun.

Hectour Trumbill, elder, and the remainder of the pursuers, find Robert Home, younger of the Heuch, as cautioner, that they shall ratify whatever Thomas and George Trumbill do in their names, in this perfit ; and ' Williame Erle of Angus band and obleist him, his airis, executouris and fuceffouris to warrand, releif and keip skaythles the said Robert Home, his airis, executouris and assignais, of his cautionrie foirsaid, and of all danger, perrell and expensfis that he may incur thairthrow.'

VERDICT. The Assyse, be the mouth of Robert Wauch of Keip, chancellor, find the saidis perfoness to be Cleane, innocent and acquit, &c. Quhairupoun the saidis perfoness on pannel askit instrumentis.

[Mr Williame Hairt, Justice-Depute.]

Mutilation and Demembration.

Jul. 2.—JOHNE HAMMILTOUNE, Persone of Crawford-Johnne, Airthour Colquhoun, than his servand, now in Kirmure, Gawin Murray of Vdstounheid.

Dilaitt of airt and pairt of the Hurting, Wounding and Mutilationne of Alexander Lokhart, Tutour of Wikketschaw, of his left hand, and demembring of him of his mid-finger, nerrest his littill finger, of his said hand : And beiring and weiring of pistolettis ; committit in Apryle, I^m.V^c.lxxxv yeiris.

Robert Chancellor of Sheillhill become pledge and fouertie, that thai and ilk ane of thame sall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of Lanerk, or soner, vpone xv dayis warning, to vnderly the law, &c.

Slaughter.

Jul. 3.—CHAIRLES CARUTHERIS of Warrambie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Roger Gordoun in Lochinkitt.

PERSEWER, Roger Gordoune, brother-son.

Continued to the air of ' Annandaill, tertio Itineris, (vel super premonitione,) xv dierum.'

Forcing (Rape.)

Jul. 3.—WILLIAME BELL, workman in Edinburgh.

Dilaitit, accuset and persewit be Jonet Falconer in Karingtoun, ffor the fforceing of hir aganis hir will ; and drawing hir furth of the way at Boddorne-mure, betuix Caringtoun and Lefuaid, and abuseing hir in ane coill-pott-hoill ; selo being ane young maid of twelf 3eiris of age, or thairby, &c. ; committit the xxj day of Junij lastbypast, about twelf houres in the day.

VERDICT. Eftir accusatioun of the said Williame Bell, be Dittay, of the faidis crymes, and verificatioun thair of be the said Williamis Depositiones ; the Assyse, be the mouth of James Ramfay in Caringtoun, chancellor, ffind, pronuncet and declairit the said W^m Bell to be ffylet, culpable and convict of the faidis crymes.

SENTENCE. To be tane to the mercait-croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid ; and all his moveabill guidis and geir to be efcheit, &c.

Slaughter.

Jul. 4.—JAMES TAIT in Kelfo, brother to George Tait of Bairersfe.

Dilaitit, accuset and persewit by Williame Tait of Chirritreis, as father, Williame and Johnne Taittis, his sones, as brether, with the remanent kyn and freindis of vmq^{le} James Tait, sone to the said Williame Tait of Chirritreis, off airt and pairt of the crymes following, viz.

FORSAMEKILL as the said James Tait in Kelfo, with his complices, being all bodin in feir of weir, with fuordis, knapfka-bonnettis,¹ lances and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with be our souerane lordis Actis of Parliament, in the moneth of July, the yeir of God 1^m.V^c. lxxxvij yeiris, haifing consauet ane deidlie feid, raucour and malice aganis the said vmq^{le} James Tait, come to the Grene of Chirritreis, quhair the said James was, in fober and quyet maner, &c., and thair set vpon him, and with thair pistolettis and fuordis, maist schamefullie, crewallie and vnmercifallie slew the said vmq^{le} James Tait : And the said James Tait in Kelfo is airt and pairt of the said slauchter ; committit vpon fett purpois, prouisioun and foirthocht felony, in hie and manifest contempt of our souerane lord, &c.

PERSEWERIS, Williame Tait, Johnne Tait, as brether.

PRELOCOUTOURIS for the pannell, Mr Thomas Craig, Mr Thomas Henderfoune.

VERDICT. The Assyse, (amongst whom, Thomas Ker of Pryoraw, Thomas

¹ A steel bonnet, or skull-piece.

Tait of the Hoill, and Johnne Ryddell, appeirand of that Ilk¹) be the mouth of Johnne Mow of that Ilk, chancellor, ffand the said James Taitt in Kelfo, to be Cleane, innocent and acquit of airt and pairt of the said Slauchter. Quhairvpone he askit instrumentis.

[*Mr William Boirthuik, Justice-Depute.*]

Perjury before the Lords of Council and Session.

Jul. 10.—MR WILLIAME CARBRAITHE (GALBRAYTHE), sumtyme Minister at Pennycuik.

Dilaitit of Periurie, in deponing contrair to his former Depositiones, eftir he was re-examinat thairupone, in the cause persewit be the Tennentis of Laffudane, contrair Sir Johnne Ker of Hirfell, knycht.

DITTAY *against the Pannel.*

FORSAMEKILL as the said Mr Williame Galbrayth, compeirand befoir the Lordis of Counfall and Sessioun, vpone the thrid day of July instant, as he that was summond to compeir befoir the saidis Lordis, to heir witnessin in the cause persewit be the Tennentis of Lessudane aganis Sir Johnne Ker of Hirfell, knicht, anent the reffait of certane evidentis and writtis be the said Sir Johnne, pertening to the saidis Tennentis, maid his Depositionne as followis, viz.—¹ MR WILLIAME GALBRAITHE, Minister, of the age of fourtie yeiris, or thairby, *solutus*,² Deponis, that in the yeir of God 1^m.V^c. four-scoir sevintene yeiris (the speciall tyme and day rememberis nocht,) the Deponar, being in James Kingis chalmer in Edinburgh, quhair he presentlie duellis, quhair he saw present, for the tyme, Sir Johnne Ker of Hirfell, knicht, one of the defenderis; Oliver Sincler of Ravinsnuk; Enoche Dewar, servand to the said Olipher; Adame Scheill, servand to vmq^{le} Mungo Tennent, and the said James King; and in all the saidis persones presens, Oliver Sincler presentit vpone the buird,³ in all thair presens, ane littill box, coverit with ledder, of Flanderis mak;⁴ and the said Oliuer said to the said Laird of Lituldane, “Thir ar the writis quhilk I promeissit to lat zow sie;” and then the box being opnit, James King tuik out all the saidis evidentis furth of the said box, in all thair presens, and red the samyn, ane be ane. *Interrogatus*, vpone the perticuler contentis and daitis of ilk ane of the saidis evidentis, rememberis perfyllie, that all the evidentis than red be the said James King maid mention and dispositioun of the landis of Lessudlane and Newtown; and rememberis that ane of the saidis Chartouris bure dispositioun of the foirfaidis landis of Lessudlane and Newtown to Airthour Sinclair, and his airis mention thairin; and rememberis nocht of ony forder particuler contentis of the foirfaidis evidentis; bot sayis, that thair was ane grit quantitie of thame, all in parchment, and haiffand feillis: And immediatlie efter the reiding of the saidis writis, thay war all put within the said box agane; and ane Obligioun maid and writtin in all the foirfaidis parteis presens, beirand the said Sir Johnne Ker to be bundin and obleift to the said Oliver Sincler in the sowne of Fyve hundreth merkis money, how sone he or ony of his sould obtene the richt of the landis of Lessudlane: And this Deponer saw the said Sir Johnne Ker subscryue the said Obligioun; and James King and this deponer subscryuit the same Obligioun, as wites: And at the samyn tyme, Sir Johnne Ker and his servandistuk away the said box with thame, and the said Oliuer Sincler tuik the said Sir Johnne Keris Band with him; and sen that tyme, the deponer newer saw ony of the foirfaidis evidentis, in ony of the defenderis handis, nor in nane vther persones handis; *reddens causa scientie*, becaus this Deponer was present, hard and saw as he deponit.—ESTIR the making of the quhilk Depositionne, the said Mr Williame Galbraithe being re-examinat, vpone the fourt day

¹ The remainder are fears.

² According to more modern form, ‘purged of malice and partial counsel.’

³ Heard, table.

⁴ Manufacture, workmanship, make.

of July instant, in prefens of my Lord Chancellor and hail remanent Lordis of Sessioun, he past fra his former Deposition, maid be him the said thrid day of July, and declairit the samyn Deposition to be altogidder fals and vntrew in the self; and that he was nevir in James Kingis Chalmer, quhair he saw the evidents delynerit to Sir Johnne Ker, nather yit saw he euir Oliver Sincler and Sir Johnne Ker, togidder, in James Kingis chalmer; nor newir saw ane Obligation subferynit be Sir Johnne Ker to Oliuer Sincler; nor nevir subferynit the samyn as witness: And being inquyret, quha movit him to mak the said Deposition? Declairit, that Dandie Plumber schew him ane Obligation, extractit and subferynit be the Clerk of Register, allegit subferynit be Sir Johnne Ker, quhairin he was witnes, as was allegit; and bad him Depone, conforme to the Obligation: The quhilke Obligation, eftir the sicht thairof, movet the deponer to depone as he deponet; and said, that be gat only fra Dandie Plumber his dennar, yisterday, and fourtie schillingis eftir his dennar. As at mair lenth is contenit in the saidis Depositiones. BE the making of the quhilkis tua contrair Depositiones, the said Mr Williame Galbraith hes schawin him self to be manifestlie Periuret, false, and vntrew: For the quhilke Periurie and falsset he aucht and sould be puneischet, conforme to the Lawis of this realme, in exam-pill of vtheris.

Quhilke cryme aboue writtin, the said Mr Williame confessit to be of veritie; and offerit him self, and become in our souerane lord and his hienes Counsallis Will for the samyn; quhome the Justice ressaunt in will. And thairfoir the said Justice-depute, at command and for obedience of ane Warrant directit to him, of the dait, the tent day of July instant; subferynit be my Lord Chancellor and vtheris Lordis of his Maiesteis Secreit Counfall; quhairof the tennour followis.

DECIMO Julij, 1605. THE Lordis of Secreit Counfall ordanis the Justice-generall and his deputis to gif this dome following, vpoun Mr Williame Galbraith, eftir that he be convict of Periurie befor thame, or pat he becum in will, viz. That he fall be tane to the mercait-croce of Edinburghe, with ane paiper on his heid, declairand him to be Men-sworne, Perjurer and Infamous, and to Banishe him the Ile of Britane for euir: And that he depairt furth of the said Ile, betuix and the fyftene day of August nixtocum; and gif euir he repair within the samin Ile agane, without the Kingis Licence, or 3it fall remane within the samyn, and nocht depairt furth pairof, betuix and the said fyftene day of August nixtocum, that he fall be execute to the daith, without any forder dome to be gevin vpone him.

(Sic subfcribitur) AL. CANCELL(arius.) SECRET(arius.) QUHITTINGHAM, R. COKBURNE.

SENTENCE. The Justice, be the mouthe of James Henderfoune, dempfter of Court, decernit and ordanit the said Mr Williame Galbraith to be tane to the said mercait croce of Edinburghe, and thair to stand, for the space of ane hour, or thairby, with ane paper vpone his heid, contening thir woirdis, in grit letteris, 'MENSURNE, PERIURET AND INFAMOUS:' And to be Banischet the Ile of Britane for euir, &c.¹

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

Sorcery—Witchcraft, &c.

Jul. 23.—PATRIK LOWRIE, in Halie (Ayrshire.)

Dilaittit, accuset and persewit, be Sir Thomas Hammiltoun of Monkland, knycht, advocat to our souerane lord, for his hienes entreis, off the crymes fol-

¹ The terms of the Council's Warrant are recited.

lowing, viz. FOR consulting with vmq^{le} Jonet Hunter, ane notorious Witche, and quha was execute to the daith for Sorcerie and Witchcraft : Quhilk vmq^{le} Jonet and the said Patrik, at Witfonday, in the yeir of God I^m.V^c. and four yeiris, convenit thame selfis vpone the cowmoun waist Sandhillis in Kyle, maist ewest¹ to the burgh of Irwing ; quhair the Devill appeirit to thame and conferrit with thame, vmq^{le} Katharene M^cTeir, ane vther Witche in Halie, and Margaret Duncane in Lones being also in companie with thame, at the samyn tyme. AND siclyk, the said Patrik, being in company with the saidis vmq^{le} Jonet Hunter, Katharene M^cTeir and Margaret Duncane, Witches, Sorcereris and abuseris of the peopill, att Hallowevin, in the yeir of God foirsaid, assemblit thame selfis vpoun Lowdon-hill, quhair thair appeirit to thame ane devillische Spreit, in liknes of ane woman, and callit hir self Helen M^cbrune ; att the quhilk tyme, efter lang consultatioune had be thame with the said wikkitt Spreit, the Devill, in the liknes of the said Helen M^cbrune, presentit to the said Patrik ane hair belt ; in ane of the endis of the quhilk belt appeirit the similitude of foure fingeris and ane thombe, nocht far different frome the clawis of the Devill : Lyk as, the samyn belt, being presentit be the said Jonet Hunter to the persones that past vpone hir Affyse, the tyme of hir Convictioun for the said cryme of Witchcraft, was brunt in ane ffyre. LYK AS, at dyuerse tymes thairestir, thay assemblit thame selfis, in dyuerse Kirkis and Kirk-3airdis ; quhair the said Patrik, and remanent his affociatis foirlaidis, raift and tuik vp findrie deid persones furth of thair graves, and dismemberit the saidis deid corporis² for the practizeing of thair Witchcraft and Sorcerie. ITEM, for airt and pairt of the Bewitcheing, be Inchantment and Sorcerie, of Bessie Saweris coirnes, and taking away the substance and fisnowme³ thairrof, be the space of ten yeiris, yeirlie aftir vtheris.⁴ ITEM, for airt and pairt of the Bewitcheing of certane milk ky, pertening to Johnne Fergushill, younger in Halie, at Beltane, I^m.Vj^e. and foure yeiris ; quhairby the said ky gaif na milk bot bluid and worsome⁵ thairestir. ITEM, ffor cureing, be Inchantment and Sorcerie, of vmq^{le} Margaret M^cguffok, callit ' the Witch of Barneweill,' hir horfe, quhairon scho raid ; committit a tuentie yeir syne, or thairby. AND siclyk, ffor laying on of Sorcerie and Inchantment and devillery vpone Jonet Lowrie, the streking of hir blind ; and be cureing and taking af of the said Witchcraft af hir agane, and restoiring hir to hir former sight. ITEM, for cureing and helping, be Inchantment and Sorcerie, of Elizabeth Craufurdis bairne in Glesgow, quha had bene deidlie feik of ane strange incurable diseife, be the space of aucht or nyne yeiris of befor, be taking ane clayth af the said bairnes fface, and sayneing and

¹ Nearest.² This seems to have been a favourite practice. It is elsewhere called ' *junting*,' (jointing) as may be seen in the description of the midnight orgies of Annie Samson and others of the unhappy wights who suffered for their deceptions of this sort.³ ' *Fushion* ' (*fouison*.) pith, strength, flavour, &c.⁴ For ten successive years.⁵ Blood and purulent matter.

croceing with his hand the said bairnes fface; keiping of the said clayth, be the space of aucht dayis; and thaireftir, haifing returnit to hir with the said clayth, couerit hir face agane thairwith, quha fleipit a tua dayis altogidder, and walknit nocht; and at the tua dayis end, ane of the said barnes eyne, that was ofbefoir tynt, throw the said diseafe, was restoirit to hir; and within fyve dayis thaireftir, the said barne was, be the said Inchantment, curet and mendit be the said Patrik. AND finallie, for ane Cowmone and notorious Sorcerer, Warlok and abuser of the peopill, be all vnlawfull charmes and devillifche Incantationes, vsed be him, this xxiiij yeir bygane.

For the quhilkis crymes *respectiue* aboue writtin, the said Patrik Lowrie was put to the knowlege of ane Assyse.—The Aduocat askis instrumentis of the sweiring of Assyse.

MR DAVID MYLL,¹ being sworne, att the desyre of Patrik Lowrie, to mak Declaration of his brute² and behaviour; deponit that he wes bruteit and comounlie callit ‘Pait þe Witch!’ And declaris, he gatt his fatheris malefoune,³ and said he wald mak ane ill end: And declaris, that he wes ordanit to mak his repentance, for the brute and sklander he sustenit; and that he maid his repentance.

And thaireftir the said Patrik Lowrie defyrit the Justice and Assyse to trow⁴ the said Mr David Myll.

My Lord Aduocat proteftis for Wilfull Errour, in caice thay acquit him of the Dittay.

VERDICT. Eftir accusation of the said Patrik, be Dittay, of the crymes *respectiue* aboue specifeit, and verificatioun of the samyn, be production of certane writtis be the said Sir Thomas Hammiltoun, aduocat; the Assyse, all in ane voce, be the mouthe of Johnne Wallace in Lonesse, chancellor, stand, pronuncet and declairit the said Patrik to be ffylet, culpabill and convict of the hail crymes *respectiue* aboue specifeit.

SENTENCE. The said Justice-depute decernit and ordanit the said Patrik Lowrie to be tane to the Castell-hill of Edinburgh, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir, his body to be brunt in asches; and his hail moveabill guidis and geir, gif he ony hes, to be escheit, &c.

Fire-raising — Taking Captive and Prisoner, &c.

Jul. 24.—INGRIE AIRMESTRANG in Inzieholme;⁵ Archie Airmestrang of Flaskholme.

Dilaitit of airt and pairt of the treffonabill Raifing of ffyre, [within the House of the Langholme?] burning and destroying thair of, pteuening to Harbert Max-

¹ Probably the Minister of the parish where this unhappy creature dwelt. reputation. Fr. *bruit*.

² Curse, malediction.

³ Credit, believe.

⁴ Report, fame, ⁵ See Vol. II. p. 450.

wall of Kavenfe : Taking of the said Harbert captiue and priffoner : Schuiting of hagbutis and piftolettis, &c.

Mathow Findlaoun of Killeyth become pledge and fouertie for Ingrie, and Archibald Batie, burges of Dumfreis, for Airchie Airmestrang, that thay fall compeir befor the Iustice or his deputis, the thrid day of the nixt Justice-air of the scherefdom of Dumfreis or Stewartrie of Annandail, quhair thay duell; or foner, vpone xv dayis wairning, to vnderly the law, &c.; aither of the saidis perfones vnder the pane of Fyve hundreth merkis money.

Slaughter.

Jul. 25.—GEORGE ANGUSE, notter; James Blair, burges of Air; David Kennydie of Corffis; and Gilbert Grahame, younger of Craig.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Richerd Spens, fervand to the Erle of Caffillis.¹

PERSEWERIS, Richerd Spens, in Vgftoun, as father; Robert Spens, his sone, as brother.

The perfeweris passis *simpliciter* fra the saidis George Anguse, &c. and declairis thame to be Innocent of the said Slauchter: Quhairupoun the saidis perfones on pannell askit instrumentis, and proteftis for releif of thair cautioneris; and that thai be nocht callit or perfewit for the said cryme, in tyme cuming.

Slaughter.

Jul. 26.—ALEXANDER BRUNTFEILD of Hardaikeris, and Nicoll Bruntfeild, sone to the Guidman of Eistfeild.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Bruntfeild, younger in Tenneudrie.

PERSEWER.

Robert Bruntfeild, as brother.

PRELOCUTOURIS for the pannell.

Mr Johnne Ruffell, Mr Williame Oliphant.

It is allegit be the pannell, that the defunct, for quhais slaughter thai ar perfewit, was flane at the horne, for four feuerall caussis, contenit in the four Hoirningis presentlie product be the pannell: Vpoun production quhair of, the pannell tuik instrumentis; and the pannell proteffit, that the producing thir Hoirningis sould nawayis affirme thame to be culpable of the factis lybellit.—Continued to Nov. 24.

Nov. 28.—Robert Bruntfeild, fear of Todrig, and Nicoll B. of Quhyte-hous become pledge and fouertie, conjunctlie and feuerallie, that thai fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdom, quhair they duell (Roxburghe,) or foner, vpone xv dayis wairning; vnder the pane of ane thousand merkis for the entrie of the said Alexander, and 500 for the said Nicoll.

¹ See Dec. 6, 1605.

Murder under Trust — Stouthreif — Adultery, &c.

Jul. 26.—WILLIAME ROISE of Dunskeithe.

Dilaitit, accuset and persewit be Sir Thomas Hammiltoun of Mounkland, kny', Aduocat to oure souerane lord for his hienes interes, of the crymes following, viz.

FORSAMEKILL as it is statute and ordanit be our souerane lordis Actis of Parliament, that the Murthour or Slauchter of quhatsumewir his Maiesteis liegis, quhair the partie is slayne vnder traist, credite, assurance and power of the slayer, all sic Murthouris and Slauchteris to be committit in tyme cuning, eftir the dait of the said Act, quhilk is of the dait the xxix day of Julij, the yeir of God, 1^m.V^m.lxxxvij yeiris, the famin being lauchfullie tryit, and the persoune dilaitit, ffund giltie be ane Assyise thairof, false Treasoun; and the persoune fund culpabill fall fforfalt lyffe, landis and guidis: As the said Act ett mair lenth beris. AND trew it is, that the said Williame Roise, haifing concludit in his haert the crewall Murthour and Slauchter of vmq^{le} Alexander Gybsoune in Nig; ffor performance of his wicked intencion, he, accompaneit with Farquhair Roise, domestik seruitor to Nicolas Roise of Pitcallane, Andro Grassich, sone to Alexander McGilliepedder and Thomas Mcconchie, vpoune the fourt day of Februar lastbypast, being Monunday, he being vnder freindschip and familiarite with the said vmq^{le} Alexander, trytit to meit the said vmq^{le} Alexander, in Huchfoun Brabneris hous in Pitcallane; quhair the said Williame Roise and his compliceis foirfaidis, in ane maist freindlie and loving maner intertineit, vnder traist of assurance, the said vmq^{le} Alexander all the day, till the ewening, driking and making mirrie: And about aucht houris att ewin, vpoune the famin day, being ane dark nycht, baith mark and mones,¹ convoyit and brocht the said vmq^{le} Alexander furth of the said Huchfoun Brabneris hous, and causit him to vnderstand that he wald tranpourt him to his awin hous; att the quhilk tyme, he maist trefsonable drew and convoyit the said vmq^{le} Alexander out of the way, to ane burne-syde, nocht far distant fra the said Huchfounis hous, he being than vnder the said Williamis traist, credite and assurance, lipping for na harme, iniurie or hurt to haif bene done to him be the said Williame and his complices, that war with him in his company, bot to haif bene preferuit and defendit be him thair. Efter the said Williame, in forme of freindschip and familiarite, delyrit the fycht of the said vmq^{le} Alexanderis sword, the said Williame and his complices maist treasonable disarmit him of his armour and wappinnis that wes about him, and maist treasonable murtherit and slew him, ffyrst be slykyng aff his . . . hand, nixt be gewing to him ane crewall and deidlie fraik in his heid, with ane half lang sword, and diueris vtheris crewall and deidlie woundis in diueris vtheris partis of his body; and thair-by, maist crewallie and trefsonable, vnder traist, freindschip and assurance, murtherit and slew the said vmq^{le} Alexander Gybsoune; and he wes airt and pairt of the said crewall and trefsonabill Murthour; ffor the quhilk he aucht and sould be pwneist as ane Traittour, viz. be fforfalt of his lyffe, landis and guidis. To the takin² that he wes culpabill of the said trefsonabill fact, he immediatlie eftir the committing of the said crewall Murthour, and to the intent the famin sould nocht haif cum to lycht, he delyverit to the said vmq^{le} Williame McStein, his cotter, the soun of foure schilling, and the said Farquhair Roise gaif vther four schilling, to the said Andro Grassich, for breing³ of the said vmq^{le} Alexander in the eird,⁴ or casting of him in the sea: Lyke as, the said vmq^{le} McStein and Andro Grassich, being thairfestr tane and apprehendit for the said fact, be thair Depositionnis, grantit and confessit that the said Williame wes the principall slyrkear and murtherfear of the said vmq^{le} Alexander, with his awin hand; and att the place of execution, quhair thay sufferit, thay past to death thairwith. To the takin also, the said Williame Rois being persewit before our souerane lordis Justice, to haif vnderlyne the law for the said cryme, he past to the horne, and continewallie senfyne hes bene fugitiue thairfor; as the Letteris presentit beris. ITEM, the said Williame, being indytit and accusit, fforamekill as it is statute and ordanit, be diuerse our souerane lordis Actis of Parliament, speciallie, be ane Act of his

¹ Dark (mirk) and moonless.² In token or testimony.³ Burying.⁴ Earth, ground.

hienes ellewint Parliament, begun and hauldin att Edinburgh, the xxix day of Julij, 1^m.V^c.lxxxvij yeiris, that in caice it fall happin ony landit men to be lauchfullie and ordourlie convict of the crymes of Common Thift, Reflett of thift, or Stouth-reiff, in tyme cuming, thay fall incur the cryme and payne of Trefloune, that is to say, tinfall¹ and fforaltour of lyffe, landis and guidis; as the said Act att mair lenth beris. And trew it is, that the said Williame Roife of Dunskeith, being ane landit gentillman and heretour of the saidis landis of Dunskeith, accompaneit with the persounes soirfaidis, his complices, immediatlie at the tyme of his trefsonabill Murthling and slaying of the said vmq^{le} Alexander Gibson, in maner and at the tyme aboue writtin; he, be way of Maisterfull Thift and Stouth-reiff, trefsonable, violentlie and thiftionsslie staw, conceillit, reflett, rest and away-tuik, fra the said vmq^{le} Alexander, the sowme of ane hundreth merkis money, or thairby, quhilk the said vmq^{le} Alexander had vpone him, and in his purse, the tyme of the said Williame Roife committing of the said trefsonabill Murthour and Slauchter soirfaid; and the said Williame is airt and pairt of the Stouth-reiff, steilling and away-taking of the said money; and thairthrow, the said Williame Roife, being ane landit gentillman, in maner soirfaid, hes committit manifest Trefloune, and the panes and pweineilment spceifeit in the saidis Actis of Parliament, viz. tynfall and fforaltour of his lyfe, landis and guidis, aucht and could be execute aganis him with all rigour, in exampill of vtheris. To the taikin, that he, being culpabill of the saidis trefsonabill crymes of Thift and Stouth-reiff and Murthour vnder trest, the said Williame was persewit criminalle thairfoir, befor the Justice and his deputis, to haif vnderlyne the law for the samyn, in the moneth of Maj lastbypast, he than past to the horne, and hes bene continuallie senfyne fugitiue for the saidis crymes. As the saidis Letteris of Hoirning, producat iudicialle be our said souerane lordis advocat, at lenth portis. Lykas, be his awin Depositiones, he hes confessit the Murthour aboue writtin, and that he wes airt and pairt thairof. ITEM, the said Williame, being indytit and accuset, fforamekill as he, haifing thir dyuerse yeiris bygane intenteit and keipit in companie with him Marie Rannaldoche, ane harlot, committing Adulterie with hir, he being mareit with vmq^{le} Agnes Rose, his lauchfull spous, and the said Marie being with bairne to him, scho and vmq^{le} Williame McStene, serwand and hyred man to the said Williame, togidder with the said Williame him selff, consultit and concludit, at diuerse thair tryftis and meittingis, the trefsonabill Murthour of the said vmq^{le} Agnes, his lauchfull spous, vnder trest, credeit and assureance; lyk as, for performance of thair wikket purpois and intentionne, the said Marie, be the said Williame's direction, gaif to the said vmq^{le} Agnes, his spous, poysonet drinkis; quhilkis trefsonabill drinkis, nocht haifing wrocht vpone hir to the deith, bot the samyn, at findrie tymes, being vomeitit bak agane be hir; and finding himselff disapoyntit be that trefsonabill meayne,² and hir daithe postponit and delayit, he thairfoir of new consultit and devyfit with the said Marie Rannaldoche and Williame McStene, quha, in the moneth of May, 1^m.Vj^e. and foure yeiris, be the said Williame's speciall causing, direction and command, inait trefsonabillie, crewallie and vamercefullie Strangallit and wirreit the said vmq^{le} Agnes, his spous, in her bed, within hir awin hous, vnder silence and clud of nycht; ffor performance quhairf, he promeit to the said Marie Rannaldoche to marie and tak hir to wyfe: Lyke as, the said Williame McStene, being apprehendit for the trefsonabill Murthour of the said vmq^{le} Alexander Gibson, and examinat be certane of the Ministrie³ and gentillmen of the cuntry, Confessit and declairit that he, at the said Williame Rossis command and direction, accompaneit with the said Marie Rannaldoche, murdreit and trefsonabillie strangillit the said vmq^{le} Agnes, his spous; ffor doing of the quhilk trefsonabill deed, the said vmq^{le} Williame McStene Confessit he ressaunt fra the said Williame, as ane reward for his panes, ane rig of beir,⁴ togidder with the haill clothing that was vpone the said Williamis bak the tyme of the said Murthour, viz. his bonet, fark, coitt, doublet, breikis, hois, fokis and buittis. Lyk as, for testificatioun of the treuth of the said trefsonabill Murthour, and that the said Williame was airt and pairt thairof, the said Williame, be his Depositiones maid in prefens of Mr Williame Hairt, Justice-depute, and the Bailleis of Edinburgh, the xxv of this

¹ Loss.² Measn, Fr. moyen.³ Clergy.⁴ Ridge of barley.

instant, hes confessit that the nycht appoyntit be him and his complices for performinge of the said tressonabill Murthour, he withdrew him self furth of his awin hous of Dunskeith, fra his said spous, to his chieff the Laird of Balnagounes houe, quhair he remanit quhill midnycht; about the quhillk tyme, his conscience being sa tuchet and trubillit for the said tressonabill fact, quhill, be his counfall and directioun foirsaid, was that nycht to be put in executioun, be the persones foirsaid, he arraise out of his bed, putt on his claithes and come to his awin houe, of purpois (as he declairit) to haif stayit the said wicked fact: And he, finding the turne done afoir his cuning, he reteirit him self bak agane. Quhillk tressonabill fact he bes continuallie senfyne conceillit to the tyme of his Examinatioun foirsaid. And thairthrow, he is airt, pairt, red and counfall of the said tressonabill Murthour and strangelling of the said vmq^{le} Agnes his spous, vnder tress, and aucht and sould be puneithet thairfoir, conforme to the tennour of the said Act of Parliament. ITEM, the said Williame, being indytit and accuset, that he, being ane landit Gentilman, as said is, with his complices, cowmone thevis, in the moneth of . . . the yeir of God . . . thiftionlie, and be way of Maisterfull Thift and Stouth-reiff, staw, rest and away-tuik, fra Williame Micain M^cWilliame in Gany, tua scheip, had and dispoinet thairupoune at his pleasour; and he, being ane landit Gentilman, be committing of the said maisterfull thift and stouth-reiff, hes committit Tressone; for the quhillk, he aucht and sould be pwnieichet, conforme to the said Act of Parliament. To the taikin, he being challanget for the samyn, maid redrefs and satisfactioun to the said Williame M^cean, at command of Huchon M^cTullie, his maister. ITEM, for airt and pairt of the thiftious Steilling, conceilling, refsetting and away-taking of ane ox, fra James Corbett in Arkbole, in the moneth of . . . yeiris: And he, being ane landit Gentilman, hes thairby committit Tressone, &c. ITEM, for airt and pairt of the steilling, conceilling, refsetting and away-taking fra Findla Mansoun, Minister in Nig, in the moneth of October 1^m. fax hundreth and foure yeiris, of fax geise, had and convoyit the samyn away with him, and dispoinet thairupoun: And the said Williame, being ane landit Gentilman, hes thairthrow committit Tressone, &c. ITEM, the said Williame, being indytit and accuset, for cuning with his complices, in the moneth of December, the yeir of God 1^m.Vj^e. and foure yeiris, to David Fairnes barne in Nig, and thiftionlie, vnder silence of nycht, brak the said barne, and staw, conceillit, refset and away-tuik furth thairfoir ane sek full of victuall, contening fax sirlottis. To the taikin, he come to the said David Fairne, and offerit to get the samyn tryit furth¹ to him, for ane rewaird; and he was airt and pairt of the thiftious steilling, conceilling and away-taking thairfoir; and thairfoir, he being ane landit Gentilman, hes incurrit the cryme and pane of Tressone. ITEM, for airt and pairt of the steilling, conceilling and away-taking of faxtene scheip, pertening to Alexander Mansoun, Donald Beroch and Andro Bane, in the moneths of October and November last-bypast, in the yeir of God 1^m.Vj^e. and four yeiris, had and convoyit the samyn away with him to the Craigis of Dunskeith, quhair he flew the said scheip and cast thair intralls in the sea; and thairefter, careit the boukkis² thairfoir to his awin hous in Dunskeith, quhairin he and his complices did eit the samyn: And he, beand ane landit Gentilman, be committing of the said theft and maisterfull Stouth-reif, hes committit Tressone, and incurrit the panis contenit in the saidis Actis of Parliament. ITEM, for Cowmoun thift, cowmoun refset of thift, inputting and outputting of thift fra land to land, fra cuntrey to cuntrey, baith of auld and of new: And thairfoir, he being ane landit Gentilman, be committing thairfoir, hes committit manifest Tressone, and aucht and sould be pwnieichet conforme to the Actis of Parliament, viz. be florifaltour and tynsell of lyfe, landis and guidis, in exampill of vtheris to commit the lyk in tyme coming.

For the quhillkis crymes, the Justice-depute ordanit the said William Roife to be put to the knowlege of ane Assyse, of the persones following.

¹ Searched out, discovered.

² *Bulks*, carcasses.

ASSISA.

Hucheon Roife, fear of Balmukie,	Willame Dumber of Hemprigis,	Mark Mawer of Staynies,
Alex ^r Bane of Wester Logie,	Walter Kynnaird of Cowbyn,	Mr James Dumber of Tarbett,
Donald Thonetoun, burges of Edinburgh,	Johnne Burgie in Haltoun,	Capitane Andro Bruce,
	Alexander Watfoune in Grange,	Robert Dumber of Burgie,
Mr Rannald Bane, burges thair Ja Adamfoun, burges of Kinlofe,	Alexander Cruikshank in Lytill Pynnik,	Patrik Dumber of Blarie.

The Aduocat takis instrumentis of the fwering of the Affyse; and that Willame Rose grantit the Slauchter of vmq^{le} Alexander Gybloune.

The Pannel, befor his Convictioun, declairis that Ferquhair Roife wes nocht in company with him at the slauchter of vmq^{le} Alexander Gybloune; nather wes he ather airt or pairt of the said Slauchter.

VERDICT. The Affyse, be the mouth of the said Mr James Dunbar, chancellor, all in ane voce, ffand, pronuncet and declairit the said Willame Roife to be ffylet, culpabill and convict of airt and pairt of the trefsonabill and crewall Slauchter and Murthour of the said vmq^{le} Alexander Gibloune, indueller in Nig, committit the tyme foirfaid, vnder trest, assureance, freindschip and familiaritie, in maner aboue writtin: AND als, ffand, pronuncet and declairit him to be ffylet, culpabill and convict of airt and pairt, red and counfall of the trefsonable Murthuring, strangling and wirrieing of the said vmq^{le} Agnes Roife his spous, committit the tyme foirfaid, vnder trest, credeit and assureance, in maner as is aboue writtin: AND lykwayes, ffand, pronuncet and declairit the said Willame Roife, to be Cleane, innocent and acquit of the haill poyntis of Thift, quhair of he wes accusit be Dittay, in maner aboue writtin, and of everie ane of thame.

SENTENCE. For the quhilkis trefsonabill crymes of Murthour, of the quhilkis he was convict in maner foirfaid, the said Justice-depute, be the mouth of James Henderfone, dempster, ordanit the said Willame Rose of Dunskeathe to be tane to the mercait croce of Edinburgh, and thair his heid to be strukin fra his body: And decernit and ordanit all his landis, heritages, takis, steidingis, rowmes, possessiones, coirnis, cattell, insicht pleniffing, guidis and geir, to be ffoirfaltit and escheit to our fouverane lordis vsf, as convict of the saidis trefsonabill crymes.

Slaughter — Shooting of Hagbuts and Pistolets.

Jul. 30.—DAVID JARDANE in Wandeldyke, Alexander Jardane in Wandell, Johnne Symfoun in Mylnehill, and twelve others.

Delaitit, accuset and persewit for the crymes following, viz.

FORSAMEKILL as the saidis David, &c. with thair complices, with convocation of our fouverane lordis leigis, to the number of twentie-foure persones, or thairby, all bodin in feir of weir, with jakis, secreitis, speiris, steil-bonnetis, fwoirdis, hagbuttis and pistolettis, expresse prohibeit to be borne, worn, vsf or schot with, be our fouverane lordis Actis of Parliament and Secretit Counfall, vnder dynerse panes

contentit thairintill; haifing conſanet ane deidlie feid, rancour and malice aganis vmq^{le} James Clelland¹ (in Vnder-the-bank,) in the moneth of Junij, the yeir of God I^m. fyve hundreth fourcoir fourtene yeiris, came to Wandelholme, upon Clyde, befye Davieſchaw, quhair the ſaid vmq^{le} James was, in ſober and quyet maner for the tyme, ryding at the hunting, in company of Sir James Hammiltoun of Libbertoun, lipning for na harme, iniurie or perfute of ony perſones, bot to haif levit vnder Godis peax and his Maieſteis, and thair ſett vpon him, ſchot and dilafchet² thair hagbuttis and piſtolettis at him, quhairby thay ſchott him throw the body, and with ſuoidis, quhingeris and remanent wappones foir-faidis, hurt and woundit him in dyuerſe pairtis of his bodie, to the effuſioun of his bluid in grit quantitie: Off the quhilkis ſchottis and ſtraikis, the ſaid vmq^{le} James immediatlie thaireftir depairtit this lyffe; and ſa, the ſaid vmq^{le} James Clelland was crewallie and vmercifullie flane be the ſaidis perſones: And thay being all vpon the grund, purſuing him with ſuoidis and remanent wappones aboue ſpecifeit, thay and ilk ane of thame ar airt and pairt of the ſaid crewall Slauchter, committit vpoun ſett purpois, proviſioun and foirthocht felony; in hie and maniſt contemptioun of our ſouerane lordis auctoritie and lawis, in ewill exampill to vtheris his hienes lieges to commit the lyk crewall Slauchteris.

PERSEWERIS, Gavin Kneilland, Roger Kneilland, as ſones.

PRELOCUTOURIS for the pannell, Mr Johnne Ruffell, Robert Hammiltoun.

VERDICT. The Affyſe, be the mouth of David Blair in Corſlaw, chancellor, ſtand, pronunceit and declairit the ſaidis Dauid Jarden, &c. to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the ſaid vmq^{le} James, and of the hail poyntis of Dittay aboue writtin.³

[*Mr Williame Hairt et Mr Williame Boirthuik, Juſtices-Deputes.*]

Slaughter — Shooting of Piſtolets.

Aug. 6.—ARCHIBALD MAXWALL of Cowhill,⁴ and Williame Maxwall, appeirand of Cowhill, his ſone.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Maxwall of Kirkhill (Kirkhouſe, or Croveſtanes,) committit in the moneth of Junij 1583 yeiris: And for beiring and weiring of piſtolettis, contrair the Actis of Parliament.

PERSEWERIS, Williame Maxwall (of Kirkhouſe,) Charles Maxwall, James Maxwall, Robert Maxwall, David Maxwall, Sir Thomas Hammiltounne.

PRELOCUTOURIS for the pannell, Mr Williame Oliphant, Mr Johnne Ruffell, Mr Alexander King, Sir Rob^t Maxwall of the Schottis, Williame Maxwall of Gribtounne, Eduard Maxwall of the Hillis.

DITTAY againſt the Pannell.

FORSAMEKILL as the ſaidis Archibald Maxwall of Cowhill, and Williame Maxwall appeirand of Cowhill, with thair complices, with convocation of our ſouerane lordis lieges, to the number of ſax perſones, or thairby, all bodin in feir of weir, with ſwoirdis, ſecreittis, gantilletis, plait-levis, lang hagbuttis and piſtolettis, exprellie prohibeit to be borne, worne, vſet or ſchot with, be our ſouerane lordis Actis of Parliament, vnder dyuerſe panes contentit in the ſamyn, in the moneth of Junij, or thairby, the yeir of God I^m. fyve hundreth fourcoir thre yeiris, vpon deidlie feid, rancor and malice conſanet aganis the ſaid vmq^{le} Robert Maxwall of Kirhouſe, for teynding⁵ of the ſaid Archibald Max-

¹ Kneilland. The name was indifferently ſpelt Kneilland and Clelland, at this period.

² Old Fr. *deslaſcher*.

³ With regard to the reſt of the pannells, the purſuers 'paſt fra' a number; and the remainder were 'repleget to the regalitie of Dalkeyth, be my Lord of Mortounne.'

⁴ See Nov. 6, 1605.

⁵ Tything his lambs and other

ſmall tythes, as having a heritable right to the teinds or tythes of Cowhill. The drawing of ſmall tythes was always conſidered an oppreſſive act in Scotland, and had for a long period been diſuſed.

wall of Cowlhillis lambes and vtheris small teyndis, thay sett vpon the said vmq^{le} Robert, vpon the lardis of Redbank, lyand within the parochin of Kirkhous, and stewartrie of Kirkeubrycht, quhair he was, in sober and quyet maner for the tyme, doand his lesull effaires and buffines, in teynding of lambes; dredand na evill, harme, iniurie or perfute of ony perfonen, bot to haif levit vnder Godis peax and our souerane lordis; and thair, schott thair hagbuttis and pistolettis at him, and maist crewallie, schamefullie and vnumercifullie slew the said vmq^{le} Robert Maxwell: And thai and either of thame ar airt and pairt of the said crewall Slauchter; quhairby thay haif nocht only committit crewall Slauchter, vpon set purpois, prouisioun and foirthocht felony, bot in lyk maner hes contravenit the tennour of the said Actis of Parliament, in beiring, weiring and schuiting of hagbuttis and pistolettis, and hes incurrit the panes contenit thairin, quhilk aucht and sould be execute aganis thame with all rigour, in exampill of vtheris to abstene frome the lyk in tym cuming.

It is allegit for Williame Maxwell, younger of Cowhill, that the tyme of the committing of the fact lybellit, viz. in Junij, 1583, that he was nocht past xij yeiris of age, *et sic non doli capax*; and can nocht thairby be put to the knowlege of an Assyse, for the crymes lybellit; and offeris to prove his age instantlie.—It is answert be the Aduocat, the allegeance aucht to be repellit, as nawayis releuant to stay the mater to pas to the knowlege of an Assyse, becaus all thingis *in facto* man be tryit be the Assyse: And albeit he had been minor, the contrair quhairof is maist manifest, yit the samyn procures na impunitie, in crymes of this natour; speciallie, being committit eftir the manner lybellit.

THE Justice, nochtwithstanding of the allegeance, findis proces; and Remittis the cryme lybellit aganis Williame Maxwell to the knowlege of ane Assyse; and Remittis to the Assyse anent his age, to tak cognitioun thairin as thay think expedient.

It is forder allegit, that this matter can nawayis pas to the tryell of ane Assyse, becaus the pannell, in the moneth of Februare, yeir of God I^m.V^c. fourfcoir aucht yeiris, hes obtenit our souerane lordis Respett, quhairof thair is dyuerse yeiris as yit to ryn: As the Respett producet beiris.—The Aduocat takis instrumentis of the productionn of the Respett, be bayth the perfonen on pannell. It is allegit, that the Respett is null, becaus the samyn is nocht past be the The-saurer and the Register, conforme to the Act of Parliament. It is answert, aucht to be Repellit, in respect of the Respett, quhilk is past the Previe seill.—It is forder allegit, that the Respett producet is null, in respect of the Act of Parliament, quhilk makis all Respettis to be null, the samyn nocht being grantit be satisfactionne of partie and Letter of Slaines¹ grantit be the pairtie thairvpoun.—It is answert, that the Act of Parliament allegit, is only temporall.²

THE Justice declairis, during the tyme of this Respett, he will nocht, for the Slauchtir lybellit, put the pannell to ane Assyse.—Quhairvpoun the pannell askit instrumentis.

¹ A writ granted by the nearest relations of the deceased, acknowledging themselves to be satisfied for the slaughter. It frequently bore their consent to a free pardon by the King.

² Temporary.

The Aduocat producet the Kingis Maiefteis Letter, direct to the Juſtice, &c. ; quhairof the tenour followis.

JAMES R.

JUSTICE, Juſtice Clerk and your deputis, We greit you weil. Forafinuche as Archibald Maxwell of Cowhill and Williame Maxwell his ſone, being ſummond to compeir befor you, in our Tolbuith of Edinburgh, the ſaxt day of Auguſt inſtant, to vnderly our law for airt and pairt of the Slauchter of vmq^{le} Robert Maxwell of Crovetanes, and for contravening our Actis of Parliament, in beiring, weiring and ſchuiting with hagbuttis and piſtolettis, as We are informet, intendis to uſe ane Reſpett allegit grantit to thame by ws, quhairof we nevir had ony knowlege: And gif ony be producet be thame, the ſame is ſeniſteruſſie purchest by our knowlege,¹ and contrair to our lawis, Actis of Parliament, and equitie. Thairfor, it is our will, and We command you, that incontinent eftir the ſicht heir-of, ye put to ane knowlege of Aſſyſe, for beiring, weiring and ſchuiting of hagbuttis and piſtolettis: And gif thay be convict, that ye caus pwneifch thame conforme to our Actis of Parliament, by cutting af pair rycht hand; and forder as our ſaidis Actis preſcryues. And gif ye delay the tryell of the Slauchter, vpoune the productionn of the ſaid allegit Reſpett; than, eftir pair tryell and pwneifchment, for beiring and weiring of hagbuttis and piſtolettis, in maner ſoirdſaid, ye ſhall put them in ſure firmance and keiping within the Tolbuith of Edinburgh, quhill we be adverteit of your proceedingis, and our forder Will be ſignifeit vnto you pairament. This ye ſhall nawayis fail to do, as ye will anſwer pair-poune: Quhairanent þir preſentis ſhall be to you ſufficient Warrant. GEVIN at Houghloun, þe penult day of July 1605.

And according to the ſaid Warrant, the pannell aucht to be put to the knowlege of ane Aſſyſe.—It is anſuerit be the pannell, that the Kingis Maieſteis Previe Letter is na ſufficient Warrant to derogat the Reſpett, paſt the Previe Seill; ſpeciallie, in reſpect that ſic privat Letteris ar reprobat be the Actis of Parliament.—It is anſuerit be the Aduocat, that ſic previe Letteris as ar purchest for ſtay of juſtice, ar diſallowit be Act of Parliament; bot this Letter is direct, of certane knowlege, and furtherance of juſtice, and pwneifchment of ane odious cryme.

THE Juſtice ſfindis as of befor, for the Slauchter allanerlie.

It is forder allegit, be the pannell, that that pairt of the Dittay, concerning the ſchuitting of ane hagbut, can nawayis be put to the knowlege of ane Aſſyſe, becaus thair is ane Reſpett producet for the Slauchter; quhill Reſpett is fund relevant for the Slauchter, to ſlay the pannell to paſ to ane Aſſyſe; and thair is na thing contenit in the Dittay, for ſchuiting, beiring and weiring of piſtolettis and hagbuttis, bot that the defunct was ſlane with ane hagbut; quhillk is the maner how the ſaid fact was committit: And as the fact is elydit be Reſpett, ſa the maner of the committing thair of is ſuperceidit be the ſaid Reſpett; ſua that, during the ſaid tyme comprehendit in the Reſpett, nather can the pannell be put to the knowlege of ane Aſſyſe, for the ſlauchter, nor ſchuitting of the hagbut, quhillk was the inſtrument be the quhillk it is allegit the deid was committit.—It is declairit be my lord Aduocat, in reſpect of the Juſtice Interloquitour, he Reſtrictis his ſummondis only for perſute of the pannell for beiring, weiring and

¹ By ſinifer means, procured without our knowledge.

ſchuitting of hagbuttis and piſtolettis : And allegis, that the Reſpett producet can nocht ſtay proces for that cryme; becaus Reſpettis, being odious of the Law, as grant-it for inipuntie of crymes and ſtay of juſtice to pairteis greivit, thay can nevir be extendit fauourabillie, be interpretation of the Judge, to ony forder nor (than) the expreſs woirdis thair of beiris : And thairfoir, the bering, weiring and ſchuiting with hagbutis and piſtolettis, being ane cryme pwneifheable of the Law, and nawayis mentionet in this Reſpett, the pardon of the cryme of Slauchter, contentet in the ſaid Reſpett, can nevir be extendit to the vther cryme of ſchuiting with hagbutis, &c. ; ſpeciallie, in reſpect of the woirdis of the Reſpett, pardon-ing the Slauchter allanerlie, and of his Maieſteis Warrant producet ; quhilke removes all doubt that evir his Maieſtie had intention to pardon the cryme of the hagbuttis and piſtolettis to the pannell.—It is anſuerit, that the Aduocattis declaratioun alteris nathing the tennour of the Letteris, contentis thair of, and Interlocutour producet. Thair is na mentioun maid in the Letteris of beiring and weiring and ſchuiting, bot ony of ane ſchot, be the quhilke it is allegit the Slauchter was committit : And forder, the Reſpett producet is nocht ony extendit to the Slauchter, bot all that mycht follow thairupone ; quhilke was the ſchuiting of the hagbut, be the quhilke the Slauchter was committit : And quhair it is allegit, that the Reſpett grantit for ane cryme can nocht be extendit to ane vther, aucht to be repellit, in reſpect of the Reſpett, and the coniunctioun of the factis : And forder, of the Law and practik of this realme, ane Reſpett or Remiſſioun grantit of ane gritter cryme comprehendis leſs crymes, albeit na mentioun be maid of the leſs ; ſpeciallie, haifing conſideratioun, quhan the leſs crymes ar ane pairt of the gritt cryme, quhairfoir the Reſpett is gevin, and all done *in uno contextu*, at ane tyme ; and the leſs cryme the inſtrument of the grit, quhilke is reſpettit.

It is forder allegit, that this Reſpett man comprehend the ſchuiting with the hagbut, in reſpect it is exprellie ſtatute, be Act of Parliament maid in the dayis of King James the Fourt, Parlamento ſexto, cap. 62, That in all Reſpettis and Remiſſiounes, mentioun ſhall be maid of the gritteſt cryme, ſa that be the expreſs meaning of the ſaid Act, the gritteſt cryme being remittit and contenit in the Reſpett, the leſs crymes man be lykwayis comprehendit thairintill ; ſpeciallie, in thir crymes, quhilkis ar ſa coherent and conioynet togidder, that the Reſpett or Remiſſioun comprehending the gritteſt, of all neceſſitie man comprehend the leiſt.—It is anſuerit be the Lord Aduocat, that that Act of Parliament militatis ony, quhair thair is Remiſſioun or Reſpet, tane ony for ane particuler cryme, and ane generall claufe of Remiſſioun ſubioynit thairto ; bot in this caice, the Reſpett producet contenis ony the cryme of Slauchter allanerlie, without ony generall claufe of vther crymes ſubioynit thairto : In reſpect quhair of, the allege-

ance aucht to be repellit.—It is anfuerit, be the pannell, that the Respet noch only comprehendis the slauchter, bot also all thingis that can follow thairupoun, quhilk is the schuiting.

It is forder allegit, be the pannell, that the cryme of schuiting and weiring of hagbuttis and pistolettis was nevir *in viridi obseruantia*, and sic a cryme quhairupoun ony accusatioun or punefichment followit, befor the Act of Parliament, in anno I^m.V^c.lxxxvij; fra the quhilk tyme and Act, that cryme hes only bene obseruet, and the pwneifichment contenit in the said Act hes only had place. And albeit, be Act of Parliament maid in anno I^m.V^c.lxvij, it is statute and ordanit, that the weiring, vsing and schuiting of hagbutis and pistoletis, fall be tynfall (*loss*) of the rycht hand, yit be ane posteriour Act, maid in anno I^m.V^c.lxxix, the pane of the schuiting and vsing is only pecuniall, contening the fowme of x li. and tynfall of the hagbut or pistoll: And sa, haifing confidderatioun that this fact is allegit to haif bene done in anno 1583, lang befor the yeir of God I^m.V^c.lxxxvij, the panes of the said Act can nawayis be extendit aganes thir defenderis. It is anfuerit be the Lord Aduocat, that the Act of Parliament, in anno I^m.V^c.lxxix, maid lang befor the committing of the cryme lybellit, levis to the Kingis Maiestie, his optioun of the inflicting of the corporall pwneifichment for the said cryme; quhairanent, his Maiestie hes declairit his will, be the Warrand producet.

It is forder allegit be the pannell, that the Act of Parliament, maid in anno lxxxvij, declairis the penaltie of the former Actis to haif place, with the additioun; sa that befor the tyme, the Kingis Maiestie nevir declairing his Will, his Maiesteis Will and penaltie man be only extendit fra the dait of the last Act.—The Aduocat anfueris, the maist solempe Declaratioun of his Maiesteis Will is be Act of Parliament.

THE Justice Repellis the allegiance, in respect of the Act of Parliament, Respett producet, and his Maiesteis Warrand; and Ordanes forder proces.

It is forder allegit, be the pannell, that the pannell, for weiring and vsing of pistolettis, can nawayis be put to the knowlege of ane Assyse, becaus it is confessit in the Dittay, that the weiring and schuiting of the hagbut or pistolettis was committit vpoun the landis of Reidbank, quhair the defenderis duelt and remanit for the tyme; and it is nawayis prohibeit be the Act of Parliament, bot be the contrair, it is permitted to persones to beir, weir and schuit hagbuttis and pistolettis, within thair awin houffis, yairdis and cloissis: And trew it is, gif ony hagbut was schott, borne or worne, the samyn was within the house of the saidis landis, at the leift, hard be the yettis and durris thair of: And albeit ony persone wald schuit and weir within his awin house, or at the yettis or within the cloissis

thairof, that is na cryme of the law. And now it man be respectit, that thair is na mair in our Dittay, bot only the beiring, weiring and schuiting, &c.; vnder proteftatioun, that the pannell nawayis grantis the famyn.

ASSISA.

Johnne Lyndfay of Auchinfeach, Jo. Mertene, bailzie of Blaikfchaw, Michell Anderfoun, burges of George Reidik of Airdrie, Adame Strudgeoun of Myllerland, Dumfreis, Johnne Turnour of Ardwell, Harbert Strudgeoun of Towcroce, Clement Edzier of Kirkblane, Williame Williamefoun, burges Johnne Richiefounne, burges of Harbert McKie in Prestoun, of Dumfreis, Dumfreis, Robert Edzier of Blaikfchaw, Johnne Slowane¹ of Garroche, Johnne Gibfoun, burges thair. Robert Rediche of Barnehowrie.

OBJECTION to an *Affisor*.—It is allegit that *Williame Maxwall of Merfyde* can nocht pass of this Affyse, becaus he was nocht of perfyte age, viz. vpon the age of xiiij yeiris, the tyme of the committing of the fact lybellit.—It is anfuierit, be the Aduocat, the allegiance aucht to be repellit, in respect of his present age.—The said Williame Maxwall being inquiryt be the Justice and fuorne, ‘Quhat age he was presentlie of?’ Declairit he was outwith xxv yeiris of age.—It is allegit be the pannell, that the said Williame Maxwall of Merfyde, the tyme of the committing of the fact lybellit, was nocht foure yeir auld.

THE JUSTICE Repellit *Williame Maxwall*, in respect of his awin confessiounne, quha declairit that he was tennet to Harbert Maxwall of Kavense.

The Aduocat takis instrumentis of the sweiring of the Affyse, and protestis for Wilful Errorr gif thay acquit: As also of the sweiring of the Dittay be the perseweris; and that the defunct was flane be Williame Maxwall appeirand of Cowhill, be ane schott.

SPECIAL VERDICT of the *Affyse*.

THE saidis perfonas of Affyse, be the mouth of the said Johnne Lyndfay of Auchinfeach, chanceler, fand, pronuncet and declairit, all in (ane) voce, the said ARCHIBALD MAXWALL elder of Cowhill to be Clene, innocent and acquit of the beiring, weiring and schuiting of hagbuttis and pistolettis, committit vpon the saidis landis of Reidbank, in the moneth of Junij, the yeir of God 1^m.Vc. fourfcoir thre yeiris: AND sicklyke, fand, pronuncet and declairit, all in ane voce, be the mouth of the said Chancellor, the said WILLIAME MAXWELL, appeirand of Cowhill, to be fylet, culpabill and convict of the beiring, weiring and schuiting of ane hagbut; committit in the moneth of Junij, the yeir of God 1^m. fyve hundreth fourfcoir thre yeiris, vpon the grund of the saidis landis of Reidbank, withiu ane speir-lenth to the hous thairof, pertening than to the said Archibald Maxwall; the said Williame Maxwall than being within the age of fourtene yeiris. In witnefs quhairof, the chancellor, for him self, and in name of the hail remanent perfonas of Affyse, hes subferyuit thir presents with his hand.

(Sic subfcribitur)

JHONE LYNDESAY.

Quhairupoun the saidis Archibald and William Maxwallis askit actis and instrumentis: and the said Charles Maxwall, in name of our said fouerane lordis Aduocat, Protestis for remeid of Law and Wilfull Errorr aganis the said Affyse.

¹ ‘Aflowane’ in another place. ‘A’ was then a common prefix to many names in the south of Scotland, as Amulligan, Acanan, Alasone, Ahaunay, &c.

[*Per Comitem de Ergyle, Justiciarium Generalem; et Magistrum Wilelmum Hairt, ejus Deputatum.*]

**Fire-raising — Burning the Place of Littlegill — Slaughter —
'Rapt' — Adultery — Theft, &c.**

Aug. 9.—THOMAS JARDANE of Birnok, Vmphra and Alexander Jardanes, his fones.

Dilaitit of airt and pairt of the tressonabill Raifing of fyre, burning and distroying of the Place of Littillgill, with the haill laiche houffis, barnes and byres thairrof, and haill insicht and pleniffing being thairin; and for the crewall Burning and slaying of vmq^{le} Alexander Bailzie of Littillgill, Rachael Bailzie, dochter to Mathow Bailzie, now of Littillgill, and vmq^{le} Achiesone, servand to the said Mathow; the saidis vmq^{le} thre perfonen being all within the said place the tyme of the burning and distroying thairrof; committit in the moneth of . . . the yeir of God, I^mV^c fourfcoir nyne yeiris. AND siclyk, for airt and pairt of the Slaughte of vmq^{le} Robert Broun in Culter; committit in the moneth of Junij, the yeir of God I^mV^clxxxvj yeiris: AND siclyk, for airt and pairt of the Rapt and Raviesching of Katharene Johunestoune, spous to . . . Airnefrang of Arkiltoune; committit in anno I^mV^clxxxvj yeiris: AND for the cryme of Adulterie, committit be him with hir, contrair the tennour of the Actis of Parliament,¹ &c. &c.

William Creichtoun of Darnehauche and Johnne Carmichell younger of Potieschaw, as cautioners for the appearance of the pannels, vnlawit in the pane of tua hundreth merkis for ilk ane of thame. The Jardanes ordained to be denounced Rebels, and their moveables to be escheit, &c.

[*Mr Willame Borthuik, Justice-Depute.*]

Bestiality.

Sep. 17.—JOHNE JAK, alias SCOTT, servand to Thomas Boirthuik, in Roifling.

Dilaitit of the abhominabill and monstuous fact of Sodomie,² &c.

SENTENCE. 'To be tane to the Castell hill of Edinburghe, and thair, he to be first bund to ane staik and wirreit thairat; and thaireftir, with the said meir to be brunt in aches, as he that, vpon his awin Confessioun, was convict of the crymes aboue writtin; and his haill moveabill guidis to be escheit to his Maiesteis vse,' &c.

¹ There are also numerous acts of theft of horses, cattle, sheep, &c. enumerated, but unnecessary to be noticed here.

² A case of a similarly disgusting description (the *only* instance in the early part of the Record) was purposely omitted, Sep. 1, 1570. The crime (Sodomy) is designated 'wyild, filthie, execrabil, detestabil and unnaturall.'—Johnne Swan and Johnne Liffter, smythis and servandis to Robert Hannay, the pannell, were likewise burnt on the Castle-hill of Edinburgh.

Slaughter.

Nov. 5.—WILLIAME JARDANE in Yle, Johnne Carfane in Erſik, Fergus Heroune at the Kirk of Glastrune, Johnne Aſlowane in Tyllochbloun, Nicoll Dungalfoun in Claymadie, Robert M^cBay in the Maynes of Quhithorne, James M^cconene in Caringdone, and Harie Stewart in Lagane.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Harbert Maxwall, callit *Harbert of the Coittis*; committit in September I^mV^lxxxxvij yeiris.—Johnne Dumbar of Mynnieweik become plege and fouertie, that thai ſall compeir befor the Juſtice, the xvij day of December nixtocum.

(Dec. 17.)—Johnne Dumbar vnlawit in the pane of ane hundreth merkis, for ilk ane of the ſaidis perſones: The Juſtice ordanit that thay be denunceit rebellis, &c., and all their moveabill guidis to be eſcheit.

[*Mr Willame Hairt, Juſtice-Depute.*]

Slaughter.

Nov. 6.—HARBART MAXWALL of Kavenſe.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Sir Robert Maxwall of Dynwiddie, knycht.

PERSEWARIS, Archibald Maxwell of Cowhill,¹ Willame Maxwell, appeirand of Kowhill, Archibald Maxwell, his brother, Sir Thomas Hammiltoun of Monkland, knycht.

The Guidman of Kavenſe takis instrumentis of this entrie, and proteſtis for releif of his cautioner.

The Juſtice continewis the matter to the Air of Dumfreis, or ſoner, vpone xv dayis wairning. Johnne Broune, of the Land, cautioner.—Archibald Myller, bailzie-depute to my Lord of Moirtonne, of the Regalitie of Moirtonne, Proteſtis, that the Guidman of Kavenſe finding of Cautiounne, preiudge nocht the previledge of my Lord of Moirtonne Regalitie; quhilk the Juſtice admittit.

Mutilation and Demembration.

Nov. 23.—ROBERT M^cDOWELL and JOHNNE M^cDOWELL, ſones to Peter M^cdowell of Machirmoir.

Dilaitit of airt and pairt of the Mutilatiounne of Patrick Murdoche of Camloddene and Alexander M^ckie, his ſervand, of thair richt handis.

PERSEWER, Patrik Murdoche of Camloddene, Alexander M^ckie, his ſervand, Sir Thomas Hammiltoun (knycht), Aduocat to our ſouerane lord.

PRELOCUTOURIS for the pannell, Mr Alexander King, Peter M^cdowell of Machirmoir, The Laird of Mondurk, Robert Dougall, merchand.

Peter M^cdowell of Machirmoir become pledge and fouertie for Robert and

¹ See Aug. 6, 1605.

Johne M'dowellis, his sones, that thay fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the Sherefdom of Kirkcald-brycht, or soner, vpone xv dayis wairning, to vnderly the Law,¹ &c.

[*Mr Williame Borthuik, Justice-Depute.*]

Slaughter.

Dec. 6.—DAVID MARSCHELL, messinger.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Richard Spens.²

Continued to the Justice-air of 'Air, tertio Itineris (vel super premonitione), xv dierum. Plegio, Roberto Stewart de Pithevels.'

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

Murder — Shooting of Hagbuts and Pistolets.

Dec. 11.—JOHNE JOHNSTOUNE of Auchrynnie; James, Johnne and Patrik Forbes in Mylnebowie.

Dilaitit, accuset and persewit off the crymes following, viz.

PERSEWER, Alexander Irwing, as fader.

PRELOCUTOURIS (for the pannell), Mr Laurence M'gill, The Laird of Corfindae.

FORSAMEKILL as thai, with thair complices, with convocation of our souerane lordis leigis, to the number of ten persones or thairby, all bodin in feir of weir, with jakis, secretis, steil-bonnetis, plait-flevis, speiris, lance-stalkis, suordis, quhingeris, gantilletis, hagbuttis, dagis and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with, be dyuerse our souerane lordis Actis of Parliament and Secreit Counfall, vnder dyuerse panes, mentionat thairintill; haifing consauet ane deidlie feid, rancour and malice, caufeles, aganis vmq^{le} Robert Irwing in Baddis, laillie, in the moneth of Februar last-bypast, come to the toun and landis of the Kirktoun of Skene, quhair the said vmq^{le} Robert was for the tyme, accompaneit with certane freindis and nichtbouris in the cuntrey, at ane bankett, making mirrie, lipning for na harme, iniurie or persute of ony persones, bot to haif leuit vnder Godis peax and our souerane lordis; thair, about ten houris at evin, vnder silence and clud of nycht, enterit within the said hous of the Kirktoun of Skene, quhair the said vmq^{le} Robert was, as said is, and schot and dilascbet thair hagbuttis and pistolettis at him, quhairwith thai schot him throw the body; and thaireftir, with thair suordis, hurt and woundit him in dyuerse pairtis of his body. Off the quhilkis schotis and crewall strakis, the said vmq^{le} Robert depairtit this lyfe; and sa, was maist crewallie flane and murtherit, vnder nycht, be the saidis persones; and thai, and ilk ane of thame, ar airt and pairt of the famyn Slauchter and Murthour, committit vpoun set purpois, prouisioune and foirthocht felony; in hie and manifest contempt of our souerane Lord, his hienes auctoritie and lawis.

VERDICT. The Assyse, be the mouth of Robert Watfoune in Auchincloche, ffand, pronuncet and declairit, all in ane voce, the saidis Johnne, &c. to be Clene, Innocent and Acquit of airt and pairt of the Slauchter of the said vmq^{le} Robert Irwing; and haill remanent poyntis of the said Dittay.

¹ 'James Gordoune, burges of Kirkcubrycht (and 26 others) amerciat in payne of ane hundreth merkis,' each, for not appearing to pass upon the Assise of the M'dowells. ² See Jul. 25, 1605.

Hamesucken — Slaughter.

Dec. 11.—Mr ROBERT IRWING of Moncoffer, David Gray in the Lyn, Alexander Maynie in Adiestoune, and Andro Many in Auchquhartene.

Dilaitit of the crymes vnderwritten, viz.

PERSEWARIS, Johnne Forbes of Mylnebowie, as father; Patrik Forbes, James Forbes, brether; Sir Thomas Hammiltoun of Monkland, Aduocat.

PRELOQUOTOURIS for the pannell, the Erle of Home, the Maister of Marfcell, the Maister of Moirtonne, Mr Johnne Russell, Mr Robert Lyntoune.

FORSEMEKILL as thai, with thair complices, with convocationne, &c. laillie, vpone the tent day of Februar lasthypast, haifing confanet ane deidlie feid, rancour and malice aganis Johnne Forbes younger in Mylnebowie, be thame selfis and thair complices, of thair speciall causing, sending, bounding out, reffetting with the bluidie hand, airt, pairt-taking, command, assistance and ratihabitounne, come be way of Hame-sukkin to James Hallis duelling hous at the Kirk of Skene, quhair the said vmq^{le} Johnne Forbes was for the tyme, doand his liefull effaires and busfines, traifing na evill, &c.; and thair violentlie brak vp the durriss of the said hous, enterit within the samyn, set vpone the said vmq^{le} Johnne, and maist crewallie and vnmerciefullie slew the said vmq^{le} Johnne, be geving of him of dyuerse bluidie woundis, in the wambe; and thai and ilk ane of thame ar airt and pairt, &c.

The persfweris passis *simpliciter* fra the persfute of Mr Robert Irwing, for the crymes contentin in the Letteris.—The persfones accuset denyis the haill Dittay, and haill circumstances thairof; alsweill of the Slaughter as of the beiring of pil-tolettis. Mr Johnne Russell, prelocoutour for the pannell, declairis, that David Gray and Andro Many war absent fra the Slaughter; and David Gray, the tyme of the committing thairof, was sleipand in his bed, and knew nathing of the doing thairof, quhill¹ it was done.

VERDICT. The Assyse, be the mouth of the said chancillar, all in ane voce, find the saidis David, &c. to be Clene, Innocent and Acquit, &c.

[APUD LYNLYTHGOW, *Mr Williame Hairt of Levelandis, Justice-Depute.*]
Treason—Declining the Jurisdiction of the Secret Council—Holding a General Assembly of the Kirk, after being charged, &c.

Jan. 10, 1606.—Mr JOHNNE FORBES, Minister at the Kirk of Airfurd, (Moderator,) Mr JOHNNE WELSCH, Minister at Air, Mr ROBERT DURIE, Minister at Anstruther, Mr ANDRO DUNCANE, Minister at Carrail, Mr ALEXANDER STRAUCHANE, Minister at Creiche, Mr JOHNNE SCHERPE, Minister at Kilmany.²

Dilaitit, accuset and persfuit be Sir Thomas Hammiltoun of Monkland, kny^t,

¹ Until.

² As the circumstances are so very fully detailed in the course of the following proceedings, it seems to the Editor only to be necessary to refer the enquiring reader to *Wodrow's Church History*, pp. 506—516; *Hailes' Memorials and Letters*, James I. pp. 1—4; *Cook's History of the Church of Scotland*, II. 160, &c. An elaborate account of this remarkable struggle is also given, by he learned *Dr McCrie*, in his interesting *Life of Andrew Melville*, Vol. II. p. 201, &c.

Advocat to our foverane Lord, for his hienes entreis, off the crymes of Treffone speicfeit in the DITTAY following, viz.

FORSAMEKILL as, he the first Act of our foverane lordis Parliament, haldin at Edinburgh in the moneth of Majj, 1st. Vc. fourfoir four yeiris, it is statute and ordanit, that our Souerane Lord, his airis and successoris, be thame selfis and thair Counfallis, ar, and in tyme cuming falbe, Judges competent to all perfonis his hienes subiectis, off quhatfumevir estait, degre, functioun or conditione that eur thay be, of spirituell or temporall, in all matteris quhairin thay or ony of thame falbe apprehendit, summond or charget, to answair to sic thingis as falbe inquiryet of thame, be our said Souerane Lord and his Counfall; and that nane of thame, quhillk fall happin to be apprehendit, callit or summond, to the effect foirsaid, presume ar tak vpon hand to declyne the Judgment of his hienes, his airis and successoris, and thair Counfall, in the premisses; vnder the pane of Treffone: NOCHTWITHSTANDING it is of verritte, that the saidis Mr JOHNNE FORBES, &c. being charget be our foverane lordis Letteris, raist at the instance of his Maiesteis Advocat, for his hienes entreis, to compeir befor his Maieste and the Lordis of Secreit Counfall, vpon the xxiiij day of October lastbypast, to haif answair for thair vnlauchfull and contemptuous conuening, proceeding and halding of ane pretendit Generall Assemblie,¹ at Aberdene, the second day of July lastbypast; and appointing of ane new Generall Assemblie, to be haldin at Aberdene, the last Tyfday of September thairefter; without the consent, and esur the expres refusall of the Laird of Lowriestoun,² his Maiesteis Commissioner, being than present in Aberdene; and in contempt of the charges of Hoirning, lauchfullie execute vpon the first day of the said moneth of July lastbypast, at the said mercat croce of the burgh of Aberdene, discharginge, in our foverane lordis name, all conuening and halding of ony sic Assemblie, at that tyme and place, vnder the pane of rebelloun; and aganis the will and command of the Lordis of his hienes Secreit Counfall, signifieit to the saidis Ministeris be the Counfallis Letter than delyuerit to thame be the said Laird of Lowriestoun, befor thair said proceeding, beiring, that becaus thair Lordschipis vnderstuid that the halding of ane Assemblie, thair, at that tyme, wald heichlie offend his Maieste, and be estimat be his hienes ane heich contempt, thairfoir it was thair Lordschipis will and plesour, that the saidis Ministeris sould nocht bald ane Assemblie, at that tyme, nor mak ony indictione of ane new Assemblie, but suffer the samyn to desert. As lykwayis, the said Mr JOHNNE WELSCH, Minister at Air, being charget to haif comperit befor the Loirdis of his hienes Secreit Counfall, the said xxiiij day of October lastbypast, to haif answair for his vnlawfull resorting to the said burgh of Aberdene, vpon the fourt, fyft and fast dayis *respectiue*, of the said moneth of July lastbypast; and vnderstanding, as it was maist nottour and manifest to all men thair, how vndeitfullie and contemptuoullie the saidis Ministeris procedit, in the halding of thair said vnlauchfull pretendit Generall Assemblie, to the contempt of his Maiesteis authoritie, and of the directione of the Lordis of his hienes Secreit Counfall, in maner aboue speicfeit; neuertheles, the said Mr Johnne Welsche, without all ordour, forme, necessitie or preceding exampill, conueinit vnlawfullie with ane number of his complices, within the Kirk of the said burcht of Aberdene, the time foirsaid, and Ratiefait and approvet the proceedingis of thair said bretherene foirsaid, in halding of thair said vnlauchfull Assemblie, and making indiction of ane new Assemblie, as said is, and tuk instrumentis thairpoune. And in respect of the premissis, all the foirsaidis Ministeris, being charget as said is, to compeir befor the Lordis of his hienes Secreit Counfall, to haif hard and sene it ffundin and declairit, that thai had verrie contemptuoullie conueinit thame selfis, and procedit in thair saidis actiones, the tyme foirsaid; and thairfoir, the said Assemblie, and approbation thairof, declairit vnlauchfull, and sua to be repute and haldin in tyme cuming; and thay to be punefschit in thair perfonis and

¹ Of the Church of Scotland. ² Sir Alexander Stralton of Laurenstoun, knight, one of the Commissioners for the Union of England and Scotland, July 11, 1604. A Letter of Gift and Pension, for all the dayes of his lifytyme, of the blenche-deutle of the Lordship of Seone, extending to 1000 merks, was Ratified by Parliament, July 11, 1606. Vid. *Acta Parl.* Stralton was appointed to represent the King, in Ecclesiastical Judicatories.

gudis, for their vnlauchfull conuening, halding and approeing of the foirfaid Affemblie, in maner aboue writtin: AND the foirfaidis Ministeris, all compeirand befor the saidis Lordis of Secreit Counfall, the said xxiiij day of October lasthy past, to answer in the said cause, the samyn being ane actioun maist competent and propper to the Jurisdictionn of the Lordis of Secreit Counfall, becaufe the samyn concernit the tryell and puneishment of ane heich offence, contempt of his Maiesteis authoritie, and disobedience of his Maiestie and Lordis of his hienes Secreit Counfall: Neuertheles, the foirfaidis Ministeris, and ilk ane of thame, tressonabillie declynit the judgement of his Maiestie and Lordis of his hienes Secreit Counfall *simpliciter*, be thair Declinatour, subscryuit be everie ane of thair handis, and gevin in be thame, in Judgement, befor the said Lordis; to the quhilk, it being replyit be the said Aduocat, that the samyn shold be Repellit, in respect of the said Act of Parliament, declairing all sic Declinatouris to be null, and the proponeris thair of to incur the pane of Tressone: And, in respect of the quhilk answer and reply, your said Declinatour was repellit be the saidis Lordis of Secreit Counfall, all in ane voce: The saidis Ministeris, neuertheles, persistit sa obstinatlie thairin, that eftir the samyn was repellit be the saidis Lordis, as said is, quhairby thai could nocht pretend ony probable dout or ignorance of thair Jurisdictionn, the saidis Ministeris gaif in thaireftir, thair remanent Defenssis, in writt, vnder protestatioun alwayis, that thai adheirit to thair said Declinatour: Be proponeing quhair of, as also be adheiring to the same Declinatour, eftir that it was Repellit, thay, and euerie ane of thame, hes committit Tressone, and shold incur the panes thair of.

PERSEWER, Sir Thomas Hamiltoun, Aduocat to our souerane lord.

PRELOCOUTOURIS for the pannell, Mr Thomas Gray, Mr Thomas Hoip.

THE LORDIS OF SECREIT COUNSALL, vnderwritten, declairis thay will assit the Justice, as ASSESSOURIS in this cause.

ASSESSORS.

Johne Erle of Montrose,	James Lord of Balmoryroche,	Mr Johane Prestoun of Pennycuik,
Alexander Erle of Dumfermeling, Lord Fyvie, Chancellor,	Secretar to his Maiestie, and	Collectour to his Maiestie,
Johne Erle of Mar,	President of his hienes Colledge of Justice,	Sir Richard Cockburne of Clerkingtoun, Lord Previe Seill,
Alexander Erle of Lynlythgow,	Mark Lord Neubottill,	Johne Lord Murray of Tylliebairne,
George Erle of Dumbair,	Walter Priour of Blantyre,	
Patrik Lord Glamefs,	Johne Commendatour of Halyrudhous,	Sir Robert Meluill of Mourdocarney, kny ^t ,
Alexander Lord Elphinstoune,	Sir James Douglas of Qnhittinghame,	Alex ^r Maister of Elphinstoune,
James Lord Abercorne,	 Levinstoun of Killythe.
Dauid Lord Scone, Comptroller to his Maiestie,		

It is allegit be the pannell, that thai aucht to haif bene charget vpone xl dayis warning, seing thay ar to be accuset for crymes of Tressone.—The Aduocat answeris, that it is daylie practik, in bringing the persones put in waired to pannell, to put thame summerlie to ane Tryell; and speciallie, the practik of the Laird of Bonytoun, quha was tane and put in waired for the breking of his fatheris houe and cofferis, and fleilling and away-taking of his fatheris eidentis, &c., was brocht fra the waired to the bar, and put to ane Assyse.

THE Justice Repellis the allegiance, and findis forder proces:—Quhairupone the Aduocat askit instrumentis.

It is forder allegit be Mr Thomas Hoip, prelocoutour for the pannell, that this

matter can nocht pass to ane Assyse, vpon the declinatour gevin in be thame aganis the summondis persewit contrair thame, befor the Lordis of Secreit Counfall, in sa far as thay ar persewit vpon the first Act of Parliament, haldin in May 1584 yeiris; becaus the meaning and intentione of the said law is only to establishe the Kingis Maiesteis royall power and Jurisdictione ouer all persones; quhilk the pannel, in all humillitie and submissioun, confessis: And albeit the said law appeiris to be generall, and vniuersallie to comprehend all matteris, yit the samyn can nocht be vniuersallie vnderstuid; becaus, quhairfoeur a law speikis generalle, gif vpon the generall speiking, ony absurditie or incommoditie may follow, quhilk may tak away former lawis, or confound distinct and diuerse¹ jurisdictiones, establischet be lawis of befor, the samyn, in that caise, man be restrictit to thais matteris that may fall vnder the compts of the law; quhilk specialle aucht to haif place, quhair the matter is odious: But sa it is, gif this law war vniuersallie vnderstuid, of all matteris, it sould follow, that the Jurisdictiones of the Secreit Counfall, the Lordis of Sessioun, and Justice Generall, quhilkis ar supreme, Jurisdictiones Ciuill sould be counfoundit, insofar as the woirdis of this law being attendit, na persone being conuenit befor the Lordis of Secreit Counfall for ane cryme quhilk is competent to the Justice, or for ane ciuill debt, quhilk is competent to the Sessioun, nicht nocht, nor could nocht, without the perrell of the Law, allege² that the Lordis of Secreit Counfall ar nocht Judges competent in Criminall or Ciuill caussis: Bot this is sic ane inconuenient, and sa improper for the caise, mynd and intentione of the law, that thair is na persone will mak questioun thairin: And as this war competent in the distinct Jurisdictione of the Lordis of Secreit Counfall, Sessioun, and Justice, sua the samyn is alse competent in Jurisdictione Ecclesiasticall, quhilk is an feuerall and distinct Jurisdictione be the self, haifing the Warrant and grund of the word of God, and being autorizet be his Maiesteis lawis; specialle, be ane Act of Parliament maid in anno I^m.V^c.lxxix, ane vther in the lxxxj and lxxxij yeiris; sua that the pannel, being than conuenit befor the Lordis of Secreit Counfall, in ane matter quhilk was altogidder Ecclesiasticall, pertening to the Jurisdiction of the Kirk, quhair of the cheif poynt consistit vpon the lawfulness or vnlawfulness of the Assemblie haldin be thame, thay nicht lauchfullie, without the perrell of this law, haif gevin in thar Declinatour, declyneing the saidis Lordis of Secreit Counfall, as nawayis Judges competent of the vnlawfulness or lawfulness of the Assemblie; and in doing thair of, thay could nawayis, nor can nawayis be decernit to haif committit aganis the said law; seing the said law, possibillie, can nocht be extendit bot to sic caisses quhilk bes nocht ane speciall, ane seperat, or distinct Jurisdiction, be the self;

¹ Separate.² Plead. This verb is almost universally made use of throughout these Records, and indeed in nearly the whole of the Forensic proceedings of that period, chiefly in that sense.

and quhair, it may appeir, that the pannell, in the Summandis befor the Secreit Counfall, war nocht samekill ceitit vpon the vnlawfulness or lawfulness of the Assemblie.—As for the contemptuous convening being dischargit be his Maiesteis Letteris, aganis the requiest of the Lordis of Secreit Counfall, and the Commissioner of the Kirk, quhilk matter mycht properlie appeir to pertene vnto the Jurisdictione of the Lordis of Secreit Counfall, and that thairby the Declinatour man fall vnder the compas of this law; it is answerit, that it could nocht be considerit, quhat was the middis¹ quhairupone thay war convenit befor the Secreit Counfall; bot the conclusioun of the Summandis man be attendit, seing it is the conclusioun and nocht the premisses that maks the natour of the actioun, quhairvpon ane cause and grund²; and vpon ane fact thair may concur of the law twa actiones or ma,³ quhilk ar dinoset⁴ be their conclusiounes; as in an actioun of spuilzie, persewit ciuillie, the cognitioun thair of will pertene to the Lordis of Counfall, the lybell being sa formet, that it conclud the restitutione of the guidis spuilzeit; and vpon that same fact, the spuilzeir may be convenit befor the Lordis of Secreit Counfall, for Oppressioun, the Summandis concluding to heir and sie ordour tane with him for committing of the said fact; sa that albeit the fact be ane, yit tua diuerse conclusiounes produces tua feuerall actiones, the cognitioun quhair of pertenis to tua feuerall Jurisdictiones. And as this is trew, in all vther matteris Prophane, sa it is alyk trew, into the cause intentit and persewit aganis the pannell befor the Lordis of Secreit Counfall, quhairin it aucht nocht to be respectit, quhat was the deid quhairupone thay war summond, bot it aucht to be considerit quhat the summondis concludit: Sa that albeit the allegit fact or deid committit be thame mycht be puneschet be the Secreit Counfall, and sa pertene to thair Jurisdictione; yit, seing the conclusioun beiris nocht allanerlie for the said fact, quhilk gif it had bene sa confaet, the pannell could nevir nor would nevir haif declynit, lyk as, *in facto*, thay haif nocht declynit the samyn; bot concludis to heir and sie the Assemblie haldin be thame vnlauchfull: Quhilk conclusioun makis the matter to be altogidder Ecclesiasticall, only subiect to the Jurisdictione of the Kirk establischt be his Maiestie and be the lawis of this cuntrie; the actioun being comptit of that nature, quhair of the conclusioun is, of all deutie and conscience thay aucht and mycht haif declynet the samyn, without the perrell of the said law; and thairfor, &c. *Secundlie*, It is allegit, that the Act of Parliament can nocht be extendit to the Declinatour vsit and proponit be the pannell; becaus in all Lawis, the intentioun and reffone of the Law aucht to be attendit; bot sa it is, that the intentioun and reffone of this Law was only maid, in sic matteris, quhair ony persone was summond *super inquirendis*, as appeiris be the verrie expres wordis of the Law, saying, in all matteris quhairin fall be apprehendit, &c. fua that the

¹ Medium, means.² Illegible.³ More.⁴ Lat. *discernere*, distinguished, judged of.

law being only confauet vpon ane singular¹ caise, it can na wayis be extendit to ony vther caissis or matteris, quhilk ar nocht exprestit in the Law; and consequentlie, can nocht be extendit to the actiounes persewit aganis the pannell befor the Lordis of Secreit Counfall, becaus thai war nocht persewit *super inquirendis*, bot vpon ane perticular fact and lybell; and the reffone of this Law, quhairfor it sould nocht militat *super inquirendis*, becaus gif ony persone, being summond *super inquirendis*, wald declyne the Lordis of Secreit Counfall, the fact nocht being knawin to him, it war ane manifest contemptuous Declinatour of his Maiesteis souerane authoritie, and ane exeilling of his persoun fra his Maiesteis maist royall power, quhilk war maist worthie of the pane of Tressone; sua that this reffone, nocht being militat in the cause of the persute persewit aganis the pannell befor the Secreit Counfall, the saidis persones, in vsing of thair Declinatour, hes nawayis fallin vnder the compas of the said Law. And forder, the said Law can nocht be perticulerlie extendit aboue the perticuler caise mentionet thairintill *quia odiosa sunt restringenda*; and that, be the consent of all Doctouris, is countit odious, quhilk is aganis the dispositioun of the Cowmoun Law, or quhilk may preiudge a thrid persones lauchfull rycht; quhilk is the nature of this Law; seing by it the puneishment of Tressone is imponet² vpon ane fact, quhilk nather be the Cowmoun Law, nor be the Lawis of this cuntrey is tressonabill. *Thridlie*, the pannell can nawayis be accuset for committing of Tressone, be proponing of the Declinatour, becaus, be the Law, the proponing of the Declinatour is nocht comptit ane tressonabill deid, bot only prohibeit to do the same, vnder the pane of Tressone; sa that the Assyse, without committing manifest Errour, can nocht convict thame of the said fact, as Tressone. *Finallie*, the pannell can nawayis pas to the knowlege of ane Assyse, for the Declinatour, be vertew of this Act of Parliament, becaus, sen the making thair of, viz. in the moneth of . . . , anno 1592, all lawis, actis, statutes and ordinances, quhilk may derogat to the Jurisdiction of the Kirk ar abrogat and annullit; lyk as, be the same Law, it is declairit be his Maieste and the thrie Estaitis, that the foirsaid Act of Parliament quhairupovn the pannell is accuset, being the 129 Act of the Parliament haldin in Maj 1584, fall nawayis be preiudiciall, nor derogat ony thing to the privilege that God hes gevin to the spirituall office-beiraris in the Kirk, concerning heidis of Religioun, matteris of errorie,³ excommunicatione, collatioun and deprivatione of Ministeris, and vtheris selyke essentiall censouris ecclesiasticall, expresse groundit and haifing warrand of the word of God; be the quhilk Law, the Kingis Maieste and the Estaitis hes declairit, that the said Act of Parliament quhairupovne the pannell is accuset, fall nawayis be preiudiciall to ony Ecclesiasticall essentiall censouris, foundit vpon the word of God, being of that nature quhairof the particularis preceding thairin contenit ar: Bot trew it is, that

¹ Special, individual.² Imposed.³ Heresy.

the Generall Assemblie is an essentiall Ecclesiasticall censour, expresse warrandit be the word of God, and be that same Act in the fourscore tuelf,¹ Ratiefeit and approvin be his Maiestie, and decernit to be lauchful and Godlie in the self, and is of the lyk natour with the particuleris contenit in the said Act; becaus the intreiting of the heidis of Religioune, matteris of errasie,² excommunicatioune, collatioune and deprivatione of Ministeris, ar proper pairtis of the General Assemblie, and of the office and Jurisdiction of the same, *et ejusdem est nature cum suis partibus*: And thairfor, the pannell, in the proponeing of the said Declinatour, haifing done nathing bot that quihilk pertenit properlie to the Jurisdictione of the Kirk, in desyreing the questioune anent the said Generall Assemblie to be remittit to the Kirk, thay did na wrang in proponeing of the said Declinatour, nor yit can the said Declinatour be drawin in question, be vertew of the said Act, quhilk be the foirsaid posteriour Act, in that poynt, is *tacite* abrogat be ane expresse declaratioune, that the samyn shall nawayis be extendit to the essentiall censours of the Kirk; sua that the pannell was *in optima fide*, in respect of the said posteriour Declaratioun, to vse the benifeit of the samyn; and thairfor, &c.

Thairefter, the pannell for cleiring to his Maiestie of thair intentione in vseing of the said Declinatour, hes declairit, and be thir presentis declairis, that thair nawayis thairby meanit to exeme³ thame selfis fra ony lauchfull subiectioun to his Maiesties royall autoritie, nor yit frome the Jurisdiction of the Lordis of Secreit Counfall, in ony thing quhairin ony vther subiect is subiect to thair autoritie; bot only, to haif that cause, tuiching the lauchfulness or vnlawfulness of the said Generall Assemblie, being ane mater meir spirituall, to be judget be his Maiestie and the Kirk, as ony Judges competent thairto, accoirding to the law of God, and establischet Actis of Parliament within this realme; declairing be thir presentis, that his Maiestie should judge Ecclesiasticall matteris with Ecclesiasticall persones, lyk as he judges Ciuill matteris with Ciuill persones; and acknowledgeing thame selfis, in all matteris Ciuill or Criminall, to be subiect to his Maiestie (and) all the lauchfull Jurisdictiones establischet for sic caissis within this land; vnto the quihilkis, in all humble reuerence, thay submit thame selfis; lyk as, in all Ecclesiasticall matteris, thair ar reddie to be judget be his Maiestie with the Generall Assemblie, and vtheris establischet ordouris of the Ecclesiasticall Jurisdietes.

IT IS ANSWERIT to the *first* allegiance, that the Actis of the Parliament lxxix and lxxxj can mak na derogatioune to the Act of Parliament maid in Maij, anno 1584, quhairupoun the Dittay is foundit, being posteriour to thame, geveing expresse Jurisdictione to the Kingis Maiestie and Lordis of his hienes Secreit Counfall over all persones, ather spirituall or temporall, accoirding to the tennour of the said Act: And as to the nature of the caus persewit aganis the pannell

¹ A.D. 1592.² Heresy.³ Exempt, free.

befoir the Loirdis of Secreit Counfall, accordring to the tennour of the Dittay and Decreit of Secreit Counfall productet, the Lordis of Secreit Counfall was maift competent Judges to the haill contentis thair of, alſweill anent the tryell and puneifchment of thair contempt, as of the vnlawfulnes of thair Affemblie, at that tyme and place, thay being expreflie difcharget be his Maiefteis Letteris of Hoirning and be the Counfallis command, in writt, to hald na Affemblie at that tyme, or indict ane new Affemblie to ane new tyme and place: Lyk as, thay haifing proponit thair Declinatour befoir the ſaidis Lordis, the ſamyn was Repellit, and Decreit gevin in the haill cauſe; in reſpect quhair of, the Dittay ſtandis relevant.—To the *ſecund* allegiance, anſueris, that the woirdis of the Act of Parliament, anent Declinatouris to be proponit in actiones *ſuper inquirendis*, befoir the Secreit Counfall, can nocht exeme the cauſe contravertit, fra thair Jurisdictione; albeit that fauour was ſchawin to the partie, to foirwairne thame of the cauſe thai war to anſuer: Bot generallie, the Law is vnderſtand, and hes alwayis bene interpret, that all Declinatouris proponit in matteris competent to the Jurisdiction of the Counfall ar of thane ſelfſis treſonabill, as was ſolempnatlie decydet in the Kingis Maieſteis awin preſence aganis vmq^{le} Mr David Blak: And thairfoir the Declinatour proponit be the pannell, and adheirit to be thame, eftir the ſamyn was repellit be the Counfall, fallis vnder the woirdis, meaning and tennour of the Act of Parliament.—To the *thryd* allegiance, anſueris, that all crymes ordauit to be pwneift be the payne of Treafoun ar treſonabill.—To the *ffourt* allegiance, anſueris, that the claus of the Act of Parliament, in the yeir of God I^m.V^c.lxxxij, being ane exception frome the Act of Parliament, in the yeir of God 1583, confermis the ſamyn Act, in all heidis nocht expreflie exceptit; lyk as, the exception is only of heidis of Religioun, materis of erraſie, excommunication, collatioun or deprivation of Miniſteris, or ſiclyke eſſentiall cenſouris, ſpeciallie groundit and haifing warrand of the word of God; and it is of veritie, that the keeping of ane Affemblie at ane certane tyme and place, and appointing of ane new Affemblie, aganis the Kingis Maieſtie expreſ charge vnder the payne of rebelloun, and aganis the will and command of the Counſale, and aganis the diſſententing of his Maieſteis Commiſſioner, is rather ane heid of Religioun, mater of erraſie, excommunication or eſſentiall cenſour; and thairfore, is nocht exceptit fra the ſaid Act, bot fallis vnder the prohibitoun and danger thair of: And thairfore, nochtwithſtanding of the alledgance and declaration foirlaid, the Dittay ſould be putt to the knowlege of ane Aſſyſe.

It is lykwyiſe alleget be the Pannell, that the Juſtice can nocht putt thame to the knowlege of ane Aſſyſe, for Treafoun, becaus thay ſtand at the horne vnrelaxit.—The Aduocat anſueris, that the Juſtice hes admittit the preloquuntouris to compeir in the ſaid mater; and thairfoir the Dittay for Treafoun ſould be putt to ane Aſſyſe.

THE JUSTICE admittit the said preloquoutouris to compeir as preloquoutouris in the said mater : And with auise of the haill Assessoris, in ane voce, in respect of the answieris maid be my Lord Aduocat, Ordanis the Dittay to be putt to ane Assyse.—Quhairupoun be my Lord Aduocat askit instrumentis.

ASSISA.

Sir Johne Home of North-Ber-	Sir Archibald Sterling of Keir, kny ^t ,	Gawin Home of Johnnefleuch,
uik, knycht,	Johne Levingstoun of Donypace,	Thomas Levingstoun of Pantoun,
Sir George Home of Broxmouthe,	James Schaw of Sauchie,	Ro ^t Levingstoun of West-Quarter,
knycht, elder,	Mark Swyntoun in Innerkething,	James Gib younger of Carriber,
Sir James Forrester of Carden,	Harie Stewart of Cragiehall,	Alexander Home of Rentoun,
knycht,	George Home of Deanes,	Sir Patrik Home of Polwort, kny ^t .

The Aduocat askis instrumentis of the admitting and sueiring of the Assyse, and eftir acculation of the personis on pannell, be Dittay.—The Aduocat, for verificatioun of the Dittay, produceit the Declinatour, subscryuit with thair handis acknowledgeit be thame selff in Judgement ; Repetit the Act of Parliament ; produceit the Decreit of Secreit Counfall, the charge of Hoirning, and the pretendit proces,¹ subscryuit be the pretendit Moderatour and the pretendit Clark of the Generall Assemblie, granting the resait of the Counfallis Missiue, of the tennour lybellit, and the Declaratioun of his Maiesteis Commissioner, bering that he disassentit fra thair haill proceeding ; and seing my Lord Justice, be the auise of the haill Counsaile present, hes discussit the pannellis haill defensilis, and sfund the Dittay relevant ; and that thair restis na forder to the Assyse bot to declair, quhider the factis contenit in the Dittay haif bene committit be the pannell or nocht, the samin fact being sa manifestlie provin be the writtis produceit, and nawyise denyit be the pannell, bot ratifeit and renewit in Judgement, as the proces beris ; in caise thay acquit the pannell, the Aduocat protestis for Wilfull Errour and remeid of Law, with all regour.—The pannell protestis for Errour aganis the Assyse, in caise thay ffyle thame of Treasoun.—The Aduocat askis instrumentis, that the pannell confessis to gefing in of the Declaratour.

VERDICT. The Assise, be the mouth of the said Harie Stewart of Craigiehall, chanceller, sfand, pronuncet and declairit the saidis sax Ministeris, and ilk ane of thame, to be ffylet, culpable and convict of the tressonabill declayneing of the Judgement of his Maiestie and Lordis of his Secreit Counfall, conforme to the Dittay aboue specefieit.

WARRANT and DOME of BANISCHEMENT² pronuncet aganis THE MINISTERIS, in Pretorio de Lynlythgow, xxij die mensis Octobris, 1606, per Magistrum Willielmum Hairt de Presloune, Jusliciarium Deputatum.

[Oct. 23.]—COMPEIRIT M^{ris} Thomas Henderfoun and Robert Lyntoun,

¹ The procedure which took place at their Assembly.

² It has been thought most convenient to insert the ' DOME' here, rather than under its proper date.

substitutis to our sowerane lordis Advocattis, and producet to my Lord Justice his Maiesteis Warrant; quhilk the Justice causit be oppinlie red in Judgement, and ordanit the samyn to be insert in the buikis of Adiorvall; quhairof the tennour followis.

JAMES R.

WHEARAS, in our Justice-Court, held at Lynlythgow, the tenth of Januare lasthyppai, Mr Johne Forbes, &c. war convicted of the cryme of Tressone, for pair contemptuous and tressonable declyneing pe Judgement of us and pe lordis of our Secreit Counfall, *simpliciter*, be a declinatour subferyuit with pair handis, and gevin in be pame, in Judgement, befor the saidis Lordis of our Counfall; as in the said proces of Convictione at mair lenth is contenit: And pe pronunceatioun of the Dome being by our Justice, vpon grave and wechtie respectis continewit, till our farder plefour war knawin pairin, WE now considering pe grit insolenace of that proud contempt, and quhat dangerus exampill it might be, if it sould pas vnpwneisched, haveing, in our accustomed lanity, gevin to thaife declared Traitoris moir pan sufficient tyme to haif implored and maid humble sute for our mercie; zit, finding in thame nathing bot a contiowing obdured obstinacie and wilfulness, without likliehoid or appeirance of resipience and repentance in thame, for pair former committed soleis: And albeit pe gritnes of pair offence, and speciallie in men of that functioun (quhais lyves sould be lanternes and lichtis to vperis, to cary thame selvis in all deutie and obedience, and pairfor pair ouerfights requyreing pe moir seveir animaduersion and pwneischment,) hath most iustlie demerited the extremitie of the regour to be inflicted vpon thame, for ane exampill to affray all vperis to attempt pe lyk; zitt, becaus heirtofoir that Law baith nevir bene putt to executioun, quhairby sum men may perhaps pretend that pai had pe moir probabill ignorance pairof, (albeit in reafone the same can be no excuse,) We haif with our wounded clemencie, vpon that respect only, spared to inflict the rigour of the Law, at pis tyme: It being our Will and plefour, that our Justice or his depute sould fence and affix a Justice Court, to be held at Lynlythgow, or ony vper pairt else that our Counfall fall think expedient, the xxij day of October nixtocum, and pair cause Dome to be gevin out against the saidis traytouris, to be BANISHED all our dominiones, during all pe dayis of pair naturall lyves; vnder pane of daeth: And pe Dome being pronounced, oure Will and plefour is, that pai be returned to pair wairdis, thair to remane for pe space of ane moneth, for making pair preparatiounes for pair depairtour; befor pe expyreing quhairof, gif pai do nocht depairt, wind and wedder serveing, oure Will and plefour is, that pe ordinarie death vsuallie inflicted vpon Traytouris be directed to be execute vpon thame: And gif pai fall nocht depairte within pe said space, or being depairtit, fall returne into oure dominiones, without our License, thay fall incur pe pane of death, and all vper panes dew to perfonen convict of Tressone. Quhairanent these presentis fall be to our said Justice a sufficient Warrant. AND becaus this our spare dealing and grit clemencie, extendit towards those aboue named offendouris, in this thair so haynous a cryme and offence, may perhappes move in sum vtheris sum presumptioun to think, that for trespassis of this qualitie no gritter rigour will be heireftir vsed: ffor removing of which pair foolische opinioun and conceate, and that everie ane may haif notice of our full determinatioun in any suche lyk case heireftir, Oure Will and plefour is, that in our said Justice Court, to be keipit pe said day, for pronouncing of pe said Dome, speciall intimatioun be maid, in open Court, by our said Justice, to all our leigis pair present, that it is our resolutioun, that gif any heirefter fall offend, in such a leich trespass, that pai fall be proceedit against with all seuerie; and that the death dew vnto Traytouris fall be inflicted vpon thame with all rigour; the example of this our present lenitie at pis tyme, nevir remayning any motiue to induce ws to schaw any such clemencie to such as fall commit pe lyk offence heireftir: And our will is, that pir presentis be recoridit in the buikis of Adiorvall, and that publicatioun be maid heirof at the mercat croce of Edinburgh, and all vper places neidfull. GEVIN at our Court of Hamptone Court, the xxvj day of September, 1606.

Accoirding to the quhilk Warrant, the said Justice-depute, be the mouth of Henrie Wilfoune, dempfter of Court, pronuncet dome, and decernit and ordanit the saidis perfones to be Banifchet all our fouerane lordis dominiones, during all the dayis of thair naturall lyves : And ordanis thame to returne to thair wairdis, thairin to remane for the fpace of ane monethle, for making of thair preparatioun for thair depairtour ; befor the expyreing quhairof, gif thay depairt nocht, wynd and wedder ferving, the said Justice-depute, accoirding to the said Warrant, decernis and ordanis the ordinarie daeth vfuallie inflictit vpone perfones convict of Treffone to be execute vpone thame : And gif they fall nocht depairt within the said fpace, or being depairtit, fall returne within his hienes dominiones without his Maiefties Licence, decernis and ordanis thame, accoirding to the said Warrant, to incur the pane of daeth, and all vther panes vfuallie inflictit vpone perfones convict of Treffone : Quhilk was pronuncet for dome.

[*Mr Williame Hairt of Prefloune, Jufice-Depute.*]

Murder of the Warden of the West Marches.

[THE Clan or 'Name' of ARMSTRONG was perhaps the most distinguished of the warlike Thieves of the Scottish Border, having possession of the largest portion of Liddisdale and the Debateable Land. For the exploits of many individuals of this name, reference may be had to the Works of Sir Walter Scott, and especially to the Introduction to the Border Minstrelsy, and the Notices prefixed to '*Johnie Armstrong*' and '*Kinmont Willie*,' &c. The almost unparalleled act of bravery of the LAIRD OF BUCCLEUCH, who achieved the deliverance of *Kinmont Will* from the Castle of Carlisle, in April 1596, has been adverted to in a former part of this Collection.¹ A very interesting 'Relation' of this remarkable feat, taken from a contemporary MS., is also given in the Minstrelsy,² which the reader will find well worthy of perusal. This event is likewise narrated in the Anonymous History of Scotland, already quoted ;³ and as his Narrative is very brief, it has been thought proper to preserve a transcript here.—'NOW Auld WILL ARMISTRANG of *Kinmont* being tane be Inglis men, and is wairdit in the Castell of Cairleill, within ane strait priffoune, and yrnifs on him ; and being to thoill the tryall of the Law, knew perflytle that thair was no faifty for him. He vritis in Scotland to his freindis, to sie gif thay culd mak him releiff. Quhairupoun THE LAIRD OF BALCLEUCH past within⁴ thrie scoir tenne horfe to the saidis Castell, and with ladderis clam the fame, and brak the priffoune ; and bringand the said Williame Kinmwnt hame with him, he cauffit blaw his trumpett and cry sum slughorns,⁵ puttis the toune and cuntry in sic ane fray, that nene durft firr: Quhairby, he brocht the said Will Kinmont away, but⁶ ane straik, to the grit honour of his cuntry. This wes done the fext day of Apryill, 1596.'

The Murder of SIR JOHN CARMICHAEL, knight, the Warden of the West Marches, sealed the fate of many of the Armstrongs, and led to the adoption of measures of the utmost severity against all those of the name who were thereafter convicted, or even suspected, of mal-practices.⁷ On Nov. 14, 1601, Thomas Armstrong, 'sone to Sandeis Ringane,' was convicted for being accessory to this barbarous act of butchery, and is the first instance on record, in Scotland, of a criminal having been hung in chains. The above mentioned Anonymous Historian⁸ narrates the event very quaintly, in the following terms. 'Now the Bordouris being werry euill brokin, thair war dyuerse Reidis⁹ in all fydis, bayth be Scotland

¹ Vol. I. pp. 363—365.

Library, A. 4. 35.

pp. 450, 451, and 452.

² See *Scott's Poetical Works*, 8vo. 1821, Vol. I. p. 180.

⁴ Under the number of.

⁵ Slogans, war crys.

⁶ Without.

⁷ MS. Advocates'

⁸ See Vol. II.

⁹ MS. Advocates' Library.

¹⁰ For Raids, hostile incursions.

and Ingland; and THE ERLL OF ANGOWS, heaffand gewin the famin owir, quha wes Wardane, the King makis THE LAIRD OFF CARMICHAEL Wardane; quha, finding the *Airmisfrayngis* to be the grittest occasioun of the trubillis, wes myndfull to pvneife sum of thame, quha wes notorius theifis; and thay heaffing intelligensfe thairrof, fendis to him ane broder of *auld William Airmisfrayngis of Kenmunt*, quha wes callit Alexander Airmisfrayng, *alias Sandeis Ringane*. This Ringane being in his company, and entering in conformance with the Wardenis, findis that thair wes na frendship to be luikit for at his handis; and also, thair wes sum young menne with the Wardane, quha begane to mok this *Ringane*, be steilling out of his fuord, and putting 50kis of egis in the skabert, quhairby the famin wald not draw; quhilk he perfaisfing, said, that "he awowit to God, that thai suld fie his fuord out, and (if) he and thay vent on the grond quhair he mycht be pairtie!"¹ And cuming hame to his awin hous, in this readge, sayis to his sonnis, that he wes "maid schame of sum," awowing to God, "to be equal with the famin!" And knawing THE WARDANE to ryd on the morne, he and his sonis settis for him with sum wtheris, and slayis him be the schott of ane hagbutt. And thaireftir, for the famin caus, this *Ringane* and his sonis wer tane and execut to deith, as Tratouris to his Maiefty, be putting handis in the Kingis Wardane. This was done the 16 day of Junij, yeiris 1600.²

Sir Walter Scott supposes the well-known verses, '*Armstrong's Gool Night*,' to have been composed by Thomas Armstrong, who is called by him '*Ringan's Tam*,' previous to his execution, Nov. 14, 1601. The reader is referred to the *Minstrelsy* for the exploits of the Armstrongs, and of other Worthies of the Scottish Border, whose names frequently occur in the Criminal Records.]

Feb. 13.—ALEXANDER AIRMESTRANG, callit *Sandie of Rowaneburne*.

Dilatit and accusit be Johnne Commendater of Halyruidhous, sone-in-law to vmq^{le} Sir Johnne Carmichell of that Ilk, knycht.

FORSAMEKILL as he, accompaneit with Thom Airmstrang, sone to *Sandeis Ringane*,³ the said Ringane and vtheris, his sonis and complices, to the number of sewintene perfonis, or thairby, commounne thewis and tratouris, the maist pairt being on horsbak, and he on fute; came all bodin in feir of weir, with hagbuttis and pistolettis, lance-stalfis and vtheris wappinnis, invasiue, to the Murthunleis; quhair thai, in the moneth of Junij, I^m. Vj^c., altogidder consultit and dewysit the cewall and trefonabill Slauchter of the said vmq^{le} SIR JOHNNE CARMICHELL of that Ilk, knycht, WARDEN OF THE WEST MARCHES;³ and for performance thairrof, past fra Murthunleis to Coloneheid, quhair he and his complices lay att wait for the said vmq^{le} Sir Johnne passng by to ane Court; and as he wes, in sobir and quyet maner, passand by to the said Court, vpone the . . . day of the said moneth of Junij, quhilk wes to be hauldin in Lochmabene, he and his complices sett vpoune him att the Raeknowis, quhair, with schottis of hagbuttis and pistolettis, thay schot him throw the body, and cewellie slew and murderit the said vmq^{le} Sir Johnne Carmichell, being his Maiefties Wardene for the tyme: And the said Alexander Armstrang wes airt and pairt of the said

¹ Where he might avenge his own quarrel.

² See Vol. II. p. 363, where he was sentenced to be 'hangit vp in irne-chenis,' after having his right hand struck off.

³ Robert Birrel gives the following notice, in his Diary, Jul. 11, 1600. 'The Laird of Carmichael bureit; quha was slaine be the Armstrangs and Carliles, he doing and executing his office of Wardenair, vpone the 16 of Junij befor.'

crewall and treffonabill Murthour, he being than vpoun the ground with his complices, att the committing of the said vngodlie fact : To the takin¹ he confest the famin be his depositiounis ; lyke as, he, be Depositoun, declarit him self to be innocent of ony vther haynous crymes, except the foirlaid innocent² Slauchter of the said vmq^{le} Sir Johnne ; quhilk he declairit he wes brocht vpoun aganis his will. ITEM, for commoun Thift, commoun Ressett of thift, inputting and out-putting of thift, fra land to land, fra countrey to countrey, baith of auld and new.

PERSEWER, My Lord (‘ Johnne Commendater’ of) Halyrudhous.

ASSISA.

Robert M ^o brair of Almagill,	Andro Ker of Mylnerig,	Michell Adamefoun, flescheour in
Johanne Weir, brother to Auchtie-	Gylbert Halyday, merchand bur-	Edinburghe,
fardell,	ges of Edinburghe,	William Mow, hatt-maker thair,
R ^t Johnnestounne, burges of Ed ^r , Allane Cathcart, staibler thair,	Andro Greir, burges thair,	
Vthrid M ^o donell of Mondurk,	Robert Dalzell, Y ^r of that Ilk,	Alexander Bowie, staibler thair,
. . . Hunter of Polmude,	James Johnnestounne or Wastraw,	J ^m Steill, sumtyme of Housfounne.

VERDICT. The Assyse, be the mouth of the said James Johnnestounne, chancellor, stand, pronounceit and declarit the said Alexander Armstrang to be flylit, culpabill and convict of airt and pairt of the crewall Slauchter and Murthour of the said vmq^{le} Sir Johne Carmichell, conforme to his Depositounis. And als, to be flylit, culpabill and convict of commoun thift, commoun ressett of thift.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be hangit vpoun ane gybet quhill he wes deid ; and all his movabill guidis to be escheit and inbrocht to our souerane lordis vs^e, for the said crymis.

Slaughter — Shooting Hagbuts, &c.

Feb. 21.—ADAME BROUNFEILD, in Gordone maynes.

Dilaitit for airt and pairt of the fellone and crewall Slauchter of vmq^{le} Thomas Cranftoun ; committit vpone the xxij day of July, the yeir of God I^m.V^c. fourfoir fyftene yeiris, within the boundis of the landis of Moriestoun, at that pairt thairof callit the Kame, be the schot of ane hagbut throw his body ; vpone fet purpois, prouisioun and foirthocht fellony.

PERSEWER, Johnne Cranftounne, as brother.

PRELOCUTOURIS in perfute, Sir Johnne Cranftounne of that Ilk, Mr Thomas Cranftounne.

PRELOCUTOURIS for the pannel, Mr William Oliphant, Adnocat, James Brounfeild of Nether Maynes.

It is allegit be the pannel, that he can nocht be put to the knowlege of ane Assyse, vpone this Dittay, and crymes contenit thairin ; becaus the Kingis Maiestie hes grantit his Remissiounne, vnder the Grit Seill.³—It is anferit be the persewer, that this Remissiounne, anent the tyme of the committing of the said (slauchter) lybellit, meittis nocht the tyme specifeit in the Dittay.⁴

¹ In token or testimony whereof. ² Sic. ³ Apud Edin. Dec. 20, 1605. ⁴ ‘ In menfe . . . 1594, commissi.’

THE Justice admittis the Remiffiounne product.

It is allegit be the perfewer, that the Remiffioun vset be the pannell, is contrair to the Act of Parliament, ordaning na Remiffiounne to be grantit, without satisfaciounne of pairtie, and productione of ane Letter of Slanes, vtherways to be null.—Anfuerit, the alledgeance aucht to be repellit, in respect of the Remiffiounne; and offeris cautionne to satisfie the pairtie, conforme to the Lawis of this realme.—James Brounfeild in Nether-maynes, Johnne Brounfeild in Gordone-maines and the said Adame (become) cautionne, coniunctlie and feuerallie, for satisfaciounne of pairtie, &c.

Slaughter — Shooting Hagbuts and Pistolets.

Feb. 25.—HEW CAMPBELL in Mauchline, sone to vmq^{le} Thomas Commendator of Halywoid.

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq^{le} Johnne Glencorfe of that Ilk, be schottis of hagbutis and pistolettis; committit vpone the xiv day of September, the yeir of God 1581 yeiris, vpone the ground and landis of Gribtounne; vpone set purpois, prouisioun and foirthocht fellonie.

PERSEWERIS, Ifobell Glencorfe, sifter; Robert Glencorfe, neir kynsman.

PRELOCUTORIS for the pannell, Mr Robert Lyntoun.

Tuik him to our fouerane lordis Remiffiounne, for the said cryme. ('Apud Edinburgh, Feb. 14, 1606:') Williame Campbell in Griennock-maynes, Alexander Nisbet of Greneholme, and the said Hew, become cautionne and fouertie, coniunctlie and feuerallie, to satisfie the pairtie, as law will.

Slaughter.

Feb. 26.—WILLIAME M^cINTOSCHE, sone to the Laird of M^cIntosche; Angus Williamfoune of Termet; Donald M^cIntosche, sone to Persone M^ccondowie; Williame M^cJames, sone to James Glas; Angus M^cRannald, sone to vmq^{le} Johnne M^cAngus; Lauchlane Williamfoune, eldest sone to Angus.

Dilaitit of airt and pairt of the slauchter of vmq^{le} Alexander Anderfoune in Balnaglak and vmq^{le} Johnne Barrone thair.

PERSEWER, Johnne Elphinstoune of Balnaglak, as neir kynsman to the saidis vmq^{le} perones.

The said Johnne Elphinstoune, persewar, for himself, and takand the burding on him for Thomas Anderfoun, brother to vmq^{le} Alexander Anderfoune, past fra the persute of the perones on pannell, *pro loco et tempore*. Lauchlane M^cIntosche of Dynnachten becomes fouertie for the entrie of the perones on pannell, the thrid day of the air (of 'Inuernefe,') or soner, vpone xv dayis wairning; vnder the panes contenit in the Actis of Parliament.

Breaking the Place of Kilbirnie — Theft, &c.

Feb. 26.—**JOHNNE CRAWFURD**, funtyme in Auchincloch, now in Auchinbothie.

Dilaitit of airt and pairt of the Breking of the Place of Kilbirnie; and steilling of certane evidentis and abulzimentis, pertening to Johnne Craufurd of Kilbirnie, &c. viz.

FORSAMEKILL as he, accompaneit with Thomas Wilsoun in Wallase, with divers vtheris thair complices, cownoun thewis, in the moneth of Nouember, the yeir of God 1^m.Vc. and twa yeiris, come to the Place of Kilbirnie, the Laird being than furth of this realme, and his Lady being than in Grenok, ten myle diftant fra the said place of Kilbirny; and thair, vnder sylyence and clond of nycht, brak the said Place, at the North syde thairof, enterit within the samin, and thiftioussie stall, concealit, refestt and away-tuik, furth thairof, and furth of the cofferis than standing within the said Place, ane figuret velvet gonne, ane blew bend of tassetie, ane ryding cloik and skirt of broun cullerit clait, wrocht with siluer palmint; ane blak velvet dowblet, cuttit out and wrocht with silk cordounis; ane pair of broun veluet breikis, wrocht with cordounis of gold; ane lowse gown of grograne, ane skirt of broune satene, ane broun saittene dowblet, twa hwidis with craipis; togidder with ane pair of blankettis, quhairin he band all the saidis clathis and abulzements: **Q**uhilkis guidis and geir pertent to the said Johnne Craufurd of Kilbirnie and his spous. **LYKE** as, att the samyn tyme, he with his complices, brak vp the said Johnne Craufurd's Charter-kist, standing within the said Place, and thiftioussie stall, concealit, refestt and away-tuik, furth thairof, ane grit number of the said Laird of Kilbirne's speciall evidentis and writtis,¹ togidder with the saidis guidis and geir and abulzements, he and his complices had and conveyit away with thame, and disponit thairvpoun att thair pleafour; and he wes airt and pairt of the thifteous steilling, conceling, refestting and away-taking of the saidis guidis, geir, writtis, evidentis and vtheris aboue writtin, and of the breking of the said Place, in maner, and att the tyme foirsaid; quhillk wes notourlie knawin. To the takin,² he, with his wyffe and seruand-wemene, delyuerit bak agane to the Lady Kilbirny, within the duelling house of Cuthbert Craufurd in Parkfut, in presens of the said Cuthbert Craufurd, Hew Gawin in Boig, Williame Allane in Manis, Thomas Harvie in Brokklir-hill, Mungo Allane in Sarlie, Hew Starrie in Bankfyde, and George Kelfo in Brighill, the perticuler abulzementis following, viz. the saidis cuttit ont velvet dowblet, the broun velvet breikis, the lowse grograne gonne, the broun satene skirt, ane broune satene dowblet, the said figurit velvet gonne, the said broun ryding cloik and skirt, with the saidis twa huidis, quhilkis wer thifteoussie stollin and away-brocht be him and his complices, furth of the said place, att the tyme foirsaid: To the takin also, he being examinat him selff, in presens of the Minister, eldaris and deakinnis of the Kirk of Kilbirnie, he grantit and confessit the haifing of the said blew tassetie bend, with certane of the said Laird and Ladies writtis and evidentis, bot wald nocht declair how he came be thame; as the Extract of his Confessioun, heirwith producit to schaw, beris: To the takin lykwayis, the said Johnne, being charget of befor to find cautionne to haif comperit before the Justice, at ane certane day bygane, to vnderly the law for the foirsaidis crymes, he than, for disobediencie of the said charge, past to the horne; as the Hoirning lykwayis schawin beiris.

PERSEWARIS, Johnne Craufurd of Kilbirnie, Sir Thomas Hammiltounne of Monkland, kny^t, Aduocat. **PRELOCOUTOURIS** for the pannell, Mr Johnne Russell, Williame Speir, wryter, Mr Patrik Hammiltounne.

The Laird of Kilbirnie takis instrumentis of the productione of Thomas Wilsoun at the horne, and lykwayis of the productione of the Letteris aganis

¹ Principal title-deeds and writings.

² In token, or proof.

the cautioneris for the Entrie of Johnne Craufurd, and of the roll of his Affise; and offeris him reddie to persew the said Johnne for the crymes contenit in his Dittay; and protestis, in respect thair of, that he be relevit of his cautionerie.

VERDICT. The Affise, be the mouth of Williame Orr in Lochrig, chancellor, for the maist pairt, stand, pronuncet and declairit the said Johnne Craufurd to be Clene, innocent and acquit of airt and pairt of the breking, &c.

Slaughter — Demembration.

Mar. 7.—NINIANE ARMESTRANG, callit *Niniane of Tueidane*, Andro Henderfoune, servand to the Laird of Mangertoune, Archibald Airmestrang, callit *Fair Archie*.

Dilaitit of the Slauchter of vmq^{le} Andro Smyth, and demembring of Thomas Tueidie of his neise (*nose*.)

PERSEWERIS, Johnne Smyth, sone to vmq^{le} Andro Smyth, Thomas Tueidie in Dwnfyre.

The perseweris passis fra the persones in pannel, *pro loco et tempore*.—Robert Scott of Hayning become fouertie for the entrie of Niniane and Andro, and Sir James Johnnestoune of that Ilk, for the said Archibald, the thrid day of the air (of Dumfries) or soner, vpone xv dayis wairning, to vnderly the Law, &c.

Mutilation and Demembration.

Mar. 7.—GAWIN ELLOTE of Fiddeltoune, callit *Johnne's Gawin*.

Dilaitit for Disinembring of Thomas Twiedie in Dunfyre of his nise (*nose*.)

Robert Ellote younger of Fallinesche oftymes callit, as cautioner for the said Gawin, to haif enterit and presentit him befor the Justice this day, vnder the pane of thre thousand merkis; as he that become fouertie actit in prefens of Sir Williame Seatoun of Kylefinure, Sir Johnne Chairteris of Amisfeld, and Sir Jedione Murray of Elibank, knyth, his Maiesteis Commisshoneris, in ane Court of Justiciarie held be thame, within the tolbutth of Peiblis, the tuentie tua day of December lastbypast. The said Robert vnlawit in the said pane.

Cattle and Horse Stealing—Slaughter—Fire-raising—Shooting of Pistolets—Cutting down Timber, &c.

Mar. 19.—HECTOUR TRUMBILL of Wauchope, George Trumbill his sone, Adame Trumbill in Bullerwall, ('*past fra*,') George Trumbill in Howa, ('*past fra*,') Johnne Trumbill, sone to Hectour of Wauchope, Hectour Trumbill of Stanyledge, ('*past fra*,') Andro Trumbill, brother to Bullerwall, ('*past fra*,') Hectour Trumbill in Clarielaw, and Thomas Trumbill of Hoppisburne.

Dilaitit, accufet and perfewit for airt and pairt of the crymes *respectiue* following, viz.

FOR the thiftious Steilling, conceilling, refetting and away-taking, fra Margaret Trumbill Lady Apotefyde, furth of the toun and landis of Hairwood, tua hundreth ky and oxin, threttie fcoir of feheip, threttie horfe and meiris, with the haille inficht and pleniffing, worth the fowme of ane thoufand pundis money; committit in the moneth of Junij, the yeir of God I^m.V^c. fourfeoir aughtene yeiris (1598). ITEM, for airt and pairt of the thiftious steilling, conceilling, refetting and away-taking furth of the landis of Apotfyde, of ane hundreth ky and oxin, tua hundreth feheip pertening to the faid Margaret, with hir haille infycht and pleniffing being within the faid place, worth V^c lib.; committit in Junij, the yeir of God foirfaid. ITEM, for airt and pairt of the thiftious steilling, conceilling and away-taking, be way of Maifterfull thift and flouth-reif, furth of the faidis landis of Apotfyde, of xxx ky and oxin, pertening to the faid Margaret Trumbill, with hir haille inficht pleniffing, worth the fowme of V^c merkis; committit in Januar, the yeir of God I^m.V^c. fourfeoir nyntene yeiris. ITEM, for airt and pairt of the treffonabill and awfull Raifing of fyre aboue the place of Apotfyde, and burning and diftroying of dyuerfe houffis within the faid place, togidder with tua horfis, price of the peice! V^c pund; with certane inficht and pleniffing; committit in the moneth of Maij, I^m.V^c. fourfeoir nyntene yeiris: And for airt and pairt of the crewall Slauchter of vmq^{le} Williame Lorane,² ane young boy of xij yeiris of age; committit in the moneth of Julij, the yeir of God I^m.Vj^c. yeiris, within the wood of Lorane, vpone fet purpois, prouifoun, auld feid and foirthocht fellony. ITEM, for airt and pairt of the crewall Slauchter of vmq^{le} Hectour Lorane of Harwoid, with fchotis of hagbutis and piftolettis; committit in the moneth of Junij, the yeir of God I^m.Vj^c. and foure yeiris. ITEM, for airt and pairt of the Slauchter of vmq^{le} Lyell Broun, fervand to the faid Margaret: AND als, for airt and pairt of Steilling fra the faid vmq^{le} Lyell, furth of his landis of Harwoid, of threttie ky and oxin, threfcoir feheip, thre horfe and twa meiris, with the haille inficht and pleniffing of his hous, worth the fowme of thre hundreth merkis; committit in the moneth of Junij, the yeir of God, I^m.V^c. fourfeoir aughtene yeiris. ITEM, for contravening of the Actis of Parliament, in beiring, weiring and fchuiting of hagbutis and piftolettis, vpone the faidis landis of Harwoid, Apotefyde and remanent places foirfaidis, fchuiting and flaying of the faidis Hectour Lorane of Harwoid, and vinq^{le} Williame Lorane, his brother, the tymes *respectiue* aboue writtin of the committing of thair faid Slauchteris. ITEM, for contravening the Actis of Parliament, in cutting down and diftroying, in the monethis of Januare, Februare, Marche, and remanent monethis of the yeiris of God I^m.V^c. fourfeoir aughtene, 1599, 1600, 1601, 1602, 1603, 1604 and 1605, at the leift in ane ar vther of the faid monethis and yeiris of God, of the haille grit growand trayis,³ within the woidis of Apotefyde, pertening to the faid Margaret Trumbill, viz. ane thoufand birk treyis, fyve hundreth grit aikis, thre hundreth allouris, four hundreth haifailis;⁴ and hes waifit and diftroyit the faidis woidis.

PERSEWERIS.

Margaret Trumbill, Lady Apotfyde; Mr Robert Lyntoun, Aduocat, fubftitute to my Lord Aduocat.

PRELOCUTORIS for the pannel, Mr Alexander King, Mr Lawrence McGill.

Comperit perfonallie WILLIAME ERLE OF ANGUS, Lord of the Regalitie of Jedburgh-efferest, and producet his Seafing, comprehending the faid Regalitie, and defyrit to Repledge the particular perfones following, duelling within the faid Regalitie, viz. The Laird of Wauchope, George and Johne Trumbillis, his fones, and Thomas Trumbill of Hoppisburne, as houfhold man to Thomas Trum-

¹ Price of each, £500.

² Brother to the Laird of Harwood.

³ Large growing timber.

⁴ 1000 birch trees, 500 great oaks, 300 allers (elder, or mountain ash), 400 hazels.

bill younger of Wauchope, all duelland within the said Regalitie. It is anfuert be the Aduocat, that the perfones defyrit to be repleget can nocht be repledget for Treffone, viz. ffyre-raising,¹ contenit in the Dittay.—It is anfuert be Mr Alexander King, that thai aucht to be repledget, nochtwithstanding of the Aduocatis allegiance; becaus (thair is) na Treffone, bot that quhilk is committit aganis the kingis awin perfone.—It is duplyt be the Aduocat, that ffyre-raising is Treffone; and quhairfore the said perfones can nocht be repledget, bot sould pas to ane Assyfe, quithir it be committit aganis his Maiesteis perfone, or for ony vther cryme impoirting Treffone.

THE Justice, eftir probatioune led that the saidis perfones duelt within the Regalitie, Admittis my Lord of Angus Replegeatioun, repledeand thame for the hail crymes contenit in the Letteris, except the Treffone of ffyre-raising: And my Lord of Angus, present, fand cautioune, viz. Adame Trumbill in Bullerwall, to administer Justice, in Lyntelleis, the xv day of Apryle nixt; and the said Adame become cautioune for the entrie of the saidis perfones.²

The perfewer passis fra Hectour Trumbill of Clarielaw, for the cutting and distroying of the greine-woid, contenit in the Dittay, *pro loco et tempore*.

Treasonable Fire-raising — Cattle-stealing — Slaughter, &c.

Mar. 19.—HECTOR TRUMBILL of Wauchope, George Trumbill and Johnne Trumbill his fones, Hectour Trumbill of Clarielaw, and Thomas Trumbill of Hoppisburne.

Dilaitit, accuset and perfewit of the crymes *respectiue* following, viz.

THE said *Hectour Trumbill of Wauchope* and *Hectour Trumbill of Clarielaw*, of airt and pairt of the tressonabill and awfull Raising of ffyre, vpone the landis of Harwod, and burning and distroying of fourtie dargis of turves,³ pertening to the said Margaret Trumbill Lady Apotefyde; committit in the moneth of Junij, the yeir of God, I^m.V^c.lxxxviiij yeiris. ITEM, the saidis *Hectour Trumbill, elder of Wauchope, George and Johnne Trumbillis* his fones, *Hectour Trumbill of Clarielaw*, and *Thomas Trumbill of Hoppisburne*, for airt and pairt of the tressonabill Raising of ffyre about the Place of Apotefyde, and burning of findrie houffis of the said Place, togidder with tua horfis, worth ane thouesand pundis, and hail insycht and pleniffing within the saidis houffis, worthe ane hundreth pundis; committit in the moneth of Maij, the yeir of God I^m.V^c.fourfoir-nyntene yeiris. ITEM, the said *Hectour Trumbill of Clarielaw*, for airt and pairt of the Steilling of tua hundreth ky and oxin, threttie scoir of scheip, threttie horfe and meiris, pertening to the said Margaret Trumbill Lady Apotefyde; with the hail insycht and pleniffing of hir bouffis, worth the sowme of ane thousand pundis; committit in the moneth of Junij, the yeir of God I^m.V^c.fourfoir aughtene yeiris: AND of the hail remanent crymes of Thift, Slauchteris, Cutting doune of grene growand treys and vtheris contenit in the Act of adjudicatioun of Thomas Trumbill, of the dait of thir presentis.⁴

¹ Being one of the pleas of the Crown.

² This, evidently, is one of the instances which the Editor has before referred to of the evil effects resulting from the Heritable Jurisdictions possessed by the Barons of Scotland, before the Act, abolishing such powers, was passed. The purpose of the 'Replegiation' was undoubtedly to quash all proceedings, and suppress the administration of justice.

³ Darg usually signifies a *day's-work*. This may, therefore, signify a quantity of peats or turfs, equivalent to the labour of forty days' work, in casting, &c.

⁴ See the first Dittay.

VERDICT. The Affyse, be the mouth of Williame Ryddell in Woidhous, chanceller, all in ane voce, ffind, pronuncet and declairit the saidis Hectour Trumbill of Wauchope, &c. to be Cleane, innocent and acquit of airt and pairt of the crymes perticularlie aboue specifeit.

Theft — Slaughter — Fire-ratsing, &c.

Mar. 19.—**THOMAS TRUMBILL**, younger of Wauchope.

Dilaittit of airt and pairt of the thiftious Steilling, conceilling, resfetting and away-taking fra Margaret Trumbill Lady Apotefyde, &c.¹

THE Justice decernit and ordanit James Gledftanes, appeirand of Coklaw (as cautioner for his entry), to be vnlawit and americiat in the panes contenit in the Actis of Parliament, viz. ffor nocht entrie of the said Thomas, to the effect foir-faid, in the pane of Fyve hundreth merkis money: And ficylke, Decernit and ordanit the said Thomas Trumbill, younger of Wauchope, for his non-compeirance, to be denuncet our fouverane lordis rebell and put to his hienes horne, and all his moveabill guidis to be efcheit and inbrocht to his Maiefteis vfe, &c.

Slaughter.

Mar. 20.—**LAURENCE LORD OLIPHANT.**

Dilaitit of airt and pairt of the Slauchter of vinq^{le} Gilbert Gray in North Banderane; committit in the moneth of September laft.

PERSEWERIS.

Helene Rattray, the relict, Mr Thomas Henderfoun, Aduocat-fubstitute to his Maiefteis Aduocat.

PRELOCUTORIS for the pannel, Mr Williame Oliphant, Mr Alexander King.

My Lord Aduocat takis instrumentis of the productione and reding of his Maiefteis Letter, direct to the Counfall; quhairof the tennour followis.

JAMES R.

RIGHT trustie and weilbelouit counseignis and counfallouris, WE greit zow hairtlie weill. Quhairas it is heavilie complened vnto us, be Patrik Gray, of the crewall Slauchter of vinq^{le} Gilbert Gray his faper, by certane perfonis speciallie houndit out be pe Lord Oliphant, and fum of pame being his domestik feruitouris; quich offence doith so muche pe moir greve us, that now, quhair as in the lait Bordouris and in pe verrie Hielandis of pat our realme, pair is fuch vnuerfall obedience, that nocht-peles in pe verrie hairt of pat cuntrey, and so neir to pe ordiner place of residence of our Justice pair, fuch ane vyld fact fould be committed, without pwneishment inflicted vpon the doaris pairof; and pat to delude our Justice, any of our nobilitie pair, absenting him self from pe actioun, fould hound out vperis to execute his privat revenge, and be his craftie conveyance of pe malefactoris out of pe way, fould tak away all meanis of pe tryell of his awin giltines in that cryme; quich doing, inferring so dangerous anc preparatiue² as that nane of our subiectis, gif pis be nocht prevented, can be in suretie of his life. WE ar pairfoir to recommend to zour speciall care and diligence, as ze respect our pleafour and seruice, that na menis be vnflayed by zow, to bring pe treuth of pis matter to light; ffor as WE ar moft grevonflic offendit with pe cryme committed, so if pe doaris be nocht apprehendit, pe matter

¹ See the first Dittay.

² Example, precedent.

halytie tryit, and justice ministrat accordring pairto, it will so much be moir discontent us. And so We bid 3ow fairweill. FROM our Court at Quhytehall, the eght of Januare, 1606.

Eftir the reiding of the quhillk Letter, my Lord Aduocat defyret, that, accoording to the said Letter, this matter shold be tryit, and my Lord Oliphant committit, quhill¹ the perfonen contentit in the Letteris be exhibeit and presentit to justice.

The quhillk day, Lawrence Lord Oliphant, being enterit vpone pannell, be him selff, with Mr Williame Oliphant and Mr Alexander King, aduocattis, his prelocutouris, exponet and declairit,² fforfamekill as he, being charget, be vertew of our fouerane lordis Letteris, purchest at the instance of Patrik Gray, in North Bandirrane, eldest sone, Gilbert and Johnne Grayis, also sones, with the remanent kyn and freindis of vmq^{le} Gilbert Gray, in North Bandirrane, and Sir Thomas Hammiltoun of Monkland, knycht, aduocat to our fouerane lord, for his hienes entreis, to find caution, actit in the buikis of Adiornall, that he shold compeir befor the Justice and his deputis this day, and place, in the hour of caufe, to vnderly the law, ffor airt and pairt of the felloun and crewall Slauchter of the said vmq^{le} Gilbert Gray, allegit done and committit be the said Laurence Lord Oliphant, vpone the . . . day of September lastbypast, vpon the landis of North Bandirrane; at the leifst, the samyn being done of the speciall causing, sending, hounding out, devyseing, airt, pairt-taking, directioun, counfailing, refsetting with the bludie hand, command, assistance and ratihabitoune of the said Laurence Lord Oliphant, as the Letteris beiris. For obedience of the quhillk charge, he than fand Williame Moncreif of that Ilk souertie for his entrie, this day and place, to the effect foirsaid; ffor quhais releif and tryell of his innocencie in the said matter, he compeirit, and offerit him self reddie to abyde the tryell of the law for the saidis allegit crymes, quhairof he was maist innocent; disaffenting to all continuatioune. And in respect that the saidis Patrik, Gilbert and Johnne Grayis, perfeweris specifeit in the saidis Letteris, being oft tymes callit, compeirit nocht to insist in his lordschipis persute, for the crymes abone specifeit, protestit for releif of the said Williame Moncreif of that Ilk, his cautioner, of his cautionerie foirsaid; and that he be nocht callit nor persewit at the instance of ony pairtie, for the saidis crymes, in tyme cuming.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of the sheresdome of Forfar, or soner, vpone xv dayis wairning: And ordanis my Lord Oliphant to find cautione for his compeirance, to the effect and in maner foirsaid; quha fand Sir George Toures of Innerleyth, knycht, souertie for his entrie, vnder the panis contentit in the Actis of Parliament.

¹ Until. ² It is thus expressed in a sentence immediately preceding, 'My Lord Oliphant offeris him self reddie to abyde the tryell of the Law, disaffenting to all continuatioune; and seing thair is ane sufficient number of noble men in this burgh to pas vpone his Assyse, desyres he may be put to the Tryell of ane Assyse, instantlie, for the crymes lybellit.'

Slaughter — Bearing and Shooting of Hagbuts, &c.

Mar. 22.—GILBERT GRAY of Bandirrane, Patrick Gray, his sone, and Williame Broun in Hagishall.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Maister of Oliphant and of James Reid, sone to David Reid of Thridpairt, &c.

Compeirit Hew Reid, and produceit our souerane lordis Lettres, deulie execute and indorsat, and askit instrumens of the productioun thairof; and protestit for his cautioneris releif, and offerit him selff reddie, with the assistance of the Kingis Maiesteis aduocat, to persue Patrik Gray and Williame Broune for the slauchter of vmq^{le} James Reid, his brother. Compeirit Mr Johnne Russell and Mr Thomas Hoip, aduocattis, and presentit the Kingis Maiesteis Letter, quhair- of the tennour followis.

JAMES R.

JUSTICE, Justice Clerk and your deputtis, We greit you weill. Forfamekill as it is vnderstand to us, that our vtheris Letteris ar direct at the instance of pe kyn and freindis of vmq^{le} James Reid, sone to David Reid of Thrid-pairt, and our Aduocat for our intreis, ffor calling of Gilbert Gray, &c. to vnderly our lawis befor you, for airt and pairt of pe Slauchter of pe said vmq^{le} James, as our saidis Lettres beiris: As lykways, for Convocatioun of our leigis in airnes, and beiring, weiring and schuiting of hagbuttis and pistolettis, aganis pe tennour of our Actis of Parliament and Proclamations, maid and direct, expresse prohibiting pe same: Nochtwithstanding, being informet pat pe said Slauchter was committit, and pe saidis forbidden wapones borne and vsed in the executioun of our Commissioun, direct for searching and apprehensioun of Gilbert Gray, sumtyme fervand to Gilbert Gray of Mekill Bandirrane, our denounced rebell, for pe crewall Slauchter of vmq^{le} Johnne Shipbird, for findrie crymes of Thift and vperis odious crymes committit be him: And that vmq^{le} Johnne Maister of Oliphant, and pe said vmq^{le} James Reid, in not withstanding of our saidis Commissioneris, and assisting and plane partaking with pe said Gilbert our rebell, wer baith slane: ffor quhilk beiring, weiring and schuiting with pe saidis hagbuttis and pistolettis, our said Commissioun, conteneing a speciall Remissioun to our saidis Commissioneris, and all vtheris our subiectis assisting same, in executioun pairof: And considering pairwith, pat pe executioun of this our Commissioun, in pat soirt, may terrifie pe lyk malefactoris to continew¹ in their wicked deidis, contempt and rebelloun. It is pairfouir our Will, and We command you, that vpon pe sicht heirof, ye stay all maner of proceeding against pe saidis Gilbert Gray of Bandirrane, Patrik Gray his sone, and Williame Broun, for pe said Slauchter of pe said vmq^{le} Maister of Oliphant and James Reid, the beiring, weiring and schuiting with pe saidis hagbutis and pistolettis, or ony vtheris crymes exprest in our saidis Letteris, alreddie raisit, or to be raisit aganis same for pe same, in tyme cuming, sua pat pai may inioy pe benefeit of our Remissioun, exprest in our Commissioun foirsaid: As ye will ansuer to vpon your office and obedience; Quhairanent this present fall be your sufficient Warrant. Gevin at our Court, in Quhytehall, pe penult day of Maij, 1604.

Mr Robert Lyntoun, Aduocat, substitute to my Lord Aduocat, allegis *ante omnia*, the persones perfewit aycht to be enterit on pannel; and thairfouir, in respect of thair nocht entry, defyres of the Justice that thair cautioner may be vnlawit, and thai, for thair nocht compeirance, adiuget to be denuncet rebell and put to the horne; and that in ane Criminall perfute, according to the daylie

¹ From continuing.

practik, the defenderis, befor any proces, sould be first enterit. The said Mr Johnne Russell allegit in the contrair, in respect of his Maiesteis Warrant; and forder, that his Maiestie, be his auctoritie, may ather command the Justice to hald Court or to continew the dyet, at his Maiesteis plesour.

THE Justice, in respect of his Maiesteis Letter, producet, continewis this matter to the thrid day of the air,¹ or foner, vpon xv dayis wairning, in the samyn estait as it was ofbefoir, aganis Patrik Gray and Williame Broune: And ordanis Johnne Lyndesay of Evlik, cautioner, in respect of their nocht entrie this day and place, to remane still cautioner, conforme to the Act of Adiornall maid thairupoun ofbefoir. Quhairupoun the saidis personeris and the said Mr Johnne Russell askit instrumentis.

Cattle and Horse-stealing.

Jun. 13.—ROBERT BEIROPE of that Ilk.

Dilaitit of airt and pairt of the Steilling of certane ky and oxin, pertening to Sir Johnne Ker of Hirfell, viz. fforamekill as he, accompaneit with Robert Selbie of Bittilfdane, Loukie Davidfoun and diuers vtheris, his complices, commoun and notorious thewis, broken men, in the moneth of November 1596 yeiris, cam to the said Sir Johnnis place of Lytildane, and thair, vnder syence and cloud of nycht, brak vp the byre-duris of the said place, and thifteoullie stall, concelit, resset and away-tuik furth thair of saxtene ky and oxin, with sax horse and meiris, &c.

PERSEWER, Sir Johnne Ker of Hirfell.

PRELOCUTOURIS for the pannell, The Lairdis of Pharnherst, elder and y^e, Mr Johnne Russell.

VERDICT. Found by the Assyse² to be 'Clene, innocent and acquit.'

Slaughter.

Jun. 18.—JOHNE M^cDOWELL of Freuchie; Johnne M^cdowell, his servant; Eufame Dunbar, Lady Garthland; Alexander M^cdowell of Barjarg; Alexander Neilsoun, fear of Craigcaffie;³ Patrik M^cdowell of Creoches; Williame Bigholme in Galderioch; Gilchryft M^cmaiffer, thair; Vthreid M^ckie in Innermessene;⁴ and Nicol M^cgowne in Trotincoroche.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Quintene Boyd; committit in the moneth of Apryle lastbypast.

¹ Of Perth. ² Chiefly feuars. The chancellor was Johnne Mow of that Ilk. Johnne Halyburtoun of Mertoun, James Ker of Steiltokbrayis, Johnne Robfoun of Burvanes, and Patrik Dikfoun of Belchefer, are the only persons of note who appear on the Inquest.

³ 'Past fra simpliciter.'

⁴ 'Past fra simpliciter.'

PERSEWER, Adame Boyd, as brother.

The perfonnes enterit on pannell afkis instrumentis of thair entrie, and protestis for releif of the Laird of Mondurk, thair cautioner: And in respect of thair innocencie of the crymes lybellit, offeris thame selfis to the tryell of the law thairfoir, and difassentis to all continuatioune.—The perfewer passis fra the Lady Garthland *simpliciter*, in respect of hir innocencie.

THE Justice Ordanis the remanent Defenderis to find caution to the thrid day of the air, or foner, vpone xv dayis warning.

QUESTION of the Pannels being entitled to their expenses.

It is allegit be the perfonnes on pannell, that in matters Ciuill, protestatioun being admittit in fauouris of the defender aganis the perfewer, the Lordis are in daylie vse to modifie the parteis expensfis; *multo magis*, in matteris Criminall, a partie being perfewit and compeirand, offerand him selff to abyde the tryell of the law, for the cryme quhairof thay ar indyttit, thair expensfis aucht to be modifeit, and the perfeweris decernit to pay the samyn.

THE Justice declairis to this perfewer, gif he raise Letteris of new agane, contrair thir defenderis, vpoune the crymes foirfaidis, gif thay fall happin to be clanget, he fall be adiudget to pay the defenderis expensfis, bayth for this dyet and the dyet following: And ordanis the Clerk to tak cautioune of him at the raising of the Letteris to the effect ffoirfaid: Quhairvpoun the perfonnes on pannell alkit instrumentis.

The 'Assyfouris' also protested, that 'thai be nocht summond heirefter, for this cause.'

Oppression — Taking Captive — Murder.

JUN. 20.—THOMAS CALDER in Clwnes, Johnne Oir in Calder, and

Walter M^robie Roife in Mekil Geddes.

Dilaitit of airt and pairt of the Taking and Apprehending of vmq^{le} David Dunbar of Lochileis captiue and presoner; and conveying him captiue to Erygill, and detening him in captiuitie, be the space of tuell oukkis.¹ And for airt and pairt of the Slauchter and Murthour of vmq^{le} Williame Lyoun and vmq^{le} Alexander Dauidfoun, seruandis to the said vmq^{le} Dauid; committit in the moneth of October, the yeir of God I^m.V^c.lxxviii yeiris, within the toune of Aulderne.

PERSEWARIS, Alexander Dumbar of Lochieleis, (as sone,) Johnne Lyoun, as sone to vmq^{le} Williame Lyoun, Andro Dauidfoun, as brother to vmq^{le} Alexander.

PRELOCUTOURIS for the pannell, Mr Thomas Henderfoun, aduocat, Mr Henrie Kynroife.

The saidis Thomas, &c. tuik thame to our souerane lordis Remissoun, producit, vnder the Greit Seill, of the dait, at Halyruidhous, the thryd day of Apryll,

¹ Weeks.

the yeir of God, I^m.V^o.lxxx and nyne yeiris ; Quhilk Remiffioun, the Justice admittit, and Johnne Campbell of Calder, with thame felffis, become cautioneris and fouerteis, coniunctlie and feuerallie, to fatisfie the partie, as law will.

[CURIA JUSTICIARIE *f. d. n. Regis, tenta in Aula Inferiori de Ormestoun-hall, per M. Willielmum Hairt, Justiciarum Deputatum.*]

Murder of a Pregnant Woman — Child-murder.

NOV. 10.—PATRIK DEANIS, in Gilcherstoun.

Dilaitit of the cewall and vnnaturall Murthour and Slauchter of vmq^{le} Katharene Butler his spous, and of ane infant bairne in hir wamb ; be streking hir with his feit vpon the wamb, and with ane swyngill-trie,¹ on the bak and schoulderis, and dyuerse vtheris partis of hir body, scho being with quik bairne for the tyme ; be ocafoun quhairof, scho immediatlie thaireftir, with the said bairne in hir wamb, depairtit this lyfe : Committit the sevint of Nouember instant, at his awin hous-dur in Gilcherstoun, betuix aucht and nyne houris at evin, &c. ; conforme to his awin Confessioun.

VERDICT. The Assise, be the mouth of Johnne Harlaw in Laistoun, chancellor, ffand, pronuncet and declairit the said Patrik, conforme to his awin Confessioun, maid judicillie in thair presens, to be ffylet, culpabill and convict of the said cewall and detaiftable Murthour.

SENTENCE. And thairfoir the said Justice-depute, be the mouth of Johnne Hammiltoun, dempfter of Court, decernit and ordanit the said Patrik to be tane to the ground quhair the said fact was committit, and thair to be hangit vpon ane gibbet, quhill he be deid ; and all his moveable guidis to be escheit, &c.

Slaughter.

Dec. 19.—EDUARD NISBET, merchand burges of Edinburge, and Thomas Nisbett, sone to the Laird of Nisbet.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Carmichell, sone to the Guidman of Vderine.

PERSEWERIS, Richerd Carmichell, brother, Williame Carmichell, father-brother, Marioun Carmichell, father-sister ; and Mr Johnne Russell, Aduocat, Mr Robert Boyd, curators to the said Richerd.

PRELOCUTORIS for the pannell, Mr Alexander King, Aduocat, Sir Williame Cranstoun, Mr Thomas of Moriestoun, Mr Johnne Nisbet, James Nisbet, merchand.

Compeirit Richerd Carmichell, &c. with Mr Johnne Russell and Mr Robert Boyd, curaturis to the said Richerd ; and the said Mr Johnne, as spous to the said Marioun ; and producet his Maiesteis Warrant to the Justice ; quhairof the tennour followis.

¹ The wooden-beam, or 'tree,' to which the plough-traces are attached.

JAMES R.

JUSTICE, Justice Clark and your deputies, We greit 3ow weill. Having directit to continew the perfute of Thomas and Edward Nisbetis, for pe slauchter of vmq^{le} James Carmichell, quhill the informatioun gewin vnto ws of pair committing of pat fact in pair awin defence, war fyrst tryed by our Counfall; from quhom we have ressaunt ane cleir testimony of pair innocency of pat fact: And being most willing that Justice be administrat to all our lving subiectis: It is thairfore oure Will, that 3ow affix and keip your Justice Court against the saidis personis, att sic place as falbe maist convenient; and putt pame to pe knowledge of ane Inqueist; so that the accusatiounes and defences of both the pairteis may be weill considered of by 3ow, before that mater be adiudged: And that, nochtwithstanding any command or directione gewin by ws or our Counfall in pe contrair; as 3e will answere to ws vpoun your office and obedience: Quhairanent pir presentia falbe your Warrant. Gewin at our Court of Roystoun, the xiiij day of October, 1606.

And siclyk, producet our fouerane lordis Letteris of Assyse and Dittay formet aganis the pannell; and tuik instrumentis of the productione thairof.—The pannell declairis, nochtwithstanding of thair innocencie of the Slauchter, they are content to enter in cownoning, and to offer satisfacioun and assythement for the slauchter, at the sight of freindis.—The perseweris declairis, in respect that the bairne is minor quha persewis; and thairfoir, the remanent perseweris can nocht tak the burding of that mater vpone thame; and desyret proces. Thair-after Mr Alexander King, prelocutour for the pannell, producet his Maiesteis Warrant, direct to the Justice, for continuatioun of this matter to the xxviiij day of Januare nixt; quhairof the tennour followis.

JAMES R.

It is our pleaffour and Will, that 3e continew all actionne and proces before 3ow, at pe instance of pe kyn and freindis of vmq^{le} James Carmichell in Dyfert, aganis Edward and Thomas Nisbetis, for pe Slauchter of pe said vmq^{le} James; committit in pe moneth of . . . lastbypast; and nawayse proceed and grant any proces thairin, before the xxviiij day of Januar nixtocum: ffor pe quhillk 3our delay and continewatioun, thir presentis falbe to 3ow sufficient Warrant. Gewin at our Court off Qulytehall, the nynt of December, 1606. To our Ry^t trustie and weilbelonit, oure Justice, Justice-clark, and pair deputis.

It is answereit be the perseweris, that the said Warrant of continuatioun aucht nawayis to be respectit be the Justice; bot nochtwithstanding thairof, the persones now on pannell aucht presentlie to be put to the knowledge of ane Assyse; for tua causis: *first*, In respect of the former Warrant producet, quhairin tua speciall poyntis are maist remarkable; first, his Maiestie thairby hes declairit, that he hes ressaunt na cleir testimony of thair innocencie, be the tryell¹ tane at Leyth, befor the Counfall; and thairfoir, accoirding to his hienes good affection to justice, of his certane knowlege and proper motiue directit the first Warrant: The nixt, is the command gevin thairin to the Justice, with this qualite,² that he fall obey the samyn, nochtwithstanding of quhatsumeir vther command thair gevin be his Maiestie or Counfall in the contrair. *Secundo*, the

¹ Examination, *precognition*.² Qualification.

saïd pretendit laft Warrant is direct expres contrair the Act of Parliament 1592, quhilk sayis, it is statute and ordanit, be his Maiesteis speciall will and direction, that na Warrant for continuatioun of Justice Courtis fall be admittit be the Justice and his deputis, in tyme cuming. *Laft*, nocht only is it exprefs aganis the saïd Act of Parliament, bot aganis the daylie ordour and practik obseruet baith befor the Lordis of Counfall, in Ciuill caussis, and befor the Justice in Criminal caussis, that Warrantis purchest be the fute of partie, sinister information, and for stay of Justice, fall nevir be respectit; quhilk is also conforme to the cowmoun law.—It is anfuierit, that the hail allegances aucht to be repellit, in respect of the Kingis Maiesteis Warrant.

THE Justice, according to his Maiesteis Warrant and direction, continewis this matter to the xxvii day of Januare nixt: And ordanis the perfonen on pannel to be wairdit within the Tolbuith of Edinburgh to the saïd day,¹ and the Affyse, summond to this day, wairnit, *apud acta*, &c.

Cruel Slaughter.

Dec. 19.—JOHNE and WILLIAME RUTHERFURD, fones to Stewin Rutherford in Chatto, boirne vnder James Ker of Greneheill.

Dilatit, accuset and persewit be DITTAY,

FORSAMEKILL as, thay haifing confanit ane deillie feid, rancour and malice aganis vmq^{le} Thomas Bell in Spiddope-fute, in England, because he had hurt and lameit the saïd Williame, vnderstanding the saïd vmq^{le} Thomas to haif bene in his fomer-scheill besyde the fellis,² in the moneth of Junij, or thairby, lastbypast, thay, vpoun cullour and in a counterfute forme, feingeing thame selfis to be in feiking of ane kow that was tynt³ amangis the scheillis, come to the saïd vmq^{le} Thomas Bell, in an howp⁴ callit Spittope-howp, quhair he wes, in fober and quyet maner for the tyme, with his wyfe and ane young las, milking thair ky; and thair, the saïd William Rutherford, haifing ane grit grene kent and squarit batoun⁵ in his hand, estir sum wordis past betuix the saïd Williame and the saïd vmq^{le} Thomas, he crewallie invadit him for his Slauchter, and gaif the saïd vmq^{le} Thomas ane crewall and deillie straik in his heid, and claif the famin afunder: Off the quhilk straik he immediatlie thaireftir fell down deid. Lyke as, the saïd Johnne Rutherford, for quhais cause the saïd deillie feid was confaunt, stude afyde, awaiting gif his brother had bene overthrawn, or the saïd vmq^{le} Thomas, to haif fortifeit and affistit him. And immediatlie eftir the famin Slauchter wes committit, thay baith mett togidder at the nik of the fell,⁶ and hering the spraich⁷ ryife, and the country to follow thame, thay baith fled in England; quhair thay were fugitive, quhill⁸ thair apprehensioun for the saïd Slauchter. And fa, the saïd Slauchter wes committit be thame; and thay and ather of thame ar airt and pairt thairof, vpoun fett purpois, provisioun, auld feid and foirthocht felony; in hie and manifest contempt of our souerane lordis auctoritie and lawis, &c.

¹ There is no entry on Record of further proceeding in this case; but it is likely the Nisbets compounded with the private prosecutors, and obtained Letters of Remission.

² The summer scheills or *scheillings* on the 'fells' or hills, were temporary huts, for the use of those who attended the cattle during their grazing on commons, &c. They are still kept up in many parts of Scotland. It is the practice to dismantle them at the end of the grazing season.

³ Lost.

⁴ Or *hope*, a sloping hollow between hills, a common term in the south of Scotland. *Slack* is synonymous.

⁵ A large *ring*, staff, or bludgeon, and a batoun or stick made square, (i. e. with angular edges,) to give a more severe and deadly blow.

⁶ Nik is a narrow cleft or opening, at the summit of two hills.

⁷ Hue and cry.

By reference to the Works of Sir Walter Scott, it will be seen with what astonishing alacrity the country was 'raised,' on such occasions. The pannels showed no small address in effecting their escape.

⁸ Until.

VERDICT. Eftir accufatioun of the pannell, be Dittay, of the crymes aboue writtin, quhilk wes grantit be the faid Williame, and alluterlie¹ denyit be the faid Johnne, the Affyfe, be the mouth of Murray of Brochtoun, chancellor, fand and pronuncet the faid *Johnne* to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the faid vmq^{le} Thomas Bell, and of the hail heidis of the Dittay aboue writtin: And alse, ffand, pronuncet and declairit the faid *Williame* to be flylit, culpabill and convict of airt and pairt of the faid Slauchter.

SENTENCE. For the quhilk caufe, the faid Justice-depute decernit and ordanit the faid *Williame Rutherford* to be tane to the Castellhill of Ed', and thair, his heid to be ftrikkin from his body; and all his movable guidis to be efcheit, &c.

Breaking into the Place of Torwoodlee — Taking Captive — Murder — Stouthrief, &c.

Jan. 8, 1607.—JOHNNE ELLOTT of Cappschaw.

Dilaitit, accusèt and perfewit be George Hoppringill of Torwoidlie, James and David Hoppringillis, as ovis,² with the remanent kyn and freindis of vmq^{le} George Hoppringill of Torwoidlie, thair guidfchir,³ of the crymes following, viz.

FORSAMEKILL as the faid Johane Ellote of Copschaw, Robert Ellote, callit *Mairtenis Hob*, and Jok Airmetrang, callit *the Lairdis Jok*,⁴ with thair complices, with convocatioun of the hail Clannis of the Airmetrangis, Ellotes, Batiesones, Grahames and remanent Clannis, duelland alswell on the Inglis as Scottis Bordouris, all comnone thevis, outlawis and brokin men, to the number of thre hundredth perones or thairby, bodin in feir of weir, with jakis, speiris, steil-bonneitis, lance-stalfis, hagbutis and pistoletis, exprellie prohibeit to be borne, wvot, vset or schot with, be dyuerse our Actis of Parliament and Secreit Counfall, in the moneth of December, the yeir of God I^m.V^c. threfcoir aucht yeiris, (1568,) come forward, in hosteill maner, baith on horfe and fute, to the Place of Torwoidlie, and thair, vnder silence and clud of nycht, with foir-hammeris and geistis,⁵ dang up the zeittis⁶ of the faid Place, and be force and violence enterit within the samyn; and tuik the faid vmq^{le} George [Hoppringill] furth of his bed, and convoyit him away, as captiue and prifoner with thame, to the Skaldeneife, within the Sherefdom of Selkirk; and thair maist crewallie and vnmerciefullie Murdreift and slew the faid vmq^{le} George: Committing thairthrow, nocht only crewall and abhominabill Murthour and Slauchter, bot also Vfurpatioun of our fouerane lordis auctoritie vpon thame, in taking of the faid vmq^{le} George Hoppringill captiue, but⁷ power or commissioun, be being our fouerane lordis frie lege. AND siclyke, at the samyn tyme, the faid Johnne Ellott and remanent perones, with thair complices, to the number aboue writtin, at the tyme foirfaid, brak up the baill kiftis, cofferis and lokfast bouffis within the faid Place, and thiftiounlie staw, conceillit, reffet and away-tuik with thame, furth of the faid Place of Torwoidlie, and stabillis thairrof, sevintene horfis pertening to the faid vmq^{le} George, price of the piece ourheid⁸ ane hundredth pundis money; togidder with the fowme of ane thousand pundis of gold and money furth of the faid vmq^{le} George Hoppringillis purse. ITEM, thre siluer peices,⁹ wey-

¹ Altogether, wholly.

² Grandchildren.

³ Grandfather.

⁴ A personage well known to the public, from various anecdotes contained in the *Border Minstrelsy*, and the graphic story contributed by *Sir Walter Scott*, in that exquisitely beautiful Annual, 'THE KEEPSAKE,' for 1829; to which publication (pp. 186-192) the Editor refers for interesting Notices of this Border worthy, his family and associates.

⁵ Forehammers, and joists or beams.

⁶ Broke up the gates.

⁷ Without power.

⁸ Overhead, on an average.

⁹ The nature of these massive pieces of plate is not elsewhere specified. They convey a favourable idea of the wealth and splendour in which many of the Border Chieftains lived.

and fourfoir vnces of siluer or thairby, price of the vnce fourtie schillingis. ITEM, tua duffane of siluer spvnes, ilk spwne weyand tua vnce of siluer, price of the vnce fourtie schilling: Togidder with the haill bedding, nāiprie, clething, abuilzementis, inficht and pleniffing being within the said place, worth the fowme of fyve thoufand merkis money of this realme, had and tranfportit away with thame, and difponit thairvpoun att thair pleafour.

THE Justice decernit and ordanit Williame Elliot of Fallinafch, cautioner and fouertie for the entrie of the said Johnne Elliot of Capfchaw, to be amerciat and vnlawit for his non-entrie, in the payne of fyve hundreth merkis: And als. adiudget the said Johnne to be denunceit our fouerane lordis rebell, and putt to the horne; and all his movabill guidis to be efcheit and inbrocht to our fouerane lordis vfe, as fugitiue fra his hienes lawis, for the saidis crymes.¹

Justice-Depute appointed.

JAN. 20.—THE quhilk day Mr ROBERT COKBURNE, Aduocat, was creat JUSTICE-DEPUTE; and gaird his ayth *de fidei administratione*, during his office.

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

Liability Anent the General Band.

JAN. 21.—SIR JAMES JOHNESTOUNE of Dunskeillie, kny^t (of that ilk). Compeirit the Laird of Johnnestoune, and producet the Warrant vnderwritin, superseruit be his Maiestie; quhair of the tennour followis.

JAMES R.

JUSTICE, Justice Clark and your deputis, We greit zow weill. Forfamekill as it is knawin to ws, that thair ar diuerse Criminall perfuitis movit at pe instance of findrie perfounes aganis Sir James Johnnestoune of Dunskeillie, kny^t, his kyn, freindis, pairt-takeris, men, tennentis, seruandis, and sic vperis, for quhom the (said) Sir James is anfuercable, be pe Generall Band and law of our realme; and that, for diuerse crymes alledgeit committit be pame, befor pe moneth of Apryll, 1^m. V^o. thre zeiris, quhilk wes pe tyme of owre repair hither: Albeit it be naper our will nor mynd, that the regour of pe lawis be profecutit aganis thais perfounes for ony crymes or offences committit be thame before pe foirsaid tyme; hoping that our lenitie fall move pame to keip our peax, and be pe moir obedient subiects in tyme cuming: IT is pairfore our Will, and We command zow, that pe on nawyis gif proces in any of pe saidis Criminall perfuitis alreddie movet aganis the said Sir James, his kyn, freindis, pairt-takeris, men, tennentis, seruandis, and sic vperis for quhom he is anfuercable, be pe Generall Band and lawis of our realme; nor that ze on nawyis direct any Criminall Letteris, for perfuit of pe saidis perfounes, or any of pame, in tyme cuming, for any cryme or offence allegeit committit be pame or any of pame, preceeding pe moneth and tyme aboue specifit; nor nawyse gif proces pairvpoun heireftir: Dischargeing zow pair of, and of all haulding of Courtis to pat effect, and of your office in pat pairt: Dispenfand alwa with pe saidis perfounes and everie ane of pame, anent pair non-comperance att quhatfumewir dyettis. As ze will anfuere to ws pairvpoun: Quhairanent thir presentis falbe your sufficient Warrant. Gewin at our Court of Quhytehall, the saxt day of Apryll, 1606 zeiris.

THE JUSTICE Depute continewis the admitting of this Warrant to the fourt day of Februar nixtocum: And ordanit the perfoun that stand caution for

¹ The denunciation and letters are recorded, at full length, on Jan. 9.

their entrie to this day, to find new caution for their entrie to the said fourth day of Februar nextcom.

The famin day Sir James Johnnestoun (of Dunskeillie, kn^t.) becom pledge and fourtie for Johnne Grahaime in Dryffe, Mungo Johnnstoun in Lokarbie, &c.

(Feb. 4.)—Sir JAMES JOHNNESTOUN of Dunskeillie, kny^t, is ‘americiat for nocht entrie of the saidis fyve personis, for ilk ane of thame in the payne of ane hundreth merkis.’ He is also americiat in 1100 merks, for the non entry of Johnne Johnnestoun in Howgill, and ten others.¹

THE Justice adjudgeit the principall persones nocht comperand to be denunceit our sowerane lordis rebellis, and all their movabill guidis to be escheit.²

Cutting Growing Timber.

Jan. 28.—GEORGE HENDERSOUN in Wynningtoun.

Dilatit, accusit and persewit be Robert Ellote of Reidheuche, of the crymes following, that is to say,

THAT quhair, it is expresse provydit, statute and ordanit be our sowerane lordis Actis of Parliament, speciallie, be ane Act of the ellivent Parliament, cap. lxxxij, that quhatsumewir persoun or personis wilfullie cuttis doune and destroyis growand treis and coirnis, false callit and persewit thairfore, before the Justice or his deputis, at Justice-airis, or perticuler dyettis; and being convict thairof, to be pwnessit as thewis to the death; as the said Act at mair lenth beris. And trew it is, that the said George Henderfoun, with his complices, expres contrair the tennour of the Act of Parliament, in the monethis of Junij, Julij, August, September and October *respectiue*, at the leift, in ane or vther of the saidis monethis, in the yeir of God 1^m.Vj^e. and fyve yeiris; and siclyke, att the fleift of Martimes last-bypast, come to the said Robert Ellottis wod, callit Birkwod, and thair, wilfullie, by³ the said Robertis knowledge or consent, cuttit doune and distroyit, at ilk tyme, the perticuler number and quantitie of growand treis following, to witt, ane hundreth grit growand birk treyis, thre hundreth grit growand allouris, thrie hundreth grit growand heiffillis, with foure hundreth grit growand sauch treis;⁴ quibilkis growand treis, the said George and his complices had and transpourtit away with thame, and disponit thairvpoune att thair pleafour; and the said George is airt and pairt thairof.

PERSEWER, Robert Ellote of Reidheuche.

PRELOCOUTOURIS for the pannell, Mr Thomas Henderfoun, Mr Johnne Dempfter.

It is allegit be the pannel, that this matter can nocht be put to the knowlege of ane Inqueist, becaus the persewer schawis na sufficient entreis to persew, nather is this persute raisit at the Kingis Aduocatis instance.—Ansuerit be the persewer, that he referris the notorietye of his entreis to persew for the cutting of the treyis lybellit, to the defenderis ayth; in respect that he knawis him to be sufficientlie infest in the woid lybellit; and as to the secund pairt, anent the Aduocattis compeirance, ansuerit, he may persew without the Aduocatis compeirance. It is allegit be the pannell, that he can nocht be vrget, vpoune the

¹ (On margin) ‘Nota, ordanit to be gewin out be pe Counfall.’
to be given out.

³ Without, contrary to.

⁴ Nota, ‘this nocht ordanit
Birch, *allar* (alder or elder), hazel, and wil-
low trees.

perfewaris exceptioun, to geve his ayth; seing the samyn will tend to the hazienda of his life.—The perfewer in the contrair.

It is allegit forder be the pannell, that this matter can nocht be Cryminallie tryet, without a Ciuill precognitioun, before the ordinar Judge; becaus the samyn is a maisterfull depridatioun.—It is anfuert, that the perfewer repeitis the Act of Parliament, quhairupoun the summond is foundit.—It is anfuert be the pannell, that the Act of Parliament of the 1587, concernis the puneischment allanerlie; and nawyis invertis nor derogatis the Act of Parliament made be King James fyft, Parlamento quarto; and speciallie, seing of the daylie practik, falsfettis man be first Ciuillie tryet, befor it cummis to ane Criminal Judge; Wilfull error in Assyse in Reductioun of Retouris man be first Ciuillie tryit, befor it tak effect befor the Criminal Judge.—The perfewer, as of befor, repeitis the Act of Parliament.

THE Justice continewis this matter, and Interlocutour vpoun the allegiances foirfaisdis, to the fourt of Februar nixt. The pairties and Assyse wairnit *apud acta*.

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

(Feb. 4.)—THE Justice, nochtwithstanding of the allegiances maid be the pannell, the last dyet, Ordanis this matter to pas to ane Assyse.

VERDICT. The Assyse, be the mouth of Johnne Gledstanes of Winningtoun-law, chancellor, stand, pronounceit and declarit the said George Henderfounne to be Cleane, innocent, acquit, &c.

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

Slaughter.

Feb. 14.—JOHNNE BEK in Lytill Kirkbryde.

Dilatit of airt and pairt of the Slauchter of vmq^{le} James M^cCulloch of Barholme.

PERSEWER, Thomas M^cCulloch in Barholme.

The said Thomas tuke him to ane Remissioune vnder the Grit feill, of the dait the xxj day of Februar, 1606; and siclyke, producit ane Letter of Slaynes, subferyuit be Elizabeth Kirkpatrik, relict of vmq^{le} James M^cCulloch of Barholme, Henrie M^cCulloch hir spous, and Thomas M^cCulloch now of Barholme, and Johnne M^cCulloch burges of Kirkcubreycht, off the dait at Edinburgh, and the xvij and . . . dayes of Februar, 1607 yeiris.

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

Witchcraft — Sorcery — Incantation, &c.

Mar. 10.—ISSOBEL GREIRSOUNE, spous to Johnne Bull, warkman in the Pannis.¹

¹ Prestonpans. Of all the Trials for Witchcraft, &c. hitherto published from the Record, this is perhaps the most absurd and *outré*; and the circumstantial detail is perhaps *unique*. It is of course

Indytit, accufit and perfewit of the crymes vnderwritten, viz. **FORSAME-KILL** as fcho, haifing confaut ane crewall haitrent and malice aganis Adam Clark in Prestounpannis, fcho has continewallie, this haill yeir and ane half by-gane, vfit all develifch and vngodlie meanis to be avangeit vpoun him ; speciallie, in the moneth of Nouember, the yeir of God I^m.Vj^c. and fax yeiris, betuix xj and xij houris at ewin, the said Adam being lyand in his bed with his wyffe, and his feruand woman being in ane vther bed ; att the quhilk tyme, fcho, in the liknes of hir awin catt, accompaneit with ane gritt number of vther cattis, in ane develifch maner, enterit within hir hous, quhair thay maid ane grit and feirfull noyfe and trubill ; quhairby the said Adam, than lying in his bed with his wyffe, and feruandis that wer than in the hous, apprehendit sic ane grit feir, that thay wer liklie to gang mad : At the quhilk tyme, the Devill, in liknes of ane blak man, apperit in the hous, eftir ane feirfull maner, com to the feruand woman, than standing in the flure, and drew hir vp and doun the hous be the hair, eftir he had caffin hir curfch² aff hir heid, and caffin the famyn in the fyre : Quhairvpoun the pure woman contractit sic ane grit feiknes, that fcho lay bedfast, in grit danger of hir lyffe, be the space of fax oulkis³ thairefter ; and as yit hes nocht returnet to hir perfyte health ; quhilk is notourlie⁴ knawin.—**ITEM**, fcho wes accufit, fforfamekill as fcho, haifing confaut ane deidlie feid, rancour and ewill will, aganis vmq^{le} Williame Burnet in Prestoun-pannis, spous to Margaret Myller, wedow, fcho dewyfit be all devillifch and vngodlie meanis to bereif him of his naturall lyffe ; and for performance thair of, fehe, as ane manifest Sorcerer and Wich, in the moneth of Januar, I^m.Vj^c. yeiris, laid on ane feirfull and vncouth feiknes on him, be casting in of ane tailzie⁵ of raw inchantit flefch att his dur : And thaireftir, the Dewill, in liknes of ane naikit infant bairne, nichtlie, for the space of half ane yeir, appeirit in his hous ; quha appeirit befor the ffyre, haifing ane inchantit pictour in his hand : And thaireftir, the Dewill appeirit, in hir liknes, within the said vmq^{le} Williamis hous, before the ffyre thair of, and in diners vtheris pairtis within the said hous ; quhair, in ane maist vn-honest and filthie maner, fcho pischit vpoun the said Margaret Myller, and in diuerse pairtis of the said hous ; that in end,⁶ the said vmq^{le} Williame, haifing namit the said Isobell, be hir name, fcho immediatlie thaireftir vaneifchit away : Eftir the quhilk tyme, the said vmq^{le} Williame Burnet continewallie dwynit and pynit away, in the said vnknawin feiknefs, for the space of thre yeiris, nocht habill to obtene ordinar cnir ; and at laft, in the moneth of September, or thair-by, I^m.Vj^c. and ffyve yeiris, he, in grit dolour and payne, departit this lyffe : And

given *literally* from the Books of Adjournal. The reader is left to draw his own inference as to the death (murder ?) of the luckless mate of *John Bull*.
² Curche, a kind of head-gear, or cap.
³ Fr. *courche*.
⁴ Six weeks.
⁵ Notoriously.
⁶ *Taille*, Fr. A piece, 'gobbet,' or cut.

⁶ At last.

fa, wes maist dewelischlie bewichit be hir, in maner forsaid ; and scho is airt and pairt of the said vni^{le} Williamis death and seiknes.—ITEM, accusit for casting of ane greit seiknes, be hir develisch meanis, vpoun Robert Peddan, in the Pannis ; and that in the moneth of October, I^m.V^c.lxxxixij yeiris ; quha, haifing remanit seik be the space of ane yeir and aughtene oulkis, swerving and vaneisch-ing away ;¹ and vsing all ordiner meanis to recover his health, bot daylie grow-ing war,² att last he callit himself to remembrance, that he wes addettit to the said Isobell in nyne schillingis and iiij d. ; and that, befor the taking of the said seiknes, becaus he refusit to pay hir the said soune, vnto the tyme scho delyuerit to him certane plaittis that scho kepit of his ; scho then, estir vtering of diuersē blasphemous speichis to the said Williame, said, he ‘ould repent itt !’ And ‘ould nocht haif bayth his health and haill clathis togidder !’ Quhairvpoun, he than come to hir, and satisfeit hir the said soune, and thryse askit his health att hir, for Godis saik ; saying, ‘ Gif ze haif done me ony wrang or hurt, repair pe famin and restoir me to my health !’ And thaireftir, the said Robert Peddane, within, xxiiij houris, recoverit his health.—ITEM, scho wes accusit, that in the moneth of Junij lastbypast, or thairby, scho, haifing wantit hir katt, be the space of half ane yeir befor, in hir bycumming the said Robert Peddanes window, scho patt in hir hand and drew furth hir catt ; at the quhilk tyme, thar wes working in the fattis³ ane brewing of guid new aill, quhairof sindrie honest neychtbouris wes than drinkand ; bot be hir develisch Incantatioun and Sorcerie, fra that tyme furth, the said brewing of aill turnit,⁴ in sic soirt, that it becam altogidder rottin and blak, thik lyk gutter-dirt, with ane filthie and pestilent odour, that na man mycht drink nor feel the finell thairrof.—ITEM, being indytit and accusit, fforamekill as scho, haifing consauit ane deidlie ewill will, haitrent and malice aganis Margaret Donaldsoune, spous to the said Robert Peddane, about Hallowevein, in the yeir of God I^m.Vj^c. and fyve yeiris, scho, in hir devill-isch maner, come vnder scilence and cloude of nycht to the said Robert Peddanes hous, and enterit efter ane devillisch and vnknawin way within the said hous. the said Margaret Donaldsoune being than lying in hir bed with hir said hus-band, found sleeping ; at the quhilk tyme, scho drew the said Margaret be the spal⁵ out of her bed fra her husband, and violentlie ruschit hir to the fluir ; be occasioun quhairof, the said Margaret hir spreit faillit hir, that scho continewit ane lang space asound ;⁶ and thaireftir, cuming to hir self, scho fell in ane feirfull and vncouth seiknes, that anes in ilk xxiiij houris, her hed and breist was sa vehementlie trublit, that scho was, for the space of ane hour, mad, and knew nocht quhat scho did ; quhilk continewit the space of fyve or

¹ Swooning and fainting away.² Worse and worse.³ Vats or tuns.⁴ Ale is said to be turned when it is affected by lightning, &c. ; milk, when soured by sun or heat, &c. A large nail is usually thrown into the churn, to prevent this disaster. By attracting the electric fluid, it is said to preserve the contents sound.⁵ Fr. *epaule*, the shoulder or shoulder-blade.⁶ In a swoon.

fax dayes thairefter, in grit vehemencie : And at the fax dayes end, scho heiring hir selff to be bruittit¹ with the said wicked and devellisch turne, scho desyrit the nychtbouris to cause hir and the said Margret to drynk togidder ; quhilk being done, scho recoverit agane hir health, and sa continewit in perfyte health, the space of aucht or ten dayes : Eftir the quhilk time, scho heiring hir name to be sklanderit, and scho to be namit a Witche, quha had skill to lay on and tak af feiknes ; scho, movit with rage and invy, of new agane, come to the said Margrattis hous, and spak to hir mony devillisch and horribill wordis, saying to hir, ‘ The fagget of Hell lycht on thé, and Hellis culdroune may thow feith in !’² And with thais, and vther the lyk devillisch speicheis, scho past away. Eftir the quhilk tyme, the foirsaid feirful feiknes tuke the said Margaret ; quha continewit thairin ilk xxiiij houris, for the space of ane hour, be the space of nyne oulkis³ togidder, in maist feirfull maner ; vnto the tyme ane pure woman come to the said Margrettis hous-dur, to ask meit ; quha, seing the said Margaret wisseit⁴ with the said feirfull feiknes, declairit to hir, that scho was witcheit, and had the rycht champ⁵ thair of : Eftir the quhilk tyme, the feiknes ceissit, and came nocht to hir agane, quhill the beginning of December last, that scho, cuming thair by hir dur, with ane creill⁶ on hir bak, said to hir, ‘ Away theiff ! I sall haif thy hairt, for bruitting of me sa fallsie !’ And immediatlie thairefter, the feiknes of new agane come vpoune hir ; quhairintill scho hes bene maist havelie vexit and trubillit senfyne, to the xxvij day of Januar last, that scho and scho war confrontit togidder, and examinat, in presens of my Lord Justice, of your devillische crymes abouewrittin.—ITEM, for ane commune Sorcerer and ane Witche and abuser of the peple, be laying on and taking af of feiknes and dis-eisses, and vseing all devilleisch and vngodlie meanis to wyn hir leving ; and Vser of charmes and vther devilleisch practizes.

PERSEWAR, Adam Clark, smyth in the Pannis, Margaret Myller, relict of vniql⁶ Williame Burnet, Robert Peddane, and Margaret Robiesone, his spous.

PRELOCUTOUR for the pannel, Robert Hammiltoune, John Bull in the Pannis.

VERDICT. The Assyse, be the mouth of David Seatoun, (bailzie in Tranent,) chancellar, stand, pronunceit and declairit the said Issobell Grierfoune to be ffylit, culpabill and convict of all and findrie the heidis and poyntis of Dittay aboue writtin, and crymis contenit particulerlie thairin.

SENTENCE. The Justice-depute, be the mouth of James Henderfoun, dempstar, decernit and ordanit the said Issobell to be tane to the Castell-hill of Edinburgh, and thair to be wirreit⁷ at ane staik quhill scho be deid ; and her body to be brunt in assis, as convict of the saidis crymis ; and all hir movabill guidis to be escheit and inbrocht to our souerane lordis vse, as convict of the saidis crymes.

¹ Issobell hearing herself to be reported. Fr. *bruit*. ² Caldron may thou see the in. ³ Weeks.
⁴ Visited, tormented. ⁵ Stamp, mark, token. ⁶ Basket, *creel*. ⁷ Strangled.

Forestalling and Regrattng.

May 19.—JOHNNE REULL, indueller in Leyth.

Dilaitit for contravening the Actis of Parliament, in ffoirstalling and regraiting of tymmer.¹

PERSEWER, Sir Thomas Hammiltoun of Monkland, knycht, Aduocat.

PRELOCUTORIS in defence, Mr Alexander King, James King.

It is allegit be the pannell, that he can nocht be put to the knowlege of ane Affyse for the cryme lybellit, becaus the tymmer lybellit was bocht be his servand in Norruay, enterit in the townes buikis, as his awin proper tymmer, and hes payit his Maiesteis custome thairfor : And for verificatioun thairof, producet the entrie of the tymmer in the townes buikis of Edinburgh, as his proper tymmer, and quhair he payit the custome thairof.—It is anferit be my Lord Aduocat, that the allegiance aucht to be repellit, in respect nothing is producet to preve the bying of the tymmer, be him self or his servand ; and is contrair to the summondis, quhilk beiris the ffoirstalling of tymmer, befor the samyn was presentit to marcat.

VERDICT. The Affyse, be the mouth of James Forman, (water bailzie,) chancellor, fand, pronuncet and declairit the said Johnne Reull to be ffylit, culpable and convict of cownone Regrattng and ffoirstalling of all foirtis of tymmer, cumand and aryveand at the said Poirt and hevin of Leyth, and sa to be repute and haldin : And Clanget and acquit him of the haill remanent poyntes of the said Dittay.—Edward Edger, merchand burges of Edinburgh, become fouertie for the entrie of the said Jolmue the morne, to heir dome pronuncet, &c.

SENTENCE. The Justice, being resoluet thairwith, and with the Act of Parliament maid thairanent, Decernit and Ordanit the said Johnne Reull to content and pay to our souerane Lordis Thefaurer and his deputis, the sowme of fourtie pundis money of this realme of North Britane,² as penaltie designat in the said Act of Parliament aganis cownoune Regraiteris and ffoirstalleris, for the first falt. And als, ordanit the said Johnne to find cautione actit in the buikis of Adiornall, to abstene fra all maner of foirstalling or regraiting of tymmer in tyme cuming, vnder the pane of ane hundreth merkis.³

Appointment of a Justice-Depute.

Jun. 2.—MR ALEXANDER COLUILL, sone to Alexander, Commendator of Culrois,

Gaif his ayth *de fidei administratione* in the Office of Justice-deputrie ; and thaireftir was creat and admittit Justice-depute.

¹ Timber. ² This is the first time Scotland is so designated in this Record. Indeed it is very unusual, even for a century after this period. ³ Edger again becomes his suretie.

Slaughter.

Jun. 26.—WILLIAME GUTHRIE of Ravenfbie.

Dilaitit of airt and pairt of the Slauchteris of vmq^{le} Patrik Gairdin of that Ilk, and vmq^{le} Robert Gairdin of Tullois, committit in the moneth of . . . I^m.V^c. threfcoir auchtene yeiris.

PERSEWER, Mr Robert Gairdin Younger of Blairtounne.

George Leslie, fear of Kincragie, become plege and fouertie that he fall compeir befoir the Justice or his deputis, the thrid day of the nixt Justice-air of the fcherefdom of Abirdene, or foner, vpoun xv dayis wairning.

Slaughter — Lebving ‘Skatt’ or Black-mail — Stouthreif, &c.

Jun. 27.—ALLASTER STEWART M^cGILLIECHALLUM, brother to Johnne Stewart, *alias Johnne Dow M^cgilliechallum* of Tennandrie.

Dilaitit, accuset and persewit be DITTAY following, viz. That is to say, of airt and pairt of the Slauchter of vmq^{le} Johnne Stewart of Bonfkeid; committit in the moneth of December, the yeir of God I^m.Vj^c. and fyve yeiris, betuix Dunkeld and Atholl, vpoun sett purpois, provisioun and foirthocht fellony. ITEM, for airt and pairt of the Slauchter of vmq^{le} Johnne Stewart, secund sone to the said vmq^{le} Johnne Stewart of Bonfkeid; committit about Paisch,¹ in the yeir of God I^m.Vj^c. and sax yeiris, vpoun the landis of Kilbrochene. ITEM, for airt and pairt of the Slauchter of vmq^{le} Williame Leith, att the Kirk of Crathie in Cromar; committ about tuell yeiris fyne, or thairby. ITEM, for cuming with Johnne Dow, his brother, to the boundis of Strathardill, in the moneth of July lastby-past, and compelling of the tementis of the landis of Strathardill to pay to thame ane skatt² of foure hundreth merkis or thairby; committand thairby manifest Oppressioun. ITEM, for the thiftious Steilling and reving, be way of maisterfull Stouthreif, fra . . . Donaldsoun, chapman, of his pak, with certane merchandice thairin; committit thre yeiris fyne or thairby.

PERSEWER, Mr Robert Lyntounne, Aduocat-substitute.

ASSISA.

Alexander Dumbar, fchereff of Murray,	Patrik Moncur of Chapeltoon,	Tho ^s Farguifoun of Bellewchane,
Sir Thomas Stewart of Garnetullie, knyght,	Johnne Moncur, sone to the Laird of Moncur,	William Stewart of Kynnaird,
David Drummond, Chalmerlane to my Lord Drummond,	Mr Alex ^r Hay of Kynmwdie,	Colene Campbell of Bothe,
	Angus Williamfoun of Termet,	
	Alexander Flemyng of Moness,	Robert Chrystie, tailzeour, burges
	Thomas Otterburne of Reidhall,	of Edinburgh.

VERDICT. The Assyse, be the mouth of Thomas Otterburne, chancillar, ffind, pronunceit and declarit the said Alexander Stewart to be ffylit, culpable and con-

¹ Paisch, Lat. *Pascha*, Easter.

² A compulsory tax, contribution, or fine, somewhat similar (in

vict of airt and pairt of ilk ane of the pointis of Dittay, *respectiue* aboue writtin, and of the crymes contenit in the samin, conforme to his Confessioun product in judgement, quhilkis he ratifeit.

SENTENCE. And thairfore, the said Justice-depute, be reasoun thairof, and of his speciall Conviction, of the thiftious steilling and reving, be way of masterfull Stouthreiff, fra Donaldsoun, chapman, of his pak and merchandice contenit thairin, be the mouth of Robert Montgomerie, dempstar, Ordanit the said Alexander Stewart to be tane to the mercat Croce of Edinburgh, and thair to be hangit vpoun ane gibbet, quhill he be deid; and all his landis, heretageis, takis, stedingis, rowmis, posselliounis, coirnis, cattell, guidis and geir to be fforfalt and escheit, &c.

Slaughter of Alexander Lord Spynie.

Jul. 8.—DAVID LYND SAY, fear of Edzell; Thomas Lyndsay, sone naturall and seruitour to David elder of Edzell; Harie Lyndsay, sone to David L. of Kynnettillis; Mr Johnne Lyndsay, sumtyme Minister at, sone to Johnne L. of Barrese, seruitour to the auld Laird of Edzell; George Lyndsay, brother to the Laird of Covington, also seruitour to the Laird of Edzell elder; Mr James Lyndsay, sone to L. of Brodland; Andro Stratoun; Home, sone to Robert Home of the Heuche; Gawin Lyndfey, father-brother to the said Laird of Covington.

COMPERIT George Guthrie, seruitour to vmq^{le} Alexander Lord Spynie, and product our souerane lordis Letteris, dewlie execute and indorlat, purchest att the instance of Dame Jeane Lyoun Lady Spynie, the relict; Alexander Maister of Spynie, eldest sone; David Erle of Craufurd Lord Lyndsay, &c., Sir Harie L. of Carriestoun, knycht, Sir Johnne L. of Woidwrae, knycht, as brether, with the remanent kyn and freindis of vmq^{le} Alexander Lord Spynie; to tak souertie of the said David, &c., that thai sould compeir befor the Justice or his deputis this day and place, in the hour of cause, to vnderly the law, for airt and pairt of the Slauchter of the said vmq^{le} Alexander Lord Spynie. Be the quhilkis Letteris, the saidis personis war denunceit our souerane lordis rebellis and put to the horne. Vpone the productioun quhairof, the said George Guthrie askit instrumentis, and protestit for releif of Harie Lyndsay of Carrestoun, cautioner for reproductione thairof.

this instance at least) to *Black-mail*. *Scatt*, properly, was a feudal tax anciently paid, in Sbetland, to the King of Denmark; and at present Lord Dundas draws a considerable sum of Scatt; which is understood to be payable chiefly in kind, *e.g.* butter and oil, &c.

Treason—Celebration of the Mass, &c.

Sep. 25.—WILLIAME MURDOCHE alias M'KIE, Preist, borne in Dunkeld.

Dilaitit, accufet, and perfewit be Mr Robert Lyntoun, Aduocat, substitute to our fouerane lordis Aduocat, FOR contravening his Maiesteis Actis of Parliament, in the tressonabill saying of Mefs, at dyuerse tynes, within the houffis and places following, in the monethis of Januare, ffebruare, Marche, Apryle, Maij, Junij, Julij, Auguft, September, October, November and December, in the yeiris of God I^m.V^c. fourfcoir fourtene, fyftene, faxtene, fevintene, auchtene, nyntene, fax hundreth, fax hundreth ane, tua, thre, four, fyve, and fax hundreth and fax yeiris ; at the leift, in ane or vther of the saidis monethis and yeiris of God : And that within the places and houffis of Strabogie, Boig of Geicht, the Lady Sutherlandis houe in Suderland, Dwnrobyn, the Lady Auchindownis houe, in Mr Alexander Leslie's hous, Patrik Butteris houe, befide Aberdene. ITEM, for saying of ane Saul-mefs (*soul-mass*) for the Lady Auchindown, in ane puir mannis houe in Strabogie, a littill eftir hir deceife. ITEM, in the Guidman of Carrones hous, callit Grant, and in Williame Leslie of Conrakis houe ; and in dyuerse vtheris places and houffis in the North ; being accompaneit with dyuerse our fouerane lordis leigs at the saidis Messis : Committing thairthrow the cryme of Tressone, and incurring the panes specifeit in the saidis Actis of Parliament, maid aganis the fayeris of Mefs, viz. tynfall and fforfaltour of lyfe, landis and guidis ; as at mair lenth is contenit in the Dittay and Depositiones maid be the said Williame thairupone.

VERDICT. The Affyse, be the mouthe of Abrahame Hammiltoun, fynyth, chancellor, in respect of his Confessioun, maid judiciallie, of the haill Dittay and Depositiones producet, stand, pronounceit and declairit the said Williame Murdoche to be flylit, culpable and convict of the crymes aboue specifeit.

Thairefter, the said Mr Robert Lyntoun, substitute to our fouerane lordis Aduocat, producet ane Warrant of his Maiesteis, vnder his hienes hand-writt, defyreand the Justice, accoirding thairto, to pronounce DOME aganis the said Williame Murdoche, Preist, quhairof the tennour followis.

To our right trustie and weilbelouit counsels and counfallouris, the Erle of Dumfermeling, our chancellor, and remanent Lordis and vperis of our Previe Counfall, in our kingdome of Scotland, these.

JAMES R.

RIGHT TRUSTIE and weilbelouit counseingis and counfallouris, We greit zow weill. Whearas, ane Murdoch alias M'kie, Preist, was apprehendit by the Bischope of Murray, and is presentlie in waird, within the tolbuthe of Edinburgh, wher he hes lyne this long tyme past : OUR pleasour and Will is, that zow cause him be proceedit aganis, in maner following : first, that he be presentit befor our Justice pair, and abyde his ordiner tryell, wher in no dout he will be fund culpable, vpon his awin Confessioun ; and than our pleasour is, that our said Justice do pronounce the judgement eftir following aganis him ; in appointing him to be tane to the mercat croce of Edinburgh, being clad in his Mefs-

claithes, in the same forme that he wes takin ; and eftir he hes bene presentit to the vew of the hole people, he than be stryppid of all his Mefs-clothes ; and the same, with all his vther Popisch baggadage that was apprehendit with him, to be presentlie cast into the fyre, pair reddie for the purpose, to be confwmed and brunt to asches : And pairwith, that he be adiudget to be BANISCHET furth of all our dominions, indureing his naturall lyfe ; vnder the pane of daith, in caice of his returne bak to ony pairt of þe same : And willing 5ow to give vnto our Justice particuler directioun heiranent, and to be cairfull to see the same, in everie poynt, execute, We bid 3ow hairtlie fairweill. FROME our Court at Theobaldis, the xvij of September 1607.

SENTENCE. Accoirding to the quhilk Warrant and directioun, the Justice-depute decernit and ordanit the said Williame Murdoche, preist, to be takin, on Mononday nixt, to the mercait Croce of Edinburghe, cled in his Mefs-claythis, and thair to stand clenzeit,¹ fra ten houris to twelf befor none ; and thaireftir, ane fyre being kyndillit at the said Croce, the said Mefs-claithes to be cassin af him and brunt in the said fyre, with all his vther Popische baggadage that war apprehendit with him. Quhilk solemnitie being vset, Ordanis the said Williame to be Banischet furth of our souerane lordis haill dominions, during his lyfytyme ; and naways to returne within the samyn, vnder the pane of daith : And to be transportit bak agane fra the said mercait Croce to the said Tolbuith of Edinburghe, thair to remane quhill ane schip be in reddines to transport him. Quhillk was pronuncet for dome.²

Cruel Oppression — Murder.

Nov. 5.—WILLIAME BONAR, in Condry.

Dilaitit, accuset and persewit be Dittay following, viz. FORSAMEKILL as he, in the moneth of October, the yeir of God I^m.Vj^c. and fyve yeiris, haifing requyret Patrik Philp in Condry, his coitter,³ to geve him the lane⁴ of his horse, for leiding of certane his schorne peis, than standing stoukit⁵ vpon ane pairt of the saidis landis of Condrie, occupyit be him ; lyk as, for fatisfeing of the said Williames desyre, haifing directit his naig, with vmq^{le} Robert Qulyte, his servand, and ane sled,⁶ to the leiding of his peis. Trew it is, that the said Williame, vpon the . . . day of October, the yeir of God aboue writtin, at the said vmq^{le} Robertis cuming to the feildis, quhair the saidis peise war roukit,⁷ becaus the said Robert refusit to tak on sic extraordinier burding as the said naig was vnhablie to draw, he thairfoir maist prouddie and contemptiouselie lousfet his belt, and with the bukillis and remanent irnes thairof, maist crewallie strak the said vmq^{le} Ro-

¹ Chained. ² *Sept. 27, 1607.*—A Preist, who had been a certaine time in ward before, in the Tolbuith of Edinburgh, was brought down, on the mercat day, to the Mercat-croce, with all his Messe-cloaths upon him, wherewith he was taken, with his chalice in his hand. He stayed at the Croce from ten hours till twelve. Then all his Masse-cloathes and chalice were burnt in a fire beside the Croce, and himself carried backe to ward.—*Calderwood's MS. Church History.* ³ Cottar.

⁴ Loan. ⁵ Put up in stouks or shlocks, to win or cure. ⁶ Sledge, a sort of cart without wheels, still in use, in mountainous districts, for leading in meadow hay, turf, &c. ⁷ Put up in rucks, ricks.

bert in the heid and face, and with his feit and kneis strak him in his breift, bellie and fydis, and brak his haill intrallis within him : And thaireftir, fchot¹ him fra him doun ane watter-bra,² quhair he fell in ane watter, and remanit bleiding thairin ane grit fpace thaireftir, at mouth and neife ; be occaßoun of the quhilkis crewall woundis and fraikis, gevin to the faid vmq^{le} Robert, he immediatlie thaireftir tuik bed, quhairin he continewit bedfaft, in grit dollour and difeafe, be the fpace of tuentie dayis thairefter, or thairby ; and at laft, vpone the . . . day of November thaireftir, he depairtit this lyfe, of the faidis hurtis and woundis ; and fa, he was maift crewallie flane be the faid Williame Bonar : And he is airt and pairt thairof ; committit vpone fet purpois, prouifion and foirthocht felonie.

VERDICT. The Affyfe, be the mouth of Williame Birsoun in Clow, ffand, pronuncet and declarit, all in ane voce, the faid Williame Bonar to be Clenget, innocent and acquit of the cryme aboue writtin, and haill circumftances thairof. Quhairvpoun the faid Williame askit instrumentis.

Slaughter — Shooting of Hagbuts and Pistolets.

Nov. 6.—JOHNE FORBES, brother to Williame Forbes of Corfindae.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Williame Broun, feruand to Johnne Irwing of Ardtanfurd, committit be him and his complices, callit ' THE COMPANIE AND SOCIETIE OF THE BOYIS,' vpone the landis callit the Peill of Lumfannen, in the moneth of November, the yeir of God I^m.Vj^c. and fyve yeiris. ITEM, for airt and pairt of the Slauchter of vmq^{le} Robert Merfar in Tombeg, committit be him and his complices foirfaidis, in the moneth of Junij laßbypaft, at Magnus Garioches hous, in Drumnahoy. AND laft, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbuttis and piftolettis, daylie and continuallie, this thre yeir bygane ; specialle, for inuaiding and perfewing of Williame Irwing, brother to the Laird of Drum, and fchuiting of ane piftolet at him, betuix his awin duelling hous and the Kirk of Kyncairdin, in the moneth of July or thairby, I^m.Vj^c. and fax yeiris.

PERSEWAR, Sir Thomas Hammiltoun.

PRELOCUTOUR in defence, Mr Johnne Ruffell.

The Aduocat produceit the Dittay aganis Johnne Forbes, with the Letteris of Hoirning, and defyrit proces.—Mr Johnne Ruffell producet ane Letter of Relaxatioune, be the quhilk he is relaxit fra the horne, for the crymis contenit in the Dittay, and thairupoun askit instrumentis.—The pannell takis instrumentis that na partie infiftis in the perfute of this Dittay, except my lord Aduocat. It is allegit, that na proces can be led in this matter, becaus he aucht to be fummond vpoune xv dayis warning, feing he is the Kingis frie fubiect ; and for instruct-

¹ Forcibly pushed, *shoved*.

² A brae or sloping bank above a stream.

ing thairrof, citit the practik betuix the Montgomeries and Cuninghame, and the vther of Newarkis.—It is anfuwerit, aucht to be repellit, in respect of the Relaxatioune producet, beiring the pannell to haif bene at the horne of befor, for the crymes contenit in the Dittay ; vpoun the quhilk Hoirning Commissiounne was direct to apprehend the pannell, rebell and at the horne ; and being apprehendit, is brocht fra the waird to the bar ; and thairfoir, na delay aucht to be grantit vpoun xv dayis.

THE Justice findis proces, nochtwithstanding of the Alledgeance : Quhair-upone the Aduocat takis instrumentis.

It is alledgit be the pannell, that the Justice can nocht proceed in the mater aganis *Johanne Forbes*, for the crymes contenit in the Dittay ; becaus, be Act of Secreit Counfall, my Lord Forbes wes maid Justice to pronounce dome (of) Baneisment aganis the said Johnne ; quho hes pronunceit the said Dome, in ane Justice Court, hauldin be him ; and gif he hes nocht pronunceit the said dome, the said Johnne offerit him to be Baneist, and to find caution, actit in the Buikis of Adiornall, to pass aff the countrey, vnder sic panis (as) the Justice will moderate ; and thairfoir na proces : And for verificatioun thairrof, producit the Act of Counfall ; and eikis,¹ that he was tane before the expyryng of the tyme appointit to his baneisment. The Aduocat anfuwerit, that the Act of Counfall can nocht stay proces ; seing that (there) is na thing producit, declaring him to be exilit ; nather yit is the Dome pronunceit : And siclyke, the said Johnne man² be putt to ane Assyse, except he can schaw Respett, Remissioun or clangeing ; and alse, the Aduocat acceptis the Secreit Counfallis ordinance.

It is allegeit, that the pannell can nocht be putt to ane Assyse for *Merfar*, seing he wes ordanit to be Baneist for Brounis Slauchter ; and thairfoir the Sentence and dome of Baneisment standing, he can nocht be put to ane Assyse for *Merfar*. It is anfuwerit be the Aduocat, the Argument makis him nocht lauchfull to slae in Junij, he being baneist in March. ITEM, it is allegeit that na proces for *Merfaris* slauchter, becaus he wes nocht apprehendit for the samin. It is anfuwerit, he wes att the Horne for the Slauchter, and he may be challengeit for the samin ; and producit the Hoirning.—The Commissioun of apprehensiounne being producit, it is alledgeit, that Commissioun fallis, in respect of Assythement, and ane Act, makeand Arthour Lord Forbes Justice, to pronounce dome of Baneisment. It is anfuwerit be the Aduocat, that the caus of the Commissioun wes rebelloun, quhilk wes nocht purget, quhill eftir his taking.

THE Justice findis proces, nochtwithstanding of the pannellis fyrst alledgeance maid, that Brounis Slauchter sould nocht be put to ane Assyse.

It is allegeit, of new, that gif ye will pitt the mater to ane Assyse, and be

¹ Adds farther, subjoins.

² Must.

convict, ye can nocht pronounce na forder Dome nor¹ according to the Act of Counfall. It is allegeit for the Slauchter of Merfar and weiring of pistoletis, he can nocht be putt to ane Assyse, feing he wes nocht tane for that cryme; and that wes nocht *in rerum natura* quhen the Commissioun wes grantit. It is ansuerit, that the pannell wes summond vpoun xv dayis warning, for the saidis crymes; and being in ward, he may be brocht out and put to ane Assyse. And the Aduocat produceit the Hoirning aganis the pannell for the Slauchter of Merfar.—The Letteris (of Hoirning being) produceit, it is allegeit that the famin s null, becaus the said Johnne Forbes is summond only att the mercat croce of Abirdene. The Aduocat ansueris, that he aucht (to) reduce; and the Justice is nocht Judge to the nulling² of Hoirningis.

THE Justice Ordanis the mater to be putt to ane Inqueist, nochtwithstanding of the allegiances.—The pannell offeris him self in his Maiesteis Will, for the weiring and schuiting of pistolettis.

ASSISA.

James Cunningham, father-brother to the Laird of Barnis, James Diksoun of Hirdrig, Andro Abircumbie of Straruthie, Williame Sydferff of Ruchlaw, Johnne Airmour, mercheand burges of Ed.³

The Aduocat, for verificatioun of the Dittay, produceit twa Letteris of Hoirning, and the said Johnne Forbessis Depositionis, confessing the crymes contenit in the Dittay.—It is allegit aganis *Harie Shirving*,⁴ that he can nocht be ressaunt on this Assyse, becaus thair is feid⁵ standing betuix the Laird of Drum, on the ane pairt, and the name of Forbes, on the vther pairt; and the Erle of Marfchell, to quhom this Assysfour is vassall, is sister-bairnes to the Laird of Drum. It is ansuerit, aucht to be repellit; in respect of the Act of Parliament discharging all feidis; and that thair is na deidlie feid qualifeit betuix the Erle Marfchell and this pannell.—The pannell, eftir reiding of the Dittay, denyis the Slauchter of Robert Merfar, or that he was ather airt or pairt thairof.—The Aduocat repeittis to the Assyse the pannellis Confessioun, with the Letteris of Hoirning for the crymes contenit in the Dittay and Act of Counfall. The Aduocat protestis for Wilfull Errorr aganis the Assyse, in cais thay acquit; and that the Assyse be reteanit in the Tolbuth, quhill the Kingis Maiestie and his Counfallis will be knawin.—The pannell takis instrumentis of the Assyses determinatioun, in Clengeing of the pannell, for the Slauchter of Broun; and desyres the Justice to be advyset with the Counfall, anent the dome, in respect of the Act of Counfall, producet be him in this proces.

VERDICT. Eftir accusatioun of the said Johnne Forbes, be Dittay, of the hail crymes aboue writtin, and verificatioun thairof, be his Depositiones, sub-

¹ Than.

² Annulling, reducing.

³ The remainder of the Assise composed of 'mercheandis.'

⁴ Of that ilk.

⁵ Feud, deadly enmity.

fcryuit with his hand, as also subfcryuit be my Lord Halvyrudhous and Mr Johnne Prestfoun, Collectour, productet be my Lord Aduocat, togidder with the Letteris of Hoirning, &c., the Affyse, be pluralitie of voittis, be the mouth of the said Williame Sydderf of Ruchlaw, chancellor, ffand, pronuncet and declairit the said Johnne to be Clene, innocent and acquit of airt and pairt of the Slauchter of the said vmq^{le} Robert Merfar : AND ffand, pronuncet and declairit, be pluralitie of voittis, the said Johnne to be ffylit, culpabill and convict of airt and pairt of the slauchter of the said vmq^{le} Williame Broun ; and for beiring, weiring and fchuiting of piftolettis, contrair the tennour of the Actis of Parliament. And that, in respect of his awin Depositiones and Confessioun productet, subfcryuit with his hand.

SENTENCE. For the quhillk caufe, the said Justice-depute decernit and ad-iudget the said Johnne Forbes, be the mouth of James Henderfoun, dempfter, to be tane to the mercait Croce of Edinburgh, and thair, vpone ane scaffold, his heid to be strukin frome his body ; and all his moveabill guidis to be efcheit and inbrocht to his hienes vfe, as convict of the crymes aboue-writtin : Quhillk wes pronuncet for dome.

Sorcery — Witchcraft — Incantation — Poisoning, &c.

[THE singularity of the following Trial cannot fail to be remarked by all who have bestowed any attention upon the history of the Superstitions of their native country. In illustration of several of the circumstances detailed, the Editor considers that the CONFESSIONS of ISSOBELL HALDANE, preserved amongst the Warrants of the Privy Council of Scotland, will prove an acceptable accompaniment. The Editor has not yet discovered whether that unfortunate woman suffered the usual death which awaited such a Confession. It is, however, but too probable that she was put to death, by being ‘brunt,’ at Perth, in terms of her own Depositions.]

Dec. 18.—BARTIE PETERSOUN, taker in Newbottill.

Dilaitit of the cryme of Sorcerie and Witchcraft, in abuseing of the peopill with charmes and dyuerse foirtes of Inchantmentis ; and ministring, vnder forme of medecine, of poyfoneable drinkis : AND of airt and pairt of the Murthour of Johnne Myller in ffurd-mylne, about Martimas last, and of vmq^{le} Elizabeth Robiesoune, be the saidis poyfoneable drinkis, viz. FOR cureing of James Broun in Turnydykis of ane vnkunawin diseafe, be ministrating to him of drinkis, rubbing him with sawis¹ maid of dyuerse grene herbis, and causing him pas hame to his awin hous : and at his bed fyde to sitt down on his kneis, thre feuerall nychtis, and everie nycht, thryfe nyne tymes, *to ask his helth at all leving wichtis, aboue*

¹ Salves.

and vnder the earth, in the name of *JESUS*. And thaireftir, ordanit the said James to tak nyne pickillis of quheit, nyne pickillis of falt and nyne peces of rowne-trie,¹ and to were thame continuallie vpone him, for his helth; committing thairby manifest Sorcerie and Witchcraft. ITEM, for abufeing of the people, with ane certane watter, brocht be him furth of the Loch callit the Dow-Loche, befyde Drumlanrig, and cureing of his awin bairne with the said Loche watter, be wasching of the said bairne, at everie nuke thairof, thryse; and casting in of the bairnis fark² in the said Loche, and leveing of the fark behind him; affirming, that gif any sould come furth of the Loche, at that tyme, the patient wald convalesce, and gif na thing appeirit to him, the patient wald die: AND for cayreing of the said Loche watter to findrie of the cuntrie, that war visseit with feiknes, or quhais beistis war feik or foirspokin:³ Speciallie, for the ministrating thairof to Alexander Clerk, in Creichtoun, for his helth; be causing him, at ilk tyme quhan he listit the stoupe,⁴ quhairin it was, to spaik thir woirdis: '*I lift this watter, in the name of the Father, Sone and Haly Gaiſt, to do guid for thair helth for quhom it is listit;*' quhilkis wordis sould be repeatit thryse nyne tymes. AND for vseing of thir charmes following, for charmeling of cattell; '*I CHARME thé for arrow-schot, for dor-schot, for wondo-schot, for ey-schot, for tung-schote, for lever-schote, for lung-schote, for hert-schot, all the maiſt, in the name of the Father, the Sone and Haly Gaiſt. AMEN.*' AND for behaifing him self as ane cownone Sorcerer, in abufeing of our souerane lordis leigis, thir diuerse yeiris bygane, be his devillische practizes, vpone dyuerse feik folk and feik bestiall; and vseing of dyuerse vther foirtis of Inchantment, expres aganis the lawis of God and Actis of Parliament.

As at lenth is contenit in the said Barteis Depositiones, maid in prefens of the Presbiterie of Dalkeith, and Dittay formet thairupoune.

VERDICT. The Assyse, be the mouth of Thomas Megget of Maistertoun, chancellor, stand, pronuncet and declairit the said Bartie to be ffylet, culpable and convict (conforme to his awin Confessioun) of the haill crymes 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 thaireftir his body to be brunt in asches; and all his moveable guidis and geir, gif he ony hes, to be escheit and inbrocht to his hienes vse, &c.

¹ The mountain-ash. Its virtues are even yet held in great repute, as a charm against Witchcraft, &c.

² Shirt. The purpose of so doing was to leave the disease on the shirt, and to make an offering to the *genius loci*. In Ireland, at this day, 'Holy Wells' are commonly resorted to by the sick, &c., who, after ablution and drinking of the spring, leave pins and pieces of rag, torn off some part of the patient's dress.

³ Bewitched, charmed.

⁴ A sort of wooden bucket or pitcher, used for holding or carrying water.

DEPOSITIONES of ISSOBELL HALDANE, *suspect of WISCHCRAFT,*
 CONFESSIT *be hir the 15 of Maij 1623, as followis.*

BEING convenit befor the Sessioun of Perth, eftir prayeris maid to God to oppin hir hairt and loufe hir toung to Confes the treuth :—Being askit, ‘ Gif scho hed onye skeill of cureing men, wemen or bairneis that war diseist?’ Scho anfuert, that scho had nane. Being requirit, ‘ Gif scho cureit Andro Duncanes bairne?’ Anfuert, that, according to the directioun of Jonat Kaw, scho went with Alexander Lokart dwyn¹ to the Turret-Port, tuik watter frome thence, being dwyn; brocht it to Andro Duncanes houle; and thair, wpon hir kneis, in the name of the Father, Sone and Halye Goost, weusch² the bairne! Eftir that, tuik the watter, with the bairneis fark, accompaneit with Alexander Lokart, and kuist³ baith in the burne; bot in the going, scho skailit⁴ fwm, quhilk scho rewis ane evill rew,⁵ becaus that if onye hed gone ower it, thay hed gottyn the ill.⁶ ITEM, being askit ‘ If scho hed ony conversatioun with the ffarye-folk?’ Anfuert, that ten yeiris syne, lying in hir bed, scho was takin furth, quhiddir be God or the Deuill scho knawis nocht; was cariyt to ane hill-syde: the hill oppynit, and scho enterit in. Thair scho stayit thrie dayis, viz. fra Thurfislay till Sunday at xij houris. Scho mett a man with ane gray beird, quha brocht hir furth agane.

ITEM, that same day JOHNE ROCH deponit, that about that same tyme, he beand in James Chryftie the wrichtis buith, caulding the wricht mak ane cradill to him, becaus his wyff wes neir the down-lying; the said Issobell Haldane com by, desyret him nocht to be fa haistie, for he neidit nocht; his wyff fould nocht be lichter⁷ till that tyme fywe oulkis,⁸ and then, the bairne fuld neuer ly in the cradill, bot be borne, bapteisit, and never fouk, bot die and be tane away. And as the said Issobell fpak, so it cam to pass, in euerie poynt.

THE said Issobell being demandit, ‘ How scho knew that?’ Anfuert, that the man with the gray beird⁹ tauld hir. ITEM, the said Johne Roch deponit, that Margaret Buchannan, spous to David Rind, being in helth, at hir ordinare wark, the said Issobell Haldane come to hir, and desyreit hir mak hir for deith;¹⁰ ffor befor fasting-ewin, quhilk wes within few dayis, scho fuld be takin away. And as scho said, so it wes; befor that terme the woman died. Being askit, ‘ How scho knew the terme of hir lyfe?’ The said Issobell anfuert, scho hed speirit at that same man with the grey beird, and he hed tauld hir.

THE *xvj day of May 1623.* PATRIK RUTHVEN, skynner in Perth, compeirit and declairit, that he being wischtit¹¹ be Margaret Horniscleuch, Issobell Haldane com to sie him; scho com in to the bed and straucht¹² hir self aboue him, hir heid to his heid, hir handis ower him, and so furth, mumbling sum wordis; he knew nocht quhat they war.

THE said Issobell Confessit the said cure; and deponit, that befor the said Patrik wes wischtit, scho mett him, and foirbad him to go till scho had gone with him.

THE *xxx day of Maij 1623.* Compeirit STEPHANE RAY in Muretoun, and deponit, that thrie yeiris syne, that Issobell Haldane haueing stollin sum bere furth of the Hall of Balhouffye, he followit hir, and brocht hir bak agane; scho chaipit¹³ him on the schulder, saying, ‘ Go thy way! Thow fall nocht win thy self ane bannok of breid for yeir and day!’ And as scho threttinit, fa it cam to pas. He dwynnit,¹⁴ haelie diseisite.

THE said Issobell Confessis the away-taking of the bere, the diseise of the man, and affirmes, that onye scho said, ‘ He that dolyueret me frome the ffarye-folk fall tak amendis (on) thé!’ ITEM, the same day scho confest scho maid thrie generall caikis, euerie ane of thame of ix curneis¹⁵ of meill, gottin fra ix wemen that wer maryit madynnys; maid ane hoill in the crowne of euerie ane of thame, and

¹ Down. ² Washed. ³ Cast, threw. ⁴ Spilt some. ⁵ Regrets or *rues* bitterly. ⁶ Had any one stepped over the place, the evil or disease would have been transferred from the sick child to him. ⁷ Lighter, i. e. delivered of her child. ⁸ Five weeks. ⁹ This familiar spirit seems to be the same as ‘*Thom Reid*,’ mentioned in the extraordinary Trial of BESSIE DUNLOP. ¹⁰ Prepare for death. ¹¹ Bewitched, *fore-spoken*.

¹² Stretched. ¹³ Clapped. ¹⁴ Fined away, without any apparent cause. ¹⁵ Handfuls, small quantities.

pat ane bairne throw it thrie tymeis, 'in the name of the Father, Sone and Halye Goof,' to wemen that pat the saidis bairnes thryfe throw bakward, wfeing the saidis wordis. *ITEM*, the said Iffobell confest, that scho went, silent, to the Well of Ruthuen,¹ and returneit silent, bringing watter from thence, to wasch Johne Gowis bairne: Quhen scho tuik the watter frome the Well, scho left ane pairt of the bairnes fark at it, quhilk scho tuik with hir for that effect; and quhen scho cam home, scho weufche the bairne thairwith. In lyk maner, scho Confest, scho had done the elyk to Johne Powryis bairne.

THE xxvij day of Maij 1623. THE said Iffobell confessit, that scho had gewin drinkis to cure bairneis; amongis the rest, that Dauid Moreise wyff com to hir, and thryfe for Goddis saik askit help to hir bairne that wes ane scharge:² And scho fend furth hir sone to gether fochsterrie leaweis,³ quhair of scho directit the bairnes mother to mak a drink.—Bot the bairneis mother deponit, that the said Iffobell Haldane, on-requirit, cam to her houle and saw the bairne; said, 'it wes ane scharge talkin away;' tuke on hand to cure it; and to that effect, gaiff the barne a drink; efter the ressait quhair of the bairne died.

WILLIAME YOUNG, Scribe to pe Presbiterie of Perth, at command of pe sáymyne, with my hand.

JONAT. DAVIDSONE, Notare Publict and Clerk to the Seissloune of Perth, at thair command and directione, with my hand.

[*Mr William Boirthuik, Justice-Depute.*]

Slaughter.

Feb. 3.—JAMES MURE, Younger of Auchindrane.⁴

Dilaitit of airt and pairt of the Slauchter of vin^q Sir Thomas Kennedyie of Cullane and Williamie Dalrumpill.

PERSEWER, Sir Thomas Hammiltounne of Bynnie, knycht.

PRELOCUTORIS for the pannell.

The Lairdis of Blair, Cauldwall, Heissilheid, Rowallane, Mr Johnne Russell, Mr Laurence McGill.

My Lord Aduocat productet the Letteris deulie execute and indorsat, quhairby the defenderis thairin contenit ar denuncet to the horne. Mr Johnne Russell productet Letteris of Relaxatiounne, of the dait the thrid of Februare instant; be the quhilkis the pannell is relaxit for the crymes aboue writtin. The pannell takis instrumentis of his entrie; and efter reiding of the Summondis, offeris him self reddie to abyd the tryell of the Law, for the crymes contenit thairin-till; and disassentis fra all continewatiounne. The Aduocat productet the Counfallis Warrant for continuatiounne of this dyet to Fryday nixt; and committing the pannell to waird in the meane tyme.

THE JUSTICE, for obedience of the Counfallis Warrant, continewis this matter to Fryday nixt, and ordanit the pannell to be wairdit in the Tolbuith of Edinburgh, in the meane tyme.

¹ The superstition of fetching water from *Holy- Wells*, as they were and still are often called, was very prevalent in Scotland, as well as in all Catholic countries. Some shred of dress belonging to the diseased person was left on the brink of the well, in token of the disease having passed away along with it. In Ireland, the bushes near to such wells are entirely covered with rags of every colour, as offerings to the *Genius loci*. ² SHARG, a creature pined away, by Witchcraft, an evil eye, &c. A changeling. ³ Leaves of an herb. Perhaps star-grass, bog-star-grass. ⁴ Vid. Jul. 17, 1611.

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

Feb. 5.—THE JUSTICE continewis this matter to the secund day of Marche nixtocum; and ordanis the pannell to be wairdit in the Tolbuith, in the meane tyme.¹

Slaughter.

Feb. 5.—GEORGE MURRAY of Brochtoun.

Dilaitit of airt and pairt of the Slauchter of vinq^{le} James M^cCulloche, appeir- and of Torhoufe; committit in November last.

PERSEWARIS.

Johnne M^cculloche, as brother; William M^cculloche of Mertoun, Thomas M^cculloche of Barholme.

THE JUSTICE continewis this matter to the morne.²

Feb. 6.—The perfewaris passis fra the perfute of the Laird of Brochtoun for the said Slauchter, conforme to the cowmoning.³

Mutilation.

Feb. 19.—JOHNNE DUNCANE, elder, myller in the Brig of Hailes, and Johnne Duncane, younger, meilmaker in Edinburgh.

VERDICT. Fylit, culpable and convict of airt and pairt of the Mutilation of Robert Davidfoun of tua fingeris of his left hand; committit be thame in the moneth of September 1st. Vj^c. and sax yeiris, vpone set purpois, prouifoun and foirthocht felonie.

SENTENCE. To be wairdit within the Tolbuth of Edinburgh, thairin to remane vpone thair awin expenssis, ay and qubill thay haif satisfeit the said Robert Davidfoun, pairtie, for his hurt and skayth aboue writtin, and obtene his letteris of Slanes thairupone: And alse, Ordanit thair haill moveabill guidis to be escheit to our souerane lordis rfe, as convict of the said cryme.

Slaughter.

Feb. 23.—WILLIAME KEITH, sone lauchfull to Alexander Keith of Auchquhirk.

Dilaitit, accuset and perfewit be Mr Thomas Hendersone, Aduocat, substitute to our souerane lordis Aduocat, of the crymes following, viz. fforfamekill as, vpone fryday the nyntene day of februar instant, the said Williame haifing fallin out, in som iniurious speiches with vinq^{le} Thomas Colfoun, Inglisman, at the drink, in Griffell Russellis hous in Bruntieland; he thaireftir rancounterit with the said vinq^{le} Thomas, beyde the fchoir of the said burch of Bruntieland;

¹ It is again continued; and Mure ordered to be kept in ward.

² Plegio, Johanne Vaufe de Barnebarroche.

³ Commoning. It is likely that the private parties compromised the matter, and that Letters of Remission were procured upon their joint application, on producing Letters of Slains.

and thair, maift crewallie, with his drawin fwoird, strak the said vmq^{le} Thomas vnder the left pape, and slew him thairwith: And the said William is airt and pairt of the slauchter of the said vmq^{le} Thomas.

PERSEWERIS, Mr Thomas Henderfonne, Mr Robert Foullis, aduocat.

PRELOCUTOR for the pannell, Mr Johnne Ruffell.

ASSISA.

Aulay McCaulay of Ardincapill,	Arch ^d Edmeftone of Ballintone,	Hew Dalzell, merchand burges of
George Murray of Brochtoun, ¹	Johnne Ahannay, Provoft of	Edinburgh,
James Lokhart of Ley,	Wigtoun,	Symone Brentoune, burges thair,
William Blair of Balgillo,	Patrik Somervell, merchand	George Redik,
. . . Leith of Harthill,	burges of Edinburgh,	Geo. Rollok, portioner of Craigie,
Sir Alex ^r Colquhoun of Lufs, kny ^t ,	Donald Thornetoun, burges thair,	Vthreid M ^c dowgall of Mondurk.

VERDICT. The Assyse, be the mouth of the said Vthreid M^cdowgall of Mondurk, chancellor, fand, pronuncet and declairit the said William Keith to be ffylit, culpable and convict of airt and pairt of the Slauchter of the said vmq^{le} Thomas Colftoun; committit in maner and at the tyme specifcit in the said Dittay.

SENTENCE. To be takin to the mercait croce of Edinburgh, and thair, vpone ane skaffold, his heid to be strukin frome his body; and all his moveabill guidis and geir to be efcheit and inbrocht to his Maiesteis vse, as convict of the said cryme. Quhilk was pronuncet for dome.

Child-murder.

Feb. 24.—ISSOBELL THOMESOUNE, dochter to Robert Thomesoun in the Watter of Leyth.

Dilaitit of the crewall and vnnaturall Murthour and distruction of hir awin infant bairne; committit be hir, immediatlie eftir hir delyuerie thairof, vpone the aucht day of Februare instant, secretlie, within hir fatheris dwelling hous in the Watter of Leyth.

VERDICT. The Assyse, in ane voce, be the mouth of Thomas Clerksoun, but-terman, chancellor, fand, pronuncat and declairit the said Issobell, conforme to hir awin Confessioun, to be ffylet, culpable and convict of the crewall Murthour and distruction of the said bairn.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit, quhill scho be deid; and hir haill moveabill guidis, gif scho ony hes, to be efcheit, &c.

Treason — Murder under Trust, &c.

Mar. 2.—JAMES WATSOUN, sone in law to James Hammiltoun of Scheirell; and James Hinchelwoid, seruitour to James Hammiltoun Younger of Spittelcheill.

Dilaitit of airt and pairt, red, counsall and foirknowledge of the crewal Mur-

¹ See Feb. 5, 1508.

thour of vmq^{le} George Tuedie; committit be the said James Hammiltoun of Spittelcheill, vpone Sanct Leonardis-evin, in Nouember last, within ane barne of Spittelcheill; the said James, the tyme of the committing thairrof, haifing consultit and devyfet the samyn with Robert Craufurd, his guid-brother, and with the saidis James Watfoun and James Hinchelwoid, of the forme and maner thair-of, viz. THAT the said James Hinchelwoid sould secreitlie convoy ane mell¹ in the barne, quhair the said George Tuedie sould be murthourit; and that the said George (his) bed sould be maid in the said barne, and the said James Watfoun to ly with him: LYK AS, about tuelf houris at evin, in the said nycht, the said vmq^{le} George Tuedie being lyne down in his bed, within the said barne, luiting for the said James Watfones cuming to ly down with him, the said James Hinchelwoid, James Hammiltoun and James Watfone come all in togidder within the said barne; and as the said James Watfone was taking af his claithes, the said James Hammiltoun, with the said mell in his hand, in prefens of the said James Watfoun and James Hinchelwoid, come to the said George Tuedeis bedheid, and thair maist crewallie gaif him tua grit straikis in his heid, and Murtherit him thairby; the said James Hinchelwoid haifing brocht in the candill in his hand, and delyuering the mell to the said James Hammiltoun, to commit the said Murthour; AND eftir the committing thairrof, the said James Watfone, taking away with him the said vmq^{le} George Tuedeis horfe, with the sadill and brydill, and the said James Hinchelwoid helping the said James Hammiltoun to beir him to ane lyme hoill, ane littill frome the hous, quhair he wes bureit.

VERDICT. The Assyse electit and choisit Hammiltoun of Sillertoun-hill² chancellor, ressonit and voittit vpone the poyntis of the said Dittay, and being ryplie and at lenth advyfet thairwith, togidder with the saidis James Watfone and James Hinchelwoidis Depositiones made be thame in the premiffes; thay, be the mouth of the said Chancellor, ffand, pronuncet and declairit the saidis James Watfone and James Hinchelwoid to be flylet, culpable and convict of airt, pairt, red, counfal and foirknowledge of the said abhominable Murthour, and conceilling of the samyn, sa lang eftir the committing thairrof.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill thay be deid; and all thair moveabill guidis escheit to our souerane lordis vsf, as convict of the saidis crymes.

Cattle-stealing.

Mar. 11.—THOMAS FRAM, sumtyme servand to James Hammiltoun of Spittelscheill.

Dilaitit of airt and pairt of the thiftious Steilling, conceilling, resfetting and

¹ Mallet. ² Robert Bailzie of Jerristoun, Johnne Grahame brother to Wastraw, and James Mureheid younger of Lachope, are the only other landed persons. James Levingtoun of Jerisfwoid was fined 100 merks for non-appearance.

away-taking of thre oxin and ane kow pertening to James, Lord of Balmirrinoch, furth of his landis of Mulrum; committit in the moneth of Auguft I^m.Vj^c. and fax yeiris.—**VERDICT.** Guilty. James Levinftoun of Jerifwoid, chancellor.

SENTENCE. To be tane to the mercait croce of Edinburgh, and thair to be hangit quhill he be deid; and all his moveabill guidis, gif he ony hes, to be conficat to our fouerane lordis vfe.

[*Mr Williame Borthuik, Juſtice-Depute.*]

Murder.

Mar. 18.—**JOHNNE SWAN**, burges of Dumbar.

PERSEWERIS, Williame Clerkfoune, brother-fone, Johnne Kellie, ſiſter-fone, Johnne Learmonth, guid-fone, Williame Ruthven alſo fone-in-law.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter of vmq^{le} George Clarkfoune, merchand burges of Dumbar; committit be him within the ſaid vmq^{le} George awin barne, lyand at the bak of the tounne of Dumbar, vpone the fyftene day of Marche instant, betuix thre and foure eftir none; be geving to him of ane crewall and deidlie ſtraik vpone the left ſyde of his heid, alongis his vane-organe,¹ with ane grit fork, quhairof he immediatlie depairtit this lyfe.

VERDICT. Guilty. Johnne Kellie, elder in Dumbar, chancellor.

SENTENCE. To be takin to the mercait croce of Edinburgh, and thair his heid to be ſtrukin frome his bodie; and all his moveabill guidis to be eſcheit and inbrocht to his hienes vfe, as culpable and convict of the ſaid cryme.

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

Sorcerie, Witchcraft, &c.

Majj 27.—**BEIGIS TOD**, in Lang-Nydrie.

Dilaitit, accuſet and perſewit, at the inſtance of Mr Robert Foulis, Aduocat, ſubſtitute to our fouerane lordis Aduocat, of the crymes of Sorcerie following, viz. **FORSAMEKILL** as ſcho, accompaneit with vmq^{le} Criſtiane Tod, hir ſiſter, Johnne Graymeill, Margaret Dwne and Erſche Marioun,² in the moneth of Auguſt, the yeir of God I^m.V^c. four ſcoir fourtene yeiris,³ conuenit thame ſelffis, with thair complices, all Witches and abuſearis of the people, at Deane-fute of Lang-Nydrie, quhair the Deuill appeirit to thame, and reprovet the ſaid Beigis Tod verrie ſcherplie, for hir lang tayreing; to quhome ſcho maid this anſuer, ‘Sir, I could wyn na ſoner!’ And immediatlie thaireſtir, thay paſt altogidder to the ſaid Beigis hous in Lang-Nydrie; quhair, eftir thay had drukkyn togidder a certane ſpace, thay, in thair devillifche maner, tuik ane katt, and drew the ſamyn nyne tymes throw the ſaid Beigis cruik;⁴ and thaireſtir come with all thair ſpeid to

¹ Jugular vein.

² Irish or Highland Marion, a perſonage who figured in the Witch Trials of that period.

³ A.D. 1594.

⁴ Of iron, on which the ‘*kail-pat*’ is uſually hung over the fire.

Seaton-thorne,¹ be-north the zet;² quhair the Devill callit for the said Cristiane Tod, and past to Robert Smartis hous, and brocht hir out; and as scho was cumand with him, scho tuik ane grit fray,³ and said to the Devill, 'Sir, quhat will ye do with me?' Quha answairit her, 'Tak na feir, for ze fall gang to your sifter Beigis, and to be rest of hir cumpanie, quha ar stayand vpone your cuming at the Thorne!' And thay theireftir past altogidder, with the Devill, to the irne zet of Seatoun, quhair of new thay tuik ane cat, and drew the samyn nyne tymes throw the said Irne-zett: And immediatlie thaireftir, come to the barne, foiranent George Feudaris dur,⁴ quhair thai cristenit the said catt, and callit hir *Margaret*: And thaireftir come all bak agane to the Deane-fute, quhair first thai convenit, and cuist the kat to the Devill. For the quhilkis devillische practizes the saidis Cristiane Tod, Johnne Gray-meill, Ersche Marioun and Margaret Dwne war convict and brunt. And the said Beigis Tod is airt and pairt of the cryme of Sorcerie and Witchcraft aboue writtin; quhilk wes nottourlie knawin: ITEM, forsamekill as the said Beigis Tod, haifing fallin furth at variance with the vmq¹⁶ Alexander Fairlie in Lang-Nydrie, scho, to be revendget vpone him and his bairnis, in the moneth of Junij I^m.V^c.lxxxvj yeiris, be hir Sorcerie and Witchcraft, cuist ane heavie and vnkawin seiknes vpone Alexander Fairlie, his sone, quha vanischet away⁵ with vehement sueiting and continual burning at the heart; quhilk seiknes indurit with him the space of tua monethis, that nane luikit for his lyfe;⁶ and nichtlie the said Beigis appeirit to him, in hir awin similitude; vpone quhome he cryit continuallie for help: And in the day, scho appeirit to him, in schape of a dog; quhilk pat him almaist out of his witts: Vpone occasioun quhairrof, the said Alexander, his father, past to the said Beigis Tod, and efter he was reconceillit to hir, maist earnestlie besocht hir to cum and remedie his sone of the said seiknes; quha refuist to cum; yit, at the eirnest desyre of Archibald Galloway, scho, accumpaneit with hir tua sones, come to the hous, and sa sone as the said Alexander saw hir, he eftir that tyme became bettir and bettir, and convalescit of the said seiknes. And sa, scho committit manifest devillrie and Witchcraft, in on-laying and aftalking of seiknes, in maner foirsaid. AND lykwayes, was accuset be the said Aduocat and Robert Woid, litster, for the casting of the lyk vncouth seiknes vpone the said Robert, be hir devillrie and Witchcraft, in the moneth of Nouember last.

VERDICT. The Assyse, all in ane voce, be the mouth of David Seatoun, bailzie of Tranent, flyet the said Beigis of the first tua poyntis of Dittay aboue writtin: And, be pluralitie of voittis, stand, pronuncet and declairit hir to be Clene

¹ Thorns were favourite trysting-places of witches as well as lovers.

² To the north of the

gate. ³ Fright. Old Fr. *frayeur*.

⁴ Door.

⁵ Swooned, fainted away.

⁶ Nove

thought he could possibly sur-vive.

and acquit of the Sorcerie and Witchcraft vsæt be hir aganis the said Robert Woid, in laying the said seiknes vpon him ; in maner specifeit in the Dittay.

SENTENCE. For the quhilkis tua crymes, quhairof she is convict, the Justice ordanit hir to be tane to the Castell-hill of Ed^r, and thair to be wirreit at ane staik, and her body to be brunt in asches ; and hir haill guidis to be escheit, &c.

[CURIA JUSTICIARIE *f. d. n. Regis, tenta in Pretorio de Lynlythgow, ultimo die Maij 1608, per M. Willielmum Hairt de Prestoun, Jusficiarium Deputatum.*]

ASSESSOURIS TO THE JUSTICE.

My Lord of Balmirrienoche,¹ My Lord Abercorne,² My Lord Lynlythgow,³ Sir Peter Young.⁴

Abstracting Pearls and Jewels belonging to the Queen.

May 31.—MARGARET HERTSYDE, spous to Johnne Buchannane, sumtyme servand to his Maiestie, and the said Johnne Buchannane, for his entreis.⁵

Dilaittit, accuset and persewit be Sir Thomas Hammiltoun of Bynnie, knycht, Aduocat to our souerane lord.

DITTAY against the Pannell.

MARGARET HERTSYDE, 3e ar indytit and accuset, floramekill as 3e, being many 3eiris in credeit and service with our souerane lordis darrest spous, the Queinis Maiestie, and haifing resslaut many grit benefeitis frome hir Maiestie, during þe tyme of 3our seruice, at dyuerse tymes, to 3our heich advancement, baith in credeit and welth : 3e, nochtwithstanding thairof, maist vnlauffullie and vndewtiefullie substractit, staw and detenit frome hir Maiestie, furth of our souerane lordis Palices of in Ingland, at the leist furth of ane or vther of our saidis Palices, ane Perle, of the valour and pryce of ane hundreth and ten pund sterling, pertening to hir Maiestie ; togidder with dyuerse vtheris perles, precious stanes, jowallis and goldsmith wark, lykwayis pertening to his Maiesteis darrest spous, worth the fowme of thre hundreth pund sterling ; committit be 3ow in the monethis of, the 3earis of God I^m, sax hundreth thre, sax hundreth foure, sax hundreth fyve, sax hundreth sax, and I^m.Vj^c. and sevin 3eiris ; at þe leist in ane or vþer of þe saidis monethis and 3eiris. For the quhilkis, 3e being sworne and examinat, first vpon the fyft day of October 1607, and pairrestir vpon the thrid day of Nouember lastbypast, anent 3our vnlauffull haifing of findrie of hir Maiesteis jowellis ; and haueing declairit, vpon 3our grit aithe, that 3e had nane, and gif it war fund that 3e had ony vther jowallis of worth, quhilkis pertenit to hir Maiestie, that þe particuleris than confessit be 3ow, (quhairin the jowallis lybellit war nocht comprehendit,) 3e acknowlegit that 3e had thame nocht lauchfullie : And lykwayis declairit, be 3our said Deposition, that at 3our first cuming frome Court to Scotland, 3e had delyuerit to hir Maiestie all þe jowallis quhairof 3e had þe credeit,⁶ and nevir senfyne had charge of pame, or mellit⁷ with ony of thame. NOCHTWITHSTANDING quhairof, 3e pairrestir, vpon the said thrid day of Nouember last, Confessit that 3e had abstractit frome hir Maiestie ane grit perle, pertening to her bienes, quhilk cam to 3our handis, amangis ane number of counterfute stanes, and many perles pairwith : Quhilk grit perle, 3e sauld, for ane hundreth and ten pund sterling, estir that 3e had presentit the same, hung at ane dyamond, to be sauld, to hir Maiesteis self ; ffor the quhilk 3e cravet her Maiesteis pardoun, and

¹ For his interest ; only as husband to the pannell.

² Sir James Elphinston, first Lord Balmerinoch, Lord

President of the Court of Session. See his Trial, Mar. 10, 1609.

³ James Hamilton, first Earl of Abercorn.

⁴ Alexander, seventh Lord Livingston, was created Earl of Linlithgow Lord Livingston and Calendar.

⁵ His

Majesty's ' Elimosinar' or Almoner, &c.

⁶ Trust, charge of.

⁷ Meddled, had to do with. Fr. *Mêler*.

be your said Deposition cum in hir Maiesteis gracious Will for it. And lykways Confessit, be your Deposition foirfaid, that, without hir Maiesteis knowlege or gift, ze had fauld and convenit to your awin proffeit and vse, vther precious stanes and perles, worth thre hundreth puad sterling, pertening to hir Maieftie; and acknowlegit pat your ouersicht and offence committit, in melling with the jowallis confessit be zow at pat tyme, pat zow in hir Maiesteis Will: And ze ar airt and pairt of pe saidis crymes: for pe quibilkis ze aucht and fould be pwneifched, conforme to pe lawis and daylie praktik of your realme.

PERSEWAR, Mr Thomas Hammiltoun of Bynnie, knycht, Aduocat to our fouerane lord.

PRELOCOUTOURIS for the pannell, Mr Williame Oliphant, Mr Thomas Hoip, Mr Alexander King, Mr Johnne Russell, Aduocatis, Mr Robert Buchannane, Minister at the Kirk of Ceres, Mr Williame Buchannane, Minister at Methven.

The Aduocat productet our fouerane lordis Letteris, deulie execute and indorfate, purchest at his instance, as Aduocat to our fouerane lord, for his hienes entreis. The Aduocat, eftir cheifing of the prelocoutouris for the pannell, productet his Maiesteis Warrant to the Justice to proceid and minister Justice; togidder with ane vther Warrant, directit to my lord Aduocat, to insift in this persute.—Mr Johnne Russell, for him self and the rest of the prelocoutouris, productet ane Warrant of the Lordis of Secreit Counfall, commanding thame to compeir, as prelocoutouris, in defence of the pannell.

My lord Aduocat productet ane Eik to the Dittay, for cleiring thairrof, and circumstances of the poyntis of Dittay contenit in the Letteris.

Margaret Hertfyde, *olim in carcere*, and now at libertie, productet ane Letter, con-tening anedesyre, ane Reuocation and protestatioun, quhair of the tennour followis.

I, MARGARET HERTSYDE, acknawleging my long captiuitie, and that I haif bene seperat fra my husband, dyuerse tymes examinat and demandit vpon findrie wechtie matteris and articles, to the quibilkis I was foret to ansuer, nocht being weill resolut, bot be pe contraire, being bevelie trubillit, be apprehensioun¹ of my husband, my self, wairding of our perones, and ceasing² vpon our hail guidis; my Depositionis nocht persytile knawin to me, and I being ane woman, *juris ignara*, nocht haifing sa guid memorie as is requisit in sic ane wechtie caus; I desyre that now, being ane frie persone, exhibit in Judgment,³ my Declaratioun and Deposition may be productet, to the effect that I may reduce my self to ane persyte memorie; and, gif my Declaratioun be set down accoirding to pe treuth, I am content to abyde pairat; vtherways, in caice pair be any thing omittit or erroneoullie declairit, that I may be hard to correct my errour and eik⁴ pairto, quathoeur is omittit: And in cais of non production of my said Declaratioun and Depositiones, to the effect foirfaid, I, be pir presentis, revoikis quathoeur Deposition maid by me, concerning the lybell and Dittay pairin contenit, and hail contentis pair of: And protestis, in caice pe said Deposition be productet, at any time heireftir, in this Judgement, that pe samyn be oppible red in my prefence, to the effect foirfaid.

The Pannell, vpon productione of the Eik to the Aduocat, desyrit this inatter to continew to the morne, to be advysed thairupoune. My Lord Aduocat declairis, that he vsis this Eik productet, as ane qualificatioun and explanatioun of the Summondis; bot intendis nocht thairby to challenge the persfear of any new cryme; and thairfoir desyrit present proces.

¹ Imprisonment.

² Seizing.

³ Presented in Court.

⁴ Add, subjoin.

THE JUSTICE and ASSESSOURIS continewis this mater to the morne, at viij houris; and hes delyuerit the Eik product to the Prelocutouris, to he advyfet thairupoun.

OBJECTIONS *against the Assessors.*

(Jun. 1.)—It is allegit aganis *Sir Peter young*, that he can nocht be Assesfour in this cause, becaus he is his Maiesteis domestik seruitor; and Margaret Hertfyde being callit in this Judgement for steilling and substracting of Jowellis pertening to hir Maieste, quhilk also pertenis to his Maieste, na domestik seruitor to his Maieste can be Judge or Assesfour in this cause.—To the quhilk it is answert, be the Aduocat, the allegiance is nocht relevant; becaus it hes bene practikket¹ in this Judgement, of befoir, that his Maiesteis servandis and domestikis hes bene admittit vpon Assyses: speciallie, the practik of Barbara Naper² and Mr Thomas Cranstoun and George Craigenelt.³

It is allegit aganis *my Lord of Lynlythgow*, that he can nocht be Assesfour, becaus his Lordschipis spous and the Kingis Maieste ar of kyn.⁴—It is answert be my lord Aduocat, the rekning was nocht relevant, becaus kyn to the King makis nane suspect, in his caus.—It is allegit aganis *my Lord Balmirrienoche*, that he can nocht be Assesfour, becaus the Aduocat being persewar, be direction of the Quenis Maieste, that the Aduocattis spous and my Lord President ar ferds of kyn; and sa can nocht be Assesfour.—To the quhilk it is answert, the allegiance is nocht relevant; and thairfoir mereitis na answert.

THE JUSTICE, be Interlocutour, finds that the noble men nominat Assesfouris may sit as Assesfouris in this cause, nochtwithstanding of the allegiances proponit be the pannell in the contrair. Quhairupone the Aduocat askit instrumentis.

My lord Aduocat declairit, that he insistit nocht aganis Johnne Buchannane, bot allanerlie as spous to Margaret (Hertfyde) for his entreis; quhairupone Johnne Buchannane askit instrumentis.—The pannell acceptis the Summondis and Dittay contenit thairin, as the samyn is qualseit.

It is allegit be the pannell, that the Summondis is blank, bayth in the tyme and place of the committing of the fact lybellit; quhilk man be fillit befoir forder proces. It is answert be the Aduocat, that the pannell man say, quhairin the blankis ar prejudiciall to thair defensilis.—It is duplyt, that the exceptione standis relevant, nochtwithstanding of the answert maid thairto, in respect that of the Law Ciuill thair is a solempne forme prescryuit anent accusationis, that thairin tyme and place fall be determinat; *quia non oportet in Criminibus vagari: Lege libellorum § de accusationibus, &c. significasti, extra de libelli oblatione.* Bald. Confilio, 1420, vol. iv. Julius Clarus, paragrapho finali, questione

¹ Decided, made matter of pratique (practice) or precedent.

² Witchcraft.

³ Gowrie

Conspiracy. See Aug. 22, 1600.

⁴ Alexander, seventh Lord Levingstoun, married Lady Helenor Hay, only daughter of Andrew, seventh Earl of Errol. They were entrusted with the care and education of the Royal children.

xij. *Speculator*, in titulo *de furtis*, numero 2. Quhilkis folemniteis ar vniuerfallie oberfuit, bayth in Scotland, and in the haill world. And forder, thair is ane grit neceffitie to condiscend vpone the fpeciall moneth, becaus the Dittay beiris, anno 1603; and it is nottour, that in dyuerfe monethis of the faid yeir, hir Maieftie was refident in Scotland, albeit the Dittay beir the place to be, 'out of his Maiefteis Palaces in Ingland.'—It is anfuerit be my lord Aduocat, that I haif alreddie declairit the Crymes lybellit to haif bene committit fen (*since*) the paffing to Ingland, furth of fome of his Maiefteis Palaces thair; quhairby the Summondis is fpeciall aneuch, vnles the pannell wald allege, quhat particuler tyme and place wald mak the fact lybellit lauchfull.—It is anfuerit, that my lord Aduocattis declaratioun is mair generall nor the lybell; and of the law, *debet prius conflare de delicto*, &c., quhilk man be circumferyit, *tempore et loco definito*. This Julius Clarus, libro v. Sententiarum—finali queftione, iv. et v.

SECUNDO, it is allegit that thai woirdis of the Dittay, 'fubferyuit and detenit,' ar nocht relevant, *et non sunt verba juris*, to infer a cryme.—It is anfuerit, that the Lybell ftandis relevant, as it is confaueit.¹

TERTIO, it is allegit, that the laft pairt of the Dittay, anent the generall woirdis of 'perles, pretious ftanes and goldfmyth-wark,' is nocht relevant, becaus the particuler number is nocht defignet, and qualitie thairof; becaus of the Law, *in furto rerum plurium, designandus est numerus; quia, sine designatione numeri, non possunt res intellegi, ubi sunt plures*. L. *in actione furti, § de ffurtis*. In *auro infecto pondus in facto et signato numerus et intefte color dicendus est*. And the expres text of the fame matter, in L. *fi quis uxori, § fi linea margaritarum surrepta est, dicendus est numerus, et non satis est res surreptus demonstrari per estimationem*: With this woird, that vpone ane generall claufe, *neque in Ciuili neque in Criminali*, na proces can be grantit.—It is anfuerit be my Lord Aduocat, that the conclufione of the argument is, that gif he fra quhome ane chen3e, or perles, or ane Jowell compofet of mony ftanes is ftown, can nocht condiscend vpone the particuler number thairof, the theif fall bruike the famyn, but remeid² of Law; quhairof I refer the relevancie and confequences to the Juftice and Affefouris.—The pannell repeittis the exceptiones, quhilk is foundit vpone the Law; and as to my lord Aduocattis anfuer, it meitis nawayis; becaus the famyn fpeikis *de corpore vnito et de gemmis inclufis in vno auro*, and the exception oppingis directlie the lybell; becaus it condiscendis nocht vpone the ftanes, Jowellis and goldfmyth-wark, quhilk ar bayth *distincta corpora, numero et specie*, mony of thame and of dyuerfe natures. To the quhilk is maid na anfuer.

QUARTO, it is allegit, that, feing the Dittay is foundit and makis expres relation to certane Depofitiones, allegit maid be the pannell, at tua feuerall tymes, in

¹ Conceived, framed.

² Without legal remedy or redress.

October and November, thairfoir my lord Aduocat, of all reffone, aucht to produce the saidis Depositiones, nocht only to the effect that the pannell and hir prelocutouris may confidder thame, for the cause contenit in hir first Protestatioun, bot also, to the effect scho and thay may be hard to reffone befor the Judge, anent the conformitie and difconformitie of the saidis Depositionis and with the Dittay; quhilk man be confidderit and tryit be the Judge; feing the samyn confistis *in jure*: And gif this be nocht done, thair will follow ane grit inconvenient, to wit, that the Assyse, gif this matter fall pas to thair knawlege, fall be forcet to reffone and discufs vpon the said conformitie and difconformitie, quhilk is nocht proper to thame, the samyn being *juris et non facti*.—It is answerit be my Lord Aduocat, that vnles ather the pannell, be thair consent, or the Justice, be his Interlocutour, will find the Summondis relevant, he can nocht be astrictit to produce his probatioun.

QUINTO, it is allegit, that the Dittay is nawayis relevant, setting down only generallie that the perles, alleget substractit, pertenis to the Quenis Maiestie, and nawayis condiscending in quhais possessioun thai war, the tyme of the allegit substracting thair of; quhilk man be condiscendit; for gif thai war nocht in the Quenis Maiesteis possessioun, than the pannell could nocht commit Thift, in melling¹ thairwith; for of the Law, in *Lege prima*, § *si qui testamento liber*, &c., it is said, *quod furtum est tantum possessionis*: And Baldus, Concilio 238, vol. ii., sayis, *quod proprietatem nemo alteri subtrahere potest*, &c.; and gif thai wer in the pannellis possessioun, scho could nocht commit Thift be disponing thairvpone, *Lege*, *qui vas*, § *qui voluntate*, ff. de furtis, *qui ex voluntate domini servum recepit, qui neque fur neque plagiarius sit, plusquam manifestum est; quis enim voluntate domini habens fur dici potest*, &c.—Answeris my lord Aduocat, the exceptione aucht to be repellit, in respect of the lybell, vnles the pannell will allege and instantlie verifie, that scho obtenit lauchfull possessioun of the guidis lybellit, and had hir Maiesteis consent and allowance to the alienatioun thair of, quhilk is nevir subsumit.—It is duplyit, that na pairtie, of the Law, can be compellit to propone, be peremptour (defence), or verifie the samyn, except the Dittay be ffund relevant: And forder, allegis, that gif my lord Aduocat will produce the Deposition, quhairupone his lybell is foundit, the samyn Depositionis will verifie, that the perles lybellit cam in the pannellis hand lauchfullie.

SEXTO, the pannell acceptis the fummondis and Dittay thairin contenit, speciallie that pairt thair of, beirand, that the said Margaret was mony yeiris in credeit and seruice with hir Maiestie, and hath ressauid many grit benefeitis from hir Maiestie, the tyme of hir seruice, at dyuerse tymes, to hir heiche advancement, baith in credeit and welth; and that the said Margaret vndewtiffullie and

¹ Meddling, intromitting. Fr. *meler*.

vnnaturallie, at the tyme lybellit, flaw, &c. : And allegis, that the Summondis is nawayis relevant aganis the said Margaret, being ane woman of credeit, as is confest ; lyk as, it is noutour to the Judges and Assesours, that scho was ane servand of credeit, at the tyme lybellit, befor, and dyueris yeiris thaireftir ; sua, of necessitie, in respect of hir credeit, the maner and forme of the steilling of the stanes and perles lybellit man be condiscendit vpon, viz., quhidder the samyn was committit be force and violence, be breking vp of the durris of the houffis, and lokis of the cofferis, quhair the samyn war ; or was done privelie, in the nycht, be taking the samyn of hir Maiesteis garmentis, or fra hir hienes jowellis, or out of hir hienes cabinettis ; or that scho, vpon the conscience of the said cryme, fled furth of hir Maiesteis seruice, and transportit the samyn with hir ; quhilk may be condiscendit vpon, of all necessitie ; becaus ther can nocht Thift be committit, be ane servand of credeit, except the saidis qualiteis concur, to manifest violence *et animum furandi* in the seruand ; *quia, de jure, furtum sine affectio furandi fieri non potest* L. 1. ff. de furtis et *ut ait* Bart. ad L. 5, is qui rem § si tu Titium ff. de furtis. *ffurtum est nomen juris, hoc est, non omnis contractatio rei aliene est ffurtum, nisi accedat dolosus animus furandi* L. Potest. et L. furtum ff. de vfù, &c.¹—It is answerit to the *sux* exceptioun, be my lord Aduocat, that, nochtwithstanding thair of, the Summondis is relevant, becaus the qualitie of the defender is nocht ane occasioun to extenuat the cryme, bot to aggravat the samyn, seing the gritter credeit scho had, scho sould the mair faythfullie discharget the samyn : And it is expresse lybellit, that it was sa far fra the Quenis knowlege or consent, that the pannell sould haif convertit ony of thir jowellis to hir awin vse, (in quhilk caice na policie neidit to haif bene vset) gif hir Maiesteis consent had bene had thairto, that the pannell, to mak hir Maiesteie to misken hir awin grit perle, causit hing the samyn to ane dyamont, and offerit to sell the samyn to hir Maiesteie, as ane jewell nocht pertening to hir self. Forder, the persewar acceptis the instance proponit be the defender, anent ane scheip-herd steilland his maisteris scheip, for the quhilk he may nocht be persewit Criminalle ; quhairin the persewar is direct contrar to the defender, and affirms, that of the law and cownone practik of the cuntrie, scheip-herdis steilling scheip, committit to thair keiping be thair maister, is ordinarlie hangit thairfor : Lyk as, David Forrester greve to my Lord of Menmuir, and Robert Loch, his servand, being accuset for steilling fra him of aittis, beir, woll and lynning clayth, the summondis was sfund relevant, albeit the greve had charge of all theis thingis, be his office, and had his maisteris credeit ; and being put to ane Assyse, was convict for the maist pairt thair of : Quhairby, it is manifest, that servandis put in trust and credeit be thair maister, and steilling ony pairt of the geir,

¹ Here a number of sentences abridged from the Doctors follow.

quhairof thay haif the keepinge and credeit, ar ordinarlie put to the knowlege of ane Affyse, and convict, gif thai be ffund giltie: And quhair, it is exceptit, that in thift committit be ane fervand of credeit (forceing?¹) of duris or kiftis is requisit, the persewar affirmes to be ane absurd allegiance.—It is anfuwerit (replied), that the pannell, in hir last and fast exceptioun, querrellis only the irrelevancie of the Dittay, and naways meanis to extenuat ane cryme committit be ane fervand; for gif it be certane and tryit that ane fervand hes committit ane cryme, he is maist worthie of double pwneischment, bot the thing that the pannell contendis for in the exceptioun, is, that na Dittay for Thift can be relevant aganis ane fervand of credeit, except sic qualities and actiones be contenit, quhilk may infer *animum furandi*; and the instances proponit be my lord Aduocat beiris, that fervandis committand crymes and ffund culpable war justifeit;² quhilk naways meittis the said exceptioun.—It is declairit be my lord Aduocat, for eschewing of disputatioun vnnecessar, that he insistis only vpone tua poyntis of Dittay; to wit, the steilling, &c. the grit perle of the pryce of an hundreth and x li. sterling, for the first article; and the vther jowellis, perles, stanes and goldsmyth-wark, for the secund poynt of Dittay: And vffis the hail rest of the lybell, nocht as ane fenerall³ cryme, bot only for explanatioun and qualificatioun thairof; and intendis nocht, at this tyme, to accuse the pannell of contrair⁴ Depositiones.

THE JUSTICE, with advyse of his Affesouris, ffindis the lybell and Dittay relevant; nochtwithstanding of the hail exceptionis proponit be the pannell.

Quhairvpone my lord Aduocat askit instrumentis.

It is allegit, peremptourlie, be the pannell, that this Dittay can nocht be put to ane Affyse; becaus of the law, ane fervand of credeit haifing the custodie of his Maiesteis guidis, being willing to rander ane compt of his intromissioun, nevir haifing committit ony violent deid, can nocht be accuset of Thift; the intromissioun, fra the begyning, being lauchfull: Bot trew it is, that Margaret Hertfyde, as is confest in the lybell, bothe the yeiris lybellit and dyuerse yeiris of befoir, was, lyke as scho is presentlie, hir Maiesteis fervand, vndischarget, with credeit, and willing to gif compt of hir intromissioun, nevir haifing committit ony violent deid.—My lord Aduocat, of his awin motiue, nocht being inducet be my Lord Justice, bot at the pannellis desyre, producet the Depositiones, quhairupoun the Dittay is foundit; quhilk he vffis, at this tyme, for verifeing thairof; vnder Protestatioun, that this be na preparatiue in this Judgement,⁵ at ony tyme heir-effir: And thairupoune askit instrumentis; and that this is the only Depositione that he vffis at this tyme. Quhairvpone the pannell also askit instrumentis.—My lord Aduocat allegit that the Depositione producet, man⁶ mak full

¹ Obliterated.

² Punished with death. L. B. *justificare*.

³ Separate or distinct.

⁴ Contradictory.

⁵ That this be no precedent in this Court.

⁶ Must.

fayth, and is valid, of the law, notwithstanding of the Reuocatioun maid and ingrossit yisterday in proces, be the defender; becaus na Deposition is revocable, of the Law, quhilkis ar maid voluntarlie, in presens of thame that hes power to examine the partie, without ony tortour or feir of tortour. And trew it is, that this Depositione producet, was maid lauchfullie and voluntarlie, and thairfoir is nocht reuocable. Julius Clarus, L. quinto, § finali, questione 55, etq. 65, versaculo, *sed quero*: And in respect thairof, desyres the reuocatioun producet to be reiectit, and the protestatioun refusit.

It is allegit, that the pannell can nocht be put to knowlege of ane Assyse for hir intromission and melling with the perles and jowellis lybellit; becaus it is set down and confest in the Deposition producet be my lord Aduocat, that the saidis jowellis and perles war gevin be the Quenis Maiestie to the defender, for the vse thairin contenit; quhilk vse was accomplishet and perfyttit to hir Maiesteis contentment; and as to the residu, the defender, supponing that hir Maiestie sould nevir re-demand the samyn, scho disponit thairupoun, quhilk can nawayis be comptit nor estemit ane cryme of Thift, of the Law: first, becaus the saidis jowellis and perles cam, fra the begynning, lauchfullie to the defenderis possessione, and sua scho could nevir commit Thift, be disponing thairupoun. *Lege, qui vas, § qui voluntate, ff. de furtis, &c. Lege, qui re ff. de eod. titulo, qui re sibi commodata vel apud se deposita, vsus est non committit furtum, precipue si putavit dominum consensurum; ut Cuiacius, ad Legem, si furem, ff. de pro emptore non omnis rem alienans fur dici potest, sed initium possessionis respiciendum est, et si initium possessionis iustum fuit, furtum fieri non potest.* Nixt, the Confessioun, contenit in the Deposition, can nocht be ane cryme; becaus *furtum non potest fieri sine affectu furandi*; and the pannell had nocht *affectum furandi*; becaus the Deposition beris, scho supponit hir Maiestie sould nocht re-demand thame: And in this caice, that Thift can nocht be committit, of the Law it is provin; § *placuit de institutionibus, &c.*¹ And this aggreis verrie weill with the Deposition, quhilk, in effect, meanis that hir Maiestie had forzet² the samyn, and had thame *pro derelictis*; sua that the said Deposition previs the Defenderis exception and everie member thairof: Quhilk Deposition my lord Aduocat can nawayis be hard to devyd; seing, of the Law, *ubi actus est legitimus in se, nunquam presumitur delictum, nisi probetur.* And to excuse the committer, *sola negligentia sufficit credulitas, immo temeritas.* Gothophredus, § *placuit.* Alexander, vol. iv. Phelinus, cap. *sicut noxius. ac delicti extra de accusationibus.* Baldus, Consilio 98, vol. v, &c.— And gifand³ that qualitie anent hir credulitie war nocht insert in hir Deposi-

¹ Various other clauses are here shortly, but very obscurely and hastily cited,

² Granting, allowing for the sake of argument.

³ Forgotten.

tiounes, yit of the law, quhair the possellioun cumis lauchfullie to ony perſones handis, be the will of the maiſter, gif ony queſtioun arryſe anent the credulitie or opinioun of the partie, quhither he intervertit the poſſellioun *animo furandi*, of the law, the opinioun or credulitie is provin be the parteis ayth: This is decydit per Bartol. ad dictum 59 '*recte*,' quhair he diſputis the ſaid matter *ad longum*, on baith the fydis; and concludis, in end, that the parteis ayth ſould be tane, cheiflie quhair the partie is abill to produce ony probable conjectouris or argumentis, to cleir hir mynd and intention; and quhair hir accuſer is nocht able to produce ony probable conjectouris, to preve the contrair; and the coniectouris and preſumptiones quhilk may infer *malam fidem in furto*, is ſet down in the Law, *in autentica, ſi vero de exhibendis reis*, Lege *ſi ffurtum*, ff. de Adulterijs; to wit, *ſi per vim, ſi clam, ſi auſugit, ſi perſona male et ſuſpecte fame*. Bot nane of thir conjectouris may be qualifeit aganis the pannell. Scho committit nather fraud nor violence: it was nocht committit be hir in the nycht; and the Depoſitioun beiris the perle was fauld to George Heriot, hir Maieſteis principall Joweller; and gif thair had bene ane intention of Thift, in the pannellis mynd, it can nocht be preſumet that ſcho wald haif fauld the ſamyn to the Jowaller quhom ſcho knew wald ſchaw the ſamyn agane to hir Maieſtie: And it is conſtant,¹ that ſcho fled nocht away fra hir Maieſtie; bot, be the ſpace of dyuerſe yeiris thaireſtir, remanit in hir Maieſteis ſeruice, in grit fauour and credeit: And quhat was hir eſtimation, quhither ſcho was repute ane pyker² or ſteiller or no, remittis to the conſcience and notorietie of the Judges. And as thair is na ſuſpitioun of Thift aganis hir; ſa, on the vther pairt, thair is mony vehement preſumptiones to mak cleir the mynd and intentione of the pannell, quhilk is nocht neceſſarlie to be writtin; bot referris the ſamyn to the Judges.

It is anſuerit be my lord Aduocat, that nochtwithſtanding the hail incompartible memberis of the exceptione, the Summondis ſtandis relevant and cleirlie veriſeit be the Depoſitioun product; firſt, becaus the pannell had nevir lauchfull poſſellioun of the guidis lybellit, ſeing the poſſellioun of the ſervand of the maiſteris guidis, to the maiſteris uſe, is the maiſteris poſſellioun; nixt, the uſe pretendit be the defender, to wit, to imploy the jowallis delyuerit be hir Maieſtie to hir; to wit, to buſk babeis,³ was nocht performet be hir, becaus thai war nocht imployit to that uſe; bot be the contrair, the babeis buſkit and ſent, and thir Jowallis lybellit, ſubſtractit in maner lybellit; quhairin the pannell had nevir hir Maieſteis allowance or conſent; and, of the Law, converting of ſtuff to vther uſis nor⁴ is commandit, is Thift, Lege 88 eod. titulo et Lege 82, *ffullo et ſarcinator qui polienda et ſarcienda veſtimenta accepit, ſi forte his vtatur co con-*

¹ Lat. *constat*.

(dolls) to the Princeſſe.

² A committer of petty theft or *pickery*.⁴ Than.³ Deck, adorn, or dress babies

tractatione, eorum ffurtum feciffè videtur; quia non ob eam caufam ab eo videatur accepta. And quhair, the pannell wald excufe thame felfis *per animum et excufationem delinquentis*, that excufe is comnone for all offenders, and relevant for nane; nather can the defender pretend simplicitie or guid intentionioun, in refpect of the fraud vset to caus hir Maieftie mifknaw hir awin perle, be hinging it to ane dyamond, and prefumptione to offer it to be fauld to hir Maiefteis felf; and the Confefsioune producet, beiring hir vnlauchfull intromiffioun with this perle, and converting of it to hir awin privat vfe, man be ane neceffar caus of convictioun, *quia confeflio probat contra confitentem, pro eo autem non probat.* Gloffa in cap. finali in verb. *Confeflio, vericulo, item, quod contra fe;* et ibi *peft alios;* Abbas, numero 13, extra *de confeflis et confeflio qualificate feindi poteft et pro parte rejici:* Bartolus, in Lege, *eum qui ff. de jurejurando.* Julius Clarus, 51, finali questione 55 vericulo, *posset quoque reus;* affirmeing, that ane Confefsioun, contening the Dittay, and haifing adioinit any qualitie that may releve the Defender, aucht to be refflaut aganis the proponer; and the qualitie adiectit can nevir be refpectit, vnles it be provin. Prosper Pharinacius, questione 81, numero 127, *quando quis a principio negavit delictum, et poftea, vel timore probationum, vel ex quacunque alia caufa, illud qualificate confeflus eft, tunc racione doli qui prefumitur ex precedenti mendatio et negatione, talis confeflio feindi poteft et pro parte acceptari, pro parte impugnari.* Et Boerius decifione 165; et Laurentius, in practica cautelarum, cap. 28, numero 7, *aiunt reum fi qualitatem adiectam non probaverit, condemnari debere in penam ordinariam;* quhilk is our direct caice; feing the Depofitioun producet beiris the Jowallis lybellit to haif bene hir Maiefteis, and fauld be the deponer, to hir awin privat vfe, without hir Maiefteis knowlege or consent; and the qualitie adiectit, of hir refflaueing of thame frome hir Maieftie to busk babeis, is nather relevant; becaus fcho convertit nocht thame to that vfe, nor provin in ony way; and thairfoir fould nocht be refpectit; fpeciallie, feing the deponaris Declaratioun, in hir awin fauouris, can nocht prove forder: And thairfoir, the Summondis is relevant, and is cleirlie provin be the Depofitioun.

It is anfuerit (replied), that the poffeffioun naturall of the perles lybellit, war in poffeffioun of the pannell; and the poffeffioun-ciuill, quhilk hir Maieftie had, fcho tynt and amittit it, be directing thame to the perticuler vfe; quhilk perticuler vfe contenit in the Confefsioune, was fulfillit to her Maiefteis contentment; the intentionioun of the partie being provin by her aith, accoording to the Law, and affistit be probable conjectouris, is fufficient to cleir ony partie accufet, quhair the poffeffioun cam lauchfullie to hir handis. The Confefsioun and Depofitioun maid be the pannell can nocht be devydet, bot be the contrair, the famyn previs hir exceptioun cleirlie. The lawis quhilk my lord Aduocat alledges, quhair

Confessio qualificata potest scindi, is only trew, quhair *Confessio facti in se est crimen, ut in Homicidio*; quhilk is the exampill, in the place of Julius Clarus, citit be my lord Aduocat; *sed Confessio non potest scindi*, of the Law, quhair the Confessioun of the deid, without the qualitie of ffelonie, is nocht a cryme; bot is only trew in his tyme, *sunt utroque jure prohibita et natura sua delicta*, cap. circa delectionibus. 6 cap. *si vero aliquis de sententia Excommunicationis*. Bartolus ad legem, genero. ff. *que notantur Infamia*; et ad legem *si cui § ejisdem*. ff. *de Accusationibus*; et ad legem *si ex lege*. ff. *de Adulterijs*. Baldus, Confilio 1424, vol. v. cap. *estote misericordes*, &c. § *recte* et Bartolus, *ibi*. The coniectouris aganis the pannell, in respect of the offer maid to the Queen, is contrair to hir Deposition, for it was nocht scho, bot George Heriot quha offerit the samyn, eftir it (wes) fauld. The Lawis allegit be my lord Aduocat, *Lex fullo*, &c., it is anfuert thay contene onlie *legem Communem*; and myne contenis *exceptionem*; and the perticuler caissis of the Ciuill Law can nocht be obseruit with us, *quia variatur pena; nam in jure pena furti est dupli apud nos capitalis*.—My lord Aduocat repeitis the practikes concerning the shiphird, my lord of Menmuris grevis, and the Laird of Bonyngtones steilling of his fatheris euidentis; and protestit that he may haif ane specciall and direct anfuert to euerie article that is proponit or writtin in the proces; specciallie anent Revocation, and the effect of the probatioun be this Depositione.

THE JUSTICE, with advyse of my Lordis Assessoris, ffindis, that in caice the pannell will nocht consent that the Revocation of her Depositiones maid at Dunfermeling be deleit, that the samyn salbe Repellit; in respect of my lord Aduocatis anfuert maid thairto. And also, with advyse foirlaid, Repellis the foirlaidis peremptour exceptiones proponit for the pannell; and Ordanit the Summondis and Dittay to be put to the knowlege of ane Assyse, to be verifeit, as accoordis of the Law.—Quhairupoun the Aduocat askit instrumentis.

It is allegit be the pannell, that it is lauchful to hir to revoik quhatsumeuir Depositionis maid be (hir) to hir preiudice: becaus the samyn war maid be hir *metus causa*, viz. *carceris metu*,—*et amissionis bonorum*,—*et metu amissionis vite*,—*et reuerentia Principis*,—and want of hir husband; and the Confessioun bindis nocht the confessor, except he perseveir thairin; per legem primam, *de Questionibus*.—The Aduocat, for anfuert, repeitis the Justice and Assessoris Interlocutour. [My Lord Chancellor declairs, that he sall mak his declaration to the Assyse, quhan he sall be inquiryt.¹]

¹ This is partially deleted. The uncommon nature of the Crime, and the interest of these pleadings, have induced the Editor to insert the entire arguments. The real cause of the Criminal prosecution of this servant of the Queen is understood to have originated in Mrs (afterwards Lady) Buchanan's being too deeply versed in certain Court intrigues; and it was deemed necessary to get rid of her, even in the face of the most strenuous remonstrances on the part of her Majesty.

ASSISA.

Sir Johnne Prestoun of Valafeild,	Harie Guidlet of Vphall,	Johnne Forbes of New,
James Somervell of Garidwoid,	Mr Moreis Drammond of Auch-	Jo ⁿ Scott, bailzie of Muffilburgh,
Johnne Hammiltoun of the	termuthill,	Thomas Esplene of Newbiging,
Grange of Kilmarnok,	Andro Boyde, brother to Kil-	Jo ⁿ Broune, bailzie of Muffilburgh,
Mathow Bailzie of Littilgill,	marnok,	David Dundas of Preistlinche,
Johnne Corbet of Ardbo,	Ro ^t Logie, bailzie of Quenis-ferie,	James Hammiltoun of Garene. ¹

The Aduocat repetis the Depositioun produceit, and my Lord Justice Interloquoutour, findand the haill Dittay relevant: And in respect thairof, and of hir becoming in will, in hir Depositiones, protestis for Wilfull Errour.

VERDICT. THE said persones of ASSYSE, be the mouth of the said David Dundas, chancellor, all in ane voce, fand, pronuncet and declairit the said Margaret Hertfyde to be ffylit, culpable and convict of the vnlawfull and vndewtfull substracting and detening frome our fowerane lordis darrest spous, the Quenis Maiestie, furth of his hienes Palices of in England, at the leift furth of ane or vther of the saidis Palices, of ane perle, of the valour of ane hundreth and ten pund sterling; togidder with dyuerse vtheris perles, precious stanes, jowellis and goldfynth wark, lykwayis pertening to hir Maiestie, worth the sowe of thre hundreth pund sterling, or thairby; committit be the said Margaret, in the monethis of, the yeiris of God I^m.Vj^e. thre, sax hundreth foure, fax hundreth fyve, fax hundreth fax and I^m.Vj^e. and sewin yeiris, at the leift in ane or vther of the saidis monethis and yeiris: Lyk as, the saidis persones of Assyse, be the mouth of the said Chancellor, for the maist pairt, fand, pronuncet and declairit the said Margaret Hartfyde to be Clanget of the steilling of the said perle, togidder with the remanent perles, precious stanes, jowallis and goldfynth wark foirsaid. In witnes quhairof, the chancellor of the said Assyse hes subferyuit the said delyuerance, with his hand.

(Sic subfcribitur)

DAVID DUNDASS.

[*Apud Lynlythgow, Aug. 10, 1608. Mr Williame Hairt, Justice-Depute.*]

DOME contrair Margaret Hairtlyde.

Aug. 10.—The quhilk day, Margaret Heartfyde and Johnne Buchannane² hir spous, for his entreis allenerlie, being presentit vponne pannell, to heir his Maiesteis will and plefouir declairit aganis hir, as scho that was convict be ane Assyse, in ane Court of Justiciarie, haldin in the tolbuth of Lynlythgow, the first day of Junij lastbypast, &c. Compeirit Sir Thomas Hammiltoun of Bynnie, knycht, and producet his Maiesteis Precept and Warrant, quhilk the Justice caustit to be publictlie red; quhairof the tennour followis.

JAMES R.

JUSTICE GENERALL, Justice Clerk, Clark and your depntis, We greit zow weill. QUHAIR AS, Margaret Hairtlyde was, vponne hir awin Confessioun, convicted for þe vnlauchfull and vndewtfull abstracting and detening of certane jowellis belonging to our darrest bedfellow THE QUENE, and pairpoun remittit to prissone, till our further plefouir could be declairit concerning hir: WE haif thoct guid, be theis presentis, to signife our said plefouir to zow; quich is, that 3e fall, with all convenient expeditioun, cause affix and fens³ ane ordinaire Justice Court, at our burgh of Lynlythgow; and pair, (scho and hir husband, for his entreis, being present,) it be declairit, that howfouir the Assyse acquit

¹ 'Sir James Sandilandis of Slamanno' is deleted from the roll of Assise.

² 'John Buchanan and his wyffe, Margaret Hartesye, that had layn longe in prissone heire, for the alleget stealling some of the Quenis Jewells (bot the Courtiers talked, that it was for reuelling some of the Quenis secrettis to the King, wich a wyse chalmbermaide wold not haue done,) was, hy ane sentence, condemned to perpetuall exyle, in the Iylandes of Orknay, and declared to be ane infamous persone, in Aguste this yeir' (1608).—*Sir J. Balfour's Annals*, II. 26.

³ Fence, hold.

hir of the cryme of Thift, 5it, in regaird that, vpon hir awin Confessioun, scho was fund giltie, as is aforfald; in that respect, We accompt hir fact als infamous, as gif it had bene done be direct stelfh: And that, seeing pair can be no difference betwene the vnlawfull meddling with any thing belonging to the Quene, our darrest bedfellow, hir persone, and our awin, and lykwayis that þe exampill is most pernicious, and allaterlie intollerable, that any face or callour shold be put vpon þe coofening or abstracting frome aþer of ws any part of our jowellis or moveabillis, by such as ar in trust, or haif þe keeping of thame, We most conclude, that scho hes delt fo dishonestlie heirin, as We account her als worthie to be repute and declared INFAMOUS,¹ (lyk as, it is our plesour that 3e declair hir to be so) as gif scho had bene directlie convict of Thift: 3E fall lykwayis declair, that it is our plesour, that scho fall with all expeditioun repay, out of the reddiest of hir and hir husbandis guidis, to Henrie Wardlaw, Chalmerlane to our darrest bedfellow the Quene, of hir Lordschip of Dunfermeling, the liquidat valew of theafe jewallis, contenit in hir proces, to be convertit to such vse as our said darrest bedfellow fall think convenient: And lastlie, 3e fall declair, that it is our plesour, that hir persone fall be, for hir said dishonest offence, confynit to þe YLES OF ORKNAY; thair to remane, and nocht exceed the boundis pairrof, induring hir lyfytme; vnder all hieft pane and charge: QUHICH Dome being pronuncet, 3e fall cause hir be sasse convoyit bak to our Castell of Blaknes, pair to remane in sure firmance, till scho find guid and sufficient caution, allweill for payment of the said sowme, contenit in hir proces, within fyftene dayis nixt eftir scho salbe charget for the same, as also for entrie of hir persone, in the place of hir confining, within fourtie dayis nixt eftir scho fall be fred out of our Castell of Blaknes: FOR Dome and performeing of everie of þe which premisses, theafe presentis fall be vnto 3ow ane sufficient Warrant. GEVIN at our Mannour of THEOBALDIS, þe tuentie day of July, 1608.

Accoirding to the quhilk Warrant, the said Justice-depute, be the mouth of Henrie Wilfoun, dempfter of Court, Declairit the said Margaret Hairtyde to be INFAMOUS; and lykwayis declairit and decernit the said Margaret to repay, with all expeditioun, out of the reddiest of hir and hir husbandis guidis, to Henrie Wardlaw, Chalmerlane to our souerane lordis darrest bedfellow the Quene, of her lordschip of Dunfermeling, the sowme of foure hundreth pund Sterling money, extending, in Scottis money, to the sowme of foure thousand and aucht hundreth li., as the liquidat valew of thois Jowellis, contenit in hir proces, to be convertit to sic vse as hir Maiestie fall think convenient: And lastlie, decernit and ordanit that hir persone fall be, for hir said dishonest offence, confinet to the Iles of Orknay, thairin to remane and nocht exceed the boundis thairrof, induring hir lyfytme; vnder all hieft pane and charge. Quhilk was pronuncet for Dome, &c.

Mr Johnne Dalzell, burges of Edinburgh, become cautioner and souertie for the saidis Margaret and hir spous, for his entreis; and they all, conjunctlie and feuerallie, Band and obleist thame to pay and delyuer to the said Henrie Wardlaw the said sowme; and that within fyftene dayis nixt eftir thay be charget to that effect. And sicklyk, the said Mr Johnne Dalzell become bundin and obleist, as cautioner and souertie for the said Margaret, that scho fall entir hir persone in the place foirlaid of hir confining, within fourtie dayis eftir the dait of thir presentis, (the morne, viz. the ellevint day of August instant, being comptit for the first day,) vnder the pane of Ten thousand merkis Scottis money, &c.

¹ (On the margin.) 'Thir wordis of Infamie is ordanit to be deletit, conforme to his Maiesteis expres Warrant, insert in the Register of Adiorvall, þe xv of December, 1619.'

JAMES R.

JUSTICE GENERAL, Justice Clark and your deputtis, We greit 3ow weill. Quhair as, our trustie and loyall seruitrix MARGARET HEARTSYDE, the spous of Sir Johnne Buchannane, kny^t, was, by the finiferous informatioun of certane hir vnfreindis for the tyme, perfewit criminallie befor 3ow; and being put to ane Aslyfe, was Acquit and affolzeit of that speciall point of hir Indytement, which of the Law sustenit the samyn to be relevant to be tryit and cognosctet be thame, and onlie was fund giltye of certain adminiclea insert in hir Dittay, for qualificatioun of hir alledget cryme. Vpoun the whilk convictioun, doome and sentence, according to our Warrant and Declaratioun pairintill, in ane Justice Court, haldin be 3ow, within our tolbuthe of Lynlythgow, vpone the tent of August, 1608, was gevin out againt hir, Declairing hir to be Infamous. Quhilk doome and sentence being maist humlie and with grit patience and modestie imbracet and vnderlyne be hir, and hir behaviour continuallie senlyne being verrie deutifull. THAIRFORE, and that the foirsaid Doome gevin out againt hir may nocht be a precedent, nor half force heireftir, It is our gracious Will and plesour, that the foirsaid Declaratioun of the said Margaret Heartsyde to be INFAMOUS, insert in hir proces, be haldin as deleit furth thairof; and on nawayis to be extractit or gevin out to ony persone or persones, in tyme cuming; bot that this our Warrant and Declaratioun be insert in our Registeris of Adiornall, for reponeing of hir to hir fame, aganist the samyn Sentence; Whilk We command 3ow to sie done. Sua, nothing douting of 3our cair and reddines heirintill, We bid 3ow hairthie fairweill. ffrome our Courte, at Roystoun, the fyfteenth day of Nouember, 1619.

Slaughter.

Jun. 21.—MR ALEXANDER INNES, sumtyme Minister at Birnay.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Agnes Leslie, relict of vmq^{le} . . . Douglas, proveit of Elgyn, and of vmq^{le} Williame Hay, father-brother to Williame Hay of Mayne; committit vpone set purpois, prouisioun and foir-thocht fellony.

James Hay 3ounger of Mayne, as neir kynfman to vmq^{le} Williame Hay, his guidfchires brother, and Alexander Bischope of Murray, as sone to vmq^{le} Agnes Leslie, producet our fouerane lordis Letteris, deulie execute and indorfat at thair instance aganis Andro Meldrum, callit of Dumbrek,¹ as cautioner and fouertie for the entrie of Mr Alexander Innes, &c. and offerit thame selfis reddie to perfew.

THE Justice ordanit the said Andro to be vnlawit in the pane of tua hundreth merkis, becaus the said Mr Alexander Innes was at the horne of befor, and fugitiue for the saidis crymes: And siclyk, ordanit the said Mr Alexander, for his nocht compeirance, to be denuncit rebell and put to the horne; and all his moveable guidis to be efcheit, &c.

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

Treason, &c.

Jun. 22.—JOHNNE LORD MAXWALL.

Mr Williame Broun, one of the clerkis in his Hienes Thesaurarie, producet our fouerane lordis Letteris, deulie execute and indorfate, vpone Johnne Lord

¹ ' Brother-germane to vmq^{le} . . . Meldrum, sumtyme of Dumbrek.'

Maxwall; be the quhilkis he hes past to the horne, for dyuerse treffonable crymes contenit thairin; and thairupoun askit instrumentis.¹

Slaughter.

Jun. 29.—SIR ROBERT GORDOUN of Lochinvar, knycht.

Dilaitit of the Slauchter of vmq¹⁶ James Gordoun, his page.²

The Aduocat producet the Letteris raisit at his lordschipis instance, deulie execute and indorfate vpon the said Sir Robert, Johnne Gordoun of Airdis and Johnne Gordoun of Collindach, cautioneris, coniunctlie and feuerallie, for the entrie of the said Sir Robert, to vnderly the Law, for the crymes contenit in the Letteris.—Compeirit Mr Williame Oliphant, Mr Johnne Russell, and Mr Alexander King, Aduocattis, as procuratouris for Johnne Gordoun of gelftoun and Johnne Gordoun of Collindach, be thair Letteris of procuratorie Producet; and declairit na proces aganis thame, in respect of the Proclamatioune; and thairfoir, can nocht be vnlawit.—It is anfuert be my lord Aduocat, that thair excude can nocht be ressaunt, because thai ar nocht charget for thair awin personall compeirance, bot to enter the Laird of Lochinvar; quhilck lauchfullie mycht be done, thay being absent. *Secundo*, the Raid has nocht as yit tane effect, and the cautioneris and principall pairtie ar yit in thir pairtis.—It is anfuert be the procuratouris for the cautioneris, *excusatorio nomine*, that thai ar nocht obleist to attend at Edinburgh vpon the Leutenent, bot only at Ilay, conforme to the Proclamatoun, as place appointit vpon the viij day of July, to pas fordward to the Raid; and thairfoir the Justice, in respect of the Proclamatoun, can nocht vnlaw the cautioneris.

THE Justice continewis his Interlocutour, vpon the saidis allegeances, to Setterday nixt, the secund of July.

Jul. 2.—Compeirit Johnne Belscheillis (Belches), aduocat, as procuratour for Sir Robert Gordoun of Lochinvar, knycht, and his cautioneris, and producet ane Warrant of the Counsell, subferyuit be my lord Chancellor and my Lord of Dumbar, for deserting of this dyet: quhairof the tennour followis.

JUSTICE, Justice Clerk and your deputis, it is his Maiesteis Will and pleasour, that 3e desert pe dyet appointit for tryell of Sir Robert Gordoun of Lochinvar, knycht, for pe Slauchter of his page: Ordinand alwayis the cautioneris, fand of befoir for his entrie, vpon xv dayis wairning, befoir 3ow, to vnderly the law for the said Slauchter, to stand. Quhairanent pir presentis fall be your Warrant. Subferyuit with our hand, AT EDINBURGH, the second day of July, 1608.

(Sic subfribitor) AL. CANCELL. DUMBAR.

The quhilck dyet the Justice desertit; and ordanit the cautioneris to remaine cautionn, as of befoir. Quhairupoun Johnne Belsches askit instrumentis.

¹ See the Trials and proceedings against this remarkable person, and the Account of the singular escape of Lord Maxwell and Sir James Maconeill from the Castle of Edinburgh, &c. in a future Part of this Collection.

² Page.

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

Resisting the King's Guard — Treasonable Slaughter, &c.

Jul. 14.—NINIANE ELLOTE, sone to Williame Ellote of Fiddeltoun,

Williame Ellote, sone to vmqle Johnne Ellote of Burnegranes.¹

Dilaitit, accuset and perfewit in the proud and contemptuous Resisting of his Maiesteis Guaird, and remanent crymes contenit in the Dittay following, viz.

FORSAMEKILL as, the saidis Niniane and Williame, being fugitiue fra dyuerse Justice Courtis, haldin be his hienes Commissioneris, at Jedburgh and Dumfreis, for cownone Thift, cownone reffet of thift, outputing and inputting of thift, and for dyuerse perticuler Thiftis, Murthouris, Slauchteris and Oppressonis; as the Dittayis and actis, gevin out thairpoun, at lenth beiris: ffor the quhillkis crymis, thay reterit thame self out of thair awin cuntrie, to the West cuntrie, to seruice, quhair thay remanit thir dyuerse yeiris bygane; quhill that laillie, the Lordis of his Maiesteis Counfall, vnderstanding quhair thai wer, directit Sir Robert Hepburne of Alderfoun, knycht, Lieutennent to his Maiesteis Gaird, to tak and apprehend thame: Quha, vpone the tuelf day of July instant, accompaneit with vmq^{le} Williame Bailzie and dyuerse vtheris of the Gaird, come to the oistler-hous² vpone the Laird of Watterheidis landis, quhair the saidis perfonis had reterit thame selfis vnto, for the tyme: And haifing, in peceable maner, requyret thame to rander thame selfis to him and his companie, as haifing Commissioun of the Lordis of Counfall to that effect: Nochtwithstanding quhairof, the said Niniane and Williame Ellotes, the said day, maist prouddie and contemptioulle resisit the said Commissioun, and in grit contempt of our souerane lordis auctorite, schot furth of the said hous at the said Lieutennent and his companie, his hienes Commissioneris in that pairt, and Gaird, to the number of tuentie schot of Hagbutis and Pistolettis; and thairwith schot and slew the said vmq^{le} Williame Bailzie, being ane of his Maiesteis Gaird; and naways wald rander thame selfis, nor cum furth of the said hous, quhill, according to the said Commissioun,³ flyre was raisit thairabouth: Quhairthrow, to thair former wrangis and oppressonis, hes conioyned haynous and crewall Slauchter with hagbuttis, and proud contempt of his Maiesteis auctoritie: And thay and ather of thame ar airt and pairt of the said crewall and presumptuous Slauchter, and of beirring, weiring, schuiting of pistolettis and hagbutis, and slaying the said vmq^{le} Williame Bailzie thairwith; committit in maner and at the time foirsaid; in hie and proud contempt of his Maiesteis auctoritie and lawis.

ASSISA.

... Carutheris of Howmaynes, Robert Power, burges of Ed^r, James Cranfoun, indueller in Ed^r,
Geo. Hereis, sumtyme of Essie, Thomas Hill, ane of the Gaird, Thomas Smyth, burges of Ed^r,
Johnne Trumbill, ane of the Gaird, Johnne Leyis, burges of Ed^r, Johnne Masoun, burges thair,
Thomas Moffett, wryter, James Haitlie, ane of the Gaird, Robert Crystie, burges thair,
Tho^s Mow, b^r to the Laird of Mow, George Smyth, burges of Ed^r, R^t Stewart, bailzie of Lynlythgow.

The Aduocat protestis for Wilfull Errour, in cais thay Acquit. And askit instrumentis of the Leutenentis Declaratioune to the Assyse, concerning the Commissioun gevin be the Counfall; and of the forne and maner, how the pannell resisit him and his companie, in the executioun thairof.

VERDICT. The Assyse, all in ane voice, be the mouth of the said Carutheris of Howmaynes, chancellor, stand, pronuncet and declairit the said Niniane and

¹ They are, in another place, described thus,—^c Niniane Ellote, sone to vmq^{le} Jok of Burgranes; Williame Ellote, sone to Will of Fiddeltoun.

² Hostler-house. Old Fr. *hostellerie*. ³ A Commission, containing warrant of 'fire and sword.'

Williame Ellottis to be ffylet, culpabill and convict of airt and pairt of the Slauchter of the said vmq^{le} Williame Bailzie, and of beiring, weiring and schuiting of hagbutis and pistolettis, and of the contemptuous resisting of his Maiefteis Gaird, in maner specifeit in the said Dittay.—SENTENCE. For the quhilk cause, the said Justice-depute, be the mouth of Johnne Cheillie, dempfter of Court, decernit and ordanit the saidis Niniane and Williame to be tane to the Castell-hill of Edinburgh; and first, thair richt handis to be strukin at thame, as culpable and convict of the beiring, weiring and schuiting of hagbutis and pistolettis, contrair to the Actis of Parliament; and thaireffir, to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis to be escheit and inbrocht to his Maiefteis vse, as convict of the Slauchter and remanent crymes aboue writtin: Quhilk was pronuncet for dome.

[*Mr Williame Hairt of Prestoun and Mr Alexander Coluill, Justices-Deputes.*]
Treasonable Murder, &c.

Jul. 15.—JOHNE MURE elder (and James Mure Y^r) of Auchindrane.¹

Dilaitit of airt and pairt of the tressonabill Murthour and Slauchter of vmq^{le} Sir Thomas Kennydie of Culzeane, knycht, and Williame Caldwell (Dalrymple?)

PERSEWAR, Mr Robert Foulis, aduocat, substitute to our fouerane lordis Aduocat.

COMPEIRIT Gilbert Rofs, Proveist of the College Kirk of Mayboill, seruitour to my Lord of Cassillis, and productet our fouerane Lordis Letteris, deulie execute and indorfate, the ane purchest be my Lord of Cassillis and his hienes Aduocat, for his Maiefteis entreis, aganis the Lairdis of Auchindrane elder and younger; and the vther Letter aganis the Lairdis of Bombie, Caldwell, and Young Langschaw, as cautioneris for the said James Mure younger of Auchindrane, for his entrie this day and place.

The Aduocat productet the Counsalls Warrant, direct to the Justice, for continuatioun of this dyet to the xxij day of November nixt; quhairof the tenour followis.

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humlie meanis and schawis I, JOHNE EARLE OF CASSILLIS, that quhair I haif raisit criminall Letteris aganis Johnne Mure of Auchindrane and James Mure his sone, for pair compeirance befor pe Justice or his deputis, vpone the xv day of July instant, to vnderly the Law, for pe Slauchter of vmq^{le} pe Laird of Culzeane and Murthour of Williame Dalrympill, and hes causit summond ane Assyse to pat effect; bot in this meane tyme, pis expeditioun for pe Ilis hes interuenit, sua that naper may I compeir, to concur with his Maiefteis Aduocat in pis persute, nor zit may the persones summond vpone pe Assyse compeir, bot ar vpone pair preparatione for pat seruice: And sua, seing pat pis delay proceidis nocht vpone ony occasioun of myne, bot vpone necessitie of his Maiefteis seruice, I maist humlie besek your Lordschipis to gif command to pe Justice, (Justice) Clark and pair deputis, to continew pe said dyet to sum certane dyet, effir pis seruice in pe Yles. And becaus pe cryme laid to pair charge is tressonabill, that the said Jus-

¹ See Jun. 23, 1602, Nov. 23, 1608, Jul. 1611, &c.

tice and Justice Clerk canse commit pe saidis perfones to waird, in the Tolbuth of Edinburghe, pairin to remane, vpon pair awin expensfis, ay and quhill pe nixt dyet, to be appoyntit be 3our lordschipis. And 3our lordschipis anfuere humlie I befeik.—[*Followis the Lordis deliquerance.*]—APUD EDINBURGHE, xiiij July, 1608. THE Lordis of Secreit Counfall, Ordanis and commandis pe Justice, Justice Clerk and pair Deputis to continew pis dyet within writtin, to pe xxij day of November nixtocum : And to returne Auld Auchindrane bak agane to his waird, within the Tolbuth of pis burch of Edinburghe : And to caue 3oung Auchindrane caue his former cautioneris consent, of new, to enter him befor the Justice, pe foirsaid day, vnder the pane contenit in the former Act ; and failzieing pairrof, that he find als sufficient cautionn, to pe contentment of pe Counsell, for pe same effect ; and in pe meane tyme, quhill pis cautionn be fund, pat he caue 3oung Auchindrane be committit to waird, within pe Tolbuth of Edinburghe.

(Sic subscribitur) AL. CANCELL.

Mr Johnne Russell, prelocutour for Auld Auchindrane, and Auchindrane him self, Offeris him self to the tryell of the Law, for the crymes contenit in the Letteris ; disafenting to all continuatiounes : And as to the Warrant product, the samyn aucht nocht to be respectit, in respect it is purchest only be the pairtie. Compeirit Mr Johnne Russell, as prelocutour for the Lairdis of Bombie, Cauldwell and Young Langschaw, and allegit that thai can nocht enter James Mure, younger of Auchindrane, in respect of the Proclamatioun.—It is anfuert be the Aduocat, for Auld Auchindrane, that, in respect of the Proclamatioun, the dyet man continew, conforme to the Counsellis Warrant : And as concerning Young Auchindrane, the cautioneris aucht to present him, or vtherways incur the vnlaw.

THE JUSTICE Ordanis the Auld Laird of Auchindrane to be committit to waird, conforme to the Counfallis Warrant. Quhairupoun the Aduocat askit instrumentis. And as concerning Young Auchindrane and his cautioneris, continewis this dyet, in the same forme, force and effect as it is now, to the xxij day of November nixtocum : and ordanis the cautioneris that day, to exhibeit the Young Laird of Auchindrane, vnder the panes contenit in the former Act : And Ordanis Letteris, gif neid beis, to be grantit to the pairtie perfewar, for chargeing of the saidis cautioneris to enter him the said day.

Quhairupoun the said Gilbert Rosk askit instrumentis.

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

Cattle-stealing — Murder — Shooting of Pistolets, &c.

Aug. 12.—JAMES HAMMILTOUN of Spittelscheill.

Dilaitit, accuset and persewit, be James Lord of Balmirrenoch, President of the College of Justice, and Sir Thomas Hammiltoun, knyght, for his hienes interres, of the crymes following, viz.

For airt and part of the thiftious steilling, conceling, ressetting and away-taking of thre oxin and ane kow furth of the landis of Mulroun, pertening to the said James Lord of Balmirrenoch ; committit in the moneth of August, or thairby, the yeir of God 1^m.Vj^{ce}. and sax yeiris. ITEM, for airt and part of the thiftious ressetting of fyve oxin, within his landis of Spittelscheill, quhillk pertent to Williame Flint in Breichmilne, and wer thiftioullie stollin furth of the landis of Breichmyll, in the moneth

of September lastbypast. ITEM, for airt and pairt of the thiftious Steilling, concealing, resfetting and away-taking of tuell hydis furth of ane barkhoill,¹ fra Cordiner, befylde Lauchop, committit in the moneth of . . . I^m.Vj^e. . . . yeiris. ITEM, for airt and pairt of the crewall Murthour of vmq^{le} George Tuedie, within the said James Hammiltounis barne, in Spittelfcheill: committit vpon Sanct Leonardis ewin lastwas. ITEM, for contravening of oure fouerane lordis Actis of Parliament, in beir- ing, weiring and schuitting of pistolettis; and speciallie, for schuitting ane pistolett att . . . Lokart of Ley, in the taking of yow; committit in the moneth of July lastbypast. ITEM, ffor commoun Thift, commoun Resfett of thift, inputting and outputting of thift, fra land to land, fra cuntry to cuntry.

ASSISA.

Mr Patrik Lyndfay, indueller in Ed^r, Mr Johane Methven of Barnfeild, James Bailzie of Hillis, Johane Weir, seruand to my lord Angus, Sir Robert Scott of Thirlstane.²

VERDICT. The Assyse, be the mouth of the said Johane Weir, chancellor, ffraud, pronounceit and declarit the said James Hammiltoun to be ffylit, culpabill and convict of the haill crymes and poyntis of Dittay.—SENTENCE. To be tane to the Castel-hill of Edinburge, and thair his heid to be strikin fra his body; and all his landis, heritageis, takis, &c. to be fforfaltit and inbrocht to our fove- rane lordis vse, as convict of the saidis crymes. Quhilk wes gewin for dome.

[CURIA JUSTICIARIE, tenta in Pretorio burgi de Ed^r per Magistros Olivarium Coltjunioem et Da- uidem Prymrois, Aduocatos, Justiciarios Deputatos, per Commissionem Dominorum Secreti Consilij.]

Slaughter.

Sep. 29.—WILLIAME NISBET in Newtonleyis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Gilbert Wauchope in Goddif- croft; committit be him and vmq^{le} Thomas Richiesoune in Cockburnespth- echeillis, in the moneth of Auguft lastbypast.

Compeirit Sir Thomas Hammiltoun of Bynnie, knycht, aduocat to our fove- rane lord, for his hienes entreis, and producet ane Commiffioun, grantit be the Lordis of Secreit Counfall; quhairof the tennour followis.

MY LORDIS of Secreit Counfall, vnto 3 our Lordschipis huimlie menis² and schawis 3 our lordschipis puir oratrice, Marioun Heilop, the relict of vmq^{le} Gylbert Wauchop in Goddifcroft, Williame Wau- chope of Stoddinleuch, broper to pe said vmq^{le} Gylbert. That quhair, vpon pe . . . day of . . . , being ane Sonday, the said vmq^{le} Gylbert wes crewallie and schamefullie Murdreift, vnder sylence and cloud of nycht, haifing naper fword, quhingar nor na vper kynd of wapponis to defend him selff, be Williame Nisbett in Newtonleis and his compliceis, vpon deliberat purpois and foirthocht felonie: Lykeas, the said Williame being, be his Maiesteis Gaird, tane and apprehendit, with reid-hand, within xxiij houris eftir pe deceis of pe said vmq^{le} Gylbert, was, be 3 our lordschipis ordinance, putt to libertie; he finding caution that he should compeir pis day, befoir pe Justice, and vnderly pe law for pe said crewall Murthour: To pe quhilk he wes ofbefoir summond, and pat vnder pe payne of thre thousand merkis, the ane haif pairof to his Maiestie and pe vper half to pe pairtie grewit; quha, conforme to 3 our lordschipis said ordinance, fand caution to pat effect: And We, being now maist willing to fol- low out the ordour of law aganis the said Williame, and to pat effect hes summond ane sufficient num- ber of honest men for ane Assyse, the said Williame and his said cautioneris, taking occasioun of his Maiesteis Justice abfence furth of pe realme, labouris, be all meanis possible, contrair to all law and

¹ Tan-pit.² The remainder of the Assise, burgesses.³ Complains; literally, moans.

reasoun, to elude the cours and ourdour of Justice, and to haif aper the said dyett desert, that he and his cautioneris may be fred of 3our lordschipis ordinance, and frustrat ws of all the effect of our just persuit; or the mater to be continewit, to wearie bayth the persewaris and pe Afflye, except 3our Lordschipis, quha sufferit him to be fred vpoun caution, haifing committit so haynous and recent Murthour, provyde remeid, be 3our lordschipis Act and ordinance, be establisshing, in absence of pe Justice ordiner, sam vper Judge, be Commissioun, for ministrating justice in pe said caus and persute, or be vper convenient ourdour, as best pleissis 3our lordschipis. **HEIRFOIR** We most humble beseik 3our honorable lordschipis, quha is the only mantenaris of justice and chastiezaris of sic haynous enormeteis within pis land, in his Maistieis absence, to constitute certane Judge or Judgeis, be Commissioun, conunctlie and severallie, viz. Mr Olipher Colt, 3ounger, Mr James Sandielandis, Mr David Prymrose, to hauld Justice Court and ministrat Justice in pe said persute, that throw inlaik thairof the cours of law and justice may nocht be eludit and frustrat; and We that hes our blude spilt and tane, be nocht disappointit of pe ordiner cours of Law and justice, and 3our lordschipis ordinance of finding of Caution be nocht ineffectuall. According to Justice; and 3our lordschipis ansuer maist humble we beseik.

[*Sic deliberatur.*] *APUD ED^a, xxix Septembris, 1608.—FIAT Commissio et petitur.* And the Lordis Ordanis the Judgeis within writtin, to hauld Court this day, in pe mater within writtin.

(*Sic subscribitur*) **AL. CANCELLARIUS. LOWTHIANE. ABIRCORNE. JO. PRESTOUNE.**

[*Sic notatur infra.*] *APUD ED^a, xxix Septembris, 1608.*—The quhilk day, in presens of the lordis of Secreit Counfall, compeirit, personallie, Mr Olipher Colt, 3ounger, and Mr David Prymrose, Aduocattis, and gaif thair aith for doing of Justice, faithfullie and vprychtlie, in the mater within writtin; as thay will ansuer to God.

J. PRYMROSE.¹

Philp Nisbet of that Ilk and George Lyell, fiar of Stanypeth, vnlawit in the panes of tua thowfeand pundis, for nocht entrie of the said William, &c.

William Nisbet ordanit to be denuncet his hienes rebell, &c.

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

Slaughter.

NOV. 9.—ALEXANDER TULLOCHE, appeirand of Tannacheis, &c.

Johnne Dumbar of Moynes, cautioner for repoirting of the Letteris, purchest at the instance of Normand Torrie and remanent bairnes² of vmq^{le} James Torrie, sumtyme in Logiehauch, aganis *Alexander Tulloche, appeirand of Tannacheis, James Tulloche*, his brother, *William Cuik*, in Forreß, *Rorie M^ccoilziechar-char*, alias *Rorie Buffache*, in Mordant, and *Donald M^clauchlane* thair, that thai sould compeir befor the Justice or his depute this day and place, in the hour of caus, to haif vnderlyne the Law, for the Slaughter of the said vmq^{le} James Torrie and vmq^{le} Agnes Douglas, his spouse, &c.

Compeirit Mr Johnne Dempster, Aduocat, as procuratour for Johnne Dumbar, quha become cautioner for repoirting of the saidis Letteris; and allegit, that, nochtwithstanding of the nocht repoirting of the saidis Letteris, deulie execute and indorfat, this day and place, conforme to the Act, that the said Johnne Dumbar, as

¹ Clerk of the Privy Council.

² Alexander, Walter and Robert.

cautioner, sould nocht be vnlawit ; becaus it is of veritie, that the saidis Letteris, being delyuerit to James Dumbar, Messinger (at arms), to haif charget the defenderis thairin contenit, to haif fund cautioune to haif vnderlyne the Law for the crymes thairin contenit, the fyftene dayis being bypast, within the quhilk the Defenderis sould haif fund cautioun ; Alexander Tulloch, ane of the principall defenderis, being joynit in marriage with Isobell Dumbar, mother to Alexander Dumbar, scheref of Murray, and principall of the cuntrie quhair he duellis, conspyret maliciouslie, with the said Schereff, and instigat him to tak and apprehend the said Messinger, be force, put him in waird, and thairby to preuene that he had na power to denunce the said Alexander and his complices to the horne, for nocht finding of the said Cautioun, quhairby the saidis Letteris mycht haif bene formerlie repoitit, deulie execute and indorlate to this day : Quhilk Scheref of Murray, vpone the fevint of October last, eftir the charge gevin to the saidis defenderis, be instigatioune foirsaid, barbaruslie maid eruptioun in Patrik Dumbars hous, in Gowfurd, quhair the said Messinger was for the tyme ; entering within the said hous, accompaneit with the said Alexander Tulloche and certane vtheris, to the number of sevin personis, or thairby, with drawin fuordis, assail;eit the said Messinger : and eftir mony outrageous woirdis, affirmeing to tak the saidis Letteris from him, and to bereif him of his lyfe ; first denudit him of his fuord, gantiletis, dager and vtheris wapponis, tuik and apprehendit him, perforce, led him captiue to the Castell of Forres, being the said Schereffs awin duelling hous, and sua *carcer privatus*, bot¹ ony lauchfull Warrant : In the quhilk prisson the said Messinger was detenit, maist wranguslie ; luiking at all tymes to haif bene bereft of his lyfe, be the space of ten dayis ; and at last, be intercession of freindis, the said Scheref wald nawayis put the said Messinger to libertie, quhill² he had forcet and compellit him to ryve³ our said fouerane lordis Letteris, with the executiones vpone the bak thairof, with his awin handis. Lyk as, the said Messinger, for justifeing the treuth of the said matter, hes raifit his hienes Letteris, be delyuerance of the Lordis of Secreit Counfall, for chargeing the said Scheref and Alexander Tulloche and remanent persones, thair associattis, to ansuer to the said complent. Quhilk allegiance, the said Johnne Dumbar, cautioner foirsaid, offeris him to verifie instantlie, be productioun of the saidis Letteris, revin ; be the said Messingeris awin Declaratioun, present at the bar, with his ayth of veritie vpone the ryveing thairof, and be the saidis Letteris raifit befor the Counfall, beiring the said complent. In respect quhairof, the said cautioner sould nawayis be vnlawit : At the leift, the Justice can nawayis vnlaw the cautioner, quhill the tryell of the premisses befor the Counfall. And thairupoun, the said procuratour, in name of the said cautioner, askit instrumentis.

¹ Without.² Until.³ Tear in pieces.

THE Justice ordanit the said Johnne Dumbar to be vnlawit in the panes contenit in the Actis of Parliament.¹

[*Mr Alexander Coluill, Justice-Depute.*]
Treasonable Murder under trust, &c.

Nov. 23.—JOHNNE MURE, elder of Auchindrane, and Johnne (James) Mure, younger of Auchindrane.

Dilaitit of airt and pairt of the crymes following, viz. the Auld Laird, for the Slauchter of vmq^{le} Sir Thomas Kennydie of Culzeane, knycht, and vmq^{le} Willame Dalrumpill: And the Young Laird, for airt and pairt of the Slauchter of the said vmq^{le} Willame Dalrumpill.

PERSEWARIS, Sir Thomas Hammiltoun of Bynnie, knycht, Aduocat to our souerane lord for his entreis, Johnne Erle of Cassilis, (Bessie Dalrumpill, as mother.)

PRELOCUTORIS for the pannell, the Laird of Caldwell, The Laird of Bombie, The Laird of Blair Younger, Mr Willame Oliphant, Mr Johnne Russell, Willame Mure of Randerfroune.

My lord Aduocat protestis that this dyet may continew, in respect of the grit disorder of this hous, this day;² vnto the tyme the Justice tak ordour thairwith.

THE Justice continewis this dyet to the last day of November instant; and Ordanis the Laird of Auchindrane elder to be of new committit to waird within the Tolbuith of Edinburgh, and Young Auchindrane to be committit to waird within the Castell of Edinburgh, thairin to remane quhill the said day.

Nov. 30, 1608.—THE Justice, be directione of the Counfall, continewis this dyet to the thrid day of februarie nixtocum; and Ordanis the pannell to enter to thair wardis of new agane, &c.—Vnto the quhill continuatioun the Lairdis of Auchindrane baith disassentit; and nochtwithstanding thair of, and in respect of thair innocencie of the allegit crymes aboue writtin, offerit thame felfis to the tryall of the Law for the samyn, and thairupon askit instrumentis.

Feb. 3, 1609.³—THE Justice, be command of the Counfall, (continewis) this dyet to the aucht day of februarie nixt.—(Feb. 8, 1609.) THE Justice continewis the dyet to the thrid day of May nixtocum.⁴

Slaughter.

Dec. 21.—ALEXANDER TULLOCHE, appeirand of Tannacheis, and Williom Cuik in Forres.

¹ This at first sight appears to be a very arbitrary mode of proceeding; but his *recourse* against the party would be reserved entire.

² The influence of these atrocious malefactors was such, that by false representations, and the incessant complaints made by them and their friends to the public, of the oppression of the Lord Advocate, in cruelly delaying their case, though he knew them to be innocent, they succeeded in raising such a popular ferment, that the Court had to be dismissed on this and perhaps on other occasions.

³ Sir Willame Hairt officiated as Justice-depute on this and the following diet.

⁴ No farther notice of proceedings before the Court of Justiciary occurs until

Jul. 17, 1611.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Torrie in Logiehauche, and Agnes Douglas, his spous.—Continewit to the fyftene day of Junij nixt.¹

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

Forcing — (Rape.)

Dec. 30.—JOHNNE ERROLE, cownone poft.

Dilaitit of the filthie and deteftabill cryme of the abufeing and fforceing of Jonet Craig, ane young virgane of xj yeiris of age.

PERSEWAR, Mr Robert Foullis, Aduocat, fubftitute to our fouerane lordis Aduocat.

DITTAY againft the Pannell.

JOHNNE ERROLE, cownoun poft, 3e ar indyttyt and accufet, fforfamekill as 3e, haifing fchaiken af all feir of God, reuerance to our fouerane lordis lawis, or regard to ciuill honeftie, as a diffolute and vyld perfone, ouercum with the beiftlie rage of 3our awin filthie luft, about ane half 3eir fyne, or pairby, to get 3our filthie appetite quenchet, drew acquaintance with Jonet Craig, dochter to vmq^{le} Andro Craig, mercheand burges of Edinburgh, ane honeft manis bairne, and ane 3oung virgane, nocht paff the age of ellevin 3eiris; and haifing forgadderit with hir, vpon the Hie freit of this burgh, vnderftanding hir to be at the fcole, maift craftillie and vnhoneftlie feducet and trytit hir to gang with 3ow to Hammiltonef clofe-fute, quhair 3e was myndit maift barbaruffie to haif abufet hir; and pan gaif hir certane billis, with vther allureing woirdis, to gang with 3ow: And becaus, at that tyme, 3e gat nocht 3our beiftlie defyre fatisfeit, perfauing the fimPLICITIE of the bairne, and how easilie fcho might be circumvenit, 3e, a tuentie dayis fyne, or thairby, eftir foure houris at evin, and ringing of the Prayer-Bell, awaitit the faid Jonet at the mercat croce of this burgh, and be geving to hir of apillis and vther frute, of new, agane maift craftillie feducet and intyfet hir to gang with 3ow; quha, vpone bairnlines and meir fimPLICITIE, haifing paff with 3ow to Bellis-wynd-heid, 3e tuik hir in to ane bak turnepyke, within the faid wynd, and behind the 3et pairof, maift filthielie forcet pe faid bairne, and did quhat in 3ow lay to haif carnall deilling with hir, and to haif bereft hir of hir virginite: At the quhilk tyme, fcho haifing cryit that 3e crewallie hurt hir, 3e maift barbaruffie and crewallie, to haif 3our filthie appetite fatiat, pat 3our handis vpone hir movth, that hir cryis fould nocht be hard, and pairby ftoppit hir braith and almoft fuffocat hir, and had nocht fail3eit to haif filthielie defloirit hir, gif 3e had nocht bene fkarrit be tua wemen at pat instant. Lyk as, 3e, perfevering in 3our former beiftlie rage of luft, vpone the fevintene day of December instant, being Saterdag, at fyve houris at evin, 3e awaitit, of new agane, the faid Jonet Craig at the mercate croce of this burgh, quhair fcho, with vther honeft menis bairnis war playing thame for pe tyme, and pair, with walnuttis, cheftennes and appillis than gevin be 3ow to hir, 3e maift craftillie feducet pe faid bairne to gang with 3ow; quha haifing refuifet to gang with 3ow, 3e maift forceable harrillit hir doun the freit with 3ow; and 3e, being demandit be dyuerfe perfones that met 3ow, quhair 3e was taking hir to, 3e maift diffimulatlie and falflie gaif thame anfuwer, that fcho had bene frome hame all that day, and pat nane of the houfe knew quhair fcho was, and pat pairfoir 3e was taking hir hame; at the quhilk tyme, 3e tuik hir to pe faid bak turnepek in Bellis-Wynd; quhair 3e, aganis pe bairnis will, tuik vp her claithe, and maift filthielie forcet 3our felf to haif ado with hir, and wald nocht pairt frome hir quhill 3e gat 3our beiftlie will fatisfeit, and was within hir body; and fcho, haifing in maift pitious maner cryit, that 3e hurt hir, 3e, as ofbefoir, pat 3our hand vpone hir mouth and held in hir braithe; quhill is nottourlie knawin. Lyk as, 3e and pe faid bairne being laitle examinat, in prefens of pe Miniftrie and Magiftrattis of this burgh, 3e and fcho haif confeffit pe treuth of pe premiffis, be 3owr Depofitionis. Quhairin, 3e haif

¹ No farther notice of this case occurs on the Record. See the preceding case, Nov. 9, 1608.

committit the maist haynous, detestabill and odious cryme of Rapt, Raveisching and Violent forceing of the said young bairne; the lyk quhairof aucht nocht to be namet within any Cristiane kingdom subiect to a Cristiane Prince, or amang Cristiane people reulit with guid lawis.

The Aduocat, for verifeing of the Dittay, producet the saidis Johnne Errole and Jonet Craigis Depositionis, subscryuit be his hand, and be certane of the Ministeris and Magistrattis of Edinburgh and Elderis of the Seffioun of the Kirk; and in respect thairof, Protestis for Wilful Errour, in caice the Assyse Acquit.

VERDICT. The Assyse, be the mouth of Williame Trumbill, mercheand in Edinburgh, chancellor, all in ane voce, stand, pronuncet and declairit the said Johnne Errole to be ffylet, culpable and convict of the forceing and abusing of the said bairne, in maner, and at the perticular tymes and places aboue specifeit and set down in the said Dittay.—SENTENCE. For the quhilk caus, the said Justice-depute, be the mouth of Johnne Lawfone, dempfter of Court, decernit and ordanit the said Johnne Errole to be tane to the Castell-hill of this burgh; and thair to be hangit vpone ane gibbet, quhill he be deid; and all his moveabill guidis, gif he ony hes, to be escheit and inbrocht to our souerane lordis vse, as culpable and convict of the saidis crymes; quhill wes pronuncet for dome.

[*Mr Alexander Coluill, Justice-Depute.*]
Stouthreif—Hurting and Wounding.

Jan. 3, 1609.—JAMES HUNTER of Hagburne.

Dilaitit of airt and pairt of the Steilling of flourtie pundis furth of Robert Hogis purse, potter in the Potter-Raw (of Edinburgh); committit in the moneth of October, I^m.V^o.lxxxviiij; and Hurting of the said Robert in his heid, and leising him for deid, at Theyuis corse.¹

PERSEWAR, Robert Hog, potter.

Continued to the air of 'Roxbur', tertio Itineris (vel super premonitione) xv dierum.²

[*Sir Williame Hairt of Prestoun, Justice-Depute.*]
Slaughter.

Jan. 31.—ANDRO AIRMESTRANG of the Langholme, Ebbie¹ Airmestrang of Kirktonehill, James Airmestrang of Cannabie, Thomas Airmestrang callit *the Mercheand*, and Johnne Murray, myller in the Cruikis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Somervell in Eirdhouffis; committit in the moneth of

PERSEWAR, Robert Somervell, fervand to the Laird of Waftraw, as neir kynfinan.

PRELOCUTOURIS for the pannell, Mr Laurence McGill, Adame Cunninghame, (Advocates.)

¹ Thieves' Cross. ² Perhaps a clerical error for *Ekkie* (Hector,) a common name in the south at that time. *Habbie* was also a favourite name. It may, however, be a familiar abbreviation for Ebenezer, though the name was unusual among the Armstrongs, whereas *Ekkie* was very prevalent.

The perfewar declairis, that at the raifing of thir Letteris, informatioun was gevin to him that the perfonis aboue writtin, presentlie enterit vponne pannell, war culpable of the Slauchter aboue specifeit; and now, fenfyne, he is certanelie informet, that thai, nor nane of thame, war present at the committing thairof: In respect quhairof, and that thai ar altogidder Innocent of the said cryme, he paffis *simpliciter* fra the perfute. Quhairvpoune the saidis perfonen on pannell and thair prelocutouris askit instrumentis.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in Pretorio de ST ANDROIS, decimo Marcij 1609, per Dominum Willielmum Haiirt de Prestoun, Justiciarium deputatum principalem.*]

ASSESSOURIS.

The Erll of Dumbar,¹

The Erll of Montroife,²

The Erll of Lowtheane,³

The Collectour,⁴

The Clark of Register,⁵

My Lord Previe Seill,⁶

My Lord of Wrychtillandis,⁷

Sir Robert Meluile of Murdocarny.⁸

Treason—Corresponding with the Pope, in the King's name.

[THE history of (Sir James Elphinston) LORD BALMERINOCHE'S TREASON has been so fully related by *Spottiswood, Johnstone, Calderwood, Robertson, Laing*, &c. and by *Mr Wood*, in his edition of *Douglas's Peerage and History of the Parish of Cramond*, that it only seems necessary for the Editor to supply the real facts, so far as they appear on the face of the Criminal Records; and further, by way of Appendix, to give a few authentic Letters, and other documents, which have been preserved.

Whatever may have been the real or alleged participation of this eminent Lawyer and Statesman in this Treason, it seems clear, as *Laing* remarks, that 'if Balmerino deceived his master, it was neither with a criminal intention, nor to a treasonable extent. But his ruin was secretly projected by Spottiswood, Dunbar, and Cecil, his implacable enemies; and, according to his own Narrative, much address and many secret intrigues were employed to persuade him, by a more ample and explicit Declaration, to exculpate the King. His life and estate were secured by promises; his offices were to remain at the King's disposal; and, on these conditions, he acknowledged that the Letter was surreptitiously obtained, when James had refused to correspond with the Romish See.' Thus, in order that he might fully exonerate the King, this unfortunate Nobleman was led into the fatal snare, and confessed more than the truth; under the full expectation, doubtless, that not only would the Royal promise of sparing his life and fortune be observed, but that he would, after a short period of retirement from the Court, be reinstated in all his lucrative and honourable offices.

It may be proper to remark, briefly, that SIR JAMES ELPHINSTON was the third son of Robert third Lord Elphinston. He was successively a Lord of Session (Lord Innernochtie), one of the Commissioners of the Treasury, called 'THE OCTAVIANS,' Secretary of State, and, Feb. 20, 1604, was

¹ Sir George Home, Lord High Treasurer of Scotland, was created Baron Home of Berwick, Jul. 7, 1604, (English Peerage,) and Earl of Dunbar, in Scotland, 3 Jul. 1605. This celebrated person was also Chancellor of Exchequer, in England. The King employed him as the chief leader in the restoration of Episcopacy in Scotland, in the Parliament at Perth, Jul. 9, 1606; for which service, and for acting as High Commissioner to the General Assembly of the Church of Scotland, in a manner highly acceptable to the King, he was installed a Knight of the Garter, May 20, 1609.

² John fourth Earl of Montrose, afterwards President of the Council, married Margaret, eldest daughter of William first Earl of Gowrie. It was this nobleman who fought the remarkable combat with Sir James Sandilands, 19 Jan. 1695, at the salt-tron of Edinburgh, as recorded by Birrel. See Diary, p. 34.

³ Robert second Earl of Lothian, who, when Master of Newbottle, had been Master of Requests to King James VI. "Mr Johnne Prestoune of Penmycuke."

⁴ Sir John Skene of Curriehill. ⁵ Sir Richard Cockburn of Clerkington. ⁶ Sir Lewis Craig, one of the Ordinary Lords of Session. ⁷ Sir Robert M. 'of Brint lland' is named in *Reg. Mag. Sig.* They were both Extraordinary Lords of Session.

created Lord Balmerinoch. In the same year he was nominated one of the Commissioners to treat for an Union with England; and on March 6, 1605, was appointed Lord President of the Court of Session. Notwithstanding of his holding, at the same time, the 'incompatible offices' of Lord President of the Court of Session and Secretary of State, (which, however, were in like manner enjoyed by his successor, Sir Thomas Hamilton, afterwards Earl of Haddington, &c.) 'yet he stemmed the secret and corrupt influence of Dunbar, on the bench, with a spirit that probably accelerated his fall.'¹

The sentence of death, as is well known, was not carried into execution. His Lordship was allowed 'Free-ward' in Falkland, and within one mile around that place. Having endured this nominal restraint for a short time, he was permitted to retire to Balmerinoch, his own estate, where he lingered about three years, and at length died, of a broken heart, A.D. 1612.

His son, John Lord Balmerinoch, was formally restored in blood, and to the dignity of the Peerage, by writ, under the Great Seal.²

Mar. 10.—JAMES LORD OF BALMIRRIENOCH.

Dilaitit of the tressonabill, fraudulent, and surreptitious procuring of ane LETTER, past be his Maiefties hand, without his hienes knowledge, direct to Pope Clement the Aucht, in the 3eir of God 1598, tressonabillie adding (eftir the subscription of the said Letter) of the styles of 'SANCTITAS' and 'FILIUS' to the said Letter; and tressonabillie affixing his Maiefties Signet thairto; committit in the yeir of God 1598, or thairby: And tressonabill affixing Sir Eduard Drummond, in his tressonabill trafficking, for the advancement of Papist courfes, at the tyme forsaid.

DITTAY against James Lord Balmerinoch.

JAMES LORD BALMIRRIENOCH, ye ar indytit and accuset of the crymes of Leafmaiestie and Heich-Tressone following. Forfamekill as, 3e, being honouret and advancet be his Maieftie, nocht only to heich and eminent places in Session and Counfall, bot also trustit with the office of Principall Secretarie to his hienes, quhairby ye war in dewtie bund, abone all vthers, to haif bene most cairfull of his Maiefties honour and preferatiounne; nochtwithstanding quhairfo, ye, preferring your awin vndewtiffull and vnlawchfull privat respectis, to his Maiefties reputatioun and fastie, and being informat, in the yeir of God 1st. Vc. fourfoir aughtene yeiris, by your neir kynfman, Sir Eduard Drummond,³ [quhosome ye knew to be ane professit Papist, maist ferventlie affected to the furtherance of all Papifche courfes, and to haif bene ane Secretare to ane Cardinall at Rome, and thairfoir the vnfitter to haif bene maid chose of and trustit by yow, for wryting or playing the clerks office to his Maiefties Letteris directit that way,] that he come to this cuntrie, directit be the Bischope of Vaizon,⁴ to deall for procuring of his Maiefties Letteris of recommen-

¹ Laing's Hist. III. 57.

² See REHABILITATIO, Reg. Mag. Sig. Lib. XLVIII. No. 152, dated August 4, 1613.

³ Marjory, the second daughter of Alexander second Lord Elphinstoun, and paternal aunt of James, first Lord Balmerinoch, married Sir Robert Drummond of Carnock. Sir Edward was perhaps her son, and cousin german of Lord Balmerinoch.

⁴ Robertson, in History of Scotland, and Wood, in Peerage of Scotland, call him Drummond; but he was William Chisholme, 2d of the name and surname, Bishop of Vaizon, and paternal nephew of the 1st, who had, a short while after 1561, been, by Papal Brief, created Bishop of Dunblane; and on his finding it inexpedient to live in Scotland, he was appointed Bishop of Vaizon; which situation he resigned, in favour of his nephew, when he became a Carthusian Friar of Grenoble. Both of these distinguished Churchmen were younger sons of the Cromlix family, Perthshire. Sir James Chisholme of Dundurn and Cromlix, who was concerned in the Popish Plot, in 1593, seems (Balfour's Annales, II. 29) to have been brother of the younger of the Bishops of Vaizon. The Chisholmes of Cromlix had, above a century, been hereditary Baillies and Justiciaries of the Ecclesiastical Lordship of Dunblane, and had furnished three Bishops of Dunblane; James and William Chisholmes, brothers, and their nephew William Chisholme, the elder of the Bishops of Vaizon above mentioned. William Chisholme tertius, was kinsman of Sir Edward Drummond and of Lord Balmerinoch, though in what degree is unknown.—The Editor is indebted to the industry and research of the Reverend Mr MacGregor-Stirling for the information contained in the preceding Note. That learned gentleman has collected much original matter relative to the See of Dunblane, which it is hoped he may, some time, be induced to lay before the public.

dation to Pope Clement the Aucht, for making the said Bischope ane Cardinall; being in grit hoip that his Maiesteis recommendatioun to the said place wald be ane grit furtherance to that his expected promotioun: Ye, nochttheles, nocht only tressonabill assenting to the said motioun, bot most willinglie and readelie taking vpon you to be ane assiter to him in that imployment, did dyuerse tymes preafe his Maieftie thairin, and did offer to his hienes the frame of fuche ane Letter as ye wald haif had signed, by his Maieftie, to the Pope; whome yow fand, nocht only vnwilling to wyrite at all, bot absolutelie to condampne the motioun for correspondence with such ane persone; who, allweill in respect of the irreconceillabill contrarietie betuix his Maieftie (in respect of his professioun in Religiou) and the Pope; as also, for that the said Pope could nocht bot expect those tyttillis and attributtis whiche his Maieftie, out of his conscience, could nocht yeild him, for any cause quhatsoever: Ye, neuertheles, nocht desisting frome your vnderstieff instance, replyt to his Maieftie, most craftillie, 'that quhatheir schew of discontentment his Maieftie vterit against Puritanes, ye could persauie nothing bot his Maieftie wald turne mair preceise nor any of thame!' Thairby, as it war, spurring his Maieftie to inclyne to such ane politike course, which none bot foolische or preceise sottis wald refus to imbrace: And nochtwithstanding of his Maiesteis oftin and flat denyallis, and refusallis to harken to your motioun, ye nocht only desistit nocht, (as ye aucht to haif done,) bot still resoluat to prosecute your tressonabill intent: WHEARVPONE, ye conspyret with the said Eduard Drummond, vpon the meaynes how to diffuae and beguyle his Maieftie, in the procureing of fuche ane Letter, and did devyse and cause to be drawin vp fuche ane Letter, with the said Sir Eduardis Drummond hand, as frome his Maieftie to the Pope, expresting thairin thankis for the Pope's kyndnes and favour, in former tymes, [albeit ye knew in your conscience that his Maieftie nevir had any deilling with the Pope, nather had he euir expected, requyred, or reslauet any kynd of fauour frome him,] subiyniing thairto ane recommendatioun of the Bischope of Vaizon to be ane Cardinall; thairby to be the moir able to further him in all his effairis; [nochtwithstanding that your self, best of all vtheris did vnderstand, by the most constant answeries gevin, at all tymes, by his Maieftie, to your frequent and importune persuasions in that purpos, that his Maieftie wald neuir consent to haif any dealing or correspondence with him,] and quhat forder wordis of compliment or specious promeissis vpon his Maiesteis behalf yow did insert in that Letter, [as weill appeiris yow did] by these wordis of that pamphlet of Tortus,¹ (quibus preter cætera) your self best knawis. And for the better conveyance and passage of this Letter by his Maiesteis hand, yow did contrye this course; *first*, that it should be schitit in amangst dyuerse vtheris Letteris to be signed; *secundlie*, that the same, with the rest, shuld be presented to his Maieftie, at sum tyme of his going out haistilie to the hunting, so as, being on the suddane surpyred, he should haif no laisure to obserue and peruse the Letteris; and, *thridlie*, that such wordis of tyttill and style as ar vsuallie gevin to the Pope, shuld be forborne to be set down in it, leist perhappis his Maiesteis eye lychting vpon oney of thame whilles he war signeing, he micht thairby tak occasioun to obserue that Lettre, and so discouer your fraud; and convenient spaces being left for thame, thay shuld efterwardis be accomodatit and insert: ACCORDING to quich course, ye, abusing the trust reposit in yow be his Maieftie, ane day, in the moirning, quhen his Maieftie was going to hunting, in haist, eftir that ye had excusit your self of cuming to trouble his Maieftie with the signeing of any Lettres, att so vnseasonabill ane hour, in respect, as ye informit his Maieftie, Sir Edward Drummondis stay any langer in the country wald bot irritat the Ministeris, and breid occasioun of jealousie and fals and scandalous bruiteis;²

¹ This alludes to the reply by CARDINAL BELLARMINE, under the feigned signature of MATTHEUS TORTUS, to a book published by King James, anno 1607, under this Title, 'TRIPlici NOBIS TRIPLEX CUNUS, or an Apology for the Oath of Allegiance against two Brieves of POPE PAUL V., and the late LETTER of Cardinal Bellarmine to Blackwall the Arch-priest.' In this reply, the King is accused of having abandoned his former sentiments, in favour of the Roman Catholic Religion; and the Letter to Pope Clement VIII. is quoted, in proof, by his antagonists, who assert, that Lord Balmerino fell a victim to the King's crooked policy, and that that able and distinguished Nobleman had been induced, through his devoted attachment to his royal master, to criminate himself, in a matter wherein he was really innocent, having merely acted by the King's express instructions.

² Reports. Fr. bruit.

and thairfore, that ye wer forceit, att that tyme, to present his Dispatch to be signet by his Maieftie, contening no thing, bot sum two or thrie Letteris, in Latine, to the Duikis of Florence, Savoy, and such vtheris, in the said Bischopes recommendatioun¹: And thane, in place thairof, ye did present the said Letter to the Pope, and vther thrie, to sa mony Cardinalis in Rome; and procureit the samin to be signed, in place of thais vther Letteris, quhich only feruit for youre cloik, in the convoy of that busines: Quhilk being done, Sir Edward Drummond, by your directioun, did efterwardis add and insert the Popes tytillis and styles, boith in the beginning of the Letter and in the end thairof, betuix the Letter itt self and his Maiefties subscriptioun, as the word '*Sanctitas*,' and the word '*Filius*,' and such vtheris as ye thoct proper for the Letter to the Pope, (quhich verry twa wordis of '*Sanctitas*' and '*Filius*,' his Maieftie had oftin before forewairnit yow, that he wald rather loife his lyffe than wryte any of thame to the Pope): AND, be your directioun, the Letter being elofet by ane of your seruandis,² his Maiefties Signet (quhairf the keping wes committit to yow, be vertew of youre Office of Secretarie,) wes by yow, aganis the honour and dewtie of your place, trust, and credite reposit in yow be his Maieftie, most vndewtifulle, fallie and tressonabill affixit to your said forseit Letter.³ Be occasioun quhairf, quhen his Maieftie cam efterwardis in questioun, in the lait Quene of Ingland, of blissit memorie, hir tyme, by meanis of hir Ambassadoure, quho, in the 3^{er} of God I^m. VI^e. yeiris, expostulatit with his Maieftie concerning such ane Letter writtin by him to the Pope; ye than, being askit thairf be his Maieftie, did vterlie deny thair wea any such mater: Lyke as, for iustificatioun of your denyall, ye send Sir Edward Drummond, quho, att your desyre, being cum from beyond sea to this cuntry, and being examinat thairf, did, att your perswasoun, deny that he careit any such Letter to the Pope: As alwa, quhen Sir Edward Drummond wes committit to waird for this caus, within the Castell of Edinburgh, ye becam ane eruff suiter to his Maieftie for his libbertie, and wes the meanis to obtene itt; quhairpoun the said Sir Edward being efterwardis to returne to Rome, ye delt ernestlie and instantlie with him, to lawboure to recover agane the said Letter to his handis, and to distroy itt; quhich he promest to do, gif be any meanis he could: And ye lykewyse gaif his Maieftie full and absolute assurance, that that repoint, quhairpoun the said lait Quene of so wordie⁴ memorie did expostulat with his Maieftie, wes vterlie fals: And that nather his Maieftie had ewir writtin any Letter to the Pope, nor yet that Sir Edward Drummond had ewir delyuerit any, in his Maiefties name, to him: Quhilk strong denyall, to his Maieftie, of your and Sir Edward Drummondis giltynes in that mater, wes the occasioun that movit his Maieftie to grant to Sir Edward Drummond his libbertie: And althocht that the constant sinceritie of his Maiefties professioun in Religioun wes so weill knawin to the world, by his daylie word, writt, and praktife, as nather that lait Quene of happie memorie, nor the religious people of the Estait of Ingland did any langer dout of his Maiefties innocence in this caice, howfoue thay had hard of his Maiefties denyall thairf, (as he mycht most iustlie haif done,) yit lay it nocht in your handis; bot, gif God had not movit thair heart to judge so honorable and iustlie of his Maieftie in this caice, the jealousie and mistrust of his Maiefties sinceritie in Religioun, being thus spred, in both realmes, mycht haue ressauit such incres and grouth, as mycht haif hafardit thairby, alswell the present securitie of his Maiefties persoun and estait, att that tyme; as also, his Maiefties happie attening to his iust clame and rycht, in Ingland: THE ground of all this calumny and sklander, and quhatsumewir such lyk hafardis mycht haif followit heirvpoun to his Maiefties persoun and estait, arryving and having the only fundatioun by this your occasioun and tressonabill dealing, quhilk weill apperit by the consequent; ffor how fone it pleast God to call that Quene, of renownit remembrance, to his mercie, and his Maief-

¹ Had such a warm debate and altercation, as that before recited, taken place, is it to be conceived as at all likely, that a person of James's jealous disposition, would have signed such Dispatches and Recommatory Letters, without first carefully perusing and scanning every phrase contained in them? Unquestionably the King would either have postponed his hunting, or, at least, would have desired the papers to await his return, when he could at leisure consider the import of such important documents. On the other hand, it must be admitted, that the Confession of Lord B. is unqualified, and apparently sincere, and is conceived in the strongest terms which language could devise.

² Clerks to the Secretary of State.

³ Dated at Holyroodhouse, Sep. 24, 1599.

⁴ Worthy.

tie to the lauchfull poffeffioun of his rychteous inheritance, with moir perfyte ioy and vniuerfall applaufe of all his fubiectis, nor any vther Prince obtienit the poffeffioun of his prediceffouris Croun, his Maieftie, alfwell by his sincere poffeffioun as by his actionnis and lawes, publeiffing to the world his moft constant zeale to mantene and propagat the trew Religioune, and to fuppres Papiftrie, and all contrarie poffeffioun, the hoill Papiftis within this Ile, and fpeciallie, in his hienes Kingdome of Ingland, finding thairby thame felfis vterlie difappoint of thair former hoipes, foundit vpoun thais Letteris, quhairby thay promeit to thame felfis all libertie and tolleratioun of thair fuperftitioun, in his Maieftis dominounis; and efteming, that his Maieftie, in nocht performing thair of, had delt wrongfullie and vnluftlie with thame, nocht only did Clark and Watfoun and thair complices, Preifts, and vtheris Papiftis, in the fyrft yeir of his Maieftis regime of Ingland, confpyre aganis his lyffe, pofteritie and eftait, bot also the incomparable CONSPIRACIE of the POWDER TRESSOUN (exceeding in malice and crewaltie all vther Treflounis, that evir wes attemptit, in any aige or countrey) wes devyit and profequitit by ane damnit crew of merciles Papiftis, to the extreame danger of his Maieftis moft facred perfoun, his moft gracious Quene, thair Royall iffew and hoill body of that Eftait; for no vther quarrell, bot becaus thay thocht thame felfis wrongit by his Maieftie, for nocht accomplifching the hoipis gevin by thais Letteris to all Papiftis in his dominounis: Lyke as, fenfyne, Cardinal Bellermino, or *Matheus Tortus*, his chaplain, and vtheris, moft impudent and infamous Popifch wryteris, haif, (fa far as in thame lay,) preiffit by thair fals, calumnious and leing lybellis, groundit vpoun your treflonabill Letteris foirfaidis, to fteingie (sully, *stain*) his Maieftis moft pure, perfyte and vnspotted reputatioun. OFF the quhilkis treflonabill crymes aboue writtin, of furreptitious, fraudulent and fals fteling his Maieftis hand to the faid Letter, without his Maieftis knowledge, and contrarie to his Maieftis declarit will, and treflonabill affixing of his Maieftis Signet to the faid fals Letter, and affixing knawin profeffit Papiftis, in thair treflonable courfis, to the danger of fabuerfioun of Religiou and overthrow of all trew profeffouris thair of; and drawing his Maieftis lyff, eftait, Croun of this realm, with his rycht of fuccelfioun to the Croun of Ingland in moft extreme perrell, and bringing moft fals and scandalous imputatiounis to his Maieftie, both in poynt of honour and Religioune, ye ar airt and pairt: And the famin hes bene done and committit by yow, and vtheris in your name, of your caufing, command, affiftance and ratihabitoun. For the quhilkis treflonabill crymes foirfaidis, ye aucht and fould be pwnieffit, be fforlatrie of your lyffe, landis, and guidis to his Maieftie; according to the Lawis and practik of this realme.

THE faid James Lord Balmirrenoch, being inquyret be the Iuftice, gif he wald defyre the affiftance of any freindis or Aduocattis to be his preloquoutouris, according to the benefite of the law and ordour of the Court, quhilk fould be obseruit to him? He anferit, that he had neuer fa grit neid of preloquoutouris and (fa) grit neceffitie to fpeik; the caus being fic as concernis his lyffe, his eftait, and all that he poffeft; bot he faid, he had gritar neceffitie to keip f Silence, his offence being fik as could admitt na excufe; and his greif and sorrow, that he could haif fa far abuift the trust his moft gracious Souerane reposit in him, being fa grit, as he defyrit na thing mair, than his cryme may be notifeit to all men: And feing, na freind wes acquent with his fact, he defyrit nane to fee the miferie thair of: And faid, he could defyre na Laweir to compeir and defend that fact, quhilk him felf had fa oft and iuftlie condemnnet; as no place wes left to him nor any vther, to vse any defence thairin: And thairfoir, his awin haert witneffing moir aganis him nor any vther could fay, he defyrit all men to knaw his cryme to be als haynous as it is; and did erniftlie intreat all thais that wer present, and wiffit that all the world mycht heir him, to declair two poyntis,

quhairof he wisfis his Maieftie to be cleirit : *ffyrft*, of all fufpicioun that his Maieftie was ony wayis acquent with the wryting of that vnhappie Letter, that fwa his hienes innocencie and finceritie mycht be knawin to the hail world ; ffor he declarit, as he wald wiſe God to be mercifull to his faull, in the grit day, that his Maieftie wes moſt falſlie and vniuſtlie chargeit with that Letter writtin to the Paip ; and that he could newir draw his Maieftie to lyk, or with patience to heir of that wickit motioun ; bot his Maieftie did vterlie and abſolutlie refuſe, vpoun ony reſpect or conditioun, to wryte to the Pope, as ane mater altogidder aganis his conſcience to tak ony ſic cruikit courſis, or to gif to the Paip thais ſtyles and attributes quhilk the Paip aſſumit to him ſelf. Quhilk refuſall could nocht ſatiſfie nor content him, bot in his politik worldlie reach, as ane naturall man, he went fordwart, in his awin vayne conſait, aganis his Maieſteis declarit will, to that quhilk he thocht ſould (have) advanceit his Maieſteis tytill, as hoping thairby to ſlay the censure of the Paipis Excommunicatioun, intentit aganis his hienes, quhilk he ferit mycht haif brocht him preiudice to his Maieſteis ſucceſſioun, nor yit could he be ſtayit from his vnhappie courſis, by his Maieſteis moſt religious reſolutioun ; quha, att ſindrie tymes, proteſtit and declarit to him, that his hienes wald nevir burdene his conſcience with ony ſic vnlauchfull and cruiket courſis, bot wald only leane and reſt vpoun Godis Providence and his awin rycht, with ſic vther lauchfull and rycht meanis as his Maieſtie mycht juſtlie uſe : Beſeikand all gentilmenn and vtheris preſent, to beir trew recoird of his Confeſſioun of ſa haynous ane offence, committit aganis ſa gracious and bountyfull ane Souerane, quho, be his vndeſeruit fauour, had raiſit his baſe fortoun ſa bountifullie, that his landis, guidis and lyffe could be na reparatioun for ſa grit ane offence.

The *ſecund* poynt, quhairof he deſyrit his Maieſtie mycht be fred and cleirit, is ane opinioun, quhich ather ſum in malice, or his freindis in the commiſeratioun of his eſtair, mycht conſaue and think, that his Maieſtie, in ane mater of this moment, (the ſuggeſtioun of ane Letter of Reconnendatioun,) mycht ſerue to proceid with grit regoure and crewaltie aganis his lyffe and eſtair ; bot he wald haue thais and all vtheris to remember, that his Maieſtie hes gevin mony teſtimoneis of his clemencie, in materis gritlie concerning him ; and thairfore, thay ſould nocht judge of his Maieſteis diſpoſitioun to mercie, by his hienes proceeding, be juſtice, aganis him, bot wiſſit thame rather to turne thair eis to his vnhappines, quha hes offendit his ſacred Maieſtie, in ſic ane poynt, as na favour can be extendit to him, without the hurt and intereſ of his Maieſteis honour, quhilk being deirar to his hienes than his lyffe, he man think and confeſs, that tuintie thowſand ſic lyves as his is, ar nocht to be compairit with it, or ballanceit aganis it ; nor did he deſyre that his lyffe ſould be ſpairit, att ſa deir ane rait as the leiſt tuich (*Fr. tache*) of his Maieſteis honour.

Forder, he cravit pardoun to protest thais tua thingis, for him selff. *Fyrst*, that he had na sic intentione, as sum hes supposit, to draw in ony alteration of Religioun or tolleratioun, or quhat thay pleis to terme it; bot any meane worldlie courfe and devyse, quhilk he confaitit mycht be for the behuif of his Maiestie, quhilk he protestit to be of treuth. The *secund* thing is, he wald haif na man to think, that itt wes any gayne or priuat commoditie that drew him to that wicket cours; ffor he protestit that he nevir ressauit norexpected ony reward, from ony Prince leving, except from the Kingis Maiestie, his maister, allanerlie.

And sa concludit, that he had spokin sa much of the treuth aganis him selff, that he wald desyre na man to speik for him; and wald gif als littill buffines to the Aduocat, Justice, Assessoris and Assyse, as he could; and was content that the Dittay shuld pas to the knowlege of ane Assyse.

IN respect of the quhilkis, THE JUSTICE Ordanit the said Dittay to be putt to the knowlege of ane Assyse, of the personis following. Thay ar to say.

ASSISA.

DAVID ERLL OF CRAUFURD, Lord Lyndesay, &c.	JOHNE ERLL OF TULLIBAR- DIN, Lord Murray,	SIR ROBERT GORDOUN of Lochinvar, knycht,
GEORGE ERLL OF MARSCHELL, Lord Keith and Altrie, Grit Marshell of Scotland, &c.,	ALLANE LORD CATHCART, JOHNE LORD SALTOUNE, DAVID LORD SCONE,	SIR WILLIAME LEVING- STOUN of Kilsyth, knycht,
JOHNE ERLL OF WIGTOUN, Lord Fleming, &c.,	ALEXANDER LORD GARLEIS, WILLIAME MAISTER OF TIL- LYBARDINE,	SIR JOHNE HOUSTOUN of that ilk, knycht,
PATRIK ERLL OF KINGORNE, Lord Glammes, &c.,	SIR JAMES DOWGLAS of Drum- lanrig, knycht,	SIR PATRICK HOME of Pol- wart, knycht.

Quhilkis persounnes of Assyse being chofin, fworne and admittit, and Instru-
mentis tane thairvpoun, be our souerane lordis Aduocat; the said James Lord
Balmirrenoch, being accusit be the said Dittay, oppinlie red in judgement to him,
in presens of the said Assyse; and for verificatioun thairof, the Aduocat, haifing
produceit the said James Lord Balmirrenochis Deposition, subseruyit with his
hand; togidder with his Letter, writtin all with his hand and subseruyit be him,
contening his speich, vterit be him befor the Lordis of his Maiesteis honorabill
Previe Counfall of Ingland, togidder with ane Letter send be his Maiestie to the
Aduocat, contening sum of the Lord Balmerinochis speichis to his Maiestie, att
sic tyme as he preissit to haif perswaidit his lienes to wryte to the Pope: And
the saidis three writtis, being oppinlie red in judgement, in his presens and in
presens of the saidis Assysouris; quhairof the tennour followis.

And fyrst, followis the tennour of HIS DEPOSITION.

ATT FALKLAND, the secund day of Februar, the yeir of God I^m.Vj^c. and nyne
yeiris. THE DECLARATION and CONFESSION of THE LORD BALMER-
RENOCH, concerning ANE LETTER fraudulentlie and surreptitiouslie pro-

cureit to be writtin and sent from his Maiestie to POPE CLEMENT (VIII.) in the yeir 1598; maid in presens of my Lordis of his Maiesteis Secreit Counsell of Scotland, eftir namet; The Earles of Dumbar, Wigtoun and Lowtheane, the Lordis of Scone, the Justice Clark, the Collectour, Justice and Aduocat.

THE LORD BALMIRRENOCHE, being examinat, sworne and chargeit with þe offence of prakteking and surreptitious procureing of þe said Letter, (quhairby hath growne ane most fals and scandalous imputatioun to his Maiestie, both in poynt of honour and of Religiou,) eftir diuers meanis vñt by him, of denyall, conceilling, transferring and extenuatting the said offence, doeth att þe last expresse acknowledge and confes: That, in þe 3eir of our Lord 1598, att þe motioun of þe lait Archbischop of Glasgou,¹ his Maiesteis Ambassadour, than resident in France, the Bischop of Vaizon,² and sum vtheris, and att þe sollicitatioun of Sir Edward Drummond, directit from þame, for procureing of sum correspondence betuix his Maiestie and THE PAIP, be the said Lord Balmirrenoch, assenting to þe said motioun, did diuers tymes preiße his Maiestie pairin, and did offer to his Maiestie the fram of sic ane LETTER as he wald haif had signed be his Maiestie to þe Paip; quhom, quhen he fand nocht onlie vn-willing to wryte att all, bot absolutilie to condemn the motioun, or any correspondence with a person that did expect thais tytillis and attributes, qulich his Maiestie, out of his conscience, could nocht 3eild him, for any caus quhatsumeur; he, the said Lord Balmirrenoch, conspyring with Sir Edward Drummond, on þe meanis how to disfaue and begyle his Maiestie, in þe procureing such a Letter, with þe said Sir Edward Drummond's hand, as from his Maiestie to þe Paip, expressing pairin (as he sayeth) only thankis for þe Paip's kyndues and favour, in former tymes, with recommendatioun of þe Bischop of Voyzin to be a Cardinall; thairby to be moir abill to forder him in all thingis neidfull for his effairis. For the better conyoynance and passage of þis Letter by his Maiesteis hand, the said Lord Balmirrenoch confesseth this course to haif bene by him contriveit; *fyrrst*, that itt sould be chefti³ in amangis diueris vperis Letteris to be signed; *secundlie*, that the samin, with the rest, sould be presentit to his Maiestie, att sum tyme of his going furth haistelie, on hunting, so as, being on the sudden surpryßt, he sould haif nocht laifour to obserue and peruse the Letteris; and *thryddlie*, that such wordis of tytill and stytle (as) ar vsuallie gevin to þe Paip, sould be forborne to be sett down in itt; leif perhappis his Maiesteis eé lichtung vpon any of þame, quhillis he wer signeing, he mycht pairby tak occasioun to observe that Letter: and that convenient specis being left for þame, thay sould efterwardis be accomodattit and insertit: According to qulich course, he the said Lord Balmirrenoch confessing, that he, abusing the trust reposit in him be his Maiestie, one day, in þe moirning, quhen his Maiestie wes going on hunting in haist, amangis vperis Letteris, writtin in Latine, to þe Duikis of Florence and Savoy and sum Cardinallis, in favour of þe Bischop of Veyzon, did also present to his Maiestie (haveing formerlie refusit to wryte to þe Pope, and na thing suspecting that any such sould be offerit to his hand) the said Letter to þe Paip, and procureit itt to be signit; qulich being done, he the said Lord Balmirrenoch confessit, that by his directioun, Sir Edward Drummond did efterwardis add and insert the Popes tytillis and styles, baith in þe beginning of þe Letter, and in þe end pairof, betuix the Letter itt self and his Maiesteis subscriptioun, as the word '*Sanctitas*' and the word '*ffilius*,' and such vperis as he thoct proper for þe Letter to þe Paip: And that, by his directioun, the Letter wes seilit vp be ane of his seruandis, and the Signet also putt to itt. Concerning þe Letteris to the Cardinallis, he the said Lord Balmirrenoch sayeth, that thay wer cloife sealit vp; bot left without superferiptioun, and so delynerit to Sir Edward Drummond, to be directit be þe aduise of the (Arch)bischop of Glasgou: And that he did efterwardis vnderstand, that two of þe saidis Letteris wer gevin to þe Cardinallis Aldobrandino and

¹ James Beaton, (2d) Abbot of Aberbrothock, elected 1551, quitted the see in 1560, and was restored by Act of Parliament, in 1588.

² Williame Chisholme. See Note on Dittay, p. 569.

³ Shifted, shuffled.

Bellarmino, and þe thrid to Cardinall Caietane, Protectour of the Scottiſh Nationn. ffordermore, the ſaid Lord Balmirrenoch Confeſſeth, that quhen his Maieſtie cam efterwardis in queſtioun, in þe lait Quenis tyme, (by meanis of hir Ambaſſadour, that expoſtulatit wiþ his Maieſtie, concerning ſuch a Letter writtin from him to the Pope,) he the ſaid Lord Balmirrenoch, being alkit pairof by his Maieſtie, did vterlie deny that thair was any ſuch mater: And lykwayis Confeſſeth, that he deſyred Sir Edward Drummond (being cum att þat tyme from beyond the Seas, and examinat pairof, vpon þe Lord Balmirrenochis ſending for him,) to juſtifie his denyall; and that Sir Edward Drummond did, att his deſyre, accordingly deny that he had careit any ſuch Letter to þe Pope; as alſo, that quhen Sir Edward Drummond wes committit to preſoun for þis caus, to the Caſtell of Edinburgh, he the ſaid Lord Balmirrenoch becam ane erniſt futear¹ to his Maieſtie for his libertie, and wes the meanis to obtene it; quhairvpoun Sir Edward Drummond, being efterwardis to retorne to Rome, he the ſaid Lord Balmirrenoch Confeſſit, that he delt ernestlie and instantlie wiþ Sir Edward Drummond, to labour to recover agane the ſaid Letter into his handis, and deſtroy itt; quhilk Sir Edward Drummond promiſit to do, gif by any meanis he could; and that the ſaid Lord Balmirrenoch pairvpoun deſtroyit the copie of þat Letter, quhilk before he had retenit wiþ him ſelff.

J. BALMIRRENO².

DUMBAR, WIGTOUN, LOWTHEANE, D. L. SCONE, (R^d) COKBURNE,
S^r TO. HAMMILTOUNE, JO. PRESTOUNE, S^r W^m HAERT.

Followis the tennour of

THE LORD BALMIRRENCHES LETTER, *writtin and ſubſcryuit be him, containing his SPEICHES, vttered be him to the Lordis of his hienes Previe Counſail, in Ingland.*

MY VERRIE HONORABLE LORDIS,

I FIND trew this day, in experience, that which I haif oft red and hard, that no exceeding joy nor exceeding ſorrow can be carryd bot wiþ ſilence. *Leues curæ loquuntur* (ſayeth the tragique) *ingentes ſupent*. From this it is that þe heaue greif and vnſpeikable ſorrow of my hart and ſoul, for my haynous offence aganis my moſt gracious Souerane, and his Maieſteis diſpleaſour that he hes moſt juſtlie conceaved aganiſt me, makis me that I haif no wordis whearwiþ I can expre þe fame: Quhen I luik vnto his Maieſteis innumerabill fauoris beſtowed vpon me, haifing raiſed my fortune (moſt miſerable and vnworthie wretch!) far aboue my mereit and my ſoule abuſe of his Maieſteis truſt: which hes brocht this fals imputatioun vpon his Maieſteis vnſpotted innocencie: I think pair is nothing in me may amend the fame; and pairfoir I find no vther end of my ſorrow, bot, wiþ the ſorlorne ſone,² to ſay to his moſt ſacred Maieſtie, *peccavi in cælum et in terram*!—My offence is ſo greit that it can nocht be pardonet,—I am nocht worthie to be rekonet ony moir among his ſubiectis or createuris! I haif ſincerlie confeſſit the veritie of my fact, in all the circumſtances, nocht for obedience, or to liberat his Maieſtie, (as ſum wald fallſlie geue out,) bot for þe treuthes ſaik, and that his Maieſteis innocencie may be knawin to all the world: Bot allace! what vnhappy man was I, that my deviſch affection and erroneous courſe ſould haif led to any thing ſould haif offendit my moſt gracious Souerane! Micht nocht his Maieſteis rair pietie, ſinguler wiſdome, and vnſpotted ſinceritie, in all his actiones, whearof I had ſo long experience, taucht me, that quhen his Maieſtie was vnwilling, and did reſuiſ ſuche ane cruikit wordli³ courſe, the event of it could nocht prove bot vnhappy! Thairfoir, ſince his Maieſteis ſoule is frie of it, let no pairt of the ſtayne ly vpon his Maieſteis honour; bot, geue⁴ his Maieſtie can nocht vtherwayis be liberat of this imputatioun brocht vpon his Maieſtie by that deviſch Letter, let naper my lyfe, my eſtate nor credeit be ſpared; bot, as I haif all by his Maieſteis fauour, ſo, let all go, to the laſt drope of my bloode, beſoir any reproche for my moſt haynous offence ſould be brought vpon his innocent Maieſtie: Bot my miſerie, aboue all, is þe gritter, that it behored me

¹ Suitor.

² The Prodigal Son in the Parable.

³ Worldly.

⁴ Gif; if.

offend evin in that point whairin his Maiestie hes ever bene most tender, his conscience, which for ane thousand kingdomes he wald nocht hurt, and his reputatioun for sincere deilling, quhilk hes maid him famous throw all the world! In all thease, his Maieftis extraordinier deliuerances, miracouloullie wrought be God, for no cause so muche as for his Maieftis incomparable sinceritie of heart to God, and iust dealing to all the world. My Lordis, it fall nocht be necessar to transmit my Confessioun to Scotland, or to remit my judgement or tryell pair, fence for my offence, and his Maieftis displeasour consault pairpoun, I haif absolutelie submitted my self in his Maieftis royall will. I raper¹ my life and all war takin, befor I could ly ony longer vnder this most importable² burding of his Maieftis heave displeasour. Thairfor, my humbill sute to your lordschip is, that ye will, in commiseratioun of my miserable estait, move his Maiestie to be plesed to luike vpon my Confessioun, accept my becoming in will, and but³ more delay, declair what oucht be done for reparatioun of his Maieftis honour, which, to my greit greif, is tuched be my most haynous offence; which, in all reuerance and humilitie, evin with the last drope of my bloode, I will obey and performe.

J. BALMERINO⁴.

Followis the tennour of the

LETTER *send be his MAIESTIE to my LORD ADUOCAT, anent THE CONFERENCE betuix his Maiestie and the Lord Balmerinoche, befor the purchessing⁴ of his hieignes subscripcioun to the LETTER to the POPE.*

To our trustie and weilbelouit Counsallour, SIR THOMAS HAMMILTOUN
of Bynnie, kny^t, our Aduocat, in that our Kingdome of Scotland,
JAMES R.

TRUSTIE and weilbelouit counsallour, Wee greit zow weill. Quhairas, We haif concludit to haif pe Lord Balmirrenochie tryed before certane our Justices, by Commissioun, vpoun that his most tressonabill and damnable fact, committed by him, in the thifteous purchessing and steilling throwch of Letteris, vnder our hand, directed to THE POPE OF ROME; We nocht being of pe knowledge pair of; bot urtherways, vpoun his moving of pat mater vnto ws, wer altogidder disaffenting pairfome: We haif thoctit mete, (for your better informatioun and gritar licht in his matter, and to pe effect that zow may pairvpoun ground your Dittay, and in his accusatioun vrge the same as ane particular evidence of his giltines heirin,) to sett down, so far as our memorie can serue, the verie wordis of pe Conference past betuix ws att pat tyme, quhen he moved ws for pat Letter, quhich so falllie and vndewtiefullie, without our knowlege, he thaireftir purchest to be past our hand, about sum nyne or ten zeiris ago. One day, he insifted that We wald be plesed to wryte a Recommendationioun to pe Pope, in fauouris of pe Bischop of Vaizon, with a request for promoving of him to pe hatt:⁵ He than schewit vnto ws, that by the vther⁶ his continewall stay att Rome, and by reasoun of the aduertismentis he wald mak from tyme to tyme, he wald serue for a spie to acquent ws with quhat courtes they had there; and that therewith, it wald be a greit credite to pe Natioun to haif thair countreyemen Cardinallis: At quhich tyme We schewed vnto him, that We could nocht, in conscience, seild vnto pe Pope thais tytillia quhich he did assume vnto him self; and that We wald nocht, for any warldlie respect, do that, quhair of We had no warrand in conscience: The wryting to pe Pope, in such foirt as he wald accept pair of, being vnlauchfull for ony trew Cristiane: Vnto pe quhich, We do perfytelie remember, that he did then answer, that nochtwithstanding quhatfoevir schew of discontentment We vterit aganis Puritanis, he could perceave no thing but We wald turne more preceisse than any of pame, quha for such a small materas a naked Letter of Recommendationioun sould be so squeamish and nice. He farther added, att pe same tyme, that We sould nocht cair quhat wer done pairin; bot willit ws to leue to Sir Edward

¹ I would rather that my life, &c.

² Unbearable, intolerable.

³ Without farther delay.

⁴ Procuring.

⁵ A Cardinal's hat.

⁶ Viz. By the uninterrupted residence of the Bishop of Vaizon at Rome, &c.

Drummond and him the filling vp of these styles ; and We being ignorant pair of, and done without our knowlege, itt could be no touch¹ nor greif to our conscience : Quhairvnto, We then anserit, that as We evir disallowit of all dowble deilling, so We loued nocht that slicht, bot wer resolved nevir to do nor consent to any thing, but quhat We wolde approve before pe hoill worlde : And nochtwithstanding of our reiterating of our dislyke pair of, zit wes pe famin most thifsioullie past our hand, without our knowlege. And thinking fitt to acquent zow with this particular circumstance, for zour better informatioun, We bid zow farewell : FROM oure Court, att Quhytehall, the 9 Januarye, 1609.

Followis the tennour of,

HIS MAIESTEIS WARRANT *direct to the ASSESSOURIS.*

TO OURE rycht trustie and weil belouit Cousinges and Counsalouris, THE ERLES OF DUMBAR, MONTROISE, LUTHEIAN ; and our trustie and weil belouit Counsalouris, THE LORDIS PREVIE SEALE, THE CLARK OF REGISTER, THE COLLECTOURE, SIR LUEIS CRAIG.

JAMES R.

QUHAIRAS We haif directit our Aduocat to insift in persute of pe Lord Balmirreno⁴ before our Justice, for his most haynous and detestabill cryme and offence committit aganis ws, our honour and reputatioun, We haif maid speciall choise of zow, in pe foirsaid Tryall, to be Assessoris to pe said Justice : And pairfore We ar to will zow to assift him, and to see justice dewlie ministrat pairin, as ze wald do ws most acceptable seruice : And thir presentis salbe zour Warrant sufficient. GEVIN att Quhytehall, the thryd day of March, 1609.

Followis the tennour of

HIS MAJESTEIS WARRANT *direct to my Lord Aduocat, to persew James Lord Balmirrenoch.*

TO OURE trustie and weilbelouit Counsalour, SIR THOMAS HAMMILTOUN of Bynnie kny⁵, our Aduocat, in pat our kingdome of Scotland.

JAMES R.

TRUSTIE and weilbelouit counsalour, We greit zow well. This haynous offence committit by the Lord Balmirreno⁴ aganis our honour and reputatioun, being so lang conceillit and now laitle discoverit, movis ws, for the clering of our innocencie, and freithing² owre selfis of thais wrangous imputatiounis quibich We haif hithertill vnderlyne, to gene ordoure for prosequuting his Tryall, befor our Justice, with all regour : And becaus the leift extenuating of pis offence can nocht bot breid in the evill disposit a distrust of his giltines : And We being fullleie auisef by thais of best judgement, heir, concerning the qualitie of pat offence, to find pe famin, insofar as it is done aganis the securitie of pe Prince, a speciall poynt of hie Tressoun and Lesemaistie ; ffor heirby, nocht only wer We brocht in danger, both in person and estait, bot also our honour, credite, and reputatioun, moir deir vnto ws then our lyffe, hes bene by pe same brocht in questioun : And pairfore, We will zow to vрге the Judgement aganis him, as for a cryme of pe qualitie aboue writtin, that so all exceptionit that may be maid aganis proceeding, aper of collusioun pairin, or in extenuating the offence, may be removed, that justice may be dewlie ministrat, and our innocencie, so much pairby wrangit, may be heirefir clerit to pe haill world : And perswading our selfis of zour cair, diligence and dexteritie heirin, as ze wald do ws acceptable seruice, We bid zow fairwell. FROM oure Court, at Quhytehall, the nynt of January, 1609.

VERDICT. THE said James Lord Balmirrenoch Confessit the said Dittay, and haill contentis of the writtis foirsaidis ; and thaireftir, the saidis persones of Assyse removed altogidder furth of Court to the Counsal hous of the said Tolbuith, quhair thay being convenit togidder, fyrst electit and chusit the said

¹ Fr. *Tache*.

² Freeing, absolving.

George Erll Merfchell Lord Keyth and Altrie, grit Marfchell of Scotland, Chancillar of the Affyfe; and thairefter, reafonit and votit vpoun the poyntis of the faid Dittay; and eftir long reafoning thairvpoun, and being throughlie refoluit thairwith, re-enterit agane in Court, in prefens of my Lord Juftice and his Affeffouris, and the faid James Lord Balmirrenoch; quhair the faidis perfounes of Affyfe, all in ane voce, be the mouth of the faid Chancillar of the faid Affyfe, fand, pronunceit and declairit the faid James Lord Balmirrenoch to be Giltie of the treffonabill, furreptitious, fraudulent and fals fteling of his Maieftis hand to the Letter fpecifeit in the Dittay, without his Maieftis knowledge, and contrair to his Maieftis declarit will; and of the treffonabill affixing of his Maieftis fignet to the faid fals Letter; and affifting knawin profellit Papiftis in thair treffonabill courfes, to the danger of fubuerfioun of Religioune, and overthrow of all trew profeffouris thairof; and drawing his Maieftis lyffe, eftait, Croun of this realme, with his rycht of fuccessioun to the Croun of Ingland, in moft extreme perrell, and bringing moft fals and fcandalous imputationis to his Maieftie, both in poynt of honour and Religioune: And of airt and pairt of the hail treffonabill crymes aboue writtin, att lenth contenit in his Dittay aboue fpecifeit,

MARSCHALL, *Cancellarius*.

Quhairvpoun Sir Thomas Hammiltoun, Aduocat to our fouerane lord, askit instrumentis.

THAIREFTIR, my lord Juftice, confulting with his Affeffouris, Declarit to the faid James Lord Balmirrenoch, that thay war nocht to proceed ony forder in that buffines, for the prefent, till thay fould knaw his Maieftis forder pleafour: Bot, in the meanetyme, aduifet him to bethink himfelff (haifing fa horribill ane fentence pronunceit aganis him) quhat caice he fluid into, wiffing him to lay his compt with the world, and draw neir to his God.

And thaireftir, gaif commandment to the Capitan of his Maieftis Gaird to convoy his body to his Maieftis waird in Falkland; thairin to be kept in furetie, as he wald anfuer to his Maieftie, vpoun his dewtie and allegiance.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in Pretorio burgi de Edr, primo die mensis Aprilis 1609, per D. Will. Heart de Prestoun, Jusliciarium, &c.*]

Apr. 1.—The quhilk day James Lord Balmirreno^t being presentit on pannell, to heir dome pronunceit aganis him, &c. the faid Juftice produceit the Warrant vnderwrittin.

WARRANT from his Majesty, for pronounceing DOOMAGAINST Lord Balmerinoch.

JAMES R.

SIR WILLIAM HAERT of Prestoun our Juftice, We greit zow weill. Forfamekill as James Lord of Balmirreno^t being convict by ane Affyfe, in ane Court of Jufticiarie hauldin by zow, in our

tolbuith of Sanctandrois, the tent day of March instant, of pe tressonabill crymes contenit in his Dittay and convictioun; wes pairpoun remittit till preiffoun, quhill our forder Will and plefour wer knawin pairin, concerning him: WE have thairfore thocht meit, be pir presentis, to signifie our said plefour vnto 3ow, quhilk is,—THAT 3ow with all convenient expeditioun cause fens ane Justice-Court, to be hauldin by 3ow in our tolbuith of Edinburgh, and thair Decerne and ordane the said James Lord Balmirreno¹ to be taken to pe place of Executioun, and pair to be demanit and execute as a Traitor; his heid to be strikin from his body; and all his landis, heretageis, lordschipis, baroneis, takis, stedingis, rowmis, possessiounis, officeis, benificeis, coirnis, cattell, infycht plenciffing, goodes and geir, to be forfealtit, escheit, and inbrocht to our vse, as convict and guyltie of pe saidis tressonabill crymes: Anent pe prouaunceing of pe quhich dome, thir presentis falbe 3our Warrant. GEWIN att our Court of Quhytehall, the xxiiij day of March, 1609.

My LORD OF BALMIRRIENOCHIS DOME.

Apr. 1. OUR said souerane lordis JUSTICE, be the mouth of Andro Quhyte, dempfter of Court, conforme to ane Warrant direct be his Maiestie to him, Decernit and Ordanit the said James of Balmirrienoch to be tane to the place of his executioun, and thair to be demanit and execute as ane Tratour; and his heid to be strukin frome his body,¹ &c.

DOCUMENTS ILLUSTRATIVE OF LORD BALMERINOC'S TRIAL.

I. *EXTRACT from an Anonymous History of Scotland, MS.²*

ANE littil befor this,³ SIR JAMES ELPHINSTOUN, President and Secretar, went wp to Ingland; quhair he was accusit, in presenfe of THE KING and *Counsell of Ingland*, for heiche Tressoune aganis his Ma^{ty}, in counterfeiting the Kingis writt, and sending tha famin Letteris of Recommendationis to THE PEAP, by⁴ his Ma^{ties} knowledge. The quhilk being confestit be him, he was thair disgredditt⁵ of his honouris quhilk he had befor, as ane off the Counsell of Ingland: And thaireftir, was on the v day of December brocht to Leith; and on the sext day conuoyit to Falkland, quhair he remaynit to the 10 day of March, 1609; and thane conuoyit to Sanct Androise; quhair, being putt to ane tryall of ane Assyse, was convict: And thaireftir conuoyit to Falkland agane; and on the last day of Marche was brocht to Edinbrughe; and on the first day of Apryll brocht to the tolbuith, and thair, befor the Justice, condamnit as ane tratour, and his heid to be strukin off; bot neather the day nor pleace decernit: Quhairupone, the secund day of Apryll, he is conuoyit bak to Falkland, in waird.

II. SIR JAMES BALFOUR'S *contemporary Account*.⁶

IN this same mounthe of Nouember (1608), James Elphinstone Lord Balmerinoche, principall Secretary of Estait to his Maiesteis, for the kingdome of Scotland, being this yeire challenged, in England, anent some Letters wrettin be him, in his Maiesties name, to POPE CLEMENT VIII. befor the King did attein the Croune of England; bot he confestit, (simulatly, as was thought by thesse that wnderstood the Courte, and hou matters then went,) to liberat the King of fuche grossnes, being examined by some Priuey Counsellors of bothe kingdomes; that, in anno 1598, he had wrettin to the Pope, in his Maiesties name, for a Cardinalis hate, to be bestowed one *Chifolme*, a Scotts man, then *Bishoppe of Weafone* in France, brother to the Laird of Crouneriggis,⁷ in Pertushyre; in which Letter

¹ The terms of the 'Warrant' are repeated here.

² Advocates' Library, A. 4. 35. Folio.

³ This is pre-

ceded by the following notice: 'On the aucht day of Nouember, thair wes sik ane earthe quaik, throw mony pairtis of Scotland, as the lyk wes not sein this mony day.'

⁴ Without, past, contrary to.

⁵ Degraded, stripped.

⁶ See his *ANNALES*, vol. ii. p. 29.

⁷ A mistake; *Cromlix* is the proper name.

(he hauing gotten the Kinges hand to it) he styles the Pope '*Beatiffime Pater*,' with wther suchie phraſes; which almoſt wronged the Kings honor and reputatione, with all the Proteſtant Princes and States in Europe.

His trayell and puniſhment (he being a Scotts Nobleman) was remitted to the Juſtice of Scotland; and he ſent home thither, wnder a guard, from thyre to thyre; of all wiche the King adwertifes his Priney Counſaill of Scotland, the 21 of the mounthe of Nouember, by Spotſwood, Archbiſhchope of Glaſgow.

After his arrivell in Scotland, he was firſt imprifſond in Edinburgh Cattle, and from thence removed to the Touer of Falkland; and arraigned at St Andrewes, in the ſubſequent yeire; and ſentenced to loſſe his head: Bot, by the Kings ſecrett commands to the Earll of Dunbar, he was againe remitted to the cuſtodey of the Lord Scone, as a cloſſe priſoner, to be kept at Falkland: And from thence was enlarged, and conſyned to his anen houſſes in Angus thyre, and Balmerinoche in Fyffe thyre; quher he deyed of a feuer, and waicknes in his ſtomache, ſome few mounthes after the death of his arch-enimy and competitor, Ceicill Erle of Salisbury¹ (after quhome) if aney tyme he had ſuruiued, (as was talked by them that beſt knew the Kings mynd) he had beine in grater crydit with his maſter then euer.

III. *EXTRACTS from the Records of the Privy Council of Scotland.*

Mar. 4, 1609. THE Privy Council, 'conſidering that his ſacred Ma^{tie} hes ſend down his faithfull and worthy counſellour *the Erll of Dunbar* to be aſſiſtant to this Tryall, the ſaidis Lordis findis it verie meete, neceſſar and expedient, for the grittair auctoritie and regaird to be had to that actioun, that the ſaid Erll of Dunbar be accompaneid with a ſufficient number of the Nobilitie and Counſaile; for whiche purpois, the ſaidis Lordis hes nominat and appointit David Erll of Craufurd,² &c. to be preſent with the ſaid Erll of Dunbar at the ſaid tryall, commanding thame, in his Maieſteis name, to aſſiſt the ſame tryall, by their preſence, counſaile and adviſe; and ſo to do and perſorme that which becometh faithfull, worthy and trew counſellouris to do, in a mater ſo heichlie importing his Maieſtie, in his honnoure, fame and credite.'

Mar. 17, 1609. WARRANT commanding the Director of Chancery 'to omitt the ſaid Lord of Balmerinochis name, furth of all ſuche Inſeſtmentis, Letteris, writtis and grantis to be paſt and exped the Chancellarie, heirefter, wherein his name formarlie hes bene accuſtumat to be inſert.'

IV. *EXTRACT from the Earl of Haddington's MS. Collections.*⁴

Mar. 28, 1609. LETTER⁵ from his Ma^{tie} to the Chancellor, commanding him to ſeaſe the Lord Balmerinoia landis, try the rentis thairof, the maner of his purchaſe, and wrongis done be him; to be tryed by indifferen⁶t Counſallouris, that the King nicht tak ordour, for ſatiſfactionn of thoſe quho war wronged.

V. *LETTER from WILLIAM CREICHTOUN, Jeſuite, [to SIR ANDREW MORAY of Balvaird.]*⁷

RIGHT WORSHIPFULL S^r,

My humble and heartlie dewtie rememberit. I haif hard with extreame dolour, the extremeties to

¹ He died at Marlborough, on Sunday, May 24, 1612, of a complication of dropsy and scurvy. *Sir E. Brydges'* Memoirs of the Peers of England, p. 481.—His other 'arch-enimey' Dunbar predeceased him. ² Vpon Monnday, fourt of Februar, aduertisement came that the Erle of Dunbar was dead, vpon Wednesday, threttie of Januar, 1611. *Haddington's MS. Collections*, Adv. Library.

³ Here follow the other names before mentioned, already marked as Assessors and Assise, together with Walter Lord Buccleuch, Walter Lord Blantyre, James Lord of Bewlie (Sir James Hay) comptroller, and Sir John Cockburn of Ormiston, Justice Clerk, who had probably absented themselves.

⁴ Preserved in the Advocates' Library, Edinburgh. ⁵ After a careful examination of the Warrants of the Privy Council, no traces of the original Letter are to be found. ⁶ Disinterested, impartial. ⁷ The envelop of this Letter has unfortunately not been preserved; but, from internal evidence, Sir Andrew Moray of Balvaird seems to have been the person to whom it was addressed.—The original is among the *Dennyhne MSS.* Advocates' Library, A. 2, 40.

the whilkis S^r JAMES ELPHINSTOUN President of the Seffion of Scotland is reduced, for the Letter sent to THE POPE and Cardinalis by Mr Eduard Drummond; and specially, becaus the President is so neir to you by alliance. As twiching the Presidentis Confeffion to haif sent that dispatche to POPE and CARDINALIS, without his Ma^{ties} consent or commandement, I will not mell me with that; nor any thing what it may merit; bot, becaus I assited Mr Eduard Drummond in all that negociatioun, thinking it to be to the Kingis weill and service, and communicatioun of all the Lettres¹ that was broght for that effairis, I thought it expedient to informe you of the veritie of all. There was no thing wrought in that negociatioun, which was not thocht to be for the Kingis Maiesteis service; which was, to procure the Bischope of Wefone advancement to the degrie of Cardinall; to the end, that his Ma^{tie} fuld haif in the Colledge of Cardinallis, one of his trew and faithfull subiectis, to advance his Ma^{ties} service, and dasche and stop that which might be to his preiudice; and specially, that thay fuld not excommunicat his Ma^{tie}, or absolve his subiectis from his obedience, as there was some at that same time bisfite to procure it: And therfore, was alledgit, that siche rigorous proceedingis in other Popes dayes did not advance, bot hinder the Catholick cause: And therfore, Pope Gregorius XIII. was constrained to grant to the Catholick, to acknowledge and obey the last Q. of England, in all thingis; which was expresse against the Catholick faith.² It was not gevin to vnderstand to the Pope, that the Kingis Maiestie was in any dispositioun ather to come or favour the Catholick Religioun; for the contrair was conteyned expresse in the Letteris³ saying, that albeit he remaned constant in that Religioun in the which he was nourished, frome his cradle, yit he wald not be enmye and persecutour of the Catholikes, so long as thay fuld remaine faithfull and obedient subiectis to him; as indeed his Maiestie had evir done, vntil the horrible and barbarous Conspiracie of the Goone-ponder: ffor in Scotland, to thame of our ordour,⁴ who ar holden the most odious, and persecuted to the deathe be the Ministeris, he did nevir vse more rigour nor to banishe thame out of the cuntry, and constrain there parentis⁵ to obleis thame, vnder paines, to cause thame depart. The calumneis of sum passioned writteris, and speciallie of him who answers the Apologie or traite, intituled 'TRINO NODO TRIPLEX CUNEXUS'; who improperatis to the Kingis Maiestie to wald haif deceived the Pope, to whome he gave hoip to favour or imbrace the Catholick Religioun, is onlie to disgrace, in what he may, the Kingis Maiesteis self, and some Catholicks whome thay haitt without iust caus, without veritie or charitie; which fuld not be imputed to all Catholickes, nor to the CARDINALL BALARMINE, who is not authour of that booke. Amongst the Catholickes ar many honest men, affectioned to his Maiestie service, in all thingis thay may with goode conscience, and faistie of the Catholick Religioun; amongst whome I wald not be the hindmest, as I haif ever bene and falbe to my lyveis end. And heir I leif to truble your worship, with my humble and heartly recommendatiounis redoublet to your goode affectionis, as to my L. Vicount of Fentoun⁶ your Vncle.⁷ FROM AIGNON, the 27 of Januarye, 1609.

Your worship most humble and affectioned coufenge and fervant,

(No address)

WILLIAME CREICHTOUN.

VI. LETTER from SIR THOMAS HAMMILTOUN to KING JAMES VI.⁸

PLEASE YOUR MOST SACRED MAIESTIE,

HAVEING refused from the Earle of Dumbar, the LORD BALMERINOES Confeffion of his most heynous offensis, committed aganis your Maiestie, togidder with your Maiesties two Letters, contean-

¹ The words 'and instructions,' added on the margin, in another hand, and deleted. ² Inserted on the margin, in the same hand, 'and sick service, who evir had done it, ather with or without Commission, apperis to meritt rather thanks and reyard nor hard treatment.' ³ On the margin, in another hand, afterwards deleted, 'and instructions.' ⁴ Jesuites and Seminary Priests. ⁵ Blood relations. ⁶ The celebrated Sir Thomas Erskine of Gogar, who killed Alexander Ruthven, at Perth, Aug. 5, 1600. He was created Earl of Kellie, Mar. 12, 1619. ⁷ This seems to prove the Letter to be addressed to Sir Andrew Moray of Balvaire. See his ingenious Letter to the King, Jul. 13, 1608, No. XIX, (14.) of the Collections relative to Gowrie's Conspiracy, vol. ii. p. 323. ⁸ From the Original, preserved in the *Dennyne MS. Collections*, Adv. Lib. A. 2. 40.

ing sum materiall poyntis of his cairiage, in the practeifing of that mischeivous pourpofe, not conteaned in his Confessioun; I have, according to the iuste and wyfe direction of your priuie Letters, formed his Dittay, heirwith to be presented to your Maiestie, to the effect that these treasonabill crymes, which offered so dangerous woundis to your immaculat fame and royall honour, being considered be your most excellent judgement; that which is imperfyte, in my frame of this Dittay, may be amended by your Maiesties most judicious censure.¹ I have also ressaued from my Lord of Dumbar the resolutions of the grane and learned Ciuilians presented to your Maiestie, concerning this same fact, whairin thay have exprest their sufficiency in their proffession and faithfull affection to your Maiesties seruice; bot, being vnacquented with the grounds and course of oure Criminall Justice heir, have leaned to sum warrands, whairpon I dar not weill relye: Becaus, I foresie that I am to perfew ane man, more skilfull to pleade his lyfe nor any that was broght to the bar in this your Maiesties kingdome thir hundreth yeiris bygane; and who may expecte suche assistance of the best of oure lawers, as many vthers offendours, most guiltie of biest crymes, hes fund heirtofore: And albeit I think that the sentence gevin aganis him be his owne conscience, and vndeniabill treuth of the cryme, confirmed be his owne Confession, sould tak from him all desyre of contradiction, and hope of any gude by his defence; yet, knowing it to be my dewtie to be reddie for the worst which he or his assistants can abill to intend, I fall be cairfull so to prepare all thinges necessar for that persute, as your Maiestie, with Goddis grace, fall have full satisfaction, by the performance of your royall commandment, in the verie forme and substance whilk your Maiestie hes preserveyed. Gif the Judges do that dewtie, whilk in reason and justice thay owe, and I dowt not will faithfullie performe to your Maiestie, speciallie, seing my Lord of Dumbar² is to be ane ey-witnes of thair proceedingis, whois caire hes bene suche in directing the first part of the proces, which lyes to my chaarge, and exacting accompt of my diligence thairin; that, vsing the lyke with the rest of the Memberis of this Judgement, as I am assured he will, thay will neither get leifour nor leive to neglect or ouersie thair dewtie. In my chaarge, his instance fall be bot spurris to ane fast running hors; yet can I not deny that his judgement hes availed to remark and reforme dyuers things to the better. So wiffing to your Maiestie, in this and all vther your Royall dissenis,³ most honorabill and happie succes; and to myself, your Maiesties gracious acceptance of the weak indeuours of ane most faithfull hairt and affection in your Maiesties seruice, I commit your most excellent Maiestie to Goddis bliffed protection. Ed^r, this 9. Feb 1609.

Your most sacred Maiesties most faithfull and most bundin servant,

S. TH. HAMILTON.

VII. *NARRATIVE drawn up by LORD BALMERINOCHE, containing an Historical Account of the various Proceedings adopted against him, in England and Scotland.*

[SINCE the preceding sheets were sent to press, the Editor, being anxious to investigate the truth or falsehood of Lord Balmerino's Treason, has pursued as extensive an enquiry as his present limited opportunities permit. It must be satisfactory to all who take an interest in such investigations to learn, that the indefatigable Wodrow has preserved a Transcript of a Memoir, bearing every mark of authenticity, and which is said by Calderwood, in his MS. Church History, to have been prepared by this unfortunate Nobleman, during his exile. Although somewhat prolix and verbose, which is common to

¹ This amended draught has been preserved by Sir James Balfour, and contains very minute and laboured corrections. The King was very partial to such employment, and the crafty Hamilton ministers here to the King's vanity, in no measured terms. ² The reader has already seen how 'earnestly' this Nobleman 'travelled' with the Judges, &c.

in the matter of Logan of Restalrig's forfeiture; and the corrupt modes which he scrupled not to adopt, to gain his ends. See this Coll. vol. ii. p. 292, for another extraordinary Letter of Sir Thomas Hamilton to the King; and also Robertson's Hist. ii. 223. Hailes' Memorials of James I. p. 16, &c.

³ It seems doubtful whether this is a lapsus for 'business'; or whether the word 'designs' is meant.

all similar compositions at that period, it must for ever set this point of History at rest; and not being written for the purpose of publication, but professedly for the information of his personal friends, and of the private perusal and instruction of his son, and for his warning, in the event of his entering into public life, it is so much the more impressive, and carries with it an air of candour and truth, 'nought extenuating,' nor 'setting down aught in malice.'—During the search which it was necessary to make among contemporary MSS. the following remarkable passage, which occurs in Anderson's History of Scotland, seemed to be worthy of preservation. 'His freindis and intereit servantis maid the word goe abroad, that the said Prefident not only had a Commission for wrytting of the said Letteris to THE PAIP and CARDINALLIS, bot also that he hade a Remission for the famyn, if ever thei sould be querrelled; as in sum misfur appeared; for he was no wayis frayed for the said Sentence, be reafon, efter his returning to ward, his imprifonment was enlarged still mair and mair, till in . . . ' he tuik feiknes and died. Bot for feir of bakcalling and renewing the saidis proces, he was quyetlie buried, no man knawing quhar, except a few only of his awin freindis. And within 3 or 4 yeiris efter, his haill landis and honours was restoirod bak again to his son and children.'¹]

THIS LETTER² and Instructions, written be Sir Edward Drummound, with the rest of that Dispatche, I presented unto his Ma. shewing it was Drummounds dispatche for the Bishope of Vizone. So all the Letters were signed, without asking to whom they were directed, clofied and sent to the Archbishop of Glasgowe,³ to be directed at his discretione. So Sir Edward received them not in Scotland, but they were sent in Monsieur Bethun's packet, leaft otherwise they might be intercepted. It may be easlie considered how necessar this service was for his Ma. as matters then went, there being small hope of Englands favour; Essex being then in his triumphe, and Valentine Thomas his proceesse at the very tyme in deducing, in his Ma^s prejudice, to disable him in his clame to the Crowne; and what respect could I have had then, other then my faithfull duty. For it proving, as it did, verie profitable for his Ma. in such fort, as by directione from Rome, all the Catholicks in England prepared themselves in armes and horses, for maintenance of his Ma^s title; and, at Rome, the Spanishe courfes were erofed. It was reputed by them that truelie loved his Ma. the best service that euer was done hime in that kind; Likeas Sir James Lindfay's imployment followed after it, and speciall dealing with diverse Catholicks of England, wherewith the greatest guiders of England being terrified, and Essex taken out of the way, the Earle of Salisburie, then Sir Robert Cecil, by Lord Harie Howard, now Earle of South-Hamptoune, sought means to his Ma., by Catholicks. They sought means to his Ma., and they were then the surest fort his (Ma.) had there: Likeas HIS MA., in his first Speech in the Parliament-hous, extant in print, and a printed Proclamatione under his Ma^s hand, did not difemble how farre, as a Prince, he was bound to POPE CLEMENT, what great loyaltie and affectione he had found in Catholicks, and ever, whill⁴ that detestable Powder Treafone (abominable in God's fight, and detestable and damnable to be remembered and curiod, by all memorie,) his Ma. continued not farre from that same minde, whill the policie of some curious heads, fearing lest his Ma. should have looked more narrowlie in his owne estate and their actions, and knowing his inclinatione to be tickle in these points of Religione, sett him on work to that *Triplici nodo triplex cuneus*, which procured that answer of TORRUS, Bellarmine's Chaplaine, unknowne, as I am crediblie informed, to Bellarmine, and not unknowne to some stats-men ther, to exasperate his Ma. not onlie against the Court of Rome, and his owne subjects in England, but to vouchsafe his charitie upon me, against whom their malice, although not deserved for any particular of my owne, is well enewgh knowne. Their malicious intention, thus founded, was well fecunded by the malice of my enemies at home, the insolenzie of some of the Bishops, and ambition of one, of whome I had deserved better. The Plott is secretlie contrived, that I shall be brought to a Confessione of it—his Ma. to disallow it—and, consequentie, my undoeing.

¹ He is said, by *Caldewood*, to have died in the end of May, 1612. See No. VIII. of this Appendix. * *Anderson's MS. Hist. of Scot.*, Adv. Library, Fol. 652.

² A copy of the Letter to the Pope precedes this Memorial.

³ James Beaton, second Archbishop.

⁴ Until.

There came never anie thing of this to my knowledge, before I came to St Albans, in the beginning of October 1608, the verie night before I come to Roisfont to his Ma. The advertiment that I had, was, that I had procured Letters, unknown to his Ma., under his hand, to THE POPE, whereby he had promised, that how soone he should come to the Crowne of England, he should either declare him self Catholick, or at least he should grant a toleratione to all Catholicks within his dominions; and had procured to make the Bylhope of Vaizon a Cardinall. The last part, because it was true, I thought it not to be denied; but the first, which was alluterlie false, I refused.¹ At my coming to Roytoun, Sir Alexander Hay, (in whom I reposed as great trust as in my self,) having formerlie perswaded me, most traterouslie, that his counseil of accepting to be seconnd Secretarie,² which at first I disliked, was a plott of my enemies, to his prejudice and mine both; and so, had perswaded my most assured and worthie friend Mr Thomas Murrey of his h(ighness) affection to me, which I did over credulouslie beleave. Coming to me, I complained that I was wronged, in so much that I had not gotten more tymous warning of their calumneis and his Ma^s discontentment against me;—excused himself, that he had sent me a packet, but that (I) had mislaid it be the way;—that it was a mater that I needed not to care fore, seing his Ma. desired no more, but to know the truth; and would not be discontent, if, in the point of his Religione, he were not ingadged. So, I confessed the simple truth. He, in the meane while, had his dailing, unknowne to me, with the Bishop of Glasgow, who infected his Ma. that, so long as I was officer,³ their state could not be raised:⁴ And having assayed manie other means to disgrace me, could effectuat nothing. Having the authoritie of the greatest there to concurre to my overthrow, they did so dispose his Ma. as, without anie shew of discontentment, he askes of me Sir Edward Drummond's Dispathe, and specialie, of that Letter to THE POPE. I could not denie that which was weill knowne to his Ma.; and that which was contained in Tortus book, was not farre different from the truth; for the words are, (speakeing of his Ma.) *Literas humanitatis et officii plenas scripsit ad PONTIFICEM MAXIMUM, quibus præter cætera rogavit, ut ex suis subditis aliquis Cardinalis S. R. E. crearetur.*⁵ But his Ma^s promisses of conformitie or to alteratione of Religione are not ascribed to my Letter, but to the promisses of some of the Ministers. Nixt, his Ma. asked, 'if ever he had consented to call THE POPE his *Father*?' I granted that he still refused—and in that, I had presumed, for the good of his Ma. service, after his Ma. had subscribed the Letter, to cause Sir Edward adde the Pope's ordinarie stiles; wherein, if his Ma. conceived anie offence, I was to crave his Ma. pardone to be disavowed in that, and to cleare his Ma. so farre as anie would twiche him therewith.

This past in Roytoun, on Sunday, in the morning, before Sermon, betuixt his Ma. and me, privatlie, in his withdrawing chamber. Sir Alexander Hay, who had still his practises with the Bishop of Glasgow, having learned of his Ma. how farre I confessed, advised his Ma. that my Confessione should be retreated,⁶ in the hearing of some others: And, to the end that I should not suspect their intentione, at my

¹ Denied. ² It is difficult to get at the truth of State intrigues, and to detect the real causes of such a change as that referred to by Lord Balmerinoch in his interesting Narrative, even at the time of their occurrence. His Lordship is, no doubt, very particular in his details, which are likely to be correct; for his Narrative was evidently intended for the perusal of those who must have had the best opportunities of knowing the facts. In a valuable Collection of State Papers, preserved in the General Register-House, Edinburgh, transcribed by Sir Thomas Hamilton (Earl of Haddington,) there occurs a transcript of the original Warrant of Sir Alexander Hay's appointment to the Office of Joint-Secretaryship, in the following terms.

³ HAVING choising MR ALEXA HAY to be on of our Privie Counsell of that our kingdome; and thinking it no way fitt that he should still attend vs heir at Court, for Scottis dispatchis, as deput to any other, We have thairfor joynd him in office with the *Lord of Balmerinoch*, our Principall Secretar, (quho being enforced, he his greitt imployments in our service, to continew thair, for the moist part,) We intend to have said Mr Alex^a our attendar and resedentaire heir at Court, for the better dispatche of the affaires of that Kingdome. And our plesour is, that yow caus tak his oath, as Secretarie unto vs. Quhairanent their presentis salbe your Warrant. [JAMES R.]

To our rycht trustie and welbelovet cunsine and counsallour, the Erl of Dumfermling, our Chanceller of that our Kingdome of Scotland.

⁴ Secretary of State. ⁵ Episcopacy could not be restored. Balmerinoch had obtained large grants of Church Lands, &c., and it was, therefore, his interest to preserve matters in their present state, for fear of a resumption of these livings taking place, which would thus strip him of a large portion of his income. ⁶ Rehearsed, reiterated; not *retracted*, which at first sight it would seem to import.

second Examinatione was present but Sir Alexander Hay, whom yett (as God judge me, I trusted as my self.) There I confessed, before his Ma., as befor, that his Ma. ever disaffented to yeild the Pope any stiles; and, at the subscribing of the Pope's Letter, I acquainted him no farther, but (in) generally, that it was to Sir Edward Drummond's Dispatch, anent the Bishop of Vaizon. That I caused Sir Edward add the stiles; and for that, upon my knees, most humbly I craved his Ma. pardone. Then, be his Ma. countenance, and some rounding¹ that past betuixt his Ma. and Sir Alexander Hay, I beganne to be in some suspicione. The King commanded me that I should repaire to Londone,—remain there whill I knew his pleasure—and in no case to repaire to the Queen's Court. Immediately, Sir Alexander Hay, the Bishops of Glasgow and Galloway conferred with the King, anent my Confessione; and were discontent that I had not presentlie sett it down, under my hand; yett, fearing least I should have suspected their policie, they would not then urge me anie farther.

The next Munday I raid to London. Sir Alexander Hay and the said Bishops raid before me; and Sir Alexander went to my Lord Salisburie, (and) acquainted him with all was past. Then begane I to suspect the counse, and to repent me I had gone so farre. I sent to the Earle of Salisburie, desired I might have an assignatioun to come to him; who did returne answer, that he was advertised from his Ma. that I was commanded to keep my house; and so it was not fitt I should come to him. Thus did I mistake his Ma's command; for in that (I) was forbidden to repaire to the Queen, then lying at Hamptoun Court, I thought all other places, within Londone, were free to me. Likeas, I went to Lambeth, to the Archbishop of Canterburie,² and to Whitthall, to the Earle of Dumbur; the said Sir Alexander allwise in companie with me, never giving me notice of his Ma's pleasure to the contrarie, whill³ I had it of the Earl of Salisburie; of purpose, as I have since found it, to exasperat his Ma., as a contempt not ordinarie there, where his Ma's commands are verie ceremoniously observed. But, as God shall judge me, I never heard anie other command from (his) Ma. but to attend his pleasure at Londone, and not to repaire to her Ma's Court.

Wedniflay thereafter, Sir Alexander Hay, having repaired to his Ma. comes with a Note, under his Ma. hand, commanding me that I should sett doune in writte the passing of that Letter to the Pope, and the circumstances, so far as I could remember. Beginning then to apprehend the businesse, and having gotten warning of his Ma's displeasure, and the advantage my enemies presumed they had gotten, I become more spairing; and by my Letters to his Ma. desired that I might be excused that I could not sett down the particulars of that, under my hand, after so long a tyme; except that either I were in Scotland, where my papers might bring me to remembrance, or that I had mett with Sir Edward Drummond; begging his Ma's patience, whill³ I might send for him; which I offered to doe with convenient speed, who should bring with him the just copy of that Negotiatione, and should give his Ma. and all the world satisfactions of the truthe. But that was not intended; but contrarie to the truth, to big upon me an unjust imputatione; wherof the production of the Letter would have made me cleare.

THE COPIE of the LETTER sent to HIS MA. the 12 of October (1608.)

Please your most sacred Ma.

In these particulare points your Ma. did demand of me, so farre as I can remember, I answer for your Ma's satisfactions; That your Ma. (of my knowledge) did never command or direct any Letter to be writtin to the POPE, neither was I present when Sir Edward Drummond moved your Ma. for any such Letter. That your Ma. did never stile your self 'FILIIUS' in any Letter, but to your Mother-in-law, the Queene of Denmark. That your Ma. did never writt 'FATHER' or 'HOLINESSE' to any. As to the Letter written be your Ma. to POPE CLEMENT, although I doe remember that there was some such Letter, containing nothing but a Recommendatione of the Bishop of Vaizone, I humbly crave your Ma's pardone, if I can make no declaratione how it was past, whill Sir Edward Drummond, who was the author, bearer and procurer thereof, be first examined; whom I am about pre-

¹ Private communings; whispering.

² Archbishop Bancroft, formerly Bishop of London.

³ Until.

fentlie, with your Ma. permiſſione, to ſend for, by whom the whole circumſtances of that mater ſhall be clearlie detected. For I proteſt before God, for the preſent, I cannot perſettlie remember how that mater was paſt; moſt humble craving your moſt ſacred Ma. (ſince I am moſt willing, for your Ma^a obedience, to clear your Ma. of that before all the world) that in remembrance of my loving and affectionate humble ſervice, yee will be pleaſed to accord me the tyme and meanes, wherby the veritie of my part in all that mater may be maniſteſt; which as I doe expect, out of your Ma. princely accuſtomed clemencie, ſo ſhall I ever pray, &c.

COPIE of the LETTER to HIS MA. the 15 of October 1608.

I DOE remember that I moved his Ma. divers times to have written to THE POPE, both to have taken notice of his kindneſſe, and to have recommended the Biſhop of Vaizon; and that his Ma. did reſuſe, onlie for that he could not, with ſafe conſcience, yeild him theſe titles of 'Father' and 'Holineſſe,' which he¹ did allow: But if otherwiſe the Pope would have accepted his Ma. Letters, with the Titles of other Temporall Princes, he would have written him. As to the circumſtances of paſſing of that Letter, I proteſt before God I cannot call them to my memorie; but by conference with Sir Edward Drummond, and with ſuch as ſerved me at that tyme, and with ſuch other adminicles as I will find in my own papers, I hope I ſhall give his Ma. ſatiſfactione.

HIS Ma. not content to admit my delays, remembering the circumſtance of that negociatione better then I, he ſetteth down a number of interrogations, under his hand, with a Letter to the Counſell of England, commanding them to examine me. Being brought before them, I at firſt declined their Judgement, till they declared that they would not take upon them to judge me; but, following his Ma. commandement, to examine me and remitt me to my ordinarie Judge. In end, to all the particulars, I answered, in ſuch fort, that they could not mend themſelves, nor bring me in compaſſe of any Law. The Earle of Dumbar, the Lord Skoone and Sir Alexander Hay preſent.—Thereafter his Ma., being diſcontented of my unwillingneſſe to cleare him, and to burthene my ſelf with the fault, yea to tak upon me ſome points (which his Ma. affirmed he remembered,) which, in truth, I could not call to my memorie, the Earle of Dumbar directed the Lord Burlie² to me, a verie favourable and faſt Nobleman, and who had, immediatlie before the Earle of Dumbar's parting out of Scotland, renewed a frienſhip between him and me, which was the greateſt cauſe of my repair to Court, that it might be confirmed there, before the Queen's Ma.; and his Ma. ſatiſfied, by the Earles meanes, of whatſoever hard opinion he had conceived either againſt the Chancellor or me, by ſuggeſtione of the Biſhops. His credit from the Earle of Dumbar was to adviſe me, for my own good, ſince it was confeſſed by me that ſuch a Letter was purchaſed, and that his Ma. had denied it, that rather, ere the imputatione ſhould lye upon his Ma., I ſhould take it upon me. When I obtended the perrell of my eſtate, his Ma^a diſcontentment and their malice, the Lord Burlie gave in this aſſurance, that my life, eſtate, nor Ropar's Reverſione ſhould be in no danger. As to my Offices, to leave them to his Ma^a diſpoſitione; whether he would take them from me or not. I finding manie enemies there, and being ſtraitlie kepted, I enter, be the Lord Burleyes meanes, who from the beginning has ever kepted an honeſt part to me, in a more particular freindſhip with the Earle of Dumbar. And, becauſe the Lord Skoon and Sir William Hart had diverſe tymes travelled with me to have married one of the Earle of Dumbar's ſiſter-daughters, I was content to give him my eldeſt ſone to be diſpoſed upon in marriage at his pleaſure, to give the Palace and Park of Hallyroodhouſe; and if he deſired Reſtalrige, he ſhould have it for the price I bought it. Theſe conditions, as the Lord Burlie told me, pleaſed him, and ſo he would take upon him my protectione, if I would follow his advice, which I was content to do, knowing what power he had, and how eaſie it was to him to calme all ſtormes; allwiſe deſiring him to carie his affectione to me ſo ſecretlie, as the Biſhops, Sir Alexander Hay, the Earle of Wigtoun and others my ſmall friends,

¹ Viz. the Pope.

² Sir Michael Balfour, created Lord Balfour of Burleigh, in Kinross-shire, Aug. 7, 1606.

should know nothing of it. He was so diligentlie allwife attended be some of these, that after he had appointed me diverse meetings, he could never meete with me; alwife, he assured me what ever the Lord Burlie should say, in his name, I might trust it, and he would performe the same. And hearupon I desire my friends to enquire the Lord Burlie, if this assurance was not given be the Earle of Dumbar, that my life, my estate, and Ropar's Reverfione should be sure; as for my Offices, they should rest in his Ma. dispositiōe; and it might be I would not want them.

The Earle of Dumbar thus entered in conditions with me; and the Lord Burlie putt in trust, for hime and me both, for all conditions on both parts. The first directione was, that I should write a Letter to him, desiring he should convene the Earles of Salisburie, Northampton and Suffolk, befor whom I should grant all the King's Articles; and thereafter write a Letter to his Ma. to the same effect. He willed me to use these three Noblemen to strengthen his credit, that they being engadged to be my friends, he might the more easilie worke that he had undertaken; and all the said Noblemen promised upon their honours that they should be my friends, and would joyne with the Earle of Dumbar to satisfie his Ma. All which I performed. Then was I delivered in the Earle of Dumbar's keeping, who promised that I should allwife be his prisoner; and at my returning to Scotland I should be wairded in the Castle of St Andrewes. By this advise, I wrote a becomming in his Ma. will, which the Lord Burlie gave him. He returned me an answer with him, that his Ma. was weill pleased with it, and all would go weill; onlie, I was desired to adde this, that I would renew the same judiciallie, when I should be required; which I did.

THE COPIE of the LETTER to his MA. 24 of October 1608.

Most gracious and dread soverane,

It is over great presumptione to offer to your most princelie eyes these lynes, from the hands which have so highlie offended your most sacred Ma.; but, because it was continuance in my offence to labour to obscure the cleare soule of your Ma^s unpotted integritie, and that the imputatione of my misdemeanour, which I justlie deserve, may lye upon my self, and your Ma^s innocencie cleared to all the world, I have truelie sett down here, how that Letter to POPE CLEMENT, wherewith your Ma. is fallie taxed, was, without your knowledge, past your hand, amongst other Letters which I did present to your Ma., by the abuse of your Ma^s trust, whereof I was not worthie. In the year of God 1598, at the earnest sute of the late Archbishops of Glasgow,¹ your Ma^s Ambassader then resident in France, the Bishop of Vaizone and divers others your Ma^s weill affectioned friends and servants, both in Italie and France, who were verie earnest to have had some correspondents betwixt your Ma. and the Pope. Sir Edward Drummond being directed by them in Scotland, to follow that businesse, I presumed divers tymes to move your Ma. therein; and did offer to your Ma. the frame of such a Letter as I would have signed be your Ma. to the Pope; whereunto I never found your Ma. so unwilling as your Ma. did altogether refuse to write; denying ever to write anie Letter, with these titles which the Pope did assume to himself. But I being in my too great zeale, and assured hops were given me by greater statemen then my self, of the benefite would come to the strengthening your Ma^s title;² by the Pope's friendship, overcome with weaknesse, and presuming that the successe of my true intencion should efface the memorie of my offence, I caused draw up a Letter, with the said Sir Edward's hand, as from your Ma. to the Pope; but verie spairinglie, onlie containing thanks for his kindnesse and bygain favour, with Recommendatione of the Bishops of Vaizone, your Ma^s native borne subject, to be made a Cardinall. To the which Letter, among others of that kind, written to the Duke of Florence, Sawoy and some Cardinalls, in favours of the said Bishop, (all presented be me unto your Ma. one day in the morning, when your Ma. was going a hunting, in haste,) your Ma. did sett your hand: For your Ma., finding the Letters all in Latine, and the Bishop of Vaizone's Recommendatione the subject, and having formerlie refused to write to the

¹ James Beaton, the second archbishop of that name.

² To the Throne of England.

Pope, did nothing suspect that anie such thing should have been offered to your hand. And after your Ma. had signed it, Sir Edward Drummond did adde the Pope's files, both in the beginning, and above your Ma's subscriptione in the end of it. Some Letters, two or three as I remember, signed be your Ma. to some Cardinalls, containing nothing but thanks and commendatione of the said Bishope, were given to the said Sir Edward cloffe, catchetted, to be directed, by the Bishop of Glasgow's advice, to such of them as were, in his judgement, best affected to your Ma.: And I did hear, after, two of them were given to Aldobrandine and Bellarmine, and the thrid to Cajetan, who was Protector of the Scottissh Natione. Here was my first fault of preposterous zeale, weaknesse, and presumptione. My nixt was fear of your Ma's displeasur; becaus the late Queen's Ambassader having expostulated for your Ma's dealing with the Pope, and I being asked therof, be your Ma., I did pertinacionlie denie that there was anie such mater; and for your Ma's better satisfactiōe, I moved Sir Edward Drummond to returne into Scotland; who, being examined, did at my desire justifie my deniall, and that he had caried no Letter for the Pope. I pressed him, verie instantlie, at his returning, to labour to reter the said Letter, and to destroy it, fearing least the knowledge of it hereafter might breed your Ma's discontentment, as it hes done at this tyme, to my exceeding great sorrow. And becaus my attestatiōe in this kind, which I protest, before God and his angels, is true, and yett will not be a sufficient liberatiōe of your princelie honour, which is dearer to me then my life, I am not hearily to beg anie pardone, but that your Ma. in your most rare and princelie wisdome, will take such course, but¹ any respect unto me, whereby your Ma's innocencie and my offence may be made knowne to the world. And so, in all humilitie, attending to suffer what your Ma. will impose, and to obey whatsoever your Ma. will be pleased to command, I pray God grant your sacred Ma., according to the sinceritie of your heart, a true and just contritiōe of all your actions befor all the world, and, after a long and most prosperous raigne, eternall felicity.

COPIE of my becomming in Will, 3 November, 1608.

Please your most gratus and sacred Ma.,

As at the verie first I did ingeniously Confesse my offence, and have particularly sett down under my hand the whole circumstances of it, and likewise answering to the severall interrogatours whereupon I was examined, I have in everie point declared the veritie; so, still continuing most desirous that your Ma's honour should be free of any such imputatione, and my offence without anie longer delay knowne to the world, doe, by these presents, in all humilitie, freele and absolutlie submitt my self, and become in your Ma's Will; that since onlie against your Ma. my offence is committed, so your Ma. will irrogat unto me such punishment as in your true justice and princelie clemencie I have deserved. And this my becomming in Will, I will renew, or reiterat in Judgment, or without, so oft as I shall be required.

AFTER this, the Earle of Salisburie causes be drawn up, upon his Ma's Interrogatours and my Answeres, a forme of a Depositione, making everie particular deid to be Treasone—that I had traterouslie conspired with Sir Edward Drummond to deceave the King, and steall his hand to a Letter to the Pope—that I had traterouslie caused put the catchett to it—and that I had commanded Sir Edward, above the King's subscriptione, to writte '*Sanctitatis v. obsequitissimus filius*,' so like the King's hand as could be—and so, I had made him fallie to counterfoote the King's hand. This Depositione being offered to me to subscribe, I refused (at) the first; becaus it made that to be Treasone and treasonable which was not; since the Letter contained nothing but meere complements, and a commendatione of a Scotisshman to be a Cardinall; and that ane Officers trust was greater then to procure a common commendatione; and the putting of the Catchett to it was lesse treasonable; seeing by that Letter his Ma's honour, nor state, nor Religione, was not harmed, nor no damages nor inconvenience had followed upon it. The last part was directly *crimen falsæ*; and as I had not deposed it, so it was not true. Att this meeting were present the Chancellor of England, Salisburie, Northampton, Suffolke,² my lord Duke

¹ Without.

² Thomas Howard, Earl of Suffolk. He was Lord Chamberlain at the time of the Gun-

of Lennox, the Earle of Dumbar, Sir Thomas Smith Clerk of the Counsell, and Sir Alexander Hay.—My answer to the laft, the Chancellor granted to be true, and that it was but a mistaking; and so it was mended, and that article deleated, in so farre as it concerned the counterfooting of the King's hand. As to the first, my Lord of Salisburie answered me, that what they had sett down was onlie to give his Ma. satisfactiōe; and it was nothing to me, since his Ma. had accepted me in Will, was to deale gratiouſlie with me, and not to proceede iudiciallie with me any more. Whatever might please his Ma., and in his Ma.^s opinion give the world satisfactiōe, and clear his honour, since it was not to harme me, it was unfit that I should refuse his Ma. to give his Ma. what should please him, seeing it was not to prejudice me. And upon this assurance, and the Earle of Dumbar's former Declaratione, that the King had weill accepted of my becomming in Will, and that my not subscribing of this Depositione hindered the progresse of the King's answer to Tortus booke, wherof this Depositione behoved to be a part, I sett my hand to it, in prefence of the Noblemen and others above written, who, I am sure, upon their honour, will not denie it. And hearupon I desire my friends to inquire the Duke of Lennox, the Earle of Dumbar, and Sir Alexander Hay.

LAST, the King's Ma. having concluded to returne me in Scotland, because all this matter was carried with a great shew (as was said to his Ma.) to cleare his honour, but in effect to disgrace me, and make me odious, I was brought before the Counsell. (Not only) all the Noblemen, both English and Scotish, (and) all the Judges were brought, but all the Court, so many as the Counsell-Chamber could containe. *The Chancellor* declared the cause of that solemne meetinge, made my Depositione to be read, and with a long harrange and many reasons did aggravat my offence, to his Ma.^s great praise; and in the end, remitted the matter to Scotland, to be judged there. Nixt, *the Earle of Salisburie* had as long a discourse, all to disgrace me, to flatter the King, and to shew his eloquence. Thridlie, *the Earle of Northampton*, to testifie his zeale as a witness, how alien his Ma. was from anie dealing with the Pope, these 18 years he had kept correspondence with his Ma., damned all my proceedings. I had warning the night before that I was to be so used, as the Lord Burleie,¹ who had bene mediator betwixt the Earle of Dumbar and me, being departed to Scotland, I was forced to fend for James Bailzie, a verie trustie young man, to whom I am infinitlie bound, and who (nixt my Lord Burleie) was verie privy betwixt the Earle of Dumbar and me; whom I desired to shew his lordship, that I understood that I was to be brought before the Counsell the next day, and that they were to raill upon me. That he should not think it evill if I should say, for my owne defence, that which I would make good; that there was no point which they were to lay against me, which I would not answer. He returned James Bailzie to me, with this answer, earnestlie praying me, since that was the last that in that earand was to be done, not for my prejudice, but for his Ma.^s honour and satisfactiōe, that I would answer nothing; but in all humilitie acknowledge my offence, cleare and liberate his Ma., renew my becomming in Will, and desire my Lords of Counsell to become intercessors, that his Ma. would end the processe, be his Declaratione. This would be most acceptable to his Ma., who would be behind a peece of tapetrie,² and if I played my owne part right, his Ma. would be best pleased. Which I also obeyed.

The Chancellor, in Counsell, produced his Ma.^s Warrant, declaring his Ma.^s Will, that I should be no more one of that bodie. Which Declaratione of his Ma.^s Will, having no Convictione nor Warrant, but my becomming in Will was ane acceptatione of it; so, having declared a part of his Will, by no law, thereafter, he might have proceeded iudiciallie with me. Immediatlie after the Counsell, the Earle of Dumbar sent James Bailzie to me, to give me thanks; and to shew how weill his Ma. was pleased;

powder Plot, and was, with Lord Mounteagle, the chief means of detecting that remarkable Conspiracy. See *Carte*, III. 757.—*Winwood's Memorials*, II. 171. Suffolk was turned out of his office, in 1618, for embezzlement, &c.

¹ Sir Michael Balfour, Lord Balfour of Burleigh.

² This was by no means an uncommon practice of 'his most sacred Majesty,' and conveys no favourable idea of the course of his proceedings, in this remarkable transaction. It reduces the whole matter to a mere stage trick, and a solemn mockery of the highest Tribunal and personages of the Country.

and that his Ma. would have that in writt, which I spake. Which also I sett donne. And because there was some words his Ma. (as he affirmed) desired to be added, which he affirmed I spake,¹ the words written with his hand, and brought to me be the said James Bailzie, I insert with my hand and subscribed; and send them to him, with the said James. And hereupon I desire, if need, that my friends may inquire the said James.

THE summe of the Counsell of England's proceedings, on Sunday, the 13 of November, 1608.

THE said day, in the after noone, the whole Counsell being convened in the Counsell-chamber, the whole Judges, and all the Noblemen, both Scottish and English, that were at Court, THE LORD CHANCELLER² beganne a verie grave speech, wherein he did earnestlie require audience and attentione, in respect of the great consequence of the mater he was to speake of. It was so much the greater, that it was a noveltie wherof he had never heard, nor (to his knowledge) in all his books read of any the like president, of before. It was of great consideration, because it did touche the Kings most sacred Ma. and royale persone, both in his honour and his safetie, wherein did consist the safetie of the whole estate. The mater was also weightie, in respect of the persone whom it did concerne; a Nobleman of Scotland, raised to that estate by his Ma^s favour, and a Member of that board. As to the mater, because he might perhaps faile in the relating of it (which he was very unwilling to doe, in a mater of that kinde and weight,) therefore he desired the Instrument, containing the Lord Balmerinoch his Confession, and signed with his hand, should be read. The same being read, and acknowledged by the Lord Balmerinoch to be his owne Confessione, then he said to the Lords of the Counsell, that he did perceive, by their countenances, that they all did looke on that mater as if it were a mater wherein they were to give their sentence and judgement. But he prayed them not to thinke so; and that he would releave them of that burthen; because neither were they convened to that end, neither was the said Lord Balmerinoch brought down to make any answer; because that mater was transcendent, and of a greater weight than that board, or any Counsell board, could judge of it; but, because it was a fact committed in Scotland, be a Scottishman, before his Ma^s happie comming to the Crown of England, they would not doe that prejudice to Scotland, that was as ancient and free a kingdome; as they are so weill governed, with so many grave and ancient Noblemen; whose Nobilitie is continued and reserved with a farre greater respect and antiquitie nor their owne; so wise a Counsell of Estate, so learned and grave Judges, as in all these perfectionis they were nothing inferiour to them. Onlie, for the present, he would point out and offer to their considerations, that were present, some heads of that Confessione, which had been the consequents of that fact; and so remitt it to the own Judgement,³ and the Lord Balmerinoch to his own answer before his owne Judge. First, he desired they should attend the tyme when his Letter was written; to witt, when his Ma. was, in possessione, King of Scotland; in his title and undoubted royall descent, apparent of England. How this fact might have perrelled him both the one and the other, if it had been knowne that his Ma. had had any dealing with the Pope; for, in Scotland, the most of all the Nobilitie, gentrie, and whole bodie of the kingdome, being of the Religione they presentlie professe, would not have failed to have made insurrectione, if they had knowne that his Ma. had any dealing with the Pope. In England, the late Queene, of happie memorie, being a Prince verie jealous and narrow looking in all his Ma^s actions, if she had knowne that his Ma. had had any course with the Pope, she would have quicklie objected unto his Ma., that since he was taking a forane course to strengthen him, speciallie with these who had so often suted⁴ her life, she would likewise take another course, for her owne preservation; and so might have endangered his Ma^s just clame. Like as, in effect, the same dealing coming to her knowledge, she did incontinent send her Ambassader, and did most bitterlie expostulat with his Ma.; and the dealing, at that time, was denied; and so smoo-

¹ Balmerino was thus led forward by one piece of artifice after another, until, at length, he was so completely in Dunbar's toils, that retreat was impossible. ² Sir Thomas Egertoun, Lord Ellesmere, afterwards (1616) created Viscount Brackley.

³ To the natural and proper Court or Jurisdiction, in Scotland; where he would be tried by an Assise of his peers. ⁴ Pursued.

thered over. Nixt, he did mightilie aggredge¹ the great inconveniences that had fallen out, all (as he did affirme,) upon the dealing mentioned in that Confessione; first, that it had given occasione of ane infinit number of scandalous books and pamphlets to be written, wherein his Ma. was verie bitterlie taxed; and speciallie, he did there produce *Bellarmines* late book, under the inscription, which he did read, of one whose name being TORTUS, he did allude therunto that he was alwise *tortus*.² The parcell³ he read, was the fault found with Pope Clement's Breave; whereby he did command the body and estates of this kingdome of England not to admitt or receive a King, in case of the Queen's decease, but a Catholicke; and so did exclude his Ma. from his just title. To the which clause, contained in the book of *Triplici nodo triplex cuneus*, Bellarmine made this answer, that by that Breave, the Pope did not meane to exclude the King, because the name '*Jacobus*' was not mentioned in it; and withall, the Chancellor did observe, in the words he read, that *Bellarmino* did give the author of the book a lye, in the word '*mentitur*'; rather could it be meant of his Ma., because his servants and Minister had given great hopes to the Pope, that '*non erat valde alienus a fide Catholica*'; and thereafter, '*quia etiam Rex ipse scripsit ad Pontificem ipsum, Literas humanitatis plenas, quibus, præter cetera, rogavit ut aliquis a Natione sua Cardinalis S. R. E. crearetur, per quem facilius cum Pontifice res suas tractare posset*.' Which words being conforme to the Lord Balmerinoch's Depositione, the same had given occasione of the writing of that booke; in manie parts wherof his Ma. was bitterlie touched. Nixt, upone the occasione, contained in that Depositione, did grow all the Conspiracies that, since his Ma^e commeing to England, had fallin furthe; for by this dealing with the Pope, unknowne to his Ma. great hopes were given to the Catholicks, that when his Ma. should come to the Crowne of England, his Ma. should either declare himself a Catholicke, or, at the least, the Catholicks should have a toleratione of Religione, within his dominion; wherof, finding themselves dislappointed, they did move their Conspiracies. For fearcelie was his Ma. warmelie sett down in this kingdom of England, when Watfone the Preist and a number of his adherents did attempt against his Ma^e royall persone; for the which a number of them were apprehended and punished. Nixt, upon it came the devilish intentione and practise of the Powder Treafone, wherein was intended the taking away of the King, Queene and their posteritie, the Counsell, Bishops, Nobles, Judges, Gentry, and whole bodie of the realmes; for the which a number were punished, and a great many, in his Ma^e clemencie, spaired. Thereafter, that none should mistake their proceedings, in the tryell and examination of the Lord Balmerinoch, he declared all the points therof, adding, that although it was a case might receive judgement in England, in respect it did concerne his Ma^e persone, which hath so many priviledges that it draweth all Judgments⁴ after it; and that the Lord Balmerinoch that was to be judged was present, and so might receive his judgement there, yett fuch was his Ma^e respect to his ancient native kingdome of Scotland, and they were so farre from encroaching upon the liberties therof, and knowing the tender regarde that the Nobilitie and Estate would have to a mater that did so highlie concerne his Ma.; after a long reiterated discourse, in the praise and honour of that kingdome, Counsell, Nobilitie and government of it, declared, that they would remitt the mater to receive judgement there.

NIXT, THE LORD TREASURER⁵ begane a verie grave speech. After the dew commendatione of the Lord Chancellor, that had spoken before; that he was verie forie to have occasione to speack of a mater of that kind; but since it did concerne, so highlie, the life and honour of his most sacred Ma. (whose life was dearer to him nor his owne) he should be thought verie undutifull, being so manie wife bound, if he were silent in it. There, having given his Ma. his owne dew praise, at great length,⁶ he did next adde that he was forie to speake of it, in respect of the persone whom it did concerne,—a Nobleman, by his Ma^e favour, a Counsellor of State, yea more, a Secretarie of State, and one against whom, his deutie reserved in this, he would be loath to have spoken. The fume of his speech grew

¹ Aggravate.² Crooked, perverse.³ Portion, passage.⁴ Jurisdictions, Tribunals.⁵ Sir

Robert Cecil, Earl of Salisbury, Principal Secretary of State. He succeeded to the office on the death of Sackville, Earl of Dorset, in 1608.

⁶ Well knowing his Majesty to be behind the tapestry!

to that same end of my Lord Chancellor's former Speech, that his Ma^s dealing with the Pope might have breed him, in his owne kingdome, disobedience, and done him prejudice in his title to England; that if his Ma. had bene of the counsell of writting of that Letter to the Pope, he would affirme that he had bowed his knee to Baal; being desirous to establish, for his affaires, ane Advocat at Rome. Nixt, by the words of Bellarmin's booke, then produced, he shew, that the Pope took upon him to declare the Crown of England elective; because, by the words of the Pope's Breeve, the estate and bodie of England were commanded, first, '*non admittre*;' next, '*non institure, nisi Regem orthodoxum et Catholicum*'—so the heretable descent of the Crown of England was taken away, and behoved to be holden in alms¹ of the Bishop of Rome; that he would not be content to be Bishop of Rome, but would have all Europe at his dispositione. And, in another place of the booke, he shew ane conclusion more offensive to his Ma.—'*ergo REX JACOBUS neque est Catholicus, neque est Christianus*.' That, for himself, he did never say so much of any Catholick; and that he did verilie beleave that a true Catholick was *Christianus*. Nixt, he fell out upon the office of a Secretarie, the great credit and trust thereof; that in a Secretarie's breast is laid in store, the treasure of all the secrets of the kingdome; that *fides* and trust is of that nature, that *fides quæ semel accedit nunquam revertitur*;—that he feared, in tyme to come, his Ma. behoved ather to have no such officer, or ells divide the trust of maters of no importance to one, and common affairs to another;—that of a King's hand-writte, if it may be caried by² the knowledge of the Prince, is more dangerous nor ane army of twentie thousand men; because the one may be fore-seene, the other not. Nixt, in the nature of the fact, he compared the King's Seall with his hand-writt; that the Great Seall was but the King's image, but his hand-writte was his minde; but if any thing should be added above the Great Seall, for himself, he would think it verie near Treafone, leaving them to consider what it was to adde any thing above his Ma^s hand-writt. He desired to be excused if he were a little kindled, and did remember the manie favours he had of his Ma., that he possessed manie places that were fitter for others, yett none should goe before him in trust nor affectione.³ To testifie his Ma^s unwillingnesse to have dealing with the POPE, he did remember how his Ma. refused to receive anie Ambassader from him; and how he commanded the Ambassader Lieger in France, to shew the Pope's Nuncio in Parife, that if anie of his Ministeris in his name had promised more then they had warrant, the Pope should not expect anie performance therof from him. Last, he made (as he called it) a punctuall discourse of all the proceedings in the Lord Balmerinoch's Examinatione, and how his Ma^s memorie was a great deall better in that matter then his; and by his particular interrogations, had brought him to a Confessione: And, after ane example and verie large commendatione of the Kingdome of Scotland, and wife and grave government of it, did remitt the judgement of that matter to them, not doubting but they would proceed in it, as his Ma^s interesse and the weight of the matter did require.

After him, THE LORD PRIVIE SEALE⁴ had a Speech, wherof this was the preface. If he had had libertie of speech, as he had not, he would have chofen these two noble lords who had so gravelie and learnedlie spoken to have gone before him; for they had taken up the crope of all was to be collected of the present matter, so cleanlie, as they had left nothing behind to him to glean; but he did remember to have read of the nature of the bee, that at first coming upon the flowre, she did gather the honie, and after the honey being collected, she did gather the waxe. So would he, since there was no

¹ In alms; as an eleemosynary gift.

² Without, contrary to.

³ The whole of these Speeches and gratuitous affirmations were in reality addressed to the King '*behind the arras*,' and they were all so constructed, by these Court sycophants, as to be most palatable to the royal taste. The knowledge of this circumstance must sink the speakers in the estimation of all who read such abominable rodomontade, and convert all their fulsome adulation into solemn mockery or absolute farce.

⁴ The celebrated Henry Howard, Earl of Northampton, who was styled by the French Ambassador, Monsieur de Beaumont, '*one of the greatest flatterers and calumniators that ever lived*.' He was deeply involved in the murder of Sir Thomas Overbury; but died before that atrocious affair was publicly investigated. The private and intriguing Correspondence between King James and Cecil, previous to his accession to the throne of England, was carried on through the medium of this individual. See *Lord Hailes' Letters*, &c.

honey left, gather up some waxe to seale up the mater with. And first, after a large commendatione of his Ma^s fo manie rare and princelie qualities, whom that mater did fo highlie concerne, (which he protested he did not as a sycophant or flatterer,¹ but as a true and faithful Counsellor,) he did say some thing of his affectione and dutie to the Lord Balmerinoch, with great sorrow for his errour in that kind, that he should have thought it a save way for his Ma. to have left his assured true friend, which was the Queene and Estate of England, to follow after a stranger, speciallie since of his own knowledge (for the space of 19 years) it had pleased his Ma. to keepe intelligence with him. He perfidie knew that his Ma. was most unwilling to anie such course. First, how in the 88 (1588) the Bishop of Dumblane cam in Scotland with so many great offers; and if his Ma. would have given him anie, never so little hope, the Pope would have stayed that great Armado. Nixt, come Sir James Chisholme, who dealt in the same course, and because he did not prevaill, he did break his heart, and so died. Watfone the Preist having come in Scotland and dealt with his Ma., did confesse to his lordship, that he could never have more of his Ma.—but if ever he came to the Crowne of England, that he would not come to break the law, but to keepe it: And that the said Watfone, being in prison, some few dayes before his executione, his lo. went, by his Ma^s commandement, to examine him in that point; who declared to him, that he could never gett anie farther grant of his Ma. nor is before said: not-the-lesse, to the end he might keepe the Catholicks in better dispositione towards his Ma. he did give them better hopes. That Sir James Lindsay did bring his Ma. a Letter from the Pope, which he refused, and would not so much as suffer the same to be unclosed. Last, since his Ma^s coming in England, there come one from the Duke of Lorane to his Ma., who being weill received, as the Duke of Loran's servant, having thereafter secretly shewed unto his Ma. that he was the Pope's gentleman, and had some directions from him to his Ma., he would heare no more of him; and his Ma. did mightilie complaine that the Duk of Lorane did use him in that kind. And hereupon did he condemne the Lord Balmerinoch his course, in respect of his Ma^s unwillingnesse to have anie dealing with the Pope. He said farther, that if at that tyme when the Queen's Ambassader did expositulat, the course had been revealed, the fault had been the lesse. That it was God's singular caire over his Ma., that by the coming furthe of such a book, at such a tyme, when the Lord Balmerinoch was present to reveale the truth, his Ma^s innocencie in it was so cleared. And because that some doe justifie the course, because of the good intentione of it, that he had read, that in good intentions three things were requisite, 1st, that they should be in things indifferent; nixt, that they should not be *contra preceptum*; last, that they should not be *in prejudicium tertiæ personæ*. Nather of which was observed in this; because it was not a thing indifferent to the King to keepe correspondence with the Pope, being a mater prejudiciall to his estate; next, that it was *contra preceptum*, because he was not of his Religione; last, it was *prejudicium tertiæ*, because the Queene of England was thereby interested; so as the intentione of it could not procure it anie allowance. In end, after a large commendatione of the countrie of Scotland, and his best wishes that the Kingdome of England would looke carefullie in their honour, and not admitt everie one so indifferentlie to it, following the example of Scotland, he did likewise remitt the mater to be tried and judged there; not doubting but it would be carefullie done, according to the weight of the mater and his Ma^s expectatione.

Thereafter, MY LORD CHANCELLER declared, that since that Board was his Ma^s bodie representative, and all the members of it were at his Ma^s dispositione, and alterable with the breath of his mouth; that it was his Ma^s pleasure, that the Lord Balmerinoch should no more be one of that boord. Whereupon he did produce a Warrant, signed be his Ma.; which being read by the Clerk of the Counsell, the Chancellor desired that all the Lords of the Counsell should take notice of it.

¹ 'Hem!' His Majesty must have been a 'glutton' indeed, and his appetite for flattery altogether insatiable, if these Speeches did not give him a *complete surfeit*! It is evident that this intriguing politician well knew what would best please the royal palate. Strange as these things may now appear, such was the King's taste,—and *de gustibus non disputandum*!

[*Thus, or near this, I would have answered, for my own justification; if that, by three several commandements from the Erle of Dumbar, I had not been desired to the contrarie. James Bailzie was the carrier of the message.*]

To the first Speech, it might have been answered, that if the reverence and majestie of the person, (whom the mater was affirmed to touch in honour and safetie) the gravitie and eloquence of the speaker, and the hatefull dispositione which was against the persone which was to be censured, had not extraordinarily concurred, although the deed wanted a presedent, yett manie offences of greater importance and more perrellous presidents were smothered up, with silence: And wher,¹ it was now first said, that the Letter might have procured his Ma. the tinsell² of the Crown of Scotland, which he had in possessione; ther was no such appearance, because ther was no Scottish man, of whatsoever qualitie, so little sensible of his Soveran's wrong, but would rather have wished his Ma. to have had correspondence politick much more with the Pope, before he had been prejudged of his undoubted title to England, speciallie since that Letter (nor no constructione can be made upon it) does carie any prejudice to Religione, or other conditione hurtfull ather to his Ma's honour or estate. Nixt, where it was said, that the said Letter might have lessed him the Crown of England, to the which he had undoubted right apparent, because the Queen might have taken exception att it, and so inclined some other way: first, it might have bene answered, that his Ma's title was not at her dispositione, and if she had been discontent, there was no reason; for since she did ever refuse to yeild him anie assurance of his succession after her, (and Spaine avowedlie, and France under hand, besides others, as competitors, daylie talked of,) although he had laboured for the friendship of all the Christian Princes in Europe, upon just and honourable conditions, and without breach of dutie to her, she had no just cause of offence: Beside that, some did not spair to talke of some unseemly plots contrived in England, about that same time, to his Ma's prejudice. *Secoundlie*, where it was with great vehemencie and rare eloquence amplified, that that Letter had given subject and occasion to the writting of many pamphlets, wherin his Ma. was bitterlie touched, it might have been answered, that by the contrarie, it had stayed the writting of many and doing of many worse turnes, had procured his Ma's good at the Court of Rome, the favour of all the Catholicks of Europe, but speciallie in England; and if his Ma. had been offended by anie books, they have had other grounds than that idle Letter; wherin *Bellarmino* alledgeth not, that ther was anie more, but a Letter full of courtesie, and a request for a Cardinall; and if it had contained any other thing whereby his Ma. had been ingadged to the Pope's advantage, it had not been forgotten. Look therefore if the writting of the former books, or some other conditions then that Letter, hath not given occasion of this offence. *Thridlie*, where it was said that all the Popish Conspiracies did flow from that Letter, because the Catholicks, finding themselves disappointed of their hopes, did attempt all those devilish Treasones, it might have been answered, that if that Letter giveth anie such hope ather of the Kings Ma. being a Catholick, or toleratione, then is the argument good; but if not, then it holdeth not; and these hopes most be found out another way, and the authors of them charged with that imputation.

The *secound* Speech, in so farre as it was carried out with the first, the same answers might have been repeated; but, where it was said, that if his Ma. had been of the knowledge of that Letter, he would have bowed the knee to Baal, appointing ane Advocat at Rome;—that conclusion holds no more nor³ if it should be said, that the Queen, for writting manie Letters to the Turk, and appointing ane agent there, should have become a Mahometan. Neither is there any that can doubt, but that great Statfman, who had the speech, does know verie weill, that Princes of different Religiones have their Leagues and Amities, their intercourses of Negotiatione and civill affairs, without bowing their knees to strange Gods. As to the invectives against the Pope, they were all just, and verie pertinentlie and eloquentlie delivered; yett they did not aggravat that fact, neither was there any thing in that Letter that did allow of them. As to the objections of violating the trust of a Secretarie, that

¹ Whereas.² Loss; from *tyne*, to lose.³ Than.

could not be denied; and so the partie doth grant his offence, pretending onlie, that as an expert Phisician, in a disperat disease, or a perfitte Pilot, in an extraordinarie tempest, is not alwise tyed to the precise rules of his art, so some things are permitted to Statfmen in their places; and he, perhaps, feing his Ma^s great danger; and that, for writting a stile to a Pope, he would give his enemies so great advantage, and perrell a Kingdome, he did temerariousslie adventure his credit: And for that was talked of the nature that *fides quæ ubi semel recepta nunquam revertitur*, that politick maxime giveth an answer, *si violandi regni causa*, and the more is he excusable, that it was to his master and not to himself; and as he durst and should have adventured his life to have foughten for it, so did he perrell his trust to confere it. To that, that a King's hand-writt, if it might be caried by his knowledge, was more dangerous than 20,000 men, that is an argument *ab incommodo*, which since the deid is past long since, and no harme followed upon it, neither to his Ma. nor his dominions, it followeth no more. To that of the comparifon of the broad-seales to the King's hand, and what is the danger to write above any of them, belongs to the Judges and Lawyers, to determine; but in the law of reafone and civill justice, where there is no fraud meant, no harme done, nor no inconvenience can ensue, the fault is the lesse.

In the last Speech, most gravelie and eloquentlie delivered, because it was for the most part a narration of particulars, testifeing his Ma^s unwillingnesse to writt or have any dealing with the Pope, it is like enough to be true; for if his Ma. had been willing, or wittinglie had sett his hand to the Letter, then there had been no fault committed, so that causeth the Confessione of him who abused his Ma^s trust. And where as, his good intentionne to his Ma^s service, did furnishe him some excuse, that was most learnedlie taken away by three *caveats*, which the Divines doe require to make intentions justifiable; first, that they be in things indifferent; nixt, that they be not *contra preceptum*; thridlie, that they be not in *prejudicium tertii*: To all which it might have been answered, first, generallie, that the politicke courtes, so weill knowne to so great a wife man in state maters, are not to be ruled according to the strick rules of Divinitie; and particularlie, to everie *caveat* there can be nothing more indifferent, nor¹ a free Prince to write a kind Letter to his neighbour, and to make to him a reafonable and just sute, hurtfull to no man; as for the second, there is none of the commands that did forbid the King to writte to the Pope, for so *preceptum* in that mater is to be understood; thridlie, by that Letter there is no prejudice done to anie persone; and since his Ma. was by no League nor Bond bound to the Queen in the contrarie, no man will think that his Ma. should be answerable to anie imaginary prejudice, there being nothing contained in the said Letter that in any fort could hurt her, or any other persone. In all the Speeches, as they were most gravelie and eloquentlie delivered, so did they yeild, everie one of them, a rare and extraordinarie commendatione to the countrie of Scotland, the grave and ancient Nobilitie, the wife Counsell of Estate, the learned Judges, and the most tender regard, in all their actions, to his Ma.; wherof, as everie man did consider the end, so they ought² no small obligatione to them, for their exceeding kindnesse.

COPIE of the SPEECH which I spak, indeid, to the COUNSELL, after the three Haranques before written.

My verie honourable Lords, I find true this day in experience that which I had oft read and heard, that no exceeding joy,³ &c.

The Bishope of Glasgowe,⁴ I think, with the counsell of the Erle of Wigtonne,⁵ despaired, before my coming to Court, that the Letter to the Pope should doe me anie harme; thinking, either that I should be denied it, or that it was of so small consequence as it could import no cryme. They had

¹ Than. ² Owed. ³ See Vol. II. p. 578. Opposite the words 'but alace!' &c. (line 10 from bottom of the page,) there is written on the margin, 'These words added at the E. of Dumbar's desire, to please his Ma.' ⁴ John Spottiswood, afterwards Lord Chancellor (1634). He was translated to St Andrews, 1615.

⁵ John, sixth Lord Fleming, was created Earl of Wigton, Mar. 19, 1606. He married, 1st, Lillias, only daughter of John, 3d Earl of Montrose; 2dly, Sarah, eldest daughter of John, Lord Herries, and relict of Sir James Johnston of that ilk.

invented against me some interrogatours, whereupon the King should have examined me, anent the Powder Treafone, which were kept cloffe from me, till immediatlie before my comming away: Then they were brought to me by my trusty friend Sir Alexander Hay, never letting me know of them, albeit they had been in his hands three moneths before. The just copie I have inclosed hear-with, and my answers. They are as frivolous as they are false; alwise I will my friends may see what hes beene the malicious cnriofitie of my enemies to my disgrace. I fuspct the Bishop of Glasgow, the Earle of Wigton and Sir Alexander Hay; and whatsoever the Earle of Wigton knew, was not kept from Killfith.¹

In a Proclamatiōe, made at Westmīaster, the 22 of February, 1603, which is imprinted, there is contained these words, in speaking of Foreign Princes: 'Among which forraen powers, although We acknowledge ourselves personallie so much beholden to the new BISHOPE OF ROME, for his kind offices and privat temporall cariage towards us in manie things, as We shall be ever readie to requyte the same toward him, as Bishop of Rome, in state and conditione as a secular Prince:' Yet conferr this Proclamatione with his Ma^s first Speeche in the Parliament Houfe, which is also printed, wherein he acknowledgeth his particular obligation to POPE CLEMENT, whereby it may be presumed, as matters then were, what great discontentment it could have beene to his Ma. to write a Letter to him. Like as, many other Negotiations which his Ma. had with him are more nor notoriouſlie known.

THE summe of the DECLARATIONE, subscribed 18 November, 1608.

THAT at my first Examinatione I did denie, extenuatt and transferre the knowledge of that Letter; therefore, I did Confesse, that, at the sollicitatione of the Bishop of Glasgow, who was his Ma^s Ambassader, and the (Bishop) of Vaizon, I laboured to have a correspondence betwixt HIS MA. and THE POPE, I moved his Ma. in it, and found him unwilling. Therafter, I conspired with Sir Edward Drummond to gett a Letter under his Ma^s hand to the Pope. Sir Edward drew up the Letter. I saw the draught of it, and corrected it. That one day, in the morning, when his Ma. past to hunting, I brought him a number of Letters to be signed, in favours of the Bishop of Vaizone, to the Dukes of Savoy, Florence, and some Cardinals; among the which Letters I shifted in that Letter to the Pope, having no superscriptione in the beginning, nor above his Ma^s name; and so gott his Ma^s name to it without his knowledge. That the Letter contained nothing but thanks to the Pope for his bygone kindeſſe, and desire of continuance; that he would be pleased to advance the Bishop of Vaizone to be a Cardinall, that his Ma. might have more intelligence of his affairs at that Court. That the Letters to the Pope were written in Roman Letters. I directed Sir Edward to write the Popes files in the beginning; and in the end, '*Sanctitas*' and '*Filius*.' That the said Letter was calſhett at my command, be one of my servants who kepted the calſhett.² That in the late Queen's tyme, some expostulation being made by her Ambassader anent the said Letter, I did denie it, and caused Sir Edward, being come home, justifie my denyall, and that he had caried no such Letter; being examined therupon be some of the Counsell. That he, being committed in ward, I laboured for him and procured his releefe. That I dealt earnestlie with him to returne the principall Letter, who promised to doe ſoe.³

[The Narrative is here interrupted by Calderwood's own work. It is afterwards resumed, being introduced by Calderwood in the following passage: 'About the beginning of December, the Secre-

¹ Sir William Livingston, Lord Kilsyth, one of the ordinary Lords of Session.

² A stamp contrived to imitate the King's signature, to save him the manual labour of signing certain official documents. It is still in use, and is applied to particular writs not requiring the royal 'Sign-manual.'

³ CALDERWOOD remarks here. 'The President was sent back to Scotland as a prisoner, with a Guard attending upon him, to be further tried. When he came to Newcastle, he sent the Laird of Pitloure to informe Mr James Melvill how he was dealt with, for standing for the freedome of our countrie, and crosseing of the Bishops and their proceedings; and desired Mr James to writte to the good brethren at home, as he thought meet himself. When he came out of Newcastle, it was marked that he shed tears, which was a verie base thing in him. At Berwick he was heard to utter these words, "I wish I had beene made a sheep-keeper when I was made a scholler."'

tare Sir James Elphinstone, President of the Colledge of Justice, came to Berwick, accompanied by the Englishe Guard and some of the Earle of Dumbars servants. He was received be the Captain of the Scottis Guard, Sir David Murrey Lord Skoone, latelie Comptroller, accompanied with the Scottis Guard and some of his friends; and was convoyed to waired to Falkland. The manner of his parting from London to this countrie he has sett down himself, as hear followeth, continuing his former relatione.']

ORDER hereafter being taken about my returning, my Lord Dumbar sent James Bailie to shew me, that there was some of the Guard, onlie for a shew, appointed to attend me; desireing I would not take it in evill part. They would ride with their coats till they were past Roystoun, where his Ma. was; and from that, as other privat servants. He sent me word divers times that he would meet with me; but whill¹ the Earle of Wigtonne and the Bishops were gone, he could not, for suspicione.² So the verie day they parted, in the morning at ten hours, his lo. came to my house, although I had offered to make the travell; but, because I was under commandement, it could not be. All this tyme I was attended to be two of his Gentlemen, who used me verie kindlie. The one was Alexander Auchinmowtie, brother to John Auchinmowtie; the other, James Carmichael, sone to Watt Carmichael of the Park; to whome I wishe my friends or to anie of theirs to be thankfull. At our meeting, I renewed to him what had past betwixt my Lord Burlie and me, my particular offers, for assurance of his Lordship's friendship, what I did expect mutuallie of him, as the Lord Burlie had promised in his name. All which he was weill pleased with, and how soone my trouble was ended, which should be upon his coming in the countrie, he would enter in the due performance of every particular, and would establish such an allyance with me as should not be discovered. I complained that my waired³ was altered, because he had promised that I should remaine in the Castle of St Andrewes: He excused the estate of the house, and that he had as great credit in Falkland as in St Andrewes. Nixt, that the Lord Skoones Warrant was so strait: His answer was, that that was onlie done for the fashione; that the Bishops and Sir Alexander Hay procured it; but he would desire the Lord Skoon, by James Bailie, to use me well. He desired me to keepe all secret; and, as he was a Christian, every thing should (be) performed with no less care than I were his own brother, or his two daughters. He willed me not to be suspicious of any his actions, because it behoved him to follow the King's honour, please the Bishops and others that were my unfriends, in outward shewes, that he might the more easlie worke my turne to my contentment. I think that he entered in a speciall friendship with my Lady Drummond, and gave her that assurance of my life, estate, (and) Ropars office that he gave to the Lord Burlie.

Being come to Falkland to my waired, and more hardlie used nor I did expect, I directed to Court my cousin Pitlowrie to put the Earl of Dumbar in memorie. My worthie friend the Lord Burlie tooke the pains likewise to go there, to make all former conditions sure; and, as I was informed, his Ma. directed no further, but that, in a Justice Court to be holden at St Andrewes, (for I desired it should not be in Edinburgh,) I should become in Will, and his Ma. to declare his Will, at his pleasure. But when my Lord of Dumbar came to Edinburgh, and found that Sir William Hart (who had gotten a promise of my place in Session) to putt me to ane Assise, and my Lord Collector⁴ to be Assessor, and a number of Assise that would convicte me upon my own Confessione, which is more than to gett me in Will. The Earle of Dumbar having advised with the Bishops, durst leave nothing undone of extremite against me; and the Collector, being more circumspect nor the rest of his fellows, and most desirous to have me sure, resolved the Earll, that none of my Depositiones made in England would serve against me, except I ratified them here. Whereupon, the coming of the Counsell to Falkland was appointed; and although I had been verie carelesse of the mater, because I was certified that there was no more ado but to take me, judiciallie, in Will; yett, knowing of their coming to Falkland, I

¹ Until.² Viz. in case the Earl and Bishop should suspect collusion between the Chancellor and Balmerino.³ Place of confinement.⁴ Mr John Prestoun of Pennycaik.

imagined at first the cause of it, and was resolved to have past from everie point of these Depositions, except onlie the naked veritie of the deid, wherupone no crime could follow; for most lawfullie I could have come against my Depositione, because it was made extrajudiciallie. And, in case they would make the Counsell of England a judicator, first, it was subscribed, not before the Counsell, but in the Earle of Salisburie's cabinet, before so many of the Counsell as are before mentioned; *nixt*, the Counsell of England could be no Judges competent to me, likeas I had lawfullie declined them of before; *farther*, it was made upon the conditione above mentioned, which I would have referred absolute to the Earle of Dumbars oath; *last*, it was revocable, as made for fear of my life, or perpetuall imprisonment in the Towre. If they would have made my Dittay Treafone, because it is so called in my Depositiones, the calling of a deed Treafone, *non mutat naturam facti*; as if I would confesse I had tratorouslie conspired to kill one of the King's bucks, would not convict me of Treafone; or that I had treasonable broken waired, being committed for fourtie pound of civill debt; so, the procuring of a common Letter of Recommendatione, containing no Treafone, prejudice to the King, nor Estate, could never be Treafone. And whear as, it was affirmed to tuiche the Princes honour, the King did never refuse to acknowledge the Pope as a Catholick Prince, to whom he acknowledged himself bound; and so it was no dishonour to him to write to him, seing the greatest Princes in Europe doe it ordinarie, both of the Reformed Religione and others. That that Letter was prejudiciall to his Ma., his Religione, countrie and Estate, it could never be verified; for, except my own Depositione, (revoked, as I have said,) there could be no other verificatione, either by writte or witneses; so no honest Judge or Assessor that had either conscience or honour could have sustained such a Dittay. And if they would have made it *Crimen Falsi*, out of the Lawes of the Majestie, (*Reg. Maj.*) I would have denied that my life could have been judged be the Majestie; more then ane hundreth kyne may be satisfacione for the King's Murther, which the Majestie calles killing. I remember, Mr Thomas Craige answered to *generaliter verum, generaliter falsum*, in a civill mater, *quibus casibus tenetur haeres prestare factum paternum*, which is lesse nor my life. Lastlie, that word, *Charta domini Regis*, is not to be understood of a privat Missive, wherby the King or a partie is not prejudged; but a Charter, or evidence, wherby either the King or subject may losse his right. If they would have made it out of the Decretals, cap. 5, *de Judiciis*, albeit it say, *non esse immunem a Crimine Falsi*, yett, according to all the Doctors, it most be understood to be *scriptura damnoza et fraudulenta*, for *omne Crimen Falsi* is not capitall, *ubi neque est damnum, neque esse potuit*, but onlie to be punishabable *arbitrio Judicis, pro ratione rei et personarum*. And this is the cleare resolutione of Julius Clarns and all the Doctors; so that albeit I had never consulted anie Advocat, nor had never any bookes to studie the mater, yett the light of reafone was so cleare, as no Judge but Sir William Hart, whom I might have lawfullie declined, would have sustained such a lybell.

The Earle of Dumbar, fearing I should alter, upon this new alteratione sent the Lord Burlie unto me; who, as he dealt ever honourable with me, so I was plaine with him, that I would not stand to my Depositiones made in England, and that I would challenge the Earle, upon his oath, of the conditione made unto me at the subscribing therof. There was great intercessione made that I would have a regarde to the Earle of Dumbars credit, and the advantage both my publick enemies and his secreit ill-willers would make, if that turne were not done to his Ma's contentment; and that, however I might resist his Ma. at this time, wherof the event, in respect of the honest dispositione of the Judge and principall Assessor was uncertaine, yett I would be kept in continuall prisone; and, seing the Earle of Dumbar was willing to secure all things promissed before, a sentence of Conviction was no more hurtfull to me nor either a coming in Will, nor in entering in a contestatione with the King, having so great enemies both at Court and at home. In end, upone promisses renewed, and my desire of quietnesse, and that my enemies should acquire no more credit be my troubles, and conditiones past betuixt the Earle of Dumbar and me to stand sure, I was content to abide at my former Depositiones.

So the Earle of Dumbar, in prefence of the Lords of Skoone and Burlic, both after particular affirance and solemne oathe to my self, renewed what he had promised before, anent my life and estate, and that he knew perfectlie it was never his Ma^s minde to (take) my life.

Nixt followed my Conviction at St Andrewes, wherin I was the onlie actor my self, to give his Ma^s satisfactioun; following, in every point, the Lord of Dunbar's directione, brought to me either by the Lord Burlic or the Lord Skoone.

A COPIE of the SPEECH I had at St Andrewes, at the time of my Convictione.

THERE is none of your Lordships but understand sufficientlie that if I would stand contentiounlie to my Defences, no Depositione, made by me in England, could prejudice me in any Tryall Criminal I was to sustaine; neverthelesse, as in all this actione, from the beginning, I have preferred the truth of his Ma^s innocencie to the preservatioun of my life and estate,¹ so I am so farre from retreating what I have said there, before that noble and most grave Counsell; that if, in more cleare termes, I could aggravat the just desert of my own haynous offence, and make his Ma^s undefiled sinceritie and innocencie knowne to all the world, I would most willinglie doe the same. I were not worthe life, if my life, that hes had no happineffe but under the glances of his benignitie, I should labour to be preserved, with the finallest imputatione that might staine his Ma^s honour. No man knoweth better his Ma^s naturall clemencie, and how unwillinglie his Ma^s is forced with this severitie to prosecute the truth of this callumnious imputatione; which, by my abuse of his trust, is drawn upon his most innocent Ma. Therfor, I ratifie whatsoever I have formerly depouned; and, if no otherwise his Ma^s honour may be sufficiently exonered, I willinglie offer my blood and poore estate to expiat my offence; and to teach others, by my exampill, to goe no farther in their master's service then they have sufficient Warrant.

BUT immediatlie after the Ratificatione of my Depositions, in Falkland, the Earle of Dumbar sent my Lord Burlic to Court, to shew his Ma. what satisfactioun I had given, to procure me all the favour he could, and to hold my friends there busie. Likeas, the Earle concluded, that immediatlie after my Convictione, my brothers sone should goe post to Court, for my Remission; and that the Lord Burlic should stay his coming, and concurre with him to that effect. And albeit it was promised to me, by my Lord Burlic, in the Earle of Dumbar's name, that Ropar's Reverence should be safe to me, yett the said Earle, fearing Sir Robert Ker's credit,² made me to yield to passe that to him, which was the best hope I had of relief of my great debt, and help of my children. So as I have in all this, from the beginning, allutterlie reposed upon the Earle of Dumbar; and, by his onlie meanes, am brought in this misery, out of the which, if, according to his manie promisses, he releave me, I and all mine are the

¹ It may be proper here to notice, that Lord Balmerinoch, besides his numerous Offices, was possessed of very extensive landed estates, such as the baronies of *Balmerinoch, Barnton, Barrie, Ballumby, Innerpeffer, Dingwall, Balgaregic and Restalrig*, &c. By his first wife, Sarah, daughter of Sir John Menteith of Kerse, he had (1.) *John*, afterwards second Lord Balmerinoch. And by his second wife, Marjory, daughter of Hugh Maxwell of Tealing, he had (2.) *James*, who was created Lord Couper. (3.) *Ann*, married to Andrew, first Lord Frazer; and (4.) *Mary*, married to John Hamilton of Blair.—See *Wood's Peerage*, &c.

² The corrupt favourite, *Sir Robert Kerr* or *Carr*, who attended King James to England, and was invested with the Order of the Bath at his Coronation, for a long period had unlimited sway at Court, and had the absolute disposal of all the Royal favours. He was successively created Gentleman of the Bedchamber, Lord High Treasurer of Scotland, 1611; Viscount Rochester, Mar. 25, 1612; Knight of the Garter, May, 1612; Earl of Somerset and Baron of Brancepeth, Nov. 3, 1613; Chamberlain of the Household; and sworn a Privy Councillor, the same year. The character of this infamous person, his shameless marriage to the divorced Countess of Essex, the murder of Sir Thomas Overbury, for which he and his Countess were convicted, May 24, 1616, (see *Howell's State Trials*, II. pp. 951 to 1022); their subsequent release from the Tower, Jan. 1621-2; and their pardon by the King, under the Great Seal, Oct. 7, 1624, in the face of his Majesty's solemn and awful imprecation, in reference to the murderers of Overbury, that 'If I SPEAKE ANY THAT ARE GUILTY, GOD'S CURSE LIGHT ON ME AND MY POSTERITY FOR EVER!' All the circumstances of his life are so well known, that it is only necessary to recall these few leading points to the reader's memory. He died in London, and was buried in the Church of St. Paul's, Covent-Garden, Jul. 17, 1645. It may be interesting to refer to the numerous Memoirs and Histories relating to this remarkable period, in illustration of the above remarks. In particular, reference may be made to *Lord Bacon's Works*, I. 87, also to his *Correspondence*, and to *Weldon's Court of K. James*, p. 99, &c., for the almost incredible dissimulation practised by James on his parting with Somerset at Royston, when his fate was for ever sealed, and when he had determined that 'he should see his face no more for ever.'

more bound to him; otherwise, there is a God in Heaven will have regard to his dealing; and, either here or hence, he will suffer for it! The vile and detestable ingratitude of Sir Alexander Hay, I am sure, the Lord will not suffer unpunished! As for others of our Natiōne, who have little regarde wherefore I suffer at Englishmen's hands, God forgive them! The day will come, that they and theirs will weepe for it! I pray God bleffe his Ma.; and that his undeserved rigour against me (who, I am sure, is perswaded, in his heart, I never thought ane undutifull thought against him, his Crown, countrie, nor estate,) be not layed to his charge, in that great day, when his crown and scepter will be layed at his feet, and he must yeild a reckning of his stewardship! And, so may I be judged, if I had anie other course, in all that or anie other service that ever I was putt in trust of be his Ma., but his Ma's weale and honour, and the libertie and good of my countrie, which is miserable, comming in a vile servitude; the foresight wherof is all my wracke!

This the naiked truth of all this mater, written in such haste, and at such occasiōes as I could, in respect of my strait keeping; and whatever, for his Ma's satisfactiōe, I have written or said upon the false promisses and traterous intyements of those whom I trusted, different from this my cleare and true Depositione, as God is my witnesse, it is false! FALKLAND, the 10 of May, 1609.

BALMERINOCH.

VIII. CALDERWOOD'S ACCOUNT¹ of Lord Balmerinoch's conduct, from the period of his Conviction to his Death.

WHEN he was brought from Falkland to Leith, after his Convictione at St Andrewes, and was received be the toun of Edinburgh, in their armour; when he came to Leith-Winde foote, or the Nether-bow-Port, he was commanded to light off his horse, for they receive no ryding prisoners. He excused himself with the infirmite of the goute in his feete; and willed them to shew him that much courtesie, as to suffer him to ride forward. One of the toun, standing hard beside, answered *Pamfara, tantara*!² my Lord! Now, when some directed from the Counsell of Edinburgh, long before his fall, requested him not to mainteane one of his dependers against them, in ane actione they had against him, for they could be more stedible³ to him then that man, he answered *Pamfara, tantara*! This taunt is now repeated to him with a taunt, and he was forced to light off his horse. Thirdlie, Its to be observed, that the Doome being delayed, after his convictione at St Andrewes, till his Ma's farther pleasure were knowne, in the tolbooth of Edinburgh upon the first of March, in presence of the Justice and the Lords of Counsell, after reading of his Convictione, that he should be beheaded, quartered, and demeaned like a tratour, and his members to be sett upon the Ports, and cheif touns, yett he appeared to have some good hope of releef. He would have spoken something, but could not utter his minde: The Earle of Dumbar commanded to remove him incontinent! After dinner, he was conveyed to Leith-Winde-foote, and delivered to the Shireff of the shire; but manie wondred wherefore he was suffered, when he went out of Edinburgh, to carie his sword about him. It was thought strange that such a thing should be suffered in a condemned tratour. Some thought, therefore, there was no danger; others thought he was caried to Falkland, that he might suffer there, where the fault was committed, and died after in displeasure, fearing ever the worst. Fourtli, it is to be observed,

¹ See *Cal'd. Church Hist.* MS. Adv. Library, VII. 283.

² An exclamation in some measure equivalent to 'Nonsense!' 'Humbug!' &c. expressive of contemptuous incredulity and derision; and applied by those who have a bombastic or high-sounding parade of empty words addressed to them, which, like the idle flourish of a trumpet, seem calculated to convey no meaning. Perhaps this contemptuous expression took its rise from the remarkably alliterative and playful line of *Old Ennius*, a rough soldier, who sacrificed rather liberally to Bacchus, and who wrote his heroics best when under the influence of the rosy God. Many of his verses smell strongly of the goblet!

³ *TUM TUBA TERRIBILI SONITU TARANTARARA DIXIT!*

The words *tantafara, tantaferata*, are still used in Italy to signify *nonsense*, &c.; and the French also familiarly use *terare!* and *tarare-pon-pon!* pour marquer qu'on se moque de ce qu'on entend dire—on qu'on ne le croit pas, &c. *Dict. de l'Acad. Fran.* 1813. This reproachful retort, and the taunt of the Edinburgh citizen, must have stung the fallen courier to the quick.

⁴ Be of more service to him; stand him in better stead.

that about the same time, the King's reply to *Mathæus Tortus*, with a monitory preface to the Emperor and all Christian Princes come furth in print, no mention was made in that booke of Sir James Elphinstoun's Confession or Depositions; which might have served to great use, to have purged him of *Tortus* his imputations. Yea, when he was in England, and had come in the King's will, the King could not be content till he subscribed his Depositions, as Dumbar assured him; because the not subscribing hindred the progresse of the Kings Answer to *Tortus* booke, quhairof his Depositione behoved to be a part. He therefore sett too his hand, in presence of some Noblemen and others, as yee may see in his own Relatione. Because the Depositiones were omitted in the Answer to *Mathæus Tortus*, and upon other considerations, manie doubted of the sinceritie of this proceeding against him; and suspected, that he had taken upon him the crime to currie the Kings favour, he keeping his credit. Mr Andrewes, indeed, in a Letter written the 23 of March to his Nephew Mr James, setteth down his opinioun in these words. *De judicio quid ego sentiam uno verbo accipe; in glorie fuit, est et erit, ut ego presentio, contra nos vero seria omnia et serio—nescit regnare qui nescit dissimulare.*¹ Since heart is free,² &c. Fildie, it is to be observed that Bishops, notwithstanding of his paines and diligence taken at Linlithgow, and the manie Proclamations penned be him, spytsfull enewgh against the Ministers, they prove now at this tyme his great enemies, and none so buisie to seeke his overthrow! It may be, the small countenance he kythed, in Counsell, in favour of Mr John Murrey, or the like occasions, have given them occasione to seeke his removell out of the way; that another Statfman, more foreward for their course, may be placed in his roome. But then we may see the deep malice and hatred of aspiring Prelats, that seek the overthrow of all that stand in their way!

About the beginning of October (1609), there came a Warrant from the King to give libertie to the President to have free ward in Falkland and a myle about; he finding cautione not to escape, under the paine of Fourtie Thousand pounds.

Mr James Elphinstone, Lord of Balmerinock, and latly Secretary, ended his dayes, about the end of May (1612).

IX. LETTER from THE KING to THE PRIVY COUNCIL OF SCOTLAND, *informing them of the Examination and Confession of the Lord Balmerinock.*³

RIGHT trustie and weilbeloveit cosines and counsallouris, We greatt 3ow weell. TYME, the moder of trewth, havinge now discovered and brocht to lycht that long obscureid and moist heynous offence and crime committed be the Lord of Balmerinock aganes our honour, credeitt, and reputatioun, and which now by his cleir Confessioun is manifest to all the world, and We thairby purgeit of thoise moist wniust and wrangous imputatiounes, quhilkis We did wnderly, by his foull abuse of that trust we had in him; quhairof both We and all our subiectis have no small caus to thank God; since the careage of the action, in the discoverie of it, may justlie be said to have bene done by Godis awin finger! And as We have hithertillis spaired to acquent 3ow particularlie, with the hole circumstances of his Confessioun and Examinatioun, vntill such tyme as the same wes here finished; so, by the rycht reverent Fader in God and our rycht trustie counsallour the Archbishope of Glasgow, (quho wes ane eie witnes and heirar of the same, and now is returning thither,) 3ow may be at lenth informed of the same. Bot, becaus the Devill wants his awin suppoisits reddie to mak falsie subgessiounes, in preassing, by misconstruing of things, to harme the trewth reveilled; and that thair man be perhappis

¹ So in the original, but very obscure, and evidently a wrong reading.

² Perhaps referring to the old saw,

' Since word is thrall and thought is free,
Keep well thy tongue, I counsel thee.'

³ This and the two following Letters are taken from a valuable Collection of State Papers transcribed by Thomas Earl of Haddington, (Sir Tho. Hamilton,) preserved in the General Register House, Edinburgh; which did not come to the Editor's knowledge till nearly the whole of the preceding Appendix was printed.

fum false rumours and bruttis thair spred, in extenuating the qualitie of the offence one his pairt, and deryeing in sum fort a pairt of the blame of that mater on ws; as it is a proud malapairt baldnes and presumption for the best of our subiectis to medill in any thing that may concerne our credeit and honour, without a varie good warrant; and that all pretenses of mistaking our trusting to wncertane reportis ar so far to be misregairdit, as thay rather justlie deserue the greater seueritie to be vsed aganes fuche as will excusetham selfis thairby; so, to repress such insolent wantonnes, in any of our subiectis pair, who either out of malice doe forge thame, or out of thair vaine, foolishhe, and idill breanes do frame thame, We will and command 3ow to tak particular tryall of all fuche as hes bene or heir- efter false spreddaris of any rumours or bruttis in this mater, wtherways nor false by the said Archbishop reportit wnto 3ow; and that 3ow caus the rigoure and extremitie of our lawis to be execut aganes thame! that thairin We may have a speciall prooff quhat dew accompt 3ow mak of our reputationne and credit, which wnto ws (is) moir deirar nor our varie lyffe! And referring all farder to the Archbishopis relationne, whome We will 3ow to trust, We bid 3ow fairweill. FROM our Court, at Roytoun, the 21 of November, 1608.

[JAMES R.]

To our rycht trustie and weilbelouit cofinges and counfallouris, the Erll of Dumfermeling, our Chancellor, and remanent Lordis and wtheris of our PRIVE COUNSALL of that our Kingdome of SCOTLAND.

X. LETTER from THE PRIVY COUNCIL OF SCOTLAND to THE KING.

Moist gracious Souerane,

WE reffaveid your Ma. Letter of the 21 of November; and hes hard, at greitt lenth, the relationne made by the reverend Fader in God 3our trustie Counfallour the Archbishoppe of Glasgou, anent the Confessioun and hole circumstanes of that lang obscured and moist heynous and inexcusabil offence committit be the Lord Balmerinock aganes 3our credeit, honour, and reputationn; quhairin, as sencill and feeling memberis of so glorious and gracious a head, finding our awin intereffis, greiff and sorrow that 3our Ma^e most famous and vnspotted name, honoure, and credeit, which 3our heynes hes to this houre so religiousely conservit in all puritie, sould have bene so unworthellie, and in so feich a point, brocht in questioun be ony of our number, quho hes that honour to be selectit be 3our Ma. to the cheiff credeit of 3our service heir; so, with moist joyfull, humbill, and thankfull hartis to God, we acqnawleg that greit blissing and benefeit which it hes pleast his Devyne Ma^{tie} to schew wnto 3our bienes by the detecting and discoverie of that purpose, and vindiccatting the sinceritie and innocence of 3our royall hart frome all suspitiounne of the wrangoule and wniust imputatiounes which 3our heynes wnderlay thairin; manifesting thairby his Devyne caire and Providence which he hes evir had over 3our sacreid persone, honour, and estat, and in quhat detestatione he holdeth all practizes and purposeis prejudiciall thairvnto. And quhairas, in the censuring of this fact befor 3our Ma^e honourabill Prive Counfall of that kingdome, thay, be 3our Ma. directiounne, (we doubt not) have remittit the full tryall pairf to the lawis and formes of this country, with many demonstratiounes and oppin Speeches, concerning the good opinioun thay have of the equitie of our lawis, and cinsferitie of our effectiounne in 3our Ma. service, we have not onely infinite occasiounne, with all humilicie, first to thank 3our sacred Ma., and nixt thame, for so respective a reservatiounne to ws of that whiche 3our Ma. knowis to be proper and dew to the privilege and freedome of this 3our autient and nobill Croune. Bot we hop, God willing, to give wnto 3our Ma. a prooff, with all fidelitie, caire, and sinciretie, we fall prosequete and follow out quabetevir it fall pleis 3our sacreid Ma. in 3our princely wisdom to command, als weil in this as in any wther thing els, tuiching 3our bienes, in honour and estate. And, in the meantyme, if any of 3our Ma. subiectis hes bene or false so wndewtiffull, foolleithe, and unworthie, as to give oute any false bruittis and rumours aganes the wndouttit trewth and varitie of this mater, or to the extenuatting pairf in any poynt, we fall not fall so exactlie to examen, try, and puneithe the samen, as wtheris false terrisset to fall in the lyk error heirefter. And sua, praying God still to vp-

hold your sacreid Ma. with all your royall progenie vnder his Dewyne protectioun and fauffgaird, we rest for ever

Your Ma. most humbill and obedient subjectis and seruitoris,
A. CANCELL^r. SANTAND^s. MAR. PERTH. LOTHEANE. BUGCLEUCHE. TORPHICHEN.
HALIRUDHOUSE. BEULIE. GAIRLEIS. ROISS. J. COKBURNE. R. COKBURNE.
S. T. HAMILTOUN. JO. PRESTOUN. S^r ROBERT MELUILL. P. ROLLOK.

Ed^r, 6 December, 1608.

XI. LETTER *from* THE KING to THE PRIVY COUNCIL OF SCOTLAND, *with*
WARRANT *for the enlargement of* Lord Balmerinoch.

RICHT trustie and weilbeloveit cousines and Counfallouris, We greete you weel. WNDERSTANDING of the evill constitutioun in helth, and seiknes in body, of the leat Lord of Balmerinoch, by ref-soune of his detentione and cloife keeping within our Palise of Falkland, and in the foire Toure¹ pairrof; and humill sute, for this caus, being mead vnto us, for his enlargement, in sum foirt; We haif bene pleisfit to grant our Licence, for his libertie and friedome, within our said Palice and a myle in circuite round about the same; upoun conditioun alwayis, that he doe not transcend the boundis prefixit; and that he find sufficient responfuall landit gentill men actit in your buikis, as cautioneris and fouerteis for his performance of the said conditioun, vnder the pane of xl^m li.² vsual Scottis money. For whiche caus, We haue thocht meet to will you to direct to the said Court of Falkland, quhair his present place and residence of abode is, your Clerk of Counsell, with the Licence heirwith sent, commanding you said Clerk to ressaue the foirfaid act of caution of sufficient landit men, boundin vnder the foume aboue specifieit, for performing the conditioun aboue writtin, of his containing him self and not exceeding the boundis of his confynning; and heirvpoun the said Clerk to delyver vnto him the foirfaid Licence, to be his warrant of this his enlairement. And so We bid you fairwele. ROYSTOUNE, first of October, 1609.

[JAMES R.]

Slaughter.

Mar. 14, 1609.—JOHN GLENDONING of Drumrasche.

Dilaitit of airt and pairt of the slauchter of vmi^{le} George Stewart, brother germane to vmi^{le} Mathow Stewart of Dunduf.

PERSEWAR, Williame Stewart of Dunduf, brother-sonne.

THE JUSTICE, of consent of ather pairtie, Continewis this dyet to the thrid day of the Air,³ (' Kirkculdbricht?') or foner vpone xv dayis wairning.

¹ Fore or front tower.

² L.40,000.

³ What took place at the Justice-air has not fallen under the Editor's observation. It is likely the case was compromised by payment of a pecuniary fine to the private prosecutor; on which 'Letters of Staines' would follow, as a warrant for the King's Remission. In cases of Slaughter or unpremeditated Homicide, in a skirmish, it was a common manner of withdrawing the instance, for both parties to concur in a continuation of the diet to the Justice-air. Another mode was to use influence with the 'Baron of the Regality,' &c. within whose jurisdiction the parties resided, to *repledge* them to his Court, and where the matter was easily hushed up. The King's Remission, in case of accidents, was also afterwards procured, lest future feud should occasion a renewal of the prosecution, and perhaps terminate fatally to the homicide.

<http://stores.ebay.com/Ancestry-Found>

<http://stores.ebay.com/Ancestry-Found>



<http://stores.ebay.com/Ancestry-Found>



Thank you for your order !

This media compilation, our respective advertisements and marketing materials are protected under U.S. Copyright law. The Federal Digital Millennium Copyright Act and various International Copyright laws prohibit the unauthorized duplication and reselling of this media. Infringement of any of these written or electronic intellectual property rights can result in legal action in a U.S. court.

If you believe your disc is an unauthorized copy and not sold to you by **Rockyguana** or **Ancestry Found** please let us know by emailing at

<mailto:dclark4811@gmail.com>

It takes everyone's help to make the market a fair and safe place to buy and sell.