

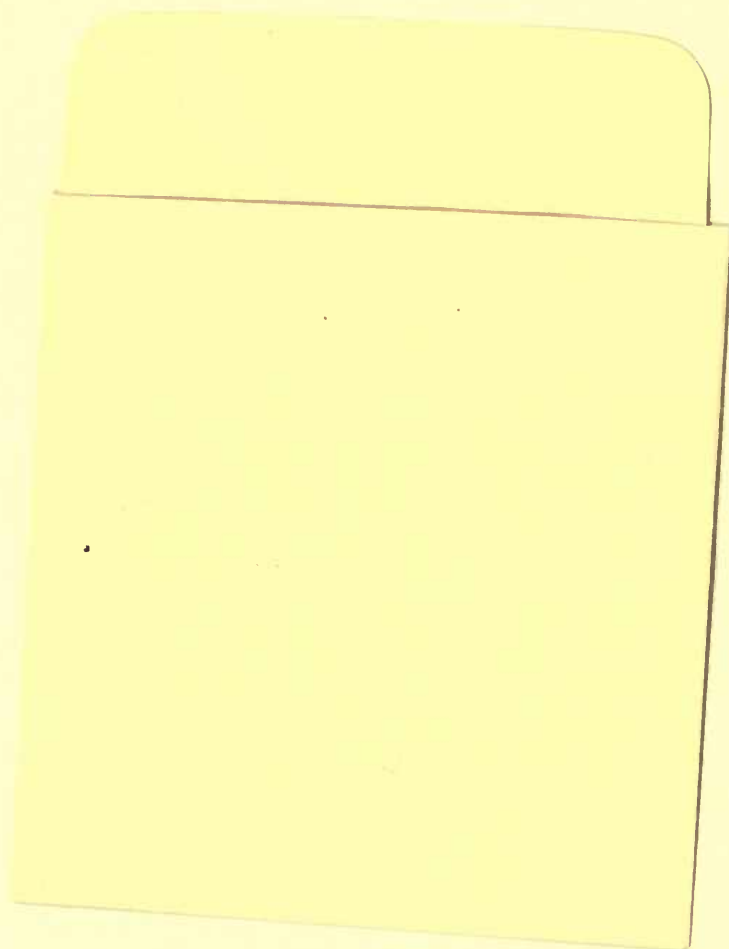
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ANCIENT  
CRIMINAL TRIALS  
IN SCOTLAND.

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VOL. III.—PART I.

1609—1615.









**ANCIENT  
CRIMINAL TRIALS  
IN SCOTLAND;**

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

BY  
ROBERT PITCAIRN, ESQ.

VOL. III.  
PART FIRST.

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



# CRIMINAL TRIALS

## AND OTHER PROCEEDINGS BEFORE THE HIGH COURT OF JUSTICIARY.

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

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

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

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

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

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

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



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

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

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

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

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

<sup>1</sup> It is worthy of remark, that, from the age of *Donald de Insulis*, who flourished in 1449, to *Angus*, the father of *Sir James* of Knockrynsay, the lineal descendants of *John de Insulis* above noticed, resident in the Isles, are uniformly styled 'Lords of Dunnoway and Glynnis.' Whether they merely assumed the title as feudal superiors of the Irish branch, or whether they were actually the proprietors of the soil, of whom the Irish Macdonalds held, Mr Gregory will probably be enabled to explain.

<sup>2</sup> The yellow-haired Somerled. B. Lat. *Sorletus*, or *Sorlie*, and in Irish and Gaelic, *Samhairle*, long a prevalent name in the family of the Isles. <sup>3</sup> *Lodge's Irish Peerage*, I. 106.

<sup>4</sup> 'Surlé-Bouie' is interlined. <sup>5</sup> Anon. Hist. of Scotland, MS. Adv. Library. <sup>6</sup> 'NEIL (HECTOR) M'LANE claine, and twentie of his narrest freindis, and his awen sone, be M'Connell; thair being at ane tryst, under trust.'—*Birrel*.



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

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

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

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

<sup>1</sup> See also *Lord Maxwell's Trial*, Jun. 24, 1609, and the Appendix of Original Documents, for farther particulars of this remarkable attempt.

<sup>2</sup> Sport, frolic.

<sup>3</sup> A cant phrase for gyves, or heavy irons used for desperate

offenders.

<sup>4</sup> Sprained or dislocated his ankle.

<sup>5</sup> *Spraiche*; hue and cry.

<sup>6</sup> After sunset; towards

nightfall.

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

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

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

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

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

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

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

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



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

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

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

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

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

SIR JAMES MAKCONEILL of Knokrynfay, kny<sup>t</sup>, 3e ar indyttit and accuset: Forfamekill as, frome 3our verrie 3outhie, 3e, being tranet vp in all maner of crewall barbaritie and wiketnes, and following the pernicious exampill of 3our godles parentis, kynfmen and cuntrie people, haifing committed infinit Opprefiones and violences aganis sic perfones as 3e misflykit, in pe cuntreyis of Kynntyre, Ila, and vtheris Hielandis Iles of this Kingdome, to the heich offence of God, displefour of the Kingis Maieftie, contempt of his authoritie, and violatioun of his Lawis: For forder manifestatioun of 3oure extreame and maift vnnatural mischancie,<sup>2</sup> vnderstanding pat pe fones of pe vmq<sup>ie</sup> Tutour of Loupe war in 3our faþeris hous of Askomell, in Kyntyre, and that the Laird of Loupe (quho

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

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

had flane 3our fader<sup>1</sup>) was verrie desyrous to haif pair lyves ; 3e, accompaneit with 3our broper, Angus Oig, and the said Laird of Loupe, with tua or thre hundredreth barbarus, wikked and bludie Hieland-men, foirneris, and avowed maliefactouris, all bodin in feir of weir, with hagbutis, pistolettis and vtheris forbidden wappones, vpon the . . .<sup>2</sup> day of Januar (fyftene dayis or pairby eftir 3ule) in þe 3eir of God, I<sup>m</sup>.V<sup>c</sup>. fourfcoir fevintene 3eiris, (1597) come in the nycht to the said hous of Askomell, quhair þe said Tutour of Loupis fones war, takand þe nychtis rest, lipning for no trubill, danger or invasioune to haif bene maid be ony man aganis þame ; and invironed þe samyn, in all fydis, with grit numberis of 3our airmet men ; and about þe brek of day, calling in to theas who war within, to rander þe hous and þame selffis to 3ow, thay, for feir of pair lyves and of þe mercieles crewaltie of 3ow and 3our bludie aflisteris, refuseing to rander ; albeit 3e knew that Angus M<sup>c</sup>conell,<sup>3</sup> 3our faper, was within the hous, with whome 3e had privat and freindlie meiting and conference that same nycht, and had pairtit frome him in sic professioun of love and naturall deutie and reuerence, as 3e had presentit and gevin to him ane pair of pistolettis : NEUERÞELES, casting of all bandis and respectis of conscience, honestie, and of nature, to 3our faper, and to 3our moþer Fynwall Nikclane,<sup>4</sup> quhome 3e knew to be also within þe said hous, 3e godleslie, barbaruslie, viprouslie and treffonabillie, be 3our self and 3our complices, in 3our name, of 3our causing, command, assistance and ratihabitoun, set ffyre in all þe four coirneris of þe said hous ; quhairby 3our saidis parentis, and haill remanent persones being within þe said hous, being brocht at þe verrie instant to extreme danger of pair lyves, and 3our moþer crying out to 3ow, ‘ THIEF ! Will thou burne thy moþer ? ’ 3e nawayis causit stay or slokin<sup>5</sup> þe ffyre, bot sufferit þe samyn to rage, quhill<sup>6</sup> þe ruif of þe hous began to fall ; and 3our faper, haifing sufferit most crewall extremitie, and being brunt in thre or four pairtis of his body with þat fyre, was forcet to rusch to the dur, quhair 3e had preparit ane number of grit treyis to be laid croce þe dur, aper to stay his furth cuming, to þe effect he micht be brunt within the hous, or micht be so hinderit in his furthcuming, as he sould indoutitlie fall in 3our mercieles handis : Accoirding to the quhilk proiect, he, falling amangis þe said treyis, was pudillit in ane myre<sup>7</sup> be 3our servandis, in 3our sicht ; and þaireftir transportit, in his fark, to Smerbie, tuo myles distant from Askomell, quhair 3e fetterit him in irnes, with ane vther

<sup>1</sup> Probably father-in-law ; the father of Margaret Campbell, his wife. <sup>2</sup> ‘ Threttein ’ is partially erased.

<sup>3</sup> Angus Macdonald of Dynnievaig and Glynnes. <sup>4</sup> *Nyc*, ‘ daughter,’ is sometimes, in the public Records, used as a prefix to the patronymic, in the case of a female. *Mac*, ‘ son,’ is the masculine, though, in modern practice, generally used indiscriminately for the patronymic of both sexes. *Nik* is considered to be a compound of *Nyn* and *Vic*, which is the genitive of *Mac*. *Nik* thus signifies *Daughter of the son of*, or *Grand-daughter of*. This Lady was a daughter of Macclane of Dowart. See Vol. I. 224, Jan. 9, 1590-1.

<sup>5</sup> Quench, *slake*, extinguish.

<sup>6</sup> Until.

<sup>7</sup> Dragged through a miry puddle.



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

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

<sup>2</sup> Struthers.

3e lykwayis vnhonestlie, crewallie, and tressonabillie hurt and woundit Margaret Phillope, wyfe to the said Alexander, in þe heid, with 3our fuordis, to þe grit effusioun of hir bluid, and left hir also lying for deid: And then, haifing no forder resistance, 3e 3eid<sup>1</sup> forwartis to þe Myd-3et of the said Castell; and pair 3e and þe said Lord Maxwell tressonabillie invaidit Archibald Cunninghame, Maister-porter of þe said Castell, for his slauchter; and becaus he wald nocht delyuer to 3ow þe keyis of þe said 3et, 3e gaif him ane grit and dangerus straik, in þe left airme; be þe paine quhairof, and abundance of þe bluid rynning frome him, he being almost in found,<sup>2</sup> 3e reft the keyis frome him, and tressonabillie forcet þe said 3et, and past furth pairat; and than going to þe Bak-wall, 3e and 3our saidis complices lap ouer þe same; and pairby tressonablie brak þe said waird, and fled to haif escaipid; quhill<sup>3</sup> 3e, being followit be þe Constable of þe said Castell, and vperis, his Maiesteis guid and faithfull subiectis, 3e war tane and brocht bak to þe said Castell. QUHILKIS tressonabill crymes war most wicketlie and contemp-tioufflie committit be 3ow and 3our saidis complices; and 3e war and ar airt and pairt pairof: And pairfoir aucht and fould be pwneischet be tynfall and fforfaltour of 3our lyfe, landis and guidis; accoirding to þe lawis and practik of þis realme.

THE said Sir James, eftir reding of the said Dittay, produceit certane Articles; togidder with ane Instrument, of the dait of thir presentis, quhair Margaret Campbell, his spous, past to Mr Johnne Russell, Aduocat, and presentit him the Counfallis Warrant to compeir in his defence; quha refusit to compeir, as the Instrument beris: And als produceit the Lordis of Secreit Counfall Warrant and delyuerance, quhair thay grant Licence to procuratouris to compeir. Quhilkis being red, the Aduocat tuik instrumentis thairvpoun, and speciallie, vpoun the production of the Warrant gewin be the Lordis of Secreit Counfall to Aduocattis to compeir.—The Aduocat produceit ane Act of Counfall, for his Warrant to infist in persuit of Sir James M<sup>c</sup>connell.

Mr Johnne Russell, Aduocat, compeirand judicallie, in presens of the Justice, declairit he wald nocht compeir in defence of the pannell, without his Maiesteis speciall Warrant and Commisfioune, commanding him to compeir.<sup>4</sup>

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

<sup>1</sup> Went.

<sup>2</sup> In a swoon or fainting-fit.

<sup>3</sup> Until.

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



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

Quhilk Dittay, eftir reiding thair of oppinlie in Judgement, the Justice ffand relevant: And thairfoir referrit the samyn to the knowlege of ane Assyse, of the perfones following.

## ASSISA.

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

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

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

Our said fouerane lordis Aduocat, for verificatioun of the said Dittay, producet to the saidis perfones of Assyse, Angus M<sup>c</sup>coneill of Dynnievaig, father to the said Sir James, and Fynwall Nickclane, his mother, thair Depositiones; togidder with his awin Depositiones; made be thame, in presens of the Lordis of his hienes Counfall; for verifeing that article and poynt of Dittay, anent the raifeing of the ffyre, and burning of the hous of Askomell. And siclyk, for verificatioun of the last article of Dittay, repeittit the said Sir James awin Judicial Confessioun, maid be him in the said Justice and Assyfouris prefence; confessing the breking of the said waird of the Castell of Edinburgh: And als producit, for verificatioun thair of, the saidis Archibald Cunninghame, Maister-porter, and Alexander Strutheris, thair Depositiones maid and subfcryuit be thame, in presens of the saidis Lordis of Counfall; quhilkis tua Depositiones was ratifeit and approvin, in Judgement, be the saidis Archibald and Alexander, in presens of the said Sir James: Quhilkis our fouerane lordis Aduocat also repeitit. And in respect thair of, protestit for Wilfull Errour, in cais the saidis perfones of Assyse Clange or Acquit him of the saidis crymes.

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

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

Vchiltrie, all in ane voce, ffand, pronuncet and declarit the said SIR JAMES M'CONEILL of Knokrynsfay, knycht, to be Giltie and convict of airt and pairt of the Raifeing of ffyre in the hous of Afkomell and burning of the famyn, accoording to his Dittay, in all poyntis; cleirlye verifeit to thame be his awin Depositiones, and vtheris probationes producet in proces. AND lykwayis, the saidis perfones of Assyfe, all in ane voce, ffand, pronuncet and declairit the said Sir James to be Giltie, culpable and convict of the Breking of his Maiesteis waird of the Castell of Edinburgh: And of airt and pairt of the forcing of the zettis of the said waird: And of airt and pairt of Hurting and Wounding of Archibald Cunninghame, Maister-porter, Alexander Strutheris and Margaret Phillope, his spous, ordiner servandis and porteris of the said Castell.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

PLEIS YOUR GRACE,

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

FROM ED<sup>a</sup> CASTELL,

Your graces serwand duiring lyfe,

27 Junij, 1607.

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

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

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

MY GRACIOUS SOVERAN,

MAY it pleis your Maiestie to apardoune my importunitie, being inforfid pairto, throw the grett misery q<sup>ik</sup> I aknawleg to hawe maist justly deseruid, for my bypast offences towardis God and your Ma<sup>tie</sup>: 3ett my foueran, your Ma<sup>tie</sup> hes graciously forgiuein gretter offenceis; 3ea, the grettest Treson 3att euer was deuyfid aganst aney Prence, 3our hienes hes forgiwein. For Chrystis caus, Sir, ance forgiue me my bypast offenceis, and with Godis grace I fall euer behawe my selff deutiffully heirefter; and fall find causion to obey quhatt your Ma<sup>tie</sup> will injune<sup>2</sup> to me; beseiking pat pe Declaratioun of your Ma<sup>ties</sup> will may be sent to pe Consall; seing, without pe fame I can gett na ansuer of pair Lordschipis. Humble kissing your Ma<sup>tie</sup> handis, I commit your Ma<sup>tie</sup> ewer to Godis protectione.

Your Maiesties maist humble and pair subiect

FROM EDINBRUCHE CASTELL,

to be imployid to dethe,

28 of Junj (1607.)

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

TO THE KING HIS MAIST EXCELLENT MAIESTIE.

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

MY VERIE HONOURABLE GUD (LORD,)

FEIRING that your lo., to whose fauor I am so much obisfid,<sup>4</sup> fuld not mistaik pe caus of this my last offence, in braicking of Ward, I haue beine this<sup>5</sup> bauld to vrytt to your lo. the only mofion quhilck, I protest to God, maid me to braik Ward. It is trew, my lord, patt *the Laird of Calder* said to honest men, wha can beir record, patt how soever my pairt was anent Donnoveg, 3ett he had ane Warrant past be HIS MA<sup>ties</sup> hand, quhilckis pe *Consall* saw nott, to command pe *Consall*, presently efter pe sight of patt Warrant, to putt me to exsecutioun; and how lyttill resone I had to trust my lyfe to *Calder*, your lo. self and vthers of pe *Counfall* knawis; for, be his misreport, he did all he culd to have perallid my lyfe. And jis trewly was pe caus I fled with my avin lyfe, and for no mistrast I had in HIS MA<sup>ties</sup> clemence, or in *the Consallis* fawor; nor 3ett, for oney feir I had off oney thing pay culd try aganes me, anentt Dunoveg; for as I said when I was in ward, I will say now; God is my vittnes, my pairtt, ever, anent pe talking or keiping of Dunoveg aganes HIS MA<sup>ties</sup>, hes beine ever most

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



honeft and lyall;<sup>1</sup> and efter all juft tryall, I will defy my onfreindis<sup>2</sup> prive<sup>3</sup> vtherwayis. And fence pe braik of Waird I maid with pe *Lord Maxwell*,<sup>4</sup> by<sup>5</sup> my exspectatione, to pis night I brak Ward laft, be God him felf, I was never privie nor a confenter to aney Platt aganes HIS MA<sup>TIE</sup> or my cuntre, I mein his MA<sup>TIES</sup> dominions. And now, feing my braik of Ward was nott, as God is my judge, for no defyre of Rebellion, nor no vther defing,<sup>6</sup> bott only for faiftie of my avin pur lyfe, I will moft humblé befeik your lo. fpeik fuch as is your freindis in *Confall*, patt HIS MA<sup>TIE</sup> micht be moveid, nott to tak no hefte or violent curfe<sup>7</sup> aganis me, onto<sup>8</sup> the tyme thatt pair lo<sup>s</sup> will heir my Peticione. And give<sup>9</sup> your lo. will gett me pat fawor that my Peticion faibe hard, and patt oney whom I fall fend with my Letters to your lo. fall nott be trubled; and I being advertesid by your lo., I will, be your lo<sup>s</sup> advyfe, do aney thing patt may beft fatisfie HIS MA<sup>TIE</sup> and *Confall*; my lyfe, and the lyfis of thefe patt helpid to faif my lyfe being faiff. So, with pe remembrance of my humble deute, I reft

Your lo<sup>s</sup> pur freind euer to ferve you,

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

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

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

MY VERIE HONORABLE GOOD LORD,

PLEAS your lo., the ondeferued fauour and courtesee which I refaued by your lo., in showing your felue my frend, that tyme at Court, when my onfrendes did misreporte of me to his Maieftie, makes me now this bold to befeek your lo. to continew my frend, according to my reasonable fute. And, in fpeciall, that your lo. will meane my caife to your frendes in Counfall; for I protest my beeng ten yeeres in warde in the Caffle of Edinburgh, and the difponeing of my kyndlie landes, made me not fo much to tak that haiftie refolution to efheap, as when I was affured, by his owine frendes reportes, that my lyf wes geven over in the *Larde of Caddelles* handis; who beeing, as your lo. knowes, nowife my frend, or one to trust my lyf to; alwife<sup>10</sup> now I befeek your lo., as yee fhall till death have my poore fervice, try by the Counfall, yf vpone any conditiones, not diminifhing his Maiefties comoditie,<sup>11</sup> I may have this peece of old poffeffiounes, which is Illa, to fufteane my felue and all my kinne that now folowes me; that his Maieftie may have his owine, with honour and eafe, and wee to leeve in peace and offend no manne, and I, getting furetie of my lyff and of this peece land, fhall find fufficient fuiretie, both for my obedyance and good ordour, keeping by all my kinne and frendes. As your lo. learnes in this, or can be hable to do me fauour in getting me his Maiefties peace, your lo. will aduertefe me. And I befeech your lo., fo far as you can, croffe the *Campbells* to gett any employmentes againes me—for they caire not how much they trouble the countree<sup>12</sup> and put his Maieftie to charges needles. As for the Houfe of Dwnoveg, I tooke it from *Calderis* menne, in the fpeace of one day,<sup>13</sup>—killed parte of thame, vpone the Greene of the Houfe,—chaifed in the reft,—tooke there watter and the two Barmkines<sup>14</sup> from tham,—and forced thame to yeeld in my will, the next morning. So I have the Houfe, neuer to be gevin to thefe that is not worthie of it. But yett, his Maieftie may ever command it and my felue, I feeng how I may leeve with the affurance of my lyff and my poore frendes. So, abyding your lo. aduertefment, with the remembrance of my humble fervice, I fhall ever remaine,

Your lo. affured frend to ferve yow,

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

ILA, 2 Julii.

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

TO THE ERLE OF CAITHNES.

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

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

MY LORD,

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

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

(Without date.)

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

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

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

MY VERIE GUD LORD,

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

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

Junij 3.

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

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

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

<sup>1</sup> John Campbell of Calder, or Caddell, as he was often styled. <sup>2</sup> . . . Campbell. <sup>3</sup> . . . M'Dougal of Dunollych, Laird of M'Dougal. <sup>4</sup> David, eleventh Earl of Crawford. <sup>5</sup> Sir Lauchlan MacIntosh of that ilk, whose father, Angus, had married Lady Jean Campbell, daughter of Archibald Earl of Argyle.—*Douglas*. He was heritable Steward of Lochaber, and one of the Gentlemen of the Bedchamber to Prince Charles; and married Agnes, daughter of John Grant of that ilk. <sup>6</sup> Lord Binning, afterwards Earl of Hadington. <sup>7</sup> William, second Earl of Tullibardine, who, for his services to the King, in the affair of Gowrie's Conspiracy, Aug. 5, 1600, had the heritable Sheriffship of Perthshire. His second wife, Lady Dorothea Stewart, being eldest daughter of John, fifth Earl of Atholl, and the male line having become extinct, their eldest son John was created Earl of Atholl. <sup>8</sup> From the Original, preserved among the *Denmylne MSS.* Adv. Library. Andrew Knox, Parson of Paisley, the first Protestant Bishop of the Isles, was translated to the See of Raphoe, in Ireland, but held both Bishoprics for some time. He assumed both titles. <sup>9</sup> Ere; before. <sup>10</sup> At all events; nevertheless. <sup>11</sup> If. <sup>12</sup> Who ever crave to fish in 'troubled waters.' A well-merited, though bitter, sarcasm. <sup>13</sup> Course.



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

MY VERIE GOOD LORD,

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

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

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

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

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

To the BISCHOP OF THE ILLIS.

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

MY VERIE HONOURABLE GUD LORDS,

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

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

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

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

Junij 3.

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

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

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

MY VERIE HONORABLE GUD LORD,

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

<sup>1</sup> Without.

<sup>2</sup> If.

<sup>3</sup> Use.

<sup>4</sup> David, *eleventh* Earl of Crawford.

<sup>5</sup> Went.

<sup>6</sup> Sir Lauchlan

MacIntosh of that ilk.

<sup>7</sup> Nevertheless.

<sup>8</sup> Often-times.

<sup>9</sup> Plot.

<sup>10</sup> If.

<sup>11</sup> Enemies.

<sup>12</sup> Than.

<sup>13</sup> Strenuously endeavour; press.

<sup>14</sup> In opposition to.

<sup>15</sup> Ere; before.

<sup>16</sup> Leave.



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

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

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

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

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

MY VERIE HONORABLE GOOD LORD,

I WES not four nightes out of the Castle when I wrotte to your lo., but be not fure if your lo. hes reffaued my Letter. I have now wrotten thir few lynes, praying your lo. to remember me 3our promefe and conference with me. As for my felue; I am well, praifed be God, and all my kyndlie men hes reffaued me moft glaidlie. I will do all I can to have HIS MA<sup>TES</sup> peace, and find alfo good fuiretie for my obedience and yeirle dewtie<sup>12</sup> as may fuffice. And if my onefrendis crofe me, I trest in God, how fo euer the mater go, to be evin with thame. I pray your lo. fee if it be poffible yee may gett outhir manne or boy to come fpeak with me, and aduertefe me moir of all your awin eftate and dyett, and of all fuch newes as occurs. Any of my bookes that your lo. can gett, fend them to me, and vfe your moyen to gett from the Erle of Atholl the bookes that wes tane from me at that onfett in Atholl. They gatt the thrie converfiones of England, Burnes book, and it that Phillip fett out on the controverted heades, it 3e faw Makcartney wrotte, the Mekle old Cornikle, in wrett. Ther wes other bookes that I remember not, bot your lo. may feek thame all to your felue. I pray your lo. gett me word from Pittfindie, and try if I will gett my mounter and chifter<sup>13</sup> to lovfe.

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

<sup>1</sup> Leave.

<sup>2</sup> This evidently alludes to a proposal for breaking ward; which, it may be conjectured, is the meaning of the Postscript. It is very probable that this and other of Sir James Makconeill's Letters had been intercepted.

<sup>3</sup> On fufpicion of aiding his efcape out of confinement. <sup>4</sup> It is left to the reader to settle whether this ufe is ufed for 'interested' or 'increased.'—It feems to fignify that none of them could hope for reward from him; fo that bribery was out of the queftion.

<sup>5</sup> The word is written fo as to read *stane* or *stare*. The article intrusted may therefore have been fome precious ftone or jewel, or an order of merit.

<sup>6</sup> Sudden or powerful medicine.

<sup>7</sup> Leaving; ceafing.

<sup>8</sup> Loose; release from pledge.

<sup>9</sup> Than.

<sup>10</sup> If.

Fr. *montre*.

<sup>11</sup> Annual-rent.

<sup>12</sup> Probably his coffer or chest.

Old Fr. *chestron*.

<sup>13</sup> Perhaps for *bush*,

or thicket; or, more probably, it may be a fliip of the pen for *ambush*.

<sup>14</sup> Excepting; faving.



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

I trest in God that all the Campbells in Scotland, without HIS MATIES powar, shall not recouer it, so long as they live. I heare Patie Kilchrist is troubled for me; bot I protest to God he is innocent of my break, and all that is in that Castele. No more, but remember me to all frendes, specialie to Margrate, to Cristian, and all your owne frendes in the breathing; and also my homble seruice remembered, I rest

Your lo. owin to command,

July 3, Fra Duneveg.

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

TO THE ERL OF CRAUFURD.

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

MY VERIE HONORABLE GUD LORD,

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

Your lo<sup>9</sup> affuired freind to command,

Junij 2.

S. J. MAKDONALL.

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

<sup>1</sup> William, second Earl of Tullibardine. See No. VI. Note.

<sup>2</sup> Nevertheless; at all events.

<sup>4</sup> Verified; proved; established.

<sup>3</sup> Three pair of buts; three buts' lengths.

<sup>5</sup> Prove; establish.

<sup>6</sup> The lands

which he held as 'kindly Tenant' to the King.

<sup>7</sup> Precipitate; hasty.

<sup>8</sup> If.

<sup>9</sup> Contrary to.

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

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

Your lo. humble seruitor at powar,

DUNVEGANE, 18th of June, 1615.

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

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

MY VERRIE HONOURABILL GOOD LORD,

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

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



by I perceave pat he is nocht previe to *Sir James* his brekking of Waird, and is resolut nocht to mell<sup>1</sup> with pair courffis, ffor *Sir James* and *McRonald* did all pat pai culd, be messages, to haue met with him, vpon pretence to haue delyuerit him his sone; bot he onnawis wald haue ony midling with pame, nor wald nocht reffau his sone, becaus he wes in thair cumpany, without ane Warrant of your lo<sup>s</sup> of pe *Counsell*. Bot I heir pat senfyne, quhan *Sir James* tuik pe sea, he send him frome him. *Sir James*, at his passing out of Lochabber, wes onlie accompaneit with fourtene men and boyis, and *McRonald* followit him with sextene men and boyis. They past out pat to *McEan of Ardnamurchais*<sup>2</sup> cuntrie, quhair I heir pat *McEan* him selff, with all his cumpany with him; att pe leift, pair is an great pairte of pame. He gat sum boittis pair, and past pairfra, langis pe coift; bot he culd haue no landing, nather in *McAllane McEane* his cuntrie, *Mcclawd Hereis*,<sup>3</sup> nor *Donald Gormis* cuntrie;<sup>4</sup> ffor pai pat forcis on all pe sea-poirtis, to stop his landing; and I think pei had maid sum onfet on him, if pair boittis had not bene all sunk of befoir, for feir of suppryng pame.

I heir he landit into pe Isles of Rowme and Eg, quhair *Coull McGillepic* did meit him with ane cumpany of hagbutteris, about pe number of sewin scoir of men. Thair forme of meiting, as I heir, wes this. *Sir James* and his cumpany stude in ane plaice be pame selffis, quhair pe wper with his cumpany went round about him, onis;<sup>5</sup> and at pe nixt going about, salutit him with pair wolly of schoittis;<sup>6</sup> and continowit sua schuitting and inviring<sup>7</sup> of him, for pe spaice of half ane hour; and pair-ester com to him euerie man, particularlie,<sup>8</sup> chapping handis.<sup>9</sup> Wpone pe morne, pai conuenit all pe haill bestiall, horse, and ky, to one plaice, quhilk pei thocht to haue slayne haill;<sup>10</sup> bot, vpon better aduyfement, pei slew onlie ane number of ky, for meat, quhilk pei caryit immediatlie to pair boittis; and pair-ester tuik pe sea,<sup>11</sup> to pe number of Thre hunder men, of all. *Cold*<sup>12</sup> brocht him tua crearis,<sup>13</sup> with sum wpir boittis pat *Sir James* him self gat in Ardmurche, and suppryfit in wpir pairtis. It is thocht pat pei haue tane pair voyage to Ilay; and if pe cuntrie be vpon pair gaird, as pai fuld, I think pai fall nocht proffit mekill. The occasioun of my mannis slay; it wes long befoir he could get tryell<sup>14</sup> quhair *McAllane McEan* wes; for he wes buffie, in gewing of ordour, pat *Sir James* fuld nocht land<sup>15</sup> on any of his Isles; and abscuring<sup>16</sup> him selff, pat pei fuld nocht get him. I vnderstand he hes send him Letteres to the *Counsell*, quhilk I think your lo. knawis of befoir now. I will request your lo. to lat me vnderstand, quhat directioun is cumit zit frome HIS MA<sup>TIES</sup>, concerning *Sir James Mcconell*, and quhat conclusioun your lo<sup>s</sup> of *Counsell* hes taiken pairant. Sua, hawing na farder at pis present, committis your lo. to pe protectioun of God; and reftis

Your lo. euir affuirit freind and seruant,

PERTHE, pe 24 of Junii, 1605.

TULLIBARDINE.

I VNDERSTAND *Glengarry*<sup>17</sup> is presentlie in Edr, and is trublit be my *Lord Lowatt*<sup>18</sup> in some actionis betuix pame. I wald request your lo. to be his freind and to forder him hame ouir; for I mynd to meit with him, in his by-cuming, and fall lay him rycht to any thing pat concernis HIS MA<sup>TIES</sup> seruice, to my power. And becaus he is dealler betuix me and *McAllane McEane*, *Capitane of the Clan Ronnald*, pleas your lo. wret to me, quhat particular ze wald haue me to lay to thair chairge; and I fall do pe beff.

The pretext pat *Sir James Mcconell* and *McRonald* myndit to haue vfit, to haue persuadit *McAllane McEane* and *Glengarry* to haue taikin pair pairte, is pis auld actioun pat my *Lord Lowat* hes

<sup>1</sup> Meddle; interfere; mingle. Fr. *meler*.

Ardnamurchan, a powerful branch of the Clandonald.

<sup>2</sup> Macdonald of Ardnamurchan, Chief of the CLAN IAN of

*Rory More*. He married a daughter of Glengarry's, and was the founder of the families of Talisker, Bernera, Muir-avenside, Hammer, Grisernish, &c.

<sup>3</sup> Sir Roderick MacLeod of that Ilk, commonly called

<sup>4</sup> Volley; feu de joie.

<sup>5</sup> See Note relative to *Donald Gorme*, (No. XXII.) III. 25.

<sup>6</sup> Once.

<sup>7</sup> Encircling.

<sup>8</sup> Separately; individually; one by one.

<sup>9</sup> An impressive mode of

swearing feudal obedience, and to live and die in his service.

<sup>10</sup> Entirely; wholly.

<sup>11</sup> Set sail.

<sup>12</sup> Coill

*Makgillespik* Macdonald.

<sup>13</sup> A *crayar*, sort of large galley; or rather a bark or sort of sloop. Cray is used in

O. E. in a similar sense.

<sup>14</sup> Advice; satisfactory intelligence.

<sup>15</sup> Should not be suffered to effect a landing.

<sup>16</sup> Obscuring, concealing.

<sup>17</sup> Donald Macdonald of Glengarry (*Donald MacAngus MacAlister*.)

<sup>18</sup> Simon,

seventh Lord Lovat. See *History of the Frasers*, by John Anderson, Esq. W.S. : a work of great ability and research.



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

### XV. LETTER, *Sir James Makconeill to Lord Binning.*

MY VERIE HONOURABILL GUDE LORD,

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

Your lo. euir to command,

Julij 1.

SIR J. MAKDONALL.

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

Your lo. euer to be commandit,

Julij 1.

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

TO MY LORD SECRETARE.

### XVI. LETTER, *Sir James Makconeill to Mr James Knox.*

RIGHT WORSHIPFULL,

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

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

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

FROM ILA, 4 Julij.

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

(*Postscript.*) Sir,

ALBEIT it be too great paines, yet in hope I will, God willing, do 3ow yett more service, send ony of 3owr servandis with all the rest of my Letters to such as thay are drected to, and what answer bees gotten, geve it to the berar. I rest  
3our assured frend,

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

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

XVII. LETTER *from Archibald Campbell<sup>3</sup> to Lord Binning,<sup>4</sup> anent his persute of Sir James Makoneill.<sup>5</sup>*

RIGHT HONORABELL,

AS I writt to 3our lo. from the Wode of Messen, SIR JAMES M<sup>c</sup>CONEILL and M<sup>c</sup>RANALD went by pat way; and, as I was informed, he had stayed Wednesday night and Thursday in Murthlie. So I, heaving riddin Wednesday night and Thursday all day, I wachit at Murthlie all pat night, bot pay maid no stay pair: Bot M<sup>c</sup>Ranald sent a man of his for a young boy of his awin pat he had in Murthlie, and convoyed him with him. On Wodnesday, at night, they were in a pure man's house in Strabrane; and on Thursday, at night, pay wer in the East end of Ranoch, quhair I might have bene sex houris before pame, gif I had bene sartane of thair way. *The Erle of Atholl<sup>6</sup>* was advertised by pe *Erle of Mar<sup>6</sup>*, and he followed pame. And on Fryday, in the morning, com in sight of pame; bot my lordis men had run so far, and his spayis pat went before him so wnprovedent, pat *Sir Jeames* and his companie wer advertised be *Strowan* his wyf,<sup>7</sup> quho is *M<sup>c</sup>Ranald* his dochter. They wer forfild to leive pair horffis and clothes, and teake pame to pe wodis. *The Erle of Atholl* apprehendit *Sir Jeames* his man, pat was with him in the Castell, and quho stayed efter him in pe Castell pat morning he brake ward, and too men of *M<sup>c</sup>Ranaldis*; bot my lord tels me he difmist pame all. My lord, so far as I culd learne, *the Erle* was exceiding willing in this persute, bot pair was sum wronge done him, pat I beleive his lo. as 3it knows not of. Those pat I send to be before pame ar not as 3it returned, nor no word from pame. I hope in God 3our lo. fall heir pat pay haue mett; for pay can hardlie pas by pame. *The Erle of Atholl* assuris me pat pair cam a compane of men to meit *M<sup>c</sup>Ranald*. My lord, if pair wer bot too hunder men and ane honest commander on pe feildis, they wer not eabell to do any thing be land; nor culd pay haue tyme to mowe<sup>8</sup> any to follow pame: Bot in treuth, if pay be per-mittit, they will no dout grow stronge. *Sir Jeames* man pat pe *Erle of Atholl* apprehendit, told, pat pay resoluit to burne *Cadell<sup>9</sup>* his landis of Mukarne; and pat he thocht a grait many Illenderis ver on pair course.<sup>10</sup> My lord, so schune as I heir from those I drectit estir pame, and pat I kno quhat course

<sup>1</sup> Weal; advantage.

<sup>2</sup> If.

<sup>3</sup> Son of Sir James, and brother of Sir John Campbell of Lawers. Afterwards Sir Archibald.

<sup>4</sup> Sir Thomas Hamilton, afterwards Earl of Haddington, Secretary of State.

<sup>5</sup> James, second

Earl of Atholl, son and heir of John, sixth Lord Innermeath, who had obtained the Earldom, Mar. 6, 1595-6. He married Lady Mary Stewart, second daughter of John, fifth Earl of Atholl, by his stepmother, Lady Mary Ruthven, and died without issue, anno 1625.—*Wood's Peerage*.

<sup>6</sup> John, seventh Earl of Marr, who had been intrusted with the education of Prince Henry, and was, in Dec. 1615, appointed Lord High Treasurer of Scotland. He married Anne, 2d daughter of David, second Lord Drummond, and died Dec. 14, 1634, æt. 77.

<sup>7</sup> Robert Robert-

son of Strowan married a daughter of Macdonald of Keppoch.

<sup>8</sup> Induce; persuade; move.

<sup>9</sup> John

Campbell of Caddell or Calder.

<sup>10</sup> Were his abettors and maintained his cause.



*Sir James* teakis first in hand, or quhich way he teakis him to be feie, I will, God willing, returne; not douting bot *my lord Thesaurer*<sup>1</sup> will haue some confideratioun of my peans,<sup>2</sup> as I fall be reddie at all occasions to adventur my self in HIS MA<sup>TIES</sup> seruice; I rest

FROM the FURD of LYON, þis Setterday  
at xij houris of þat day.

3our lo. ewer to serue 3ow,

AR. CAMPBELL.

I pray 3our lo. adverteise Cadell, þat he may send word to his men of Mackarney, to be war of þe rebels.

To þe right honorabell, and my spefeall good lord,  
MY LORD OF BINNING, Secreter, &c.

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

LOVING FREIND,

I RESSAVED your Letters of the 15 of this moneth, from Dunoveg; bot now newes in thame; becaus, vpon the 12 day, I hard the substance of all that your Letter beares; quhilk that same 12 day was writen to Court be my Lord Chancellour. I am glad that my Lord is maister of these strenthis, and sorie that all the principall men are escaped, except *Coll*, who hes gottin conditions; bot I hope that my lordis diligence, wisdom, and gud luk, fall owerlak thame, and red HIS MA<sup>TIE</sup> and the cuntrie of thair cummer, for if it sould fall vtherwayes furth (as God forbid) yow know quhat constructions men wald mak of the great preparatioun maid be sea and land, at so great charges to HIS MA<sup>TIE</sup>, without any effect, bot the wrak of the poore beggarlie tennentis of Ilay and Kintyre. For, since *Sir James* and his sone, with *M<sup>r</sup> Rannald* and his sone, and *Glengarries* sone, and *M<sup>r</sup> Sorle*,<sup>3</sup> ar all escaped, and *Coll*<sup>4</sup> pardoned, I know not quhat ringleaders these ar, whome ye wryt 3e ar to bring in. Allwayes, it is gud that thair forces ar scattered, without harme or danger; yit, so long as the heades ar all to the fore,<sup>5</sup> the Rebellioun will never be thought quenched. Quhairfor, I know my Lrd will have such cair as agrieth with his honour and HIS MA<sup>TIES</sup> expectatioun. I have no certantie of the *Thesaurer* deputes dyet, bot I hope he will be heir about Hallowmes, and will assuredlie performe his promeis, yours being observed, quhilk I hartelie wishe. So, remembring my loving commendatiounis to your brother *Collin*, and praying you to prevent your curious nighbouris in the adverteifments of my lordis proceedingis, quhilk I wishe may be prosperous, I rest

Your verie loving freind, at powar,

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

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

HONORABLE GOOD LORD,

MY humble dewtie remembrit, please 3our lo. to wit, that I am heer in the Tarbet, attending vpon our enemies coming farder in the cuntrie. 3our lo. fall vnderstand, since my last wryting to 3our lo., *Sir James* the traitour hes latlie directit out ane *fyrrie croce*<sup>7</sup> from the head of Lockerrane, quhair he makes his residence for the tyme, to the Tarbart, vpon the pretence that all maner of man betuix the Mull of Kintyre and the Tarbart sould come and tak land of him. And to preveine this, that the cuntrie sould get no skaith, I have directit for to get more assistance of men throw Argyle and Lorne. 3our lo. fall know that I was not anfuerit, according to my Commiffioun. The monyest<sup>8</sup> that came to me was ane hundreth men; the number of the baill thrie hundreth men. Wifhing 3our lo. to tak ordour with the cuntries disobedience, for farder inconvenience; quhilk I fear will come to more

<sup>1</sup> Sir Robert Carr, Earl of Somerset, held the office at this time.

<sup>2</sup> A gentle hint that remuneration was looked for, to quicken his zeal.

<sup>3</sup> A son of Sir James MacSorle of the Route, formerly mentioned, both in this Appendix and in the Introduction to this Trial.

<sup>4</sup> Coll Macgillespick Macdonald.

<sup>5</sup> In being; existing.

<sup>6</sup> From a copy, marked by Lord Binning himself.

<sup>7</sup> See Notes to *Sir Walter Scott's Lady of the Lake*, &c.

<sup>8</sup> Most; greatest number.



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

TARBART, 30 July, 1615.

Your lo. to be comandit to my powar,

AUCHINBRECK.

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

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

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

Your lo. verie affectionat to serve you,

[BINNING.]

Ed<sup>a</sup>, the fyft of August (1615.)

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

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

<sup>1</sup> The Fiery-cross so often described by Sir Walter Scott in *The Lady of the Lake*, &c.

<sup>2</sup> Clan Campbell.

<sup>3</sup> Prove careless.

<sup>4</sup> Than.

<sup>5</sup> Freely.

<sup>6</sup> From the *Denmylne MSS.* Adv. Library.

<sup>7</sup> George,

sixth Earl and first Marquis of Huntly, the same person who was concerned in the traitorous correspondence with Spain, the burning of Dunibersel, and slaughter of the Earl of Moray, &c.

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

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

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

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

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

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

<sup>1</sup> Alexander McDonald or McRonald of Keppach or Gargavache.

<sup>2</sup> George Earl of Enzie, afterwards second

Earl of Huntly, who was beheaded at Edinburgh, Mar. 22, 1649.

<sup>3</sup> Father of Alistair McDonald, Lieutenant

to the great Marquis of Montrose in the civil wars. He was popularly styled *Coll Keitach*, i. e. Left-handed Coll, from which his son Alistair took his designation of McColl Keitach, abridged to *Colkitto*.

<sup>4</sup> Donald MacAngus

of Glengarrye.

<sup>5</sup> Of Sleat, called

*Sassenach*, having been educated in England. He married Mary, daughter of Hector MacLean of Dowart, leaving three sons. *Donald More*, the eldest, married Margaret, sister to Colin Lord Kintail; and dying, without issue, in 1616, his nephew, *Donald Gorme Oig*, son of his brother Archibald, by Margaret, daughter of Angus Macdonald of Dun-

<sup>7</sup> Donald McAllan McEan.

nivaig and Glynnis, succeeded. See (Archdall's) *Lodge's Irish Peerage*, VII. 115.

<sup>8</sup> Edited by Thomas Thomson, Esquire, quarto, Edin. 1825, p. 388.

<sup>9</sup> The author either did not live to fulfil

this intention, or at least did not complete his History, which terminates abruptly, anno 1617.



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

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

<sup>1</sup> Presented to the Privy Council by 'Archibald Campbell,' (Brother to the Laird of Lawers,) 'seruitour to Archibald Erle of Ergyle,' Nov. 23, 1615.

<sup>2</sup> Probably meant for *Dunoon*, of which the Duke of Argyll is still nominally the Heritable Keeper. The *Dun* on which the ancient Castle stood is all that remains to point out its site.

<sup>3</sup> Until.

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

<sup>5</sup> Cowell, a district of Argyle.

<sup>6</sup> Some words appear to be omitted here,

such as 'set for,' or 'laid in wait for.'

<sup>7</sup> Frustrated.

<sup>8</sup> . . . . Macdonald, ancestor of Sir Charles Macdonald

Lockhart.

<sup>9</sup> Large beacons.

<sup>10</sup> To make them aware; put them on their guard. Such beacons were

usually large fires placed on the tops of the highest mountains or eminences, and carefully fed with tarred wood, &c. until answered from adjacent heights.

<sup>11</sup> Met; rencountered.

<sup>12</sup> Rachlin or Rachrin.



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

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

#### ARTICLES and ANSWERIS.

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

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

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

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

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

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

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

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

<sup>4</sup> Respite.

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

FOURTLIE, to schaw thair Lordschipis, that *my Lord of Ergyle* findis the hail cuntry people of KINTYRE, ILA, COLONSAY, JURA, and EIGA, guiltie in being in cumpany, and beiring wapponis, and musturing with *Sir James M<sup>c</sup>conceill*, at fuche tymes as he appointit; and in geving of meite, drink, and harborie to him, his followaris; and for the most pairt thay neuir left *Sir James*, nather in KINTYRE nor ILA, vntill he was confrayned to leive thame; yit *my Lord of Ergyle*, finding the nowiner so grite, and that thay alledgeit that it was throw just feir that thay went with him, or schew him ony fauour; thairfoir my Lord hes put to the knowledgement of ane Affyse, fuche as had commandiement of companyis with him, who micht haue done seruice on *Sir James* and his followairis, and haue left thame at thair pleafoure; and forbearis the rest, vntill he know the Commiffionaris pleafoure; altho' the extremitie of the law wald tak all thair lyveis.

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

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

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

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

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

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

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

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



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

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

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

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

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

<sup>3</sup> John Johnstone of that Ilk. He was  
<sup>4</sup> *Wood's Peerage*, I. 73.      <sup>5</sup> *Robertson's*  
<sup>6</sup> See this Collection of Trials, I. 359.

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

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

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

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

<sup>1</sup> See *Trials*, I. 305. <sup>2</sup> *Ibid.* and I. 360. *Marj. Annals*, p. 57. *Balf. Ann.* I. 394. *Birrell's Diary*, p. 19.

<sup>3</sup> Viz. called or begged for quarter. <sup>4</sup> Formerly or previously granted quarter to Johnstone's father, by taking him prisoner, instead of putting him to death. <sup>5</sup> At all events; nevertheless. <sup>6</sup> *Spots. Hist.* 407.

<sup>7</sup> Whatever opinion may be entertained of the treasonable conduct of Johnstone, in thus openly resisting the King's Lieutenant, merely because he happened to be his personal enemy, it is impossible to withhold admiration at the masterly manner in which this skirmish was conducted, which showed military talents of a very high order. <sup>8</sup> *Statistical Account*, IX. 424. <sup>9</sup> Q. d. *Dryfe's-dale*.



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

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

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

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

<sup>1</sup> Rymer's *Fœdera*, XVI. 60 D.    <sup>2</sup> Birrell's *Diary*, 44.    <sup>3</sup> *Ib.* 46.    <sup>4</sup> Vol. II. 363, Nov. 4, 1601.

<sup>5</sup> *Ib.* 49.

<sup>6</sup> For a number of extremely interesting and minute particulars, the reader is referred to *Tales of a Grandfather*, Second Series, which the Editor had not had the advantage of perusing, until this Notice was written. The difficulty of procuring minute and authentic information on such points of history is best known to those who have made the attempt; and even after the most laborious research, the most anxious enquiries often prove fruitless.

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

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

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

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

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

Jun. 24.—JOHNNE LORD MAXWALL.

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

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

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



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

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

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

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

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

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



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

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



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

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

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

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



violenter aufugerunt; donec sub Castellam nostri et aliorum fidelium subditorum insequentium diligentia, captus et in carcere retractus est, dictus Jacobus M<sup>c</sup>Connell; dicto Joanne Domino Maxwell celeri fuga euadente: Sicque, Joannes Dominus Maxwell Maieftatem nostram lefit, eiusque opera, consilio, dolo, malo, consilium initum est, quo arma contra nos per seipsum et dictos Jacobum dominum M<sup>c</sup>Conneill et Robertum Maxwell de Dunwiddie lata sunt, ac etiam dictum Jacobum M<sup>c</sup>Conneill militem Maieftatis reum in vincula coniectum dimisit, dictorumque omnium Lese Maieftatis criminum conscius, et particeps, ars et pars fuit et est, et penas iis a jure constitutas subire et perpeti debet. ET PROPTEREA, dictus Joannes Dominus Maxwell ad videndum et audiendum, per nos, dictumve nostrum Commissionarium et Justiciarium, ac dicti nostri regni Scotie ordines, decerni et ordinari, se, predicta Lese Maieftatis crimina, per seipsum et alios ipsius mandato et persuasione, consilio, auxilio et ratihabitione comississe et perpetrasse; ac eorum conscium et participem, vulgo *airt and pairt*, fuisse et esse; ideoque penas dictis Proditionis et Lese Maieftatis criminibus competentes ferre et subire debere, vite, scilicet, et bonorum omnium, mobilium et immobilium, terrarum, tenementorum, dignitatum, officiorum, jurium, aliorumque omnium ad se spectantium, amissionem et confiscationem; dictasque terras, predia, bonaque omnia, mobilia et immobilia, dignitates, officia, jura, aliaque omnia ad dictum Joannem Dominum Maxwell spectantia et pertinentia, vel que ad illum spectare et pertinere vilo modo potuerunt, nobis confiscari, ad nos pertinere et perpetuo nobiscum in proprietate permanere: ET ulterius, in premissis respondendum et juri parendum: Intimando dicto Joanni Domino Maxwell, quod siue, dictis die et loco, cum continuatione dierum, comparuerit, siue non, nos tamen dictusue noster Commissionarius ac Justiciarius, et dicti regni nostri ordines, in premissis, justitia mediante, procedemus et procedent. Insuper summoneatis ad comparandum coram nobis, nostroue Commissionario ac Justiciario, et dictis regni nostri statibus, in dicto Parlamento, dictis die et loco, hora caufarum, cum continuatione, ad perhibendum fidele testimonium in premissis, sub pena legis: Et presentes literas debite executas et indorsatas earundem latori reddatis. Et vos qui presentes executi fueritis sitis ibidem dictis die et loco, cum continuatione dierum, coram nobis dictoue nostro Commissionario et Justiciario, ac tribus regni ordinibus, portantes vobiscum vestre summonitionis testimonium, in scriptis, pro premissis aut ipsos testes. Ad quod faciendum, vobis et vestrum cuilibet, coniunctim et divisim, vicecomitibus nostris in hac parte, nostram plenariam virtute presentium committimus potestatem. Datum sub testimonio nostri magni Sigilli, Apud Edinbur<sup>g</sup> vigesimo sexto die mensis Januarii, anno domini millesimo sexcentesimo nono, et regni nostri annis quadragesimo secundo et sexto.

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

being this instant day red, in presens of our fouerane lordis Commissiounar and Estaittis of Parliament, first in Latine and thaireftir in Scottis, the said Johne Lord Maxwell, being oft tymes callit of new at the tolbutth window of the said burcht of Edinburcht, to haue compeirit, &c. And he nocht compeirand to haue defendit in the said mater, and to haue answerit to the said summondis, the said Sir Thomas Hammyltoun of Bynnie, kny<sup>t</sup>, Aduocat to our fouerane lord, desyrit the saidis Estaittis declaratioun, gif the reffounes of the said summondis wer relevant aganis the said Lord Maxwell. The quhilkis Estaittis fand the said summondis, and the reffones and causses thairin contenit, and euerie ane of thame relevant. Thairfor the said Aduocat, of new, for preving of the foirsaidis thrie reffounes and euerie ane of thame, beirand and contenand as is abone writtin, repetit all the Depositiones of the Witnesfes, examinat befor the saidis Lordis of Articlis, and Lordis of the Secrete Counsaill, respectiue, with diuerse Actis of Parliament, Lawes and constitutionis of this realme, Sir James M'Coneillis Conviction, &c. with all vtheris wryttis and probatiounes producit of befor, this instant day, be the said Aduocat, ffor preving of the foirsaidis summondis of Treassoun, and hail thrie reffounes and causses contenit thairin, and euerie ane of thame; and desyrit the saidis Estaittis of Parliament to advyse the probatiounes foirsaidis led and deducit in the said mater, and to pronounce thair Sentence of Parliament thairintill, according to the famin probatiounes, and thair consciences: And thaireftir, the hail wryttis, Depositiones of Witnesfes and probatiounes being red, sene, and considerit be the saidis hail Estaittis of Parliament, and they thairwith being rylie advyfit,

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

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



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

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

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

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

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

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

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

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

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

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

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

APUD ED<sup>8</sup>, xx Junij, 1609. WITNESSES *producit be the Advocat, for preving of the Third  
Reffounne of Treffoun anent the Breking of Ward furth of the Castell of Edinburgh.*

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

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

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

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

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

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

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

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

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

<sup>1</sup> Hasty, precipitate.

<sup>2</sup> Fifty.

<sup>3</sup> Hanging.

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

<sup>5</sup> A midden, or dunghill.



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

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

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

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

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

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

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

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



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

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

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

ROBERT MAXWALL OF SPOTTIS.

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

(10.) DEPOSITION of William Johnstoun of Lockerby.

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

WILLIAME JOHNSTOUN, callit of Lockerbie, of the aige of xl yeiris, or thairby, mareit; deponis, that vpoun the sext day of Aprile, the yeir of God 1608, this deponar cumming to the place of Lochwod, about ane efternone, THE LARD OF JOHNSTOUN tuik this deponar to the clois, and said to him, 'Ze ar velcum, for I haif ane gritar turne ado with you nor ewir I had befor this day; I am to meit with the Lord Maxwell, and ze sall go with me, and loip on vpoun your horfe, and raik fordwart to Lytill Lochwod, quhill I owirtak you, and let nane ken quhair ze ar rydand to.' Immediatlie thairafter the Lard of Johnestoun and Sir Robert Maxwell of Spottis owirtuik this deponar within ane myle from the Lochwod; and thei raid altogidder towartis the place appoyntit, quhill thai come to the Cowart-croce, quhilk was within a myle quhair THE LORD MAXWELL and Charlis Maxwell was huifand<sup>4</sup> on horfbak togidder. Then Sir Robert Maxwell directit the Lard of Johnestoun and this deponar to stay thair, quhill his returne to thame, or ellis that he gif thame ane sing to cum fordwart, quhilk was be haldin vp of his nepkyn vpoun his wand end.<sup>5</sup> Schortlie thaireftir Sir Robert Maxwell cumming from the Lord Maxwell, about the mydway betwix the saidis parteis, the said Sir Robert held vp his nepkyn vpoun his wand end; and vpoun that finge the Lard of Johnestoun and this deponar raid fordwart to the said Sir Robert. At thair meting the said Sir Robert shew to the Lard of Johnestoun, that the Lord Maxwell, accompaneit with Charlie Maxwell allane, war awayting vpoun thair cumming, and that the Lord Maxwell inquyrit of Sir Robert quho was with the Lard of Johnestoun? The quhilk Sir Robert answerit, that he had tauld to the said Lord Maxwell, that this deponar was onlie in companie with the Lard of Johnestoun; and that the Lard of Johnestoun, for secrecie of the tryft, was rydand vpoun ane naig, and had left his best hors behind him. Then the Lard of Johnestoun answerit, that he was weill content that Charlis Maxwell was rather thair nor ony vther, be ressoun he was Johne Murray of Cokpullis sifter-son; and at that samyn tyme, Sir Robert tauld to the said Lard of Johnestoun, that he had tane the Lord Maxwellis ayth and promiseis, vpoun his fayth and honour, that he suld meit fairlie, and depairt fairlie. And that the Lord Maxwell desyrit the said Sir Robert to tak Charlis ayth thairvpoun; the quhilk Sir Robert refusit to do, saying, that 'he wald haif na promise bot the Lord Maxwellis awin promiseis for his man.' Lyk as, at that samyn tyme, Sir Robert tuik the Lard of Johnestonis ayth and promiseis, be his hand laid in his, that he suld meit fairlie and depairt fairlie with the Lord Maxwell, quhidder thai aggreit or nocht. Immediatlie thairefter Sir Robert raid to the Lord Maxwell, the Lard of Johnestoun and this deponar followand adreiche;<sup>6</sup> and thaireftir, Sir Robert haveing an short space spokin with the Lord Maxwell, they turnit towartis the Lard of Johnestoun, and the Lard of Johnestoun towartis thame; and eftir salutation, the Lord Maxwell, the Lard of Johnestoun, and Sir Robert, raid togidder to and fro, the said Sir Robert being in the myddis; bot quhat thai spak togidder kennis nocht, be ressoun the said Charlis and this deponar stayit about ane pair of but-landis, or thairby, from thame, as Sir Robert Maxwell had directit tham of before: And schortlie eftir that the said Charlis and this deponar had stayit pairt and findrie,<sup>7</sup> the said Charlis Maxwell cummis first to this deponar, and said to this deponar, 'Gif I had knawin of this tryft, the Lord Maxwell nather culd nor suld haif brocht me heir.' The deponar answerit, 'I hoip in

<sup>1</sup> Growing restive.

<sup>2</sup> Girths.

<sup>3</sup> Clerk to the Privy Council.

<sup>4</sup> Riding; literally, *hoofing*.

<sup>5</sup> The end or point of his riding switch.

<sup>6</sup> Leisurly, loiteringly.

<sup>7</sup> Apart and separate, or asunder.



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

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

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

<sup>1</sup> Advocates' Library, A. 4. 35.<sup>2</sup> Drunk, intoxicated.<sup>3</sup> From closing or shutting.<sup>4</sup> Fetters.

winne the hairtt of my Lord Maxwell, giff (be) his meanis and trawell he mycht purches his Maieftieis gude will to his lordschip: Quhairwpone, he fendis to Schir Robert Maxwell of Orchortt-toune, kny<sup>t</sup>, quha had mareyit the Laird of Johneston's sifter, as, also, Johnestoun had mareyit his sifter, to trawell with Maxwell, to sie gif he wald speik with him: And quhat he wald direct him, in that turne, he wald do to the wttermest of his power. The quhilk the said Schir Robert did, and brocht thame to ane meitting, the next day of Apryll, the zeir of God 1608; and Chairlly Maxwell with my Lord, and Williame Johnestoun of Lochirbie with the Laird of Johnestoun. Thay mett on the hill beyde the place of Ellifcheillis, the said Schir Robert being with thame; quhair thay, being mett, the tua ferwandis rydis a pairt off thame, leaffand my Lord and the Laird and Schir Robert; bot, or euer thay had conferrit ony speace, the tua ferwandis fallis in wordis, and also in schottis of pistollattis, the same cuming be this Chairlly Maxwellis motioun: The quhilk, quhen the nobill menne feis, Johnestoun cryis, 'Fy! Red!' and spurris to thame. And my Lord, being ryding with pistollattis, cumis behind Johnestoun and schuttis him throw the hartt, quhairof he fallis: And yit his curradge maid him to draw his fuord; bot being schott neir to the hairtt, he fallis deid. The Lord Maxwell, seing him fallyn deid, giffis him na ma straikis, bot rydis his wayis. Bot albeit he had gottin his lyff, zit he gat the fame with schame, it being gottin wnder tryfing. Quhairfor the King estemeit the fame as Treffoun, being done vnder tryft.

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

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

RIGHT trustie and weilbelouit coungis and counfallouris, We greitt zou weelle. The leatt escheap of THE LORD MAXWELL furth of our Castell of Edinburgh, haveing gevein to ws moir nor just caus of discontentment at his foly, We have thocht meitt heirby to direct zow how to proceid aganes him. And first, We will this Proclamatioun, heirwith sent, to be publeissed at all placeis neidfull; and that zow pairefter tak ordour for tryall of all reffeattares and suppleares, and caus the extreametie of the law to be prosequit aganes thame. And also zou fall, upon ressait heirof, presentlie fend chairges of Treffoune, for the randerig of his Castellis and houffis, and zou fall put garefounes and keiparis in everie one of the fame, to be interteined vpon the rentis belonging to the houffis, wnto such tyme as We doe tak farder ordour thairwith. And als, our will is, that zou give particular directioun to suche as fall ressave the Castell of Lochmabene, that thay mak delyverie of the same to our rycht trustie coising and counfallour the Erll of Dumbar, or to ony wther quhome the said Erll of Dumbar fall direct, with our wther Warrant, for ressaveing pairof. Furthermore, zou fall caus chairge the principallis of the said Lord Maxwell his name and followaris, being ony way men of mark, to find cautione and fuertie, wnder gritt pecuniall panes, that thay fall noway ressait, supplie, nor intercommoun with him. Zou fall in lyk maner geve speciall ordour to our garifoune, wnder the Lord of Scones command, and als to that wther, wnder Sir W<sup>m</sup> Cranstounes chairge, that thay mak speciall searche, for the said Lord Maxwell his taking and apprehending. And heirof, willing zou to be cairfull, and to omit nothing that may haisten ane exemplar pwneishment vpon him, for his prowde contempt, We bid zow fairwelle. FROM our Court at ROYSTOUNE, this 14 of Dec. 1607. [JAMES R.]

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

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

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



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

Please your most sacred Maiestie,

KNOWING that your Maiestie will expect and requyre of me ane discharge of my dewtie, in performing your Maiesties commandement, geuin for persewing the LORD MAXUELL and SIR JAMES MAKONEILL, for thair treasonabill breaking wairde furth of your hienes Castell of Edinburgh, becaus I have hard that sum, whois opinion may have place in sum of the circumstances of thair tryell, inclynes to juge, that, vnles the crymes for the whilk thay wer imprisoned have bene treasonabill, that thair break of wairde can not import Treasoun, I have bene the more solist to inquire of thair vther offensis, which may be found treasonabill of the law: And albeit the Examination and re-examination of Sir James Makoneill I have had small aduantage, in respect of his resolution to deny all the poyntis of his crymes, at the Slauchter of his vnle, and taking of his parentis, whilkis might infer Treasoun; yet I hope that sufficient information fall verie schortlie cum, of the trewth of his most heynous and vnnaturall factis, from those to whom my Lord Chancelar hes writtin, to that effect. As to the Lord Maxwell, I have hard of his raising of fyre at Dalisbill, whan he slew Willie Johnestoun, callit of Eschieschiellis and ane vther Johnestoun; bot becaus he hes sensyne had the honour to be admitted to your Royall presence, I wald not presume to summond him for that fact, whill first I sould knaw your Maiesteis mynde thairanent; the knaulege whair of fall lead me to proceed or desist. The progres of the Commissionars at the mynes<sup>2</sup> I hope your Maiestie hes hard from thameselfis, and what I know I have writtin to my Lord of Dumbar; becaus I fand him most desyrous to vnderstand the successe of that whilk concernit your Maiesties seruice and contentment. Swa, attending most humbly your Maiesties farther pleafour for my direction, I pray God long to blesse us with the continuance of your most gracious regne, and your Maiestie with all honour and wisshed contentment. ED<sup>n</sup>, this 28 Januar, 1608.

Your most sacred Maiesties most humbly and bundin seruand,

S. TH. HAMILTON.

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

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

<sup>1</sup> From the original, preserved among the *Denmylne MSS.* Adv. Library.

<sup>2</sup> At this period the King was deluding himself as to the discovery of silver mines, &c.

<sup>3</sup> From *Hadington MS.* General Register House.

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

MOIST SACREID SOVERAGNE,

WE have hard, to our gritt greiff and sorrow, by the report of your Ma. Secretare and be the Instructions committit be your moist sacred Ma. to his credeit, how far your hienes is discontented with the government of this Estaitt, as of the haill misfordouris and accidentis that fallis out heir. . . .

As to the particular prosecuting of the Lord Maxwellis reffettares, thair is a nwumber of thame callit, fynned, and wairdit. The rest ar summondid to particular dyettis, and falbe pwneischid. As to the particular Slauchter of Cowhill, that feid is weall knawin to your Ma<sup>tie</sup>, and no complent of it maid by ony to the Counfall, and these brether of Kirkhoufe had alwyis favour, bot not for the Counfall; and the committer of it is come in England. And quhairas your Ma. is informed, that these who wer appoynted to prosecute the Lord Maxwell hes keipit companie with him, thease that hes commandement of your Ma<sup>tie</sup> Guairdis humlie craves tryall of that calumnie; as alsua, that that Cove, quhilk is the allegit place of his reffeat, may be designed; for we cannot find any countrie man that knawis any place in Nithisdail or Galloway that careyis that name. . . . .

The tryall of that royat, at Drumfres, wes wnder tryall befor your Ma. directione cam, and falbe prosecuted with all regour.

The buriall of the Lord Maxwell wes a calumnie quhairwith many mo (than) your Ma. is importuned; for he lyes still wnburiid quhair he wes. And lykways the slauchter of Johnestoune of Howgill ves alyk false.<sup>2</sup>

AL. CANCELL. LOTHEANE. VCHILTRIE. BALMERINCH. SCONE. HALLIRUDHOUS.  
S. T. HAMILTONE. BEULIE. COMPTROLLER. JO. PRESTOUN.

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

MOST GRACIOUS SOVERANE,

ACCORDING to your Maiesteis direction, We wryte for the Laird of Johnnstoun, his moder and goode dame, to vnderstand of thame, gif thay wald persist in the persute of that Petitioun, exhibite vnto your Maiestie in thair names, whairby thay craved iustice to be execute vpoun the forfeited Lord Maxwell, for the Slauchter of the laite Laird of Johnnstoun? Thay come all to this burgh, and the Laird of Johnnstoun, with his moder and Tutour, presentit thame selffis before ws, and declairit that thay wald insist in that persute and prosecution of that mater, according to the tennour of thair Petitioun. The auld Lady Johnnstoun, through seiknes and inhabilitie of hir persone, being vnable to compeir before ws, haueing, with grite difficultie, come to this burgh for this fame errand, we directit and send the Bishop of Caithnes, the Lord Kildrymmie and Lord Preuey Seale to hir, to vnderstand hir will and pleafoure in this mater; vnto quhome scho declairit, that scho come heir purpofelie for that mater, and that scho wald insist, accoirding to the tennour of the Petitioun; sua that now thair restis no farder bot your Maiesteis will and pleafoure to be declairit, quhat forder your Maiestie will haif to be done; wherein, althocht the conclusioun of your Maiesteis Lettre beiris, that we sould proceed to the administratioun of iustice, zitt, in respect of a worde cassin in the preface of the Lettre, beiring that your Maiestie had not as zitt gevin a direct ansuer to thair Petitioun, we haif presomed, first, to acquent your Maiestie afor we proceed ony forder; and whateuir it fall pleis your Maiestie to direct, in this mater, falbe immediatlie and without delay execute. Thair was a Petitioun gevin in this day vnto ws be Robert Maxwell, bruthir to the said laite Lord, with some offeris to the pairtie; bot, becaus the mater concernit not ws, we wald not mell thairin; alwyse, we haif heirwith send the same to your

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

<sup>3</sup> From Original *Denmylne MSS.* Advocates' Library.



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

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

Your Maiesteis maist obedant subiectis and seruitoris,

AL. CANCELL<sup>R</sup>. HAMILTON. MAR. GLENCAIRNE. ALEX<sup>R</sup> HAY. LINLY<sup>T</sup>GW. GLASGOW. KINGORNE.

TO THE KING his most sacred and excellent Maiestie.

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

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

IN THE FIRST, I humble confes my offens to God, the Kingis Maiestie, and to the foirfaidis perfonas, for the said vnhappye slauchtir, and declairis my selff to be maist penitent thairfoir; craveing first, mercie at the Almightie God for the same, nixt, favour and grace of the Kingis Ma<sup>tie</sup>, my souerane lord, and forgifnes of the great offens done to the foirfaidis perfonas; testifeing be my soleme aith, vpone my saluatioun and condempnatioun, that the foirfaid vnhappye slauchter was nawayis committit be me vpone foirthocht felonie or sett purpois, bot vpone meir accident: Lyk as, for cleiring thair of, I am content to purge my selff be my greit aith in publick, quhair it pleissis the parteis to appoint, and do quhat farder homage falbe thocht expedient.

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

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

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

FYIFTLIE and last, I am content, for the farder satisfactioun of the house of Johnstoun, to be Banischt his Maiesteis dominions, for the space of sevin geiris, and farder at the will and plesour of the Laird of Johnstoun.

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

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

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

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

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

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

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

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

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



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

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

MAY 18, 1613. Ane Warrant paſt and expd to the Proueſt and Balgies of Edinburghe, to tak the lait Lord Maxuell to thair mercat croce, vpoun the xxj of this inſtant, and thair to cauſ ſtrik his head from his body. The delay of tua dayis wes thocht meit to be grantit, to the effect he micht haue leaſer to be reſolued ; and that the Miniſteris micht haue tyme to confer with him, for his better reſolutioun.

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

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

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

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

### Slaughter.

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

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

<sup>1</sup> Sufficient ?

<sup>2</sup> Minutes of Privy Council Proceedings, *Denmylne MSS.*, Adv. Library.

<sup>3</sup> *MS. Church History*, Adv. Library.

<sup>4</sup> *Balf. Ann.* II. 42.

<sup>5</sup> Soldiers.

Williame Sinclair of Etha, oftymes callit, as cautioner for repoirting the Letteris duellie execute and indorsate and persewing thair of, purchest be Margaret Grote, the relict of vmq<sup>le</sup> Donald, Malcolme, his sone, Johnne Grote, brother to vmq<sup>le</sup> Walter, and Allaster Stewin, as brother-sone to vmq<sup>le</sup> James Stewin.

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

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

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

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

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

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

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

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

PRELOCUTOURIS for the pannell, The Laird of Lammyngtoun, The Laird of Carmichell, The Laird of Covingtoun, Williame Carmichell of Rownetricorse, Mr Johnne Russell, Aduocat.

#### **DITTAY against Thomas Jardane.**

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

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



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

*DITTAY against Vmphra Jardane.*

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

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

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

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

<sup>1</sup> The articles stolen are not detailed in the Record.

<sup>2</sup> Without.

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

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

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

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

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

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

<sup>2</sup> Without.



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

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

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

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

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

ASSISA.<sup>3</sup>

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

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

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

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

<sup>2</sup> Wholly.

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

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

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

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

### HAMESUCKEN—DEMEMBRATION.

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

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

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

<sup>1</sup> Weeks.

<sup>2</sup> Gate.

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

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



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

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

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

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

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

THE Justice findis proces; and repellis the allegeance.

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

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

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

West Bow.

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

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

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

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

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

VERDICT. The Assyse, be the mouth of Dauid Fergushill, mercheand, Proveist of the burcht of Air, chancellor, all in ane voce, stand, pronounceit and declairit the said Andro to be Giltie, culpable and convict of the dismembring of the said Adame Montgomerie of thre fingeris of his left hand; committit at the tyme contenit in the Dittay, vpone set purpois, prouisioun and foirthocht felony.—Efter publicatioun of the quhilk Convictioun, THE JUSTICE ordanit the said Andro to be tane bak agane be the Magistratis of Edinburgh to his waird, within thair tolbuith thair of; thairin to remane in sure keeping, in the irnes, as ane convict persone, quhill he war forder advyset anent his dome and pwneischment.

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

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

<sup>1</sup> Two folds thick. Lat. *plica*.

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



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

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

'SANDIE,

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

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

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

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

<sup>1</sup> *Reg. Mag. Sig. Lib.* xxxvii, No. 415.

<sup>2</sup> It has been published before. See *Dalyell's Fragments*, App. 83. *Wood's Peerage*, II. 517. And a *fac-simile* of the Letter has been given by Mr J. T. Gibson Craig, in his Contribution to the Bannatyne Club, being 'Papers relative to the Marriage of King James the Sixth.'

<sup>4</sup> *Acta Parl.* III. 650.

<sup>5</sup> *Reg. Mag. Sig. Lib.* cxxxix, No. 140. *Robertson's Proceedings*, p. 426.

<sup>3</sup> Until.

*Birrel's Diary*.

<sup>7</sup> *Balfour's Annales*, II. 7.

<sup>8</sup> *Lord Hadington's MSS.* Adv. Library, A. 4. 22.

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

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

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

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

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

<sup>1</sup> This Notice is preceded, in *Lord Hadington's Minutes*, by the following remark. 'EDZELL and *Pittarro* committed to waird; becaus thair neglecting to contene thair sones in thair houses (as thay war commandit be *my Lord Chancellare*) was the occasion of tumult and slauchter. At desyre of *my Lord of Edzell*, the deid corpses of *William Guthrie* wes visited be the *Bailzeis of Edinbur* and the Chyrurgians, that saw him examined, gif his woundis wer mortall, and gif he died of thame?' <sup>2</sup> Smothered; suffocated. <sup>3</sup> *Spotswood's Hist.* p. 504. <sup>4</sup> Had

great reason to move him to rule (or exercise his authority) to reconcile them. <sup>5</sup> Sir James Douglas of Drumlanrig, ancestor of the Marquis of Queensberry, a powerful baron, who was most active in suppressing disturbances on the Borders. <sup>6</sup> *Anon. Hist. Scot.* MS. Adv. Library, A. 4. 35. <sup>7</sup> See this Collection under that date.



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

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

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

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

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

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

<sup>2</sup> Peerage, *ibid.* and I. 379.

<sup>3</sup> Who married Lady Grizel Stewart, eldest daughter of John *fourth* Earl of Atholl.

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

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

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

#### APPENDIX OF DOCUMENTS illustrative of the preceding Case.

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

MAIST SACRED SOUERANE,

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

ED<sup>a</sup>, 1608. 16. Aug.

Yo<sup>r</sup> Sacred M<sup>ties</sup> maist humill and obedient subiect and servitour,

TO HIS MAIST SACRED M<sup>tie</sup>.

EDZELL.

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

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

<sup>1</sup> *Denmylne MSS.* Adv. Library.

<sup>2</sup> David eleventh Earl of Crauford, who, at the date of the rencontre at which Lord Spynie was killed, was the Master of Crauford.

<sup>3</sup> Honourable.

<sup>4</sup> Moves.

<sup>5</sup> *Denmylne MSS.* Adv. Library.

The Letter, which is very long, craves instructions on a great variety of subjects.

<sup>6</sup> Title-deeds of his property.

<sup>7</sup> Nevertheless.

<sup>8</sup> Only.



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

MAIST SACRED SOVERANE,

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

Your Sacred Maieſteis maiſt humble and obedient ſubiect and ſerviteur,

Ed<sup>r</sup>, 1609. Penult. Mart<sup>il</sup>.

EDZELL.

**Slaughter of James Lord Torthorwald.**

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

<sup>1</sup> *Denmylne MSS.* Adv. Library.<sup>2</sup> Judicially proved.<sup>3</sup> Should be *intentit*; raised.<sup>4</sup> Sir

Walter Lindsay of Balgavies, who was murdered betwixt Brechin and the Place of Edzell, Oct. 25, 1605. See Jun. 2 and 9, 1613, &amp;c.

<sup>5</sup> Add; join.<sup>6</sup> Resett.<sup>7</sup> Pretence; mockery.<sup>8</sup> Craves.<sup>9</sup> Meddle; interfere. Fr. *meler*.<sup>10</sup> Viz, the House of Crawford.<sup>11</sup> Same.

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

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

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

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

Sep. 20.—ANDRO LORD STEWART of Vchiltreie, and Andro Stewart, his servand.

Dilaitit of the Slauchter of vmq<sup>10</sup> James Lord Torthorell. Compeirit and producet ane Act of Secreit Counsaill, extractit furth of the buikis thairrof, vnder

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

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

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

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

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



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

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

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

MOST SACREID SOUERAYNE,

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

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

<sup>2</sup> Street.

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

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

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

### Child-Murder.

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

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

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

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

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

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

### Witchcraft — Administering Enchanted Drink.

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

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

PERSEWAR, Margaret Wicht.

PRELOCUTOUR for the pannell, Joseph Myller, Aduocat.

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

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

<sup>1</sup> No entry appears to show the result of this matter.

<sup>2</sup> A depender of the *Mures of Auchin-drane* and *Minihagan*. See their Trial for Murder, Jul. 17, 1611, &c.

<sup>3</sup> All the Assisers absent, eighteen in number; 'ilk ane of thame vnlawit in the pane of ane hundreth merkis.'



(1610, Feb. 7.)—For the relief of his cautioneris, and tryell of his awin innocencie of the saidis alegit crymes,<sup>1</sup> he now compeiris, and maist willinglie offeris him self to the tryell of the law for the samyn, disassenting fra all continuatioun. And in respect that the said Margaret nor na vtheris compeiris this day to insist in his perfute, for the saidis allegit crymes, and that this is the secund dyet keipit be him, for abyding tryell thairof, haifing cum threfcoir myles, or thairby, to that effect; and that the samyn perfute is bot maliciouſlie inventit aganis him, be the said Margaret, for hir awin previe advantage, be raising of Letteris aganis him; and the perſones ſummond be hir vpone his Affyſe, of quhome ſcho hes reſſaut grit ſowmes of money in compoſitioun, to abyde at hame: Proteſtis, in reſpect of the premiſſes, for (Sir) Johnne Wallace of Carnall his releif of his cautionerie, and that he be nocht callit, trubellit, or perſewit, at the inſtance of the ſaid Margaret, or ony vther pairtie, for the allegeit crymes aboue ſpecifeit; nather yit that my lord Juſtice ſuffer Letteris to be direct aganis him to that effect, in ony tyme cuming: Quhilk proteſtation the Juſtice admittit, &c.

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

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

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

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

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

<sup>1</sup> Having been ſummoned to appear before the Juſtice this day.

<sup>2</sup> The purſuers paſſed from the purſuit of 'Patrik Cranſtoun of Corbies, Robert Ker of the Schaw, Patrik Tait, and Williame Cranſtoun, his tua ſervandis, Johnne French, callit *the Baſtard*, ſone naturall to Robert French of Thornydykis; and Thomas Erſkyn.'

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

PERSEWARIS, George Home of Bassindene, Alexander Home, his brother; Sir Thomas Hammiltoun. PRELOCUTOR for the pannell, Mr Williame Oliphant.

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

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

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



of.—It is anſwerit be my lord Advocate, aucht to be repellit, in reſpect of the ſummondis and place thairin deſignit, viz. outwith the Place of Corſbie; nather yit was the Place of Corſbie the ſaid Alexander Frenches duelling place.

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

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

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

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

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

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

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

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

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

Nov. 17.—DAVID SPALDING of Effintullie

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Aduocat producet the DITTAY, following.

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

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

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



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

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

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

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

#### ASSISA.

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

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

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

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

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

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

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

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

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

PERSEWAR, Sir Thomas Hammiltoun of Bynnie, kny<sup>t</sup>, Aduocat to our souerane lord. PRELOQUUTOURIS for the pannel, Mr Alexander King, Mr Johnne Russell, Mr Robert Learmonth.

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

It is allegit be Robert Johnnestoun, that he can nocht be put to ane Affyse, for weiring of hagbuttis and pistolettis, lybellit; becaus, be Act of Parliament, in November, 1600 yeiris, it is speciallie provydit, that sic personis as fall be persewit befor his hienes and Lordis of Secreit Counfall, and tryit be probatioun of Witnesfes, giltie of bering and wering of hagbuttis or pistolettis, fall nocht incur the corporall punischment in the former Actis, be amputatioun of the rycht hand; bot only to be puneischit, be wairding of thair personis, escheit of thair guidis-moveabill, or payment of sic pecuniall sowmes of money as his hienes and lordis of Secreit Counfall fall declair: And trew it is, that in the persute, intentit be my lord Aduocat, quha is now persewar aganis Airthour Lord Forbes, for the particuler factis contenit in the persute intentit thairupoun; bot speciallie, of his Lordschip being accompaneit with Daid Forbes of Petlethie, his brother, Williame Garioche, younger of Kinstair, and the said Robert, now enterit vpone pannel, was challanget *per expreßum*; in maner as is contenit in the said Decreit: Be the quhilk Decreit, the saidis Lordis of Counfall, nocht only tuik tryell anent the said Lord Forbes, for him self, bot also anent the saidis Williame Garioche and Robert Johnnestoun thair beiring and weiring of hagbuttis and pistolettis; and finding thame giltie thair of, ordanit the said Robert Johnne-



ftoun and Williame Garioche to be committit to the tolbutth of Ed<sup>r</sup>, and that for weiring and beiring of pistolettis, in the tyme contenit in the Dittay : And thairfore, the said Robert Johnneftoun can nawayis be put to ane Affyse. And for verificatioun, producet the Act of Parliament, with the Decreit of Counsell.—It is anfuerit, be my lord Aduocat, that the Act of Parliament ordanis na processe intentit befor the Justice for weiring of hagbutis and pistolettis to stay, bot quhair the saidis defenderis has been persewit befor the Lordis of his Maiesteis Secreit Counsell, be his Maiesteis Thesaurer or Aduocat : And the Decreit of Secreit Counsell produceit beiris na actioun to haif bene intentit or persewit, be his Maiesteis Thesaurer or Aduocat, befor the Counsell, aganis the pannell, for the cryme contenit in the Dittay. Thairfoir, the Decreit of Counsell producet can nocht stay proces.

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

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

(Nov. 24.)—THE JUSTICE, haifing acquentit the Lordis of his Hienes Secreit Counfall with the proces persewit be his hienes Aduocat, aganis the said Robert Johnneftoun, for bering and wering of hagbutis and pistolettis, and with the haill allegeances and defenssis proponit *hinc inde* be thame, and anfueris maid thairto ; Eftir reding of the Act of Parliament and Decreit of the saidis Lordis of Secreit Counfall, quhairupoun the defenderis alledgeances and defence is foundit, and producet for verificatioun thairof ; ffindis, with expres auise of the saidis Lordis of Secreit Counfall, that this mater aucht nocht to be put to the knowledge of ane Affyse, in respect of the foirsaid Act of Parliament, and Decreit of the saidis Lordis of Secreit Counfall, producet : And Ordanis the said Robert to be tane bak agane to the Tolbuthe of Ed<sup>r</sup>, thairin to remane, vpon his awin expenssis, quhill he satisfie his hienes Thesaurer, accoirding to the Counfall modificatioune.

### Slaughter.

Dec. 29.—WILLIAME GUTHRIE of Ravinsbie.

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

PERSEWERIS, Robert Gairdin, oy<sup>1</sup> to the defunct, Mr Tho<sup>2</sup> Henderfon, substitute to the Lord Aduocat.  
PRELOCUTOR for the pannell, Mr Thomas Hoip.

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

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

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

ASSESSORES JUSTICIARIO.

Mr Johnne Prestoun, President,<sup>2</sup> Walter Lord Blantyre, My Lord Previe Seill,<sup>5</sup> My Lord Kilsyth.<sup>4</sup>

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

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

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

PERSEWERIS.

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

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

### **DITTAY against the Pannels.**

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

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

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

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

burn of Clerkington.

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

<sup>5</sup> The

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

<sup>6</sup> Without.

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

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



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

The said James and Alexander Gordoun tuik thame to tua feueral REMISIONES, productet be thame, for the crymes aboue writtin. The ane, grantit be our fouerane lord, vnder his hienes Grit Seill, to George Marqueis of Huntlie Erle of Enzie Lord Gordoun and Badzenoche, Sir Thomas Gordoun of Glwne, kny<sup>t</sup>, the said James and Alexander Gordones, and dyuerse vtheris persones, thair affisteris and pairt-takeris, for thair treffonable cuming, in opin hostilitie and armour, to the landis of Auldquhannoquhen and Glenlivat, aganis Archibald, Erle of Ergyle, his Maiesteis Lieutennent for the tyme, and aganis his Maiesteis oift and cumpaneis, vnder the said Erles leiding and command, in the moneth of October 1594 yeiris ; and for the Slauchter of quhatfumeuir persone or persones, committit aganis his Maiestie or his hienes Lieutennent foirfaid, quhais names ar haldin as for expresseit, in the said Remissioun ; and namlie, for the Slauchter of vmq<sup>le</sup> Robert Fraiser, his hienes Herauld, &c. As the said Remissioun, of the dait at Halyrudhous, the secund day of Apryle, 1603 yeiris, in the self proportis.—The vther of the saidis Remissiounes, grantit be Ludovick, Duik of Lennox, his Maiesteis Lieutennent and Justice, ouer the North pairtis of this realme, for the tyme, Remittand Johnne Gordoun of Licheftoun, the said James appeirand thair-of and Williame his sones, Alexander Gordoun in Fernauchtie, and Williame Ewin, servandis to the said James ; ffor thair treffonable being in cumpanie, affisting, airt and pairt-taking with George, sumtyme Erle of Huntlie, ffrances, sumtyme Erle of Errole, and certane vtheris his Maiesteis declairit traitouris and rebellis, at the lait Conflict aganis Archibald Erle of Ergyle, &c.

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

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

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

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

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

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

### Slaughter.

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

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

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

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

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



the fpace of nyntene yeiris eftir the dait thairof; quhilk is of dait, at Halyrud-hous, the xxiiij day of Januar, I<sup>m</sup>.Vj<sup>c</sup>. yeiris; and in refpect thairof, allegit, that the faid Dittay could nawayes be put to the knowledge of ane Affyfe, for the faid Slauchter.—To the quhilk it was anfuerit be the Aduocat, that the Refpett is null, becaus, conforme to the Act of Parliament, na Refpett nor Remiffioun can be grantit without fatisfactioun of partie; and this perfewar nocht being fatisfeit, the Juftice aucht to put the pannell to the knowledge of ane Affyfe.

THE JUSTICE, nochtwithftanding of the Aduocattis anfuer, eftir reiding of the Dittay and Refpett aboue fpecifeit, Admittis the faid Refpett; and ordanit the pannell to find cautoun to fatisfie the partie perfewar, conforme to the lawis of this realme; but preiudice alwayis of his lauchfull defenffis: Quha, for obedience of the faid Juftice ordinance, ffand, with him felff, Alexander Guthrie ffiear of that Ilk, cautioneris, &c.

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

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

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

Dilaitit of certane Treffonable crymes, at lenth fpecifeit and fett down in our fouerane Lordis Letteris, vnderwritten:

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

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

<sup>1</sup> See Feb. 1, 1615.

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

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

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



subfcribe and delyuer to him ane Band callit Band-mutus,<sup>1</sup> and thairby obleife thame selfis and thair airis, that thai fould ferue and mantene him aganis quhat-fumeur perfonis, without ony referuatioun of ws;<sup>2</sup> and that thay fould nevir heir nor know his hurt or fkaith, bot fould reveil it within tuentie foure houres, without ony exceptioun of impossibilitie or diftance of place, contrarietie of wind, wedder, or vther impediment; vnder the pane of tynfell<sup>3</sup> of lyfe, landis, and guidis; contening alfo this claufe, ‘that gif it happin that þe contravening of this Band, be ony of the faidis fubfcriberis, fould (fall) nocht cum to þe faid Erles knowlege, quhill<sup>4</sup> eftir the committeris deceife, it fould (fall) be leifum to him to try the famyn eftir pair daithis aganis pair airis, and pwneife pair faidis aris as he mycht haif done the principall offendour: And that the faid probatioun of pair contravening of the faid Band fould (fall) be fufficient be tua witneffis: Bindand lykwayis the faidis Gentilmen and vtheris of the cuntrie to be judged be the faid Erle; and nevir to feik to King, Counfell, nor Seffioune!’ Quhilk Band the faid Erle hes debaited to be lauchfull, and hes confeft the reffaucing and haveing thair of; althocht it be maift vnnaturall, uniuft, tyrannicall, impoffible, and treffonable; bindand men to impossibilities, and inioyneing to thame, in caice of contraventioun, the paynes of Treafone, ffor naiked conceilling and nocht reveilling his fkaith, generallie, in ony matter; it being of verritie, that no man hes power to prefcribe or exact fuch paynes, bot only fouerane poyntes, and that in matteris treafonable allanerlie. Quhairby, the faid Erle hes manifeftlie and treafonable ufurped vpone him our royall authoritie and princelie power, in poyntis of our abfolute fouerantie. LYK AS, the faid Patrik Erle of Orknay hes treffonable tane vpone him, in the faidis yeiris and monethis, at the leift in ane or vther of thame, to call and perfew befor him and his pretendit deputtis and Judges, in his pretendit Jurisdictiones of Orknay and Zeitland, Adame Mudie, and many vtheris our frie and obedient fubiectis; and eftir his pretendit maner, haifing accused and convicted thame of dyverfe crymes, hes nocht only pronounced aganis thame the Sentence of Banifchement, and fforfaltour to him felff of thair landis and guidis; bot thaireftir componed, tranfacted, and agreid with thame, and treafonable vfurped our royall authoritie and fouerane power, be Remitting to thame the faidis capitall crymes; quhilk no man hes power to do, within this our realme, bot the King and fouerane of the fame. AS LYKWAYIS, the faid Erle, bereifing our faithfull fubiectis of the benifeit of

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

our pease and generall protectioun, and the fredome of thair travelling and traffique be sea and land, hes, in the yeiris and monethis foirfaidis, att the leift in ane or vther of thame, dischargd the passageis and ferreis of Orknay and Zeitland, that nane sould haif entreis or outgoing furth thairof, without his Passport and Licence; and did incarcerat, in stokis and irnes, the servandis of James Stewart of Gramesay, for transpoirting of Robert Menteithe his guidbrother,<sup>1</sup> without his licence; and causd incarcerat the servandis of Frances Mudie, for transpoirting thair said maister;—the men of Sowna, for transpoirting Williame Bannatyne;—and the men of Flottay, for transpoirting of . . . . ., thair maister; held and detenet thame captiues and prissoneris, in irnes, stokis, cloifs-prissone and furance, dyuerse dayis and oulkis;<sup>2</sup> vsurpeing thairby, most tressonablie, our autoritie royall, and bereifing our lauchfull subjectis of the vse and benifite of thair natie libertie, dew to thame, in thair frie passage and traffique, vnder our peace and protectioun, throw all the pairtis of this our kingdome, be sea or land. AND nocht content thairwith, the said Erle, leifing na foirt of extraordinier Oppressioun and tressonable violence vnpractized aganis the saidis Inhabitantes of Orknay and Zeitland, at the tymes perticulerlie aboue reherfet, at the leift in dyuerse of the monethis and yeiris foirfaidis, hes compellit the maist pairt of the gentilmenis tennentis of the saidis contreyis of Orknay and Zeitland to work to him all maner of work and laubour be sea and land, in rolling<sup>3</sup> and sailling his schipis and boittis, working in the stane-querrel,<sup>4</sup> wynning and beiring furth thairof stanes and red furth thairof, laidning his boittis and schelopes<sup>5</sup> with stane and lyme, and loifeing the same, biging his park dykes, and all vther foirtis of ferveill and paynefull laubour, without ather meit, drink, or hyre.<sup>6</sup> AND, to conclude the vtter rwyne of the possessoris of the saidis landis and Yles, hes, in the saidis yeiris and monethis, att the leift in dyuerse of the same, imposed, exacted, and tressonabillie vplifted frome thame, dyuerse grit and exorbitant taxationes and impositiones, quhilkis na man may lauchfullie do, within this our realme, bot We, of our souerane power allanerlie; vsurpeand thairby, maist tressonabillie, vpon him, our autoritie royall. FINALLIE, the said Erle, in the saidis monethis and yeiris, at the leift in ane or vther of thame, hes tressonabillie dischargt the saidis Inhabitantis of Orknay or Zeitland, to by or sell meill, malt, meit, drink, fische, flesche, butter, nolt, scheip, or ony vther commoditeis, without his Licence, vnder grit penalteis; lykas, he

<sup>1</sup> Brother-in-law.  
lops; small vessels.

<sup>2</sup> Weeks.

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

<sup>4</sup> Stone quarry.

<sup>5</sup> Shal-

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



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

*Ex deliberatione Dominorum Conſilij.*

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

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

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

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

JOHNE BLINSELL, Ilay Herauld. (L. S.)

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

Aug. 29.—MR ANDRO CREICHTOUN, brother to the Laird of Innernytie.<sup>6</sup>

Dilaitit of the Declyning of his Maiestie and Lordis of Secreit Counsal Judgement; and thairby committing Treasoun, contrair the Actis of Parliament.

<sup>1</sup> In its *own*, or in its proper time and place.

<sup>2</sup> The Warrant is *verbatim* the same with the former; and is subscribed by the Lord Chancellor and Earl of Dunbar. It is dated Aug. 9, 1610.

<sup>3</sup> The Letters and Execution are repeated.

<sup>4</sup> In same terms as the others. Dated Nov. 20, 1610, and signed by 'E. Glencairne. Sanctandrois. Blantyre. Jo. Prestoun. R. Cokburne.'

<sup>5</sup> An attested copy of the above proceedings, by Sir John Cokburn of Ormestoun, knight, Clerk of Justiciary, is preserved in the General Register House, with various other papers relative to Orkney.

<sup>6</sup> See Arnot's *Crim. Trials*, p. 37, 67, and 328. The Case of Ogilvie the Jesuite, 1615, in this Collection, &c.

*DITTAY against the Pannell.*

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

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

## ASSISA.

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

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

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



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

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

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

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

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

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

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

be had of some schip going out of the cuntrie; quhairby he may be caryed to hir be pe Magistratis of Edr, and sua fend away. And this 5ow faill nocht to do: Whearanent pir presentis fall be 3our Warrand. At Ed<sup>n</sup>, the xxvj day of Februar, 1611. JAMES R.

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

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

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

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

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

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

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

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

a kind of cutlass.

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

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



or pairby, the zeir of God 1608 zeiris foirsaid, he depairtit this lyfe; and sua, was crewallie flane be 3ou and 3our saidis complices, of 3our causing, command, reffet, assistance, and ratihabitoun: And 3e ar airt and pairt pairf; ffor pe quhilk, 3e haif lyne at pe horne thir tuo zeiris bygane. 3e ar also Indytit, fforfamekill as pe said Johnne Greir, being tane with the bludie hand, and immediatlie efter pe committing of pe said crewall Slauchter of pe said vmq<sup>le</sup> Eduard Maxwall, being committit to Waird for pe fame, in our fouerane lordis ordiner Priffone and Pledge-chalmer of Dumfreis, and pair keipit priffoner in the irnes, be the space of foure dayis, the said Johnne Schitlingtoun, 3our fervand, at 3our command, and be 3our speciall convoy and assistance, haveing provydit him self of gaviglokis,<sup>1</sup> craw-irnes,<sup>2</sup> fyles, and vperis work-lowmes,<sup>3</sup> furneist and prepairit to him be 3ou and 3owr meanis, come vpone the . . . day of pe said moneth of September, or pairby, and zeir of God foirsaid, and in the nyght seafoun brak pe vout and pend<sup>4</sup> of pe said priffone, and schure<sup>5</sup> af pe irnes, quhairin the said Johnne Greir was loket, and violentlie and forceable relevit him furth of our fouerane lordis Priffone foirsaid, and cayreid him to 3our duelling hous in Lyncluden, whair 3e reffet, keiped, and interteneid him dyuerse dayis, nychtis, and oulkis<sup>6</sup> paireftir: And sua, 3e ar airt and pairt of the contemptuous, insolent, and violent breking of our fouerane lordis priffone, and taking furth pairf, violentlie and perforce, of the said Johnne Greir, giltie and captiue for pe said crewall Slauchter of pe said vmq<sup>le</sup> Eduard Maxwall of Corstoun, and of pe wilfull reffet, supplie, and intertenement of pe said Johnnie Grier, giltie and fugitiue for pe said crewal Slauchter; and aucht and fould be pwneifched with the lyk and self same paynes quhilk pe law hes prescryved aganis pe said principall malefactour, for his crymes foirsaidis. To the taikin,<sup>7</sup> that pe said Johnne Grier and 3e war bothe fugitives, and at pe horne, for pe cryme foirsaid.—ITEM, 3e ar indytit of 3our treassounabill Intercowmoning with JOHNNE sumtyme LORD MAXWALL,<sup>8</sup> in the toun of Dumfreis, and in the Castell-3aird pairf, and dyuerse vtheris places within the scherefdomes of Nyddiffaill, Annandaill, Kirculdbrycht, and Galloway; and for Reffeting and suppleing him in 3our hous of Lyncluden, and vperis 3our duelling places, in pe moneth of December, the gear of God Im.Vj<sup>c</sup>. and sevin zeiris, and in pe monethis of Januar, ffebruar, and remanent monethis of pe zeir of God 1608 zeiris, at pe leift dyuerse dayis and nychtis of pe said zeir, eftir that he had committed nottour and manifest Treafone, be his violent and forceable breking Waird furth of pe Castell of Edinburgh, vpone the fourt day of December, or pairby, pe zeir of God Im.Vj<sup>c</sup>. and sevin zeiris, and persewing the Porteris and Keiperis pairf for pair Slauchter, hurting and wounding dyuerse of pame in findrie partis of pair bodeis, to pe grit effusioun of pair bluidis, and perrell of pair lyves; and preiffing, so far as in him lay, treafoneabillie to relief SIR JAMES M<sup>c</sup>CONEILL, detenit in irnes and strait priffoun within pe said Castell, for dyuerse odious and treafoneabill crymes;<sup>9</sup> ffor pe quhilkis manifest Treafones, the said Johnne Lord Maxwall was nocht only denuncet rebell and tratour, and all our fouerane lordis legis discharget, be Proclamatoun, to intercowmone with, reffet, or suplie him, vnder pe panes of law; bot also, he fforfaltit, be Decreit of Parliament, for pe samyn. To the taikin, that 3e, being dyuerse tymes charget to compeir befor pe Counsell, to ansuer for pe saidis crymes of Reffett, supplie, and intercowmoning with pe said Johnne, sumtyme Lord Maxwall, 3e, knawing 3our awin giltines, disobeyit the charge, and past to pe horne; at the quhilk 3e haif lyne continuallie sensyne vnrelaxit.—ITEM, 3e ar indytit and accuset, fforfamekill as Johnne Lord Hereis, being directed be pe Lordis of his Maiesteis Secreit Counfall to tak and apprehend 3ow and Eduard Maxwall of Craigtoun, ane nottour rebell and fugitiue, for Thift, Stouth-reif, ffyre-raifing, suppleing and assisting my Lord Maxwall, and dyuerse vtheris treafonable crymes, quhilk pe said Eduard him self declared vnto 3ow; the said Lord Hereis, vpone the fyftene day of August lasthypast, cuming, for executioun

<sup>1</sup> A lever used by quarriers of stone, a *pinch* or *prize*.

<sup>2</sup> Crowbar.

<sup>3</sup> Tools.

<sup>4</sup> Vault and arch.

<sup>5</sup> Literally *sheared*, as with a reaping-hook.

<sup>6</sup> Weeks.

<sup>7</sup> In testimony or proof whereof.

<sup>8</sup> See

May 13 and Jun. 24, 1609, &c. That nobleman was beheaded, at the Cross of Edinburgh, May 21, 1613. See also Appendix.

<sup>9</sup> See his Trial, III. 1, &c. Jun. 24, 1609.



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

<sup>1</sup> Literally a reading-desk or pulpit where prayers are read, from O. Fr. *letrin*, *lectrin*, *lutrin*. It is frequently employed to signify a box, chest, or desk for holding papers, &c.

<sup>2</sup> Exchanged; 'changed'; sometimes spelt *quhissellit*. <sup>3</sup> Threatened, as Lord of the Regality, and entitled to sit as Criminal Judge on his trial.

<sup>4</sup> A common punishment, in the inferior Judicatories, for Theft, &c.

<sup>5</sup> A kind of long hose.



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

Eftir production of the said Dittay, be our said fouerane lordis Aduocat, the said Williame Douglas was put to the tryall of ane Assyse of the persones following, viz.

## ASSISA.

Williame Creichtoun of Ryhill,	Thomas Hunter in Burne,	George M <sup>c</sup> ne in Lyncluden,
Alexander Maxwell of Logane,	Williame Douglafs of Lache,	Thomas Welsche thair,
Johnne Broun of Mullennis,	James M <sup>c</sup> Rerik of the Kerne,	Niniane Myller in Ryhill,
James Mairtene in Airdis,	Johnne Greirfoun of Inglistoun,	Hew Douglas of Belliebocht,
Jo <sup>n</sup> Fairies in Carse of Kynneill,	Johnne Carmichell elder in Spothe,	Rodger Padgeane of Newtoun,

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

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

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

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

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



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

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

### **Sorcery — Witchcraft — Murder.**

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

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

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

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

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

<sup>1</sup> Weeks.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

### Horse and Cattle-stealing.

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

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

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

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

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

<sup>1</sup> Strangled. <sup>2</sup> A *strayed* horse ; or perhaps a horse kept for *waithe* or hunting. It may be stated, however, that the general acceptation of the term '*waithe horse*,' is a stallion who escapes from pasture, and wanders in quest of mares ; but in this instance, he seems to have been *wayff*, or strayed. <sup>3</sup> Riding horse. <sup>4</sup> A young unbroken *horse* ; a stallion. <sup>5</sup> Forester. <sup>6</sup> Mare. <sup>7</sup> Sorrel-coloured ; reddish. <sup>8</sup> The practice of executiug Criminals near the spot where their crime was committed, did not seem to be much attended to at this period ; but this is one among the few instances of a pannel, tried in Edinburgh, being carried to some distance and executed for the greater example.



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

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

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

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

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

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

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

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

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

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

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

<sup>1</sup> Without.<sup>2</sup> Pillaging.<sup>3</sup> Plunderings.<sup>4</sup> Persons who live by plunder, who bereave

others by violence of their property.

<sup>5</sup> Loosed and set sail off the coast of Ireland.<sup>6</sup> Priam?<sup>7</sup> Barnstable, in Devonshire.<sup>8</sup> 'A small ship built with a round stern, the bends and ribs compassing so as that her sides bulge out very much.'—*Bailey*.<sup>9</sup> Stole.<sup>10</sup> Chests, boxes.<sup>11</sup> Sugar.<sup>12</sup> Rials, or *Pieces of eight*.<sup>13</sup> Bezoar-stones, supposed to be an antidote against

poison.

<sup>14</sup> Cinnamon.<sup>15</sup> Cochineal, a scarlet dye.<sup>16</sup> The Island of Lewis, one

of the Western Islands of Scotland, the property of the Clan M'Leod.



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

ASSISA.

James Lokhart of Ley,

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

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

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

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

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

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

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

<sup>4</sup> Spoilers.

<sup>5</sup> Leal,

loyal.

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

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

## APPENDIX OF PAPERS ILLUSTRATIVE OF TRIALS FOR PIRACY.

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

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

LEWIS, the 16 of October, 1610.

NEILL MC'CLOUD.

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

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

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

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

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

<sup>2</sup> Perhaps Flemings;



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

*Followis the tennour of THE DITTAY.*

*INTRANTES.*

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

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

<sup>1</sup> Joined; gathered; confederated.  
Grip-hound.

<sup>2</sup> Strange; unfrequented.

<sup>3</sup> Griffin; or, as it is here emphatically styled,

with dyveris vtheris 3our complices, haveing amassit 3our selffes togidder, with all hosteill maner, within the said schip, as said is; AND 3ow the said *Capitane Johne Parkins*, being than Captane of the Schip callit pe IRON PRYSE, being lyand in the same Rod<sup>1</sup> of Long Yland, with 3our fellow Pirates and complices, in the said Schip, bodin and furnischt lykwayes in hosteill maner, as said is, acompa-  
neit with *Captane Harvie*, *Captane Cowward* and dyvers vther Pirates, Sie-Roberis, and Reifferis, consultand, lurkand, and waittand vpoun pe practeiffing of all kynd of Robereis and Piraceis, vpoun all maner of persones without exceptionne; 3ea first devydit 3our selffis, in maner efter following, viz. 3ea the said *Jacob Janfone*, *Thomas Thomlene*, *Richard Robifone*, *Roger Codgen*, *Alexander Wijche*, *Johne Friman*, *George Nicolfone*, *Edward Bruz*, *Aschtoune Courtney*, and *Robert Croudiss*, the said *Captane Williame Randill* being than abuird in the said *Captane Williame Parkins* Schip soirfaid, in the said month of Julij or pairby, at the leift vpoun dyvers dayes of the samyn moneth, haveing consultit and plattit with the said *Captane Harvie* maist thifteoullie and piraticallie rest and away-tuik pe said *Captane Randellis* Schip, and tuk sail and coms toward the West-waird, vnder the conduct of pe said *Captane Harvie*, quhom 3ea all, of commoun consent, than choysit for 3our Captane; and cum- and fordward, in the latter end of pe said moneth of Julij or August, in the said 3eir 1609, at pe leift vpoun sum dayes of 3e samyn monethis, *respectiue*, 3ea onbeset,<sup>2</sup> persewit, and burdit,<sup>3</sup> at pe leift ane great number of 3ow, at command and be advyse of the rest, ane puir fischar-man and his bot,<sup>4</sup> and robit him of his wictuallis and all that he had. AND thairefter, in the said moneth of August, at pe leift vpoun sum dayes pairof, 3ea the saidis Pirates affoirsaidis onbeset and persewitt, in all hosteill maner, ane French Bark, cumand from pe New-found-land, quhair 3e forceablie enterit abuird of pe same, robit and rest pe haill victuallis being pairintill. AND thairefter, in the said moneth of August, October, November, December, or vpoun sum dayis of pe saidis monethis, *respectiue*, 3ea, haueing returnit bak agane to Ballendrac, vpoun the West pairt of Ireland, and haueing trymit<sup>5</sup> 3our said Schip, and taiking sail and cours to pe Seis for catching of 3our prayes,<sup>6</sup> vpoun dyvers dayes of pe saidis monethis immediatlie aboue writtin, or sum of thame, 3ea then forgadderit with *Captane Peirfie*, ane comowne and deiteistabill Pirat and Sie-river, and joyning 3our selff in vnhappye societie with him, vpoun pe thrid day of pe said moneth of November or pairby, or sum dayes of pe samyn, being aff and on with the North Cap,<sup>7</sup> or neir thairby; and thair, all togidder of on mynd and wickit resolutionne, avaitting and lurking for catching of 3our pray, 3ea the saidis Pirates immediatlie affoirsaidis, forgad-  
derit with ane Schip of Midilburgh callit THE SANCT JOHNE, quhairof Daniell Abeg was maister, be-  
ing than boun to Lighorne<sup>8</sup> in Italie, and thair 3ea altogidder being actoris and deid-doeris, airt, pairt, red, and counfell with vtheris, in all hosteill and forceabill maner, invadit and persewit pe said Schip, buirdit, rest, and variet<sup>9</sup> hir away to the Cost of Barbarie to Sancticruce, quhair 3ea and everie ane of 3ow forceablie extrudit and pat out pe said *Capitane Harvie*; and haveing electit *Capitane Barrett* to be 3our Captane, enterit into pe said Dutch pryse, and gave pe said schip callit the Gryphound to pe said *Captane Peirfie* and his company; and pair violentlie tuik *William Sanderis* and *Michaell Paterfone* his boy, with sex mo captiues and prisioneris; and sua deteinitt thame in the said Schip, quhair the said *Captane William Randell* and *Captane Johne Parkins* being arrayvit at Sophie in Barbarie, with 3our haill crew, and vicket companie soirfaid, enterit 3our selffes in societie with pe said *Captane Barrett*, and thair 3ea all, accompaniet and assitit with the said *Captane Peirfie*, being tua Schipes togidder, in the monethis of December, Januar, Februar, Marche, Apryll, Maij, Junij, at the leift vpoun dyvers and sundrie dayes of the saidis monethis, or sum of thame, past to the West Yles,<sup>10</sup> quhair 3ea haveing rancounterit at pe Yle Sanct Michaellis with tuo Englisch Schipes, and pair 3ea, with all kynd of hosteill maner, invadit and persewit the saidis tua Schipes, buirdit thame, and rest and robit thame of pair haill victuallis, and vther furnitur being pairintill. LYKAS, also 3e pe saidis Pirates im-  
mediatlie aboue namet, in the saidis monethis of December, Januar, Februar, March, Apryll, Maij,

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



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

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



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

*Followis the tenor of the PRECEPT.*

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

QUHILK Dittay and Precept affoirnamet being productit, in prefens of the saidis Judges, and the foirsaidis haill Pirates and Criminallis indytit, compeirand and enterand vpounne pannell, as said is, the said Procuratour Fiscall askit instrumentis and Act of Court thairvpounne: And than desyrit the saidis Criminallis to be put to the knowlege of ane Assyse; and for that effect desyrit the said Assyse to be callit, and the foirsaid Dittay red, as is aboue-ceauit,<sup>5</sup> in prefens of the pannell and persones of Assyse;

<sup>1</sup> Norway was celebrated for the best breeds of falcons, &c., for the sport of hawking, then so much in vogue.

<sup>2</sup> Literally, *looms*; implying lockers, chests, &c. in which valuable goods and money were stowed away.

<sup>3</sup> Webs;

pieces. <sup>4</sup> Share, portion.

<sup>5</sup> Perhaps for 'conceavit.'



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

## NOMINA ASSISÆ.

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

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

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

*Followis THE DOME,*

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

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

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

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

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

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

MOST GRATIOUS AND SACRED SOUERANE,

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

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

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

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

<sup>4</sup> Of Forth.

<sup>5</sup> Fr.; hindrance.

<sup>6</sup> Untill.

<sup>7</sup> Called a 'Chase-pinnace' in *Had. MS.*

<sup>8</sup> Added in *Had. MS.*



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

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

Your Maiesteis most humble and obedyent subiectis and seruitouris,

EDINBURGH, 27 July, 1610.

DUNFERMELINE. DUMBAR.

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

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

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

<sup>1</sup> The *Had. MS.* reads, 'And the same also.' in the *Had. MS.*

<sup>4</sup> 'Plaine,' in *Had. MS.*

<sup>2</sup> 'Foirseing,' in the *Had. MS.*

<sup>5</sup> 'Aduertyset,' in *Had. MS.*

<sup>3</sup> These words added

<sup>6</sup> *Denmylne MSS.*

Advocates' Library, A. 4. 15.

<sup>7</sup> One year's lease.

<sup>8</sup> A tax paid to the Crown upon the quantity of herrings caught at the fishery; which, owing to the expense of collection, was usually farmed out annually.

<sup>9</sup> Andrew Knox, Bishop of the Isles, and Abbot of Icolmkill, had livings in Ireland. He was translated to the see of Raphoe, in Ireland, anno 1622.

<sup>10</sup> Until.

Hes a pretty bark, wherewith this last yeere bygone he made sundry voyages betweene Amsterdame and Lyne, having none in equyppage<sup>1</sup> but sex perones. This yeere, when he resolues to come to our Ylles, he takes in at Yairmouth one CAPTAN WILMAN, who had beene a notable Pirott, and had obtained his Maiesteis Remission, with two of his brether: And pretending, as he affermes, to come to Rona to have taken possession of the Ylle, and to have tryed the fisheing there, (althoght he was nouthr provided with salt, trees, victualles, nor no kynd of outredd for the fisheing,) he comes first to Orknay, where he takes in other two perones, the one to be a cook and the other to be a pyllot, and makes his adreafs for Rona; but the winds being contrarious, and not darring tak land there, he comes about the Ylles to Mull, where he stayed foure dayes. In which tyme, there comes to M<sup>c</sup>CLEANE a derecton and Commission from the Counfall, for the persute of Coll M<sup>c</sup>Gillespik and the others Rebels of Ila.<sup>2</sup> Captane Masone being acquainted heerwith, he ingyres him self in that seruice, geveand M<sup>c</sup>claine to vnderstand that he would hafard his perfon and ship in persute of the Rebelles, vpon hope of his Ma<sup>ties</sup> consideratioune and rewarde for his seruice. M<sup>c</sup>claine geveand trust to his discourffis, encourages him to follow that enterpryse; and furnishes him with some victuales, for he had lytle or non of his owne: And so, leaving M<sup>c</sup>claine his country, he comes bak againe that same way he went, towards Rona; and having stayed there some half a day, and getting information that the Rebelles wer in the Lews, he derectis his course from that towards Orknay, to tak in mo men, as he pretended, for the bettar strenthening of him against the Rebelles. In Orknay he takis in sex men, which made his number to be seavintenth perones. And whereas he should have gone to the Lews, he directes his course for Zetland, and from that to the coast of Norroway, where, going into a bay under a craig,<sup>3</sup> and lying there at ankar couertlie vnder the craig, there comes by a ship of Copmanhouen.<sup>4</sup> Vpon the sight wherof, Masones ship immediatlie louses, follows the Copmanhouen ship, takes her, and bringes her in to the bay, takes the wholl equippage<sup>5</sup> oute of her, which wer four or fyve perones, and stowes thame in Masones ship.

Captane Masone, to excuise him selue of this deide, makes this discourse, that when he came to Zetland, Captane Wilman persaveing ther voyage lyk to proof fruitles, there was no appearance of the Rebelles, he layed to his charge, and earnestlie delt with him to go seek some adventur by sea; and becaus he refused to yeeld to such a vnhoneft and vnlawfull motion, Captane Wilman stirred vp the wholl companye of his ship against him, vsurped vpon him the charge and commandement of the ship, depyryed him of all charge, and took him aganest his will to Norroway; and when the pryise was persewed, stowed him beneth—and at last patt him in the pryise, whiche wes a ould lek<sup>6</sup> ship, with three of his company that would not yeeld to follow Wilman, spoiled him of his owne ship, which wes a tight and good ship, and sett him to the sea, to the hafard and perrell of his lyf.

For discouerie and tryeing of the troth of this discourses, the Counfall hes been verie carefull in the examinatioun of such of Captane Masones companye as ar broght heere, and by there examination it is funden that (there) wes neuer any mater of contestation betweene Masone and Wilman, that Willman stirred vp the companye against Masone; and that there was neuer once such motion in the ship, concerning that mater; that Masone diswaded none of his companye to joyne with Wilman, nor neuer told ony of thame that Wilman had a purpose for Pirracye; but that thay aggreid verie well in all thingis. And the Maister of the Copmanhouene ship sayd planelie, that Masone wes aboue,<sup>7</sup> in his ship, when he wes persewed and taken; and when his ship wes broght in to the bay and fastened to the other ship, that Masone enterred in his ship, and that Wilman and he suped togidder and made mirrye vpon the prouision that wes in his ship, and drank out his wyne and his beir; and that Masone lay all night in the pryise, and vpon the morn called for the Maister of the pryise, and tould him that he behoofed to tak his ship, seeing Wilman had taken his ship; and sayes, that vpon the morne,

<sup>1</sup> Crew.<sup>2</sup> See Papers appended to the Trial of Sir James Makconell, III. 1, &c.<sup>3</sup> Rock.<sup>4</sup> The

common name then in use for Copenhagen.

<sup>5</sup> Crew.<sup>6</sup> Leaky.<sup>7</sup> On deck.



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

The two companyees being finder-ed, Captane Mafone come bak againe till Orknay in the Copmanhouen pryife, of purpose, as appeires, to have taken in some ma<sup>2</sup> men; but beeing guyltie, in his owne confcience, of Pirracye, he durst not tak land, but took him to the sea, and by storme of wedder wes dryven upoun the coast of Caithnes; and being lyand there, in a harborry, he wes boorded by a sone of the *Larde of Markles*, and he and his foure men were taken and send heere.

Captan Wilman in Mafones ship past bak againe to that same bay from which they loused, and the nixt morning took a ship of Rustok, loadned with fishes, and set the wholl companyee of the ship, being nyne in nomber, vpon a rock in the sea, and kept onlie one with thame; and Wilman come with the pryife and Mafones ship till Orkney vpon a Sunday, and he past to land and wes enterteined by the country people, and some come aboorde and wer mirrie with him. Vpon the morn, being Mononday, two of the *Lairde of Grymmiffayes* sones, and one *Robert Elphinstoun*, comes aboorde of the pryife, wherin Wilman and his skippar war both for the tyme; and haveing some conference and speatch with thame, and espying there strength, they commanded Wilman to rander; and he refuiseing, the youngest of *Grymmiffayes* sones immediatlie gave him a deadlie stroak, wherwith he dyed presentlie; and at that same instant killed the skippar by an other stroak. And so, the Captane and skippar being both killed, the rest of the companyee and both shippes randered. In this meantyme there is a Waughtar lyand in Zetland, attending the Fledes Fleitt<sup>3</sup> at the fischeing, and being enformed by *Mr Williame Levingstoun* schiref-depute, that a Pirote with a pryife wes gone by towards Orknay, this Waughtar, refaueing a pylote from the Schiref-depute, followes the Pirote to Orknay, and comes directlie to this same harborry where the Pirott and the pryife lay, takes thame both and bringes thame to Leyth, saying, that he had a command and directioun from his Maisteris, the Estates, that what ener Pirrottes he fand in the Scottishe Seas, he should tak thame and present thame with there shippes and goodes to the Kinges Maiesties Counfall here. The Orknay men who killed the Pirrott and his skippar followed the Waughtar, and greeveoullie complained of the wrong alledged done to thame in taking of the shippes af there handes, which thay had recouered with the hafard of there lyues; and they alledged that they wanted findrie of there goodes which they had put in the shippes, they being of purpose to have broght thame aboute to Leyth. The Captane of the Waughtar excused him selue, that he knew nothing that they had recouered the shippes; but believing the shippes wer still in the possession of the Pirrottes, he tooke thame and broght thame heere to the Counfall—and tuitching the goodes which they alleged they wanted, the Captane constantlie affermed, and so did the Orknay Pylote, that the Shiref-depute delyuered him, that they wanted not a pennie worth of that which he gott in the shippes. The Counfall accepted verie well of the Waughtars doings, hes return-ed him bak, with thankes, and hes propnyed<sup>4</sup> him with a coup of lx vnce<sup>5</sup> weight.

Directioun is geven for delyuerie of the Copmanhouene ship to the ownar, he geveand some reasonable satisfacioun to the gentlemen who recovered the same from Captane Mafone.

Bycaus the owners of the ship of Rustok are not heer to refaue there ship and goodes, and becaus the goodes will not keepe in the ship, therefor drection is geven to roup and sell the wholl goodes beeing within the ship, and to mak pennie of the same; to be furth-cumand to the ownaris, whan they shall come heere; they geveand reasonable satisfacioun to the gentlemen who recovered the ship and goodes from the Pirrottes.

<sup>1</sup> More valuable than.<sup>2</sup> More.<sup>3</sup> Flemish Fleet.<sup>4</sup> Gifted; presented.<sup>5</sup> Sixty ounces.

### Mutilation and Demembration.

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

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

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

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

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

[*Mr Alexander Colvill Justice-Depute.*]

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

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

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

<sup>1</sup> Directly before or opposite.

<sup>2</sup> An extremely interesting Family Chronicle, containing valuable notices of Highland History, and illustrating the genealogy of many families in those districts. The Original is in possession of the Noble family of Breadalbane, and, as the Editor has been informed, is likely to be privately printed for the use of the BANNATYNE CLUB.

<sup>3</sup> This curious work might with much propriety have been styled a *History of Scotland*.



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

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

Mar. 2, 1611.—Johnne M<sup>c</sup>kewin, in Kilbryde ; Archibald M<sup>c</sup>ilvoyll M<sup>c</sup>lowrin, Donald M<sup>c</sup>inowie, in Glencho ; Duncane Caird M<sup>c</sup>gregour, Patrik M<sup>c</sup>ean Dow M<sup>c</sup>gregour, Allafter Bowie M<sup>c</sup>gregour Clerache, Dougall M<sup>c</sup>gregour Clerache M<sup>c</sup>gregour, Duncane M<sup>c</sup>neill M<sup>c</sup>gregour, [Donald M<sup>c</sup>eandich M<sup>c</sup>gregour,<sup>1</sup>] Johnne M<sup>c</sup>andro.

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

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

<sup>2</sup> Goats.

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

## ASSISA.

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

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

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



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

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

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

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

Mar. 8.—JOHNE CARUTHERIS in Netholme, fumtyme feruitour to Robert Lord Sanquhair.

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

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

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

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

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

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

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

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



crumbie of Pitmedden contrair Gordones, quhair the lyk Remiffioun was fustenit, vpone finding of caution.

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

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

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

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

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

For obedience quhair of, the said Johnne Carutheris ffind Willame McClellane, Tutour of Bombie, with him selff, caution to satisfie the pairtie; conforme to the Lordis modificatioun. Lyk as, Johnne Cranstoun, brother to my Lord of Cranstoun, obleist him to exped the said Remission throw the Seillis, within fourtie dayis, under the pane of iij<sup>e</sup> merkis.

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

### Abiding from the Raid of the Isles.

Mar. 15.—GILBERT M<sup>c</sup>ADAME of Watterheid; Donald M<sup>c</sup>millane of Knockingarroche; Robert M<sup>c</sup>adame of Smeistoun; George M<sup>c</sup>adame, thair; Johnne M<sup>n</sup>nacht of Doungucht; Gilbert Achannane of Murdochat; Robert Fergusone of M<sup>k</sup>illieftoun; Johnne M<sup>k</sup>ill, elder; Johnne M<sup>k</sup>ill, younger; Willame Makadame of Craigullane; Thomas Gordoun of Crago; Johnne Neilson of Corfok.

Dilaitit for the allegit contravening of his Maiesteis Proclamatiounes, in nocht accompaneing and passing fordwardis with Andro Lord Stewart of Vchiltrie, his Maiesteis Lieutennent, in the prosecution of his hienes seruice, towardis the repressing of the insolencies of certane the disobedient Inhabitants of the Isles of this kingdome; according to his hienes Proclamatiounes maid to that effect, in the monethis of Maij and Junij, the yeir of God I<sup>m</sup>.Vj<sup>e</sup>. and aucht yeiris.<sup>1</sup>

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

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



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

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

### Slaughter.

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

Dilaitit of the Slauchter of vmq<sup>le</sup> Johnne Findlay in Eglischem; quha was slane at the Kirktown of Eglischem, vpone the xvij of ffebruare, 1611.

PERSEWAR, Archibald fyndlaw, as brother to vmq<sup>le</sup> Johnne Fyndlaw.

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

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

### Slaughter of Provost of Wigtoun—Shooting Hagbuts, &c.

Maij 22.—JOHNNE KENNYDIE of Blairquhan, and Johnne Bairdis, brother germane to the Laird of Kilquhinzie.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq<sup>le</sup> Patrik Ahannay of Kirkdaill, Proveist of Wigtoun; committit be thame and thair complices, with schottis of hagbuttis and pistolettis, at the Cruves of the Watter of Crie, in the moneth of December, I<sup>m</sup>.Vj<sup>c</sup>. yeiris, vpone set purpois, prouiffioun, and foirthocht fellonie: And for beiring, weiring, and schoitting of hagbutis and pistolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Patrik Ahannay of Kirkdaill, as sone to vmq<sup>le</sup> Patrik A.; Sir Thomas Hammiltoun of Byris, kny<sup>t</sup>, Aduocat to our souerane lord, for his Maiesteis intereis.

PRELOCUTOURIS for the pannel, My Lord of Cassillis, My Lord Vchiltrie, Gilbert Roifs; Mr Johnne Ruffell, Mr Thomas Hoip, and Mr Laurence M<sup>c</sup>gill, Aduocatis.

The pannel acceptis the summondis, and speciallie that pairt thair of quhair

<sup>1</sup> ‘Plegijs, Hugone Montgomerie de Auchinhuid, et Joanne Hammiltoun de Hairschaw, pro omnibus; et ipsi ad relevand.’

the defunct was schot with peiftis<sup>1</sup> or dropis, with ane charget hagbut. It is allegit, that this matter can nocht pas to ane Assyse; becaus his Maieftie, of his speciall grace, hes gevin to the perfonen on pannell ane Remiffioun, quhilk thai producet to the Justice, of the dait at Edinburgh, the xvij day of Maij instant: And offeris Cautioun to fatisfie the pairtie.—It is anfuert that this Remiffioun can nocht stay the matter to pas to ane Assyse; becaus, be Act of Parliament, in anno 1593, it is provydit, that all Remiffiones ar null that ar purchest eftir ane pairtie passis to the horne for the tyme; quhilk allegiance is reffaut be way of exceptioun, the pairtie nocht being fatisfeit.—It is anfuert,<sup>2</sup> that this Act of Parliament is nocht *in viridi obseruantia*, nor hes nocht tane effect in this Judgement of befor: Quhilk allegiance he offeris to verifie, be my Lord Cassillis, and vtheris heir present.

THE Justice continewis Interloquitour vpone this allegiance to fryday nixt.

(Maij 24.)—My Lord Aduocat, befor Interlocutour, passis fra his lordschipis former allegiance: Quhairupoun the pannell takis instrumentis.

THE Justice, be Interloquitour, Admittis the Remiffioun producet be the perfonen on pannell and thair prelocutouris; and Ordanit thame to find sufficient and responfall Cautioun and fouertie to fatisfie the pairtie grevit; conforme to the lawis and daylie practik of this realme.

Quhairupoun the said Johnne Kennydie of Blairquhan and Johnne Bairdis askit instrumentis: And ffor obedience of the said Justice Ordinance, nominat my Lord of Cassillis, my Lord Vchiltrie, Sir Robert M<sup>c</sup>clellane of Bombie, kny<sup>t</sup>, Williame Cunninghame of Capringtoun, and Sir James Kennydie of Culzeane, as cautioneris, coniunctlie and feuerallie for thame; lyk as, being all personallie present, in presence of the Justice, Band and obleift thame, coniunctlie and feuerallie, thair airis, executouris and assignais, to fatisfie the pairtie, viz. the kyn and freindis of the said vmq<sup>le</sup> Patrik Ahannay of Kirkdail, ffor the slauchter aboue writtin; conforme to the Lawis of this realme.<sup>3</sup>

<sup>1</sup> Pellets, small shot; but, most probably, what is now termed *slugs*. <sup>2</sup> Replied. <sup>3</sup> The arguments are thus expressed in an after part of the Record. As the point started is interesting, and the Counsel engaged were the most eminent of their day, it has been deemed proper to preserve the arguments at length.—‘It being peremptourlie allegit for the pairt of the saidis perfonen on pannell, be Mr Johnne Russell, with concurrence of Mr Thomas Hoip and Mr Laurence M<sup>c</sup>gill, Aduocattis, thair preloquitouris, that the said summondis and Dittay could nawayis be put to the knowlege of ane Assyse, becaus our fouerane lord, of his speciall grace and mercie, had gevin and grantit to thame ane Remiffioun for the saidis crymes, and producet the said Remiffioun, past the Grit Seill, of the dait at Edinburgh, the xvij day of Maij instant; quhairvnto thai tuik thame selfis, and offerit responfall cautioneris and fouerteis, at the bar, to fatisfie the pairtie for the crymes contenit in the said Remiffioun, according to the modificatioun of the Lordis of Sessioun, lawis and practik of this realme. To the quhilk it was anfuert be our fouerane lordis Aduocat, that the foirsaid allegiance aucht to be repellit, and the pannell, nochtwithstanding thair of, sould be put to the knowlege of ane Assyse; becaus, be Act of Parliament maid in anno 1593, it is statute and ordanit, that na Respekt nor Remiffioun be grantit at ony tyme thaireftir to ony persone or perfonen passand to the horne for Thift, Reif, Slauchter,



The pannels bound themselves to relieve their cautioners; and the cautioners also obliged themselves to free each other, *pro rata*, &c.

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

Jun. 7.—ROGER GORDOUN in Glasniche, and Johnne Glendoning of Drumrafche.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> George Stewart, brother to vmq<sup>le</sup> Mathow Stewart of Dunduff; committit the xxj<sup>1</sup> of September, 1601 yeiris, vpone sett purpois, prouifioun and foirthocht fellonie: And als, for beiring, weiring, and schuitting of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Williame Stewart of Dunduff, Johnne Stewart, brether fones.

The perfewaris producet the Letteris deulie execute and indorfate vpone the said Roger Gordoun and Johnne Glendoning; and als, vpone Alexander Gordoun of Hillis, Williame and Robert Gordones, his tua brether, Robert Gordoun of Bannernie, Alexander Creichtoune in Garrick, and Thomas Creichtoun in Balcaffie, quha ar past to the horne for the crymes contenit in the Letteris: And vpone the productione thairrof, askit instrumentis; and protestit for the cautioneris relief for repoirting thairrof.

Continewit to the morne. Plegio, Wilelmo M<sup>c</sup>culloche de Mertoun.

PRELOCUTOURIS for the pannell, Mr Johnne Ruffell, Aduocat, The Laird of Lochinvar.

(Jun. 8.)—The perfewaris declairit, in respect that this Roger Gordoun is only airt and pairt of the Slauchter, and nocht principall actor of the fact, and thairfore, vnto the tyme the principall maliefactouris be apprehendit, quhairby the pannell his giltines or innocencie of that crewall slauchter may be tryit, defyres that he may be continewit to the thrid day of the air [Wigtoun], or foner, vpone xv dayis wairning; and that caution be fund be him to that effect, vn-

Burning, or Heirfchip, &c. quhill the pairtie skaithed [viz. until the party shall previously have received pecuniary satisfaction or damages for the loss sustained] be first satisfeid: And gif ony sic Respet or Remiffioun fould happin to be grantit, befor the pairtie grevit be first satisfeid, the samyn fall be null, and of nane availl, be way of exceptioun or reply, without ony forder declaratour. Bot trew it is, that the perfonen on pannel, lang befor the purcheffing of the said Remiffioun, war denounced rebellis and at the horne, and war declairit fugitiues fra his hienes Lawis for the saidis crymes contenit in thair Dittay; the pairtie nawayis being satisfeid as zit: And thairfor, the said Remiffioun vsfet and producet is null, be way of reply. And for verifeing thairrof, producet the Extract of the Hoirning aganis the pannell.—To the quhilk it was duplyit be the pannell, that thay offerit thame to preve, be my Lord of Caffilis, and tua Ministeris, at the bar, that satisfacioun was offerit be thame to the pairtie grevit, lang befor thair passing to the horne, or purcheffing of Remiffioun; quhilk was refuiffet: *Secundo*, it wes nevir in *viridi observantia* that the foirsaid Act of Parliament was authorisfet in this Judgement; nather yit could evir his Maiesteis fauour and pardoun, being anes grantit, be callit thair-efstir in questioun. And thairfor, takis thame, as of befor, to his Maiesteis Remiffioun; and offerit caution to satisfe the pairtie.

<sup>1</sup> In the act of caution the slaughter is stated to have been committed on the 'ellevint.'

der the panes contenit in the Actis of Parliament. [*Plegio, Wilelmo M<sup>c</sup>culloche de Mertoun.*]

The Laird of Mertoune americiated 'in the pane of ffyve hundreth merkis, for nocht entrie of the said Johnne Glendoning' on June 8, and Glendoning ordained to be denounced rebel, and all his 'moveabill guidis to be escheit,' &c.

### Slaughter.

Jun. 28.—PATRIK MAXWALL of Newark.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Robert Montgomerie of Skelmourlie, and vmq<sup>le</sup> Williame Montgomerie apperand of Skelmourlie; committit in the moneth of . . . . I<sup>m</sup>.V<sup>c</sup>.lxxxij yeiris.

PERSEWAR, George Montgomerie.

The Laird of Newark producet ane Warrant of the Lordis of Secreit Counsell, direct to the Justice, anent the deserting of this dyet, for the reffonis contenit in the Supplicatioun gevin in to thair Lorfchipis thairanent; with ane Command on the bak of the said Supplicatioun and Warrant aboue writtin, commanding the Justice to tak cautioun of ather of the pairteis, befor thair cuming out of Judgement, that thai fall remane and keip waird within this burgh, quhill Tyfday nixt; and that thai fall compeir befor his Maiesteis Counsell the said day, vnder the panes following, viz. of Newwerk, vnder the pane of tua thousand merkis, and George Montgomarie, vnder the pane of ane thousand merkis. Quhilk Warrant is daitit at Edinburgh, the xxvij day of Junij 1611 instant.—For obedience of the quhilk Warrant, and ordinance thairin contenit, the Justice Desertit the said dyet; and Ordanit the saidis tua pairteis, *hinc inde*, to find cautioun for thair compeirance befor the Lordis of Secreit Counsell the said day, viz. the secund day of Julij, vnder the panes aboue specifcit: Lyk as, for obedience of the said Justice ordinance, compeirit Williame Lord Kilmaweris, and became plege and fouertie for the said Patrik Maxwell; and siclyk, compeirit James Dunlope of that Ilk, and become fouertie for the said George, &c.

### Slaughter.

[THE Records of the Court of Justiciary do not afford sufficient information regarding the facts connected with the following Case; and, as it relates to individuals of considerable rank, the Editor thought it proper to select even such meagre notices as those which do occur. The Young Laird of Closeburn seems to have been one of the active spirits of these times, and to have been engaged in a laudable share of affairs of honour, and in quarrels *quantum sufficit*, and 'befitting his degree!']

In *Lord Haddington's MS. Collections*, the following remarkable entry occurs, under date Feb. 27, 1610. 'The Lady Hempsfeild, haveing desyred Andro Quhyt, keiper of the Tolbuith, to bring to hir Young Cloisburne, who wes in the Tolbuith wairdit, to speak with hir in his house; he doing it at her desyre, Young Cloisburne schifitit him self away. ffor the quhilk caus, scho being put in the Tolbuith, and thairafter transported to the Castell, socht Licens of the Counsell to be transported to the



toune; quhilk the Lordis refuiffed, vnles fcho wald aither enter 3oung Cloisburne, or find cautione to fatisfie all pairteis be quhome he wes wairdit or arreifted.'<sup>1</sup>

Closeburn's escape had been effected by his exchanging clothes with the Lady Hemptisfield, a method which has often proved successful in similar emergencies. It may be remarked, that the jailor's house was commonly attached to, or rather consisted of one or more apartments of, the prison.]

Jun. 28.—ALEXANDER KIRKPATRIK, fone to Sir Thomas Kirkpatrick of Cloisburne, kny<sup>t</sup>.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> James Carmichell, fone to Johnne Carmichell of Spoth.

PERSEWARIS, Johnne and William Carmichell.

THE Justice, of consent of pairtie, continewis this dyet to the xxiiij of Julij nixt. [Plegio, D. Tho. Kirkpatrik de Cloisburne, milite.]

(Jul. 24.<sup>2</sup>)—THE Justice, of consent of pairtie, continewis this mater to the thrid day of the nixt Justice-air of the scheref dome of Dumfreis, or soner vpone fyftene dayis wairning: And ordanis caution to be ffund for that effect. [Plegio, D. Thoma Kirkpatrik de Cloisburne.]

### Treason—Murder under Trust.

Jun. 29.—PETER WEIR, sumtyme in Goittnow in Rig.

Dilaitit of airt and pairt of the crewall Slauchter and Murthour of vmq<sup>le</sup> Johnne Hammiltoun, merchand burges of Edinburgh; committit, vnder trest, vpone the fevint day of November 1608 yeiris, besyde Monharig burne-fute.

PERSEWARIS, Jonet Small, the relic; Patrik Hammiltoun, as brother; Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Aduocat to our fouerane lord, for his hienes intres.

PRELOCUTOUR for the pannell, Robert Bannatyne, wryter.<sup>3</sup>

DITTAY *against Peter Weir, the pannell.*

FORSAMEKILL as vmq<sup>le</sup> Johnne Hammiltoun, merchand burges of Edinburgh, haifing conqueift<sup>4</sup> and acqyret to him self the richt of certane landis, occupyit and posselt be Johnne Weir in Over Quhytecleuch, the said Peter Weir, and Margaret Weir in Bagra; and haifing thairupoun obtenit Decreit is of Removeing, aganis thame and remanent tennentis and occupyeris of the saidis Landis; and for dissobedience of the charges of Hoirning, haifing denuncet the said Peter owr fouerane lordis rebell, and put him to the horne, the said Johnne Weir, Mungo Weir, his brother, the said Peter Weir, and Margaret Weir, consultit and devysit amangis thame felfis, how to bereiff the said Johnne Hammiltoun of his lyfe: And for effectuating thair of, causit certane freindis travell with him, and to cum in tryfing,<sup>5</sup> and to meit at Monharig, to cownone<sup>6</sup> thairupone; and affixt the

<sup>1</sup> Minutes of the Proceedings of the Privy Council, *Had. MSS.* A. 4. 22. Advocates' Library.

<sup>2</sup> The pursuers marked at this diet, are designed 'Johnne C. of Spoth, Williame C. his fone.'

<sup>3</sup> One of the brothers of the celebrated George Bannatyne, in honour of whose valuable compilation of early Scottish Poetry, the Club of that name was formed.

<sup>4</sup> Purchased, in contra-distinction to having inherited.

<sup>5</sup> By special agreement or appointment.

<sup>6</sup> Commune.

sevint day of November I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris to that effect : Lyk as, the said vmq<sup>le</sup> Johnne Hammiltoun, for keiping of the said tryft, accompaneit with James Creichtoun in Bar, being cuming rydand furth the hie way, in sober and quyet maner for the tyme, vpon the said sevint day of November, to the appointit place aboue writtin, the saidis Johnne Weir, Peter Weir, Mungo Weir, and Margaret Weir, accompaneit with dyuerse perones thair complices, being bodin with suordis, quhingeris, kent-stalfis and otheris wappones *invasiue*, darnit<sup>1</sup> thame felfis in the hie way, besyde Monharig, quhair thai lay at await for the said vmq<sup>le</sup> Johnne Hammiltounes by-cuming ; and thair, vnder trest and friendship, maist crewallie invalidet him for his slauchter, drew him af his hors, and with quhingeris, gaif him threscoir<sup>2</sup> bludie woundis, in dyuerse pairtis of his body, to the effusioun of his bluid in grit quantitie ; and crewallie slew and murdreift him out of hand : And the said Peter was and is airt and pairt of the said Murthour. To the taikin, he and the said Margaret Weir, being in cumpanie with the said Johnne Weir, com to the said James Creichtoun, and drew him doun af his hors, and held him be force doun, quhill the said vmq<sup>le</sup> Johnne was murthourit out of hand ; quhairthrow the said James mycht nocht releif him.

*James Creichtoun*, being suorne, Declairit, that he, being in company with the defunct, the tyme lybellit, vpon the grund of the Land quhair the fact was committit ; and thair, this Peter Weir, with Margaret Weir, drew him af the hors and held him doun ; quhairthrow he was nocht able to defend the defunct. —Quhairupoun my Lord Aduocat askit instrumens ; and Protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse,<sup>3</sup> being ryplie and weill advyset thairwith, togidder with the said Peteris Depositiones, producet be our fouerane lordis Aduocat ; togidder with the Letteris of Hoirning, quhairby the said Peter was fugitiue fra his hienes lawis, for the said cryme, lykwayis producet, for instructing of the Dittay ; thai, be the mouth of Robert Phillope, burges of Sanquhair, ffland, pronuncet, and declairit the said Peter Weir to be ffylet, (be pluralitie of voitis,) of airt and pairt of the Murthour of the said vmq<sup>le</sup> Johnne Hammiltoun.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin from his body : And his haill guidis and geir to be escheit to our fouerane lordis vse, &c.

### Treason—Slaughter—Murder under Trust, &c.

[THE TRIAL of the MURES OF AUCHINDRAYNE may, without hesitation, be pronounced to be one of the most remarkable, in the whole range of the Criminal annals of this, or perhaps of any other country. In it are unfolded their most hidden transactions, and the secret springs of their most private and craft-

<sup>1</sup> Concealed.      <sup>2</sup> Three score ; sixty.

<sup>3</sup> Among their number were George Maxwell of Drumcowtrane,



tily contrived plots, all of them leading to the perpetration of crimes so singular in atrocity, and of so deep a die, that one can hardly expect to meet with their parallel, even in the pages of Romantic fiction. By the clew, now afforded, may be traced almost the secret thoughts of two of the most accomplished and finished adepts in crime—individuals who murdered by rule, and who carried forward their deadly schemes of ambition, by means of a regularly connected chain of plots and stratagems, so artfully contrived, as to afford them every reasonable prospect of success—and even in the event of the entire failure of their plans, almost to ensure their escape from suspicion; at the least, in their estimation, to warrant their security against ultimate detection, and consequently exempt them from the penalty of capital punishment.

Ambition and the lust of power appear to have been the immediate procuring causes of all the crimes in which these infatuated men were involved. There was not the sudden burst of ungoverned passions, which might have hurried them on to the commission of a solitary deed of frightful but unpremeditated violence—nor were their crimes the consequence of ancient Feuds, inherited from their restless and vindictive ancestors—nor yet had they the too common apology that they originated in impetuous assaults made upon them, and that their hasty quarrels sprung from a fiery and unbridled temper, which had unfortunately terminated in fatal results. On the contrary, the whole of their numerous attempts and crimes may be characterised as cool, calculating, and deliberate acts, anxiously studied, and by slow and patient, but sure degrees, matured and prosecuted, for a long series of years, until at length ‘the measure of their iniquities overflowed,’—and the unlooked-for concurrence of an extraordinary train of circumstances, the most unlikely to have happened, eventually led to a triumphant discovery of their enormous crimes.

It is quite unnecessary here to enter into any detailed account of the facts connected with the crimes of these individuals. Their leading features are already familiar to all, ever since the publication of ‘AUCHINDRANE, OR THE AYRSHIRE TRAGEDY,’ from the pen of Sir Walter Scott; in the preface to which dramatic sketch, the origin and progress of these dark transactions are so fully discussed, that the Editor begs simply to refer the reader to a reperusal of that work.

In addition to the information contained in the ‘Dittay,’ and in the pleadings in this Trial, the Editor has been anxious to collect and lay before the reader the most remarkable circumstances connected with the history of the elder and younger Mures. For this purpose he has for some years past used all exertions to extend his researches in every direction, where authentic illustrative Documents and Records could be procured—and he has now the satisfaction of appending to this highly interesting Case a variety of Papers, which may almost be said to throw all the light that can now be reasonably expected, on proceedings which occurred now above two hundred and twenty years ago.

For the sake of saving too copious quotations in this work, the Editor has, through the liberal permission of the Curators of the Library of the Faculty of Advocates, Edinburgh, published in a separate volume ‘THE HISTORIE OF THE KENNEDYIS,’<sup>1</sup> from the Original MS. in their valuable collection. That History, besides the numerous interesting notices of the Mures of Auchindrayne, Sir Thomas Kennedy of Colzean, who ultimately fell their victim, the Earls of Cassilis, &c., enters most minutely into the Feuds and Conflicts of the Kennedies, Mures, Crawford, &c., and satisfactorily develops the causes out of which the various crimes of Auchindrayne and his son sprung. The state of society, and the habits and manners of the people of Carrick, are very graphically delineated by the author, who was evidently an eye-witness of the many interesting transactions he has recorded.

For the purposes of the present Introductory Notice, it is enough to state, as in reference to the persons who principally figure in this dark tragedy, that so far as respected birth, the MURES OF AUCHINDRAYNE were of most respectable and ancient extraction, and were connected with many of the most opulent and influential families in Ayrshire. They also for a considerable period held a con-

<sup>1</sup> A limited impression of the ‘HISTORIE OF THE KENNEDYIS’ has been printed, uniformly with the works of THE BANNATYNE and MAITLAND CLUBS, and may be had of the Publishers of this Collection.



spicuous station in all the transactions and feuds of the district of Carrick. There is no reason to doubt that the Mures of MONYHAGEN and Auchindrayne (which last title was only latterly assumed by them) were cadets of the very ancient and honourable Family of Mure of Rowallan, now represented by the present Marchioness of Hastings, as Countess of Loudoun, &c. In confirmation of this fact, Sir William Mure of Rowallan, knight, in his *History of that House*,<sup>1</sup> states, that *Andrew Mure of Monyhagen*, the first of the family, was either a son or a grandson of Sir Gilchrist Mure, who died *circa ann.* 1280. It does not appear how or when they became possessors of the Lands of Auchindrayne; but it is certain, that previous to the Wars of Bruce and Baliol, Auchindrayne (i. e. *the Field of Thorns*) belonged in property to Robert Brown; and was, upon his forfeiture, granted by King Robert the Bruce to Henry Annan. By a Charter, dated March 16, 1498, *James Mure of Monyhagen* granted certain lands, in Wigtonshire, in favour of James Mure, his son, and Margaret Wallace, his spouse. One of the witnesses to this deed, is *John Mure*, 'grandson and heir apparent of the said James;' which shews him to have been a very old man at that period, and that he was born *circa* 1430. This *John Mure* must have been the grandfather of the old Laird of Auchindrayne, who figures in the present Trial.

It is pretty evident, as appears from a Charter of *Novodamus* of the Lands of Leffenhill, dated Sept. 29, 1671, by Chalmers of Gadgirth, in favour of *John Mure of Auchindrayne*,<sup>2</sup> that the elder Mure must have been *nearly eighty years of age* at the period of his execution! The grantee is described as heir of *John Mure of Monyhagen*, 'proavi,' who had in like manner had a Charter of same Lands from Campbell of Loudoun, Sep. 2, 1550.<sup>3</sup>—This *John Mure*, who obtained the above mentioned Charter 1671, married Bethia Hamilton, daughter of Hamilton of Dalzell, by whom he had at least one son *James*, who probably predeceased him—for he conveyed Auchindrayne to his brother *Hugh Mure*, whose son or grandson sold it early in the last century; and the Family, it is believed, is now extinct in the male line.

To return to *John Mure Elder*, and *James Mure Younger of Auchindrayne*, the subjects of the following Trial, it is worthy of notice, as proving their rank and consequence in the most convincing manner, that *John Mure* the elder married Margaret Kennedy, second daughter of Sir Thomas Kennedy of Bargeny, (*obit*, Nov. 7, 1597,) by Lady Agnes Montgomery, sister to Hugh, *third* Earl of Eglinton,—and that *James Mure* the younger married Helen, second daughter of Sir Thomas Kennedy of Colzean, Tutor of Cassilis, by Dame Elizabeth MacGill, daughter of David MacGill of Cranstoun-Riddell, King's Advocate, and relict of the celebrated Robert Logan of Restalrig.

On occasion of John, fifth Earl of Cassilis, going on his travels to France, he conferred THE BAILLIARY OF CARRICK upon the elder Auchindrayne, for all the period of his life, an office of high trust and respectability, having the Civil and Criminal Jurisdiction of the whole of that extensive and populous district. It had previously been enjoyed by Kennedy of Blairquhan, one of the most powerful Chiefs of the name of Kennedy. The Earl had previously given Auchindrayne grants of a five-merk-land and a two-merk-land, in return for his fealty and service; and besides, 'the said Johnne to be one his chargis euer quhan he ves out of Carrik.'<sup>4</sup> Through the influence, as was asserted, of Sir Thomas Kennedy of Colzean, the Tutor of Cassilis, this office was recalled on the Earl's return, which probably gave rise to the deadly grudge of Auchindrayne, and, after the lapse of many years, eventually terminated in his murder. After the period of this recall, Auchindrayne returned to the allegiance of the Laird of Bargeny, and took a most active lead in all the feuds of that disturbed country.

As the most copious materials occur in the Illustrations appended to the present Trial, and in the 'Historie of the Kennedyis,' relative to all the transactions of Auchindrayne, the Editor will not en-

<sup>1</sup> Written in or prior to 1657, and printed from the original MS. Crown 8vo, Glasgow, 1825.

<sup>2</sup> He was eldest son of *Sir John Mure of Auchindrayne*, who was eldest son of *James Mure younger of Auchindrayne*, executed along with his father for the Murder of Dalrymple.

<sup>3</sup> See Particular Register of Sasines for Ayrshire, II., 613, where numerous entries occur; but it would be foreign to the purposes of the present work to enter into lengthened genealogical detail and proofs.

<sup>4</sup> See *Historie of the Kennedyis*, 4to, Edin. 1830, pp. 18, 19.



croach on the prescribed limits of this work, by entering into farther detail. It is hoped that enough is there given to gratify the most anxious enquirer.

Among other curious matters which are mentioned in the present Trial, there occurs the ancient and almost universal superstition, that *the body of a murdered person bleeds at the approach, or at least on the touch, of the Murderer!* This test of guilt, or ordeal, is so remarkable, that the Editor has made every investigation which his opportunities admit; and lays the result before the reader, in the Appendix.]

Jul. 17.—JOHNE MURE OF AUCHINDRANE, elder; JAMES MURE, younger of Auchindrane; and JAMES BANNATYNE of Chapeldonall.

Dilaitit of airt and pairt of the tressonabill Murthour of vmq<sup>le</sup> SIR THOMAS KENNYDIE of Culzeane, knycht, Tutour of Caffilis, vnder trust, &c.; committit be the said Johnne Mure of Auchindrane elder, in forme and maner, and at the speciall tyme sett down in his Dittay. AND als, for the tressonabill Murthour of vmq<sup>le</sup> WILLIAME DALRUMPILL, in Air; committit be the saidis Johnne Mure, elder of Auchindrane, (James Mure, younger of Auchindrane,) and James Bannatyne, in forme and maner also contenit in the Dittay, producit be our fouerane lordis Aduocat aganis thame.

PERSEWARIS, James Kennydie of Culzeane, as sone to vmq<sup>le</sup> Sir Thomas Kennydie of Culzeane, kny<sup>t</sup>, Tutour of Caffillis; Bessie Dalrumpill, as mother to vmq<sup>le</sup> Williame Dalrumpill; Sir Thomas Hammiltoun of Byres, knycht, Aduocat to our fouerane lord, for his hienes interes.

PRELOCUTOURIS for the perfonen on pannell.

Mr Johnne Russell, Aduocat; Mr Thomas Nicolfone, Aduocat; Josephe Myller, Aduocat.

My lord Aduocat producet the Dittay aboue (under) writtin.

DITTAY *against* JOHN MURE, *elder of Auchindrane*; JAMES MURE, *younger of Auchindrane*; and JAMES BANNATYNE, *sometime in Chapeldonane*.

JOHNE MURE, elder of Auchindrane, James Mure, younger of Auchindrane, and James Bannatyne, sumtyme in Chapeldonane, Ye and everie ane of yow, for your owne pairtes, *respectiue*, ar Indyted and accused of the haynous, crewall, and treasonabill crymes vnderwrittin: FORSAMEKILL AS, be Act of Parlement, maid be oure fouerane lord and Estaittis of this kingdome, in the moneth of July, 1587 yeiris, cap. 51, it is statute and ordaned, that the Mourthour or Slauchter of whatsumeuer our fouerane lordis liegis, whair the pairtie slayne is vnder the traift, credit, assurance, and power of the slayer, all sik Mourthour and Slauchter to be committit efter the dait of the said Act, the samin being lauffullie tryed, and the perfoun dilaited, ffund guiltie be ane Affyse thairof, fall be Treasoun; and the perfonen ffund culpabill, fall forefault lyfe, landis and guddis. AND TREW IT IS, that ye, the said *Johne Mure, elder of Auchindrane*, haiving, without any iuste cause, conspyred the Mourthour of vmq<sup>le</sup> SIR THOMAS KENNEDIE of *Cullayne, knicht*, in the moneth of Januar, or thairby, 1597 yeiris, accompanied with sevin or aucht of your complices in the said interpryse, came

to the Towne of Maybole, and being furelie informed that the said Sir Thomas wes than soupping, vpon the . . . . day of the said moneth of Januar, in the howse of Sir Thomas Nisbett in Maybole, and wes to pass, efter supper, from that pairt to his owne howse; ye and your said complices, bodin in feir of weir,<sup>1</sup> with hagbuttis and pistolettis, and vtheris forbiddin and vnlauffull wapinis, dairnit<sup>2</sup> your self, vnder silence of night, about nyne or ten houres at evin, in ane obscure place, by the whilk<sup>3</sup> the said Sir Thomas Kennedies passage laye; and, so sone as ye persaued him, ye fercelie set vpon him, persewed him with all violence and crueltie for his slauchter, schot and delaschit<sup>4</sup> at him ane great number of schottis of hagbuttis and pistolettis, and still chaiffit and persewed him; whilk,<sup>5</sup> be the Providence of God, and releif of honest nighbouris, he wes delyuered from your crueltie. For the whilk vylde and barbarous offence, ye being summond to vnderly the law, (wes) forced be your owne notour guiltines to go to the horne. THAT feid and inimitie wes schortlie thairefter removed, not onlie be publict and sworne reconciliation maid betuix the said vmq<sup>le</sup> Sir Thomas Kennedie and yow, the said Johne Mure of Auchindrane, bot also confirmed and strenthened, be allyance and mairiage of your eldest sone vpone the said Sir Thomas his dochter; whairby the said vmq<sup>le</sup> Sir Thomas wes drawin vnder sik traift, assurance and freindschip with yow, that he, lipning<sup>6</sup> altogidder to the same, vpon the tent day of May, the yeir of God 1602 yeiris, being of intentione to ryde to Ed<sup>r</sup> for his lauffull buffines, and having no less cair of your turnis<sup>7</sup> nor of his owne,<sup>8</sup> he send his seruand, Lancelot Kennedie, to wryte aduerteisment to yow, that he wes to tak his journey touardis Ed<sup>r</sup> vpon the nixt day, whilk wes the ellevint day of May, 1602 yeiris, or thairby; to the effect ye might meit him vpon the way, at the Duppil, a littill be-west the burgh of Aire, and informe him of sik buffines as ye wald desyre him to do for yow in Ed<sup>r</sup>. Whilk aduerteisment, being writtin at desyre of the said Lancelot Kennedie, be Mr Robert Mure, than schole-maister of Aire, your kinsman, he sent that his Letter to yow, with ane scollar boy, being in his schole for the tyme, called *Williame Dalrumpill*; whilk letter cumming to your handis that efternone that it wes writtin, vmq<sup>le</sup> Walter Mure in Cloncaird being than in cumpanie with yow, in your place of Auchindrane, ye dispatchit bak the said William Dalrumpill, in haift, directing him to returne to Maybole with diligence, and to deny that he had met with yow, or delyuered the Letter to yow: And incontinent thairefter, consulted and resolued with the said vmq<sup>le</sup> Walter Mure of Cloncaird, to aduerteis Thomas Kennedie of Drumvrquhie, your gude-brother,<sup>9</sup> of the certaintie of the

<sup>1</sup> Arrayed in warlike manner.<sup>2</sup> Hid, concealed.<sup>3</sup> Past which.<sup>4</sup> Let off, fired.Fr. *delascher*.<sup>5</sup> Until.<sup>6</sup> Trusting, confiding.<sup>7</sup> Affairs or matters.<sup>8</sup> Than of his own.<sup>9</sup> Brother-in-law.



saïd vmq<sup>le</sup> Sir Thomas Kennedie of Cullayne's journay, and of the way whilk he intended to ryde, advyſing the ſaïd Thomas Kennedie of Drumvrquhie to vſe that occaſion to Mourthour the ſaïd Laird of Cullayne, in reuenge of the Slauchter of the vmq<sup>le</sup> Laird of Barganie; whairof the Laird of Cullayne wes altogidder innocent: And conforme to your ſaïd develiſh reſolution, ye, having aduerteiſed, and perſuaded, and inſtigat the ſaïd Thomas Kennedie of Drumvrquhie to interpryſe the ſaïd treaſonabill Murthour, alſweill be your meſſage ſend to him be the ſaïd vmq<sup>le</sup> Walter Mure of Cloncaird, as be ane vther Letter ſend be yow to him with . . . . . Makadam, your eldeſt ſones ſeruand for the tyme; the ſaïdis Thomas Kennedie of Drumvrchie and the ſaïd vmq<sup>le</sup> Walter Mure of Cloncaird, accompanied with fyve or ſax of thair complices, vmbefet the ſaïd vmq<sup>le</sup> Sir Thomas his hie-way, neir the pairt whair he had tryſted to meit yow, and vpon the ſaïd ellevint day of May, 1602 yeiris, be your aduerteiſment, counſall, and inſtigatioun foirſaïd, cruellie and treſſonablie Mourthoured and ſlew him, vnder traift, credit, and aſſurance; of your cauſing, command, counſall, and ratihabitation;<sup>1</sup> ffor the whilk treaſonabill cryme, the ſaïd Thomas Kennedie of Drumvrquhie ſtandis forfeitit be Parlement. Notwithſtanding whairof, ye, at all tymes ſen the ſaïd treaſonabill Murthour, aſſiſted and ſupported the ſaïd Thomas Kennedie, bothe within this cuntrie and ſen his going furth thairof; and hes keiped ordinar intelligence and correſpondence with him. AND ye, the ſaïd Johne Mure of Auchindrane, ar airt and pairt of the ſaïd cruell and treaſonabill Murthour, and aucht and ſould be forfeitit, and vnderly the pvneiſment of treaſon for the ſame. LYKE AS, ye, feiring the diſcouerie of your guiltines of the ſaïd Treaſonabill Mourthour, be the taking, tryall, and examinatioun of the ſaïd Williame Dalrumpill, for eſchewing thairof, ye cauſed quyetlie convoy him to your place of Auchindrane, immediatlie eſter the ſaïd Murthour; and cauſed your wyfe keip him quyet within the ſam, ſumtymes within the barne and ſumtymes in the turnepyke-heid;<sup>2</sup> appoynting James Cuninghame, your ſeruand, to cairie his meit to him for the maiſt pairt, and to ly in bed with him; keeping him verie quyet and ſecret from all vtheris. And nevertheles, finding that, pairtlie be his weireing to be keiped as ane cloſe priſoner, and pairtlie be the diſcouerie of ſum of your ſeruandis, who got knouledge of his being in your howſe, that he might be more publictlie diſcovered, and ye thairby tryed<sup>3</sup> guiltie of the ſaïd Mourthour, ye ſend him to Loch-Ranſay, in Arrane, to the Laird of Skelmurlie,<sup>4</sup> your freind,<sup>5</sup> convoyed be your ſeruandis, Johne Mure called *the Barroun*, and James Gordoun, now ſtabler in Ed<sup>r</sup>, and at that tyme your houſhald ſeruand; whare he, being deteaned for

<sup>1</sup> Confirmation. Law Lat. *ratihabere*. <sup>2</sup> The top of the *turnpike* or circular ſtaircase, common to the towers and reſidences of the principal families in Scotland, at this period. In the courſe of the Trial, it is ſpecified that he was kept 'in *pe chalmer* in *pe turnepyke-heid*.' <sup>3</sup> Found on trial to be guilty. <sup>4</sup> Sir Robert Montgomery. <sup>5</sup> Blood-relation; one related by the ties of conſanguinity.

your cause, ane lang space, and he lykwayes weireing to remayne in ane barbarous cuntrie, amang rude peopill, who nothing reguairdit him, being ane strenger to thame, leivand vnder ane counterfute name of *Williame Mure*, as ye had directed him ; efter sum discord betuix him and ane of the Laird of Skelmurlies seruandis, he came bak to yow to Auchindrane, whair ye caused keip him darned<sup>1</sup> in the barne and turnepyke-heid *respectiue*, till ye learned that your freind James Mure of Fleit wes going to the Warres in the Low Cuntries ; and than ye, be your self and your Lady, perswaded the said James to tak the said Williame to Flanders with him ; whilk he consenting to do, your wyfe gaue to the said James ane naig, to help to mak the said Williames expensis ; and ye recommended to him the cairefull and saif transport of the said Williame Dalrumpill, and send the said James Gordoun, your seruand, to convoy thame and await vpon thame, to the Place of Cauldwell, in thair way to Leith. Lyke as, the said James Mure of Fleit send the said Williame to Flanderis to the Warris ; whair he served dyueris yeires, and ressaued dyueris woundis, and sustained many vther miseries in the same : Whairthrow, he, becumming desyrous to returne to his natiue cuntrie, ye no soner hard of his hame-cumming, bot incontinent thairefter ye send for him to the duelling howse of Walter Mure in Glenheid of Auchindrane ; and thairefter, vpon the . . . day of September, or thairby, the yeir of God 1607 yeiris, ye directed the said James Cuninghame, your seruand, to convoy him from the said Howse of Glenheid to *James Bannatynes* house of Chapel-Donald ; and casting yow, to forgadder with him be the way,<sup>2</sup> ye, the said Johne Mure, elder of Auchindrane, and ye the said *James Mure, eldest sone and apperand aire* of the said Johne Mure, elder of Auchindrane, meitting with the said Williame Dalrumpill, in the hieway, betuix Auchindrane and Chapel-Donald, ye keiped cumpanie with him be the space of aucht myles, and held dyuers pourposés, speeches, and conferences with him ; tryed of him the estait of the Low Cuntries, and findrie vther materis ; till ye, cumming altogether to the house of Chapel-Donald, ye, the saidis Lairdis of Auchindrane, desyred the said *James Bannatyne* to keip the said *Williame Dalrumpill*, whom ye than named ' Williame Montgomerie,' whill he sould vnderstand farther of your pourpose : And sending vpon the morne thairefter, being Setterday the . . . day of September, 1607 yeiris, for the said James Bannatyne, ye, the said Johne Mure, elder of Auchindrane, desyred him to bring to yow, to the Sandis of Girvan, the said Williame, about ten houris at evin ; whairin he<sup>3</sup> obeying yow, at his cumming with the said Williame, he fand yow, the said Johnne Mure of

<sup>1</sup> Secreted, concealed.

<sup>2</sup> Contriving that you should, as if by accident, meet with him on the road.

<sup>3</sup> On the margin there is written, ' he simplie lipning (trusting) to traist and freindschip, cam simplie to yow,' but without a mark where it is meant to be taken in. The Dittay in Haddington's MS. Collections seems the original scroll, and bears numerous corrections, in his own hand.



Auchindrane, and James Mure, your eldest laifull fone, attending thame :<sup>1</sup> And at your meitting, ye, the faid James Mure, demanding whair the boy wes? And the faid James Bannatyne, fchawing to yow whair he had lichted fra behind him,<sup>2</sup> he pafte fordward to yow, the faid Johne Mure elder of Auchindrane; wha, fchawing to him that boy wes he wha broght to yow the Letter of aduerteifment of Cullaynes dyet before his Mourthour, and that ye hauing vfed diuers meanes to put him by the way, for efchewing the difcouerie of your pairt and guiltines of the faid Mourthour, he ftill returned within the cuntrie; whairby ye, feiring that he fould be the meanes of your wraik, ye wes forced to refolue to mak quyte of him: And the faid James Bannatyne, perfuading yow rather to giue him fumwhat and fend him away of new, when, as he had almoft perfuaded yow, and that he and ye wer returning towardis your fone, to move him to allow of the faid refolutioun, fo fone as ye approched neir vnto him, he crewallie invaied the faid Williame Dalrumpill for his flaughter, rufched him to the ground, and, fetting his kneis vpon his airmes, he pat his handis in the faid Williames throt, and thairwith worried and flew him: In the whilk fact, ye, the faid Johne Mure, elder of Auchindrane, helped, with your owne handis, to hald him downe and fmore<sup>3</sup> him. AND incontinent thairefter, ye, the faidis Johne Mure, elder of Auchindrane, and James Mure, your fone, and ye, the faid James Bannatyne, taking ane fpaide and fchule, reddie prepared be the faid James Mure for the pourpoife, caift<sup>4</sup> hollis in the fand to have buried him; whilk ftill fchutting and filling with fand and water, fwa that ye wes not abill to get his corps covered, ye, the faidis James Mure, younger of Auchindrane, and James Bannatyne, cairied his deid corps in the Sea, fa far as ye could waid, and left his corps thair, to be cairied to the mayne Sea,<sup>5</sup> be ane vtterlie wind;<sup>6</sup> notwithstanding whair of, within fyve or fax dayes thairefter, the wind and tyde broght bak the dead corps of the faid vmq<sup>le</sup> Williame, neir to the pairt where ye had mourthoured him: WHILK being tryed,<sup>7</sup> and the authoris of his Mourthour refferched, be all laifull meanes, the conftant and vniuerfall bruit<sup>8</sup> and opinion of the haill peopill of the cuntrie, blamed yow and evrie ane of you of the fam: Lykeas, in treuth and veritie, ye thrie are the verie and onlie Murthouraris and flayeris of the faid vmq<sup>le</sup> Williame Dalrumpill, vnder your traift, credit, affurance, and power; in refpect that he wes knowne to you, the faid Johne Mure, elder of Auchindrane, at the tymes and in maner before fpecified; and wes not onlie knowne to yow, the faid James Mure, younger of Auchindrane, whan he wes ane fcoller in Maybole, and whan he wes keiped in the place of Auchindrane,

<sup>1</sup> Waiting for them. Fr. *attendre*.  
 rumpill had 'rode double.'

<sup>2</sup> Alighted from horseback, on which Bannatyne and Dal-  
<sup>3</sup> Smother, suffocate. This horrid manner of death is in all respects  
 the same as that lately pursued by the infamous *Burke* and his associates!

<sup>4</sup> Cast, dug. <sup>5</sup> The  
 Ocean. <sup>6</sup> An off-shore wind. <sup>7</sup> Examined or investigated by the proper legal authorities.

<sup>8</sup> Report. Fr. *bruit*.

in anno 1602 yeiris, befoir his going to Arrane, and efter his bak-cumming thairfra to Auchindrane; bot also at his going fra Glenheid to Chapel-donald, whan ye, the saidis Johne Mure of Auchindrane, and James Mure, your eldest sone, convoyed him to the howse of Chapel-Donald, recommended him to the said James Bannatyne, and left him in the keiping of the said James Bannatyne; and, thairefter, fend for him to cum to yow to the Sandis of Girvan; whilk message he obeyed, and most willinglie and reddelie cam to yow; whan he, being vnder your traist, credit, assurance, and power, ye treasonable slew and murderified him, in maner aboue-writin: AND yow, and evrie ane of yow, ar airt and pairt thairof, and aucht thairfoir be Decerned to forfeit lyfe, landis, and gudes, and to amit all landis, heretageis, takkis, steidingis, rowmes, possessionis, teyndis, cornis, cattel, gudes and geir, titillis, proffitis, commodities, and rightis whatsumever, directlie or indirectlie perteaning to yow, or ather of yow, at the committing of the saidis Murthouris, or senfyne, or to the whilk ye, or any of yow, had richt, clame, or actioun.

IT IS ALLEGET be the pannell, that na proces can be led aganis thame, becaus thai ar nocht summond to this dyett.—My lord Aduocat answers, that thai war summond for thir same crymes of befoir, and being presentit and enterand, wer wairdit,<sup>1</sup> sum of thame in the Castell of Edinburgh, and vtheris in the Tolbuith of Edinburgh; and being accuset for Treasone, may be brocht furth of thair wairdis, and put to ane Affyse. And for verification of the premisses, producet the Letteris of Horning, quhair thay being summond, past to the horne, for nocht finding of caution to compeir and vnderly the law.

The pannell desyres xxiiij houris to be advysed with the Dittay, becaus the matter, substance, persones, and subiect of the first Dittay is alterit.—The Aduocat in the contrair, becaus the Dittay and the first Letteris agreis in substance, tuiching the Murthour of Sir Thomas Kennydie and Willyame Dalrumpill.—The pannell answers, thay differ in circumstances.

The Aduocat thairefter producit the first Summondis, and desyret the samin to be red; and the Justice to advyse, quhidder thay differ fra the Dittay, in substance, or nocht.—THE JUSTICE Ordanis proces, without delay.

The Lairdis of Auchindrane, elder and younger, askit instrumentis, that James Bannatyne is accuset and pannellit with thame, in this proces.—My Lord Aduocat declairs, that he insistis vpon the Summondis, as it is tressonabill.

It is allegit, that this Act of Parliament, quhairvpon the Summondis is foundit, was nevir in *viridi obseruantia*, in this Judgement, quhill this persute.<sup>2</sup>

<sup>1</sup> Imprisoned, kept in ward.

<sup>2</sup> That the act in question was never observed in the practice of this Court; and that this is the first instance of its having been founded on.



—It is anfuerit, that this Act of Parliament hes tane effect aganis Thomas Kennedy of Drummorchie.

It is allegeit, that the affumption of the first pairt of the Dittay, aggreis nocht (with the) woirdis of the Act of Parliament, in thir woirdis, ‘vnder power, trust, credeit, and affurance;’ becaus the Laird of Auchindrane had na power over the Tutour of Caffilis: And as to the woird of ‘affurance,’ it is repointit in the Summondis, that the feid was taikin away, and thairfoir, na affurance.—To the quhilk it was anfuerit, be the Aduocat, that the allegiances aucht to he Repellit, in respect of the Dittay. For, it is fufficientlie knawin, that foure perfones may haif ‘power’ over ane; and the pannell, haifing gevin aduerteifment and direction to fax to stay the Tutour, thair was mair nor fufficient power: And as to the rest of the allegiance, ‘credeit, trust, and affurance,’ the Dittay standis relevant, feing thair was na feid standing, and thairfoir, behovet to be flane under trust.

It is allegit, that the Dittay can nocht be relevant, vnles the famyn beir that the pannell was actuall committer of the cryme; becaus the Act of Parliament beiris, quhair the fact is committit and done be ane man, haifing power and authoritie of the perfone flane; bot fa it is, that the pannell was nocht present at the committing of the fact; and fa the perfone flane was nocht vnder his power.—It is anfuerit, that the Dittay standis relevant, in respect that the Pannell was airt and pairt of the fact; and thairfoir the allegiance aucht to be repellit, in respect of the Dittay.

THE JUSTICE findis the Dittay relevant, and Ordanis the famyn to be put to the knowlege of ane Affyse, except the pannell fay forder.

It is forder allegeit, that the naikit assertioun of power, authoritie, and affurance, except the pannell had bene present at the committing of the fact, is nocht relevant. *Item*, thair can na proces be led vpone this Dittay, feing the famyn is foundit vpoun ane writ quhilk is nocht producet. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegit, that the Dittay is nocht relevant to infer Treasoun, becaus it is never subsumeit in the Dittay, that the Laird of Cullane was vnder the power of Auchindrane. Anfueris, *vt supra*, that the famyn aucht to be repellit, in respect of the Dittay.—It is allegit, that the wrying of ane Letter be Auchindrane to Thomas Kennedy is nocht relevant to infer, that the pannell was airt and pairt of Cullanes slauchter. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegeit, that thair is na thing qualifeit in the Dittay, that the cryme was committit be the pannellis causing, counfall, or command; becaus counsell can nocht infer airt or pairt. Anfueris, aucht to be repellit, in respect of the Dittay.

THE JUSTICE Repellis the haill former allegiances; and findis proces.

It is allegeit, gif the principal slayeris fallis nocht vnder the danger of the Act of Parliament, the perfones nocht present, and yit accuset of airt and pairt, can nocht fall vnder the danger of the said Act: Bot sa it is, that the Tutour of Caffillis was nocht vnder the power or assureance of Thomas Kennydie of Drummurchie, principall slayer; and na assureance betuix thame, bot feid standing betuix thame. It is anfuerit, that thair was na feid standing betuix Drummvrchie and the Tutour of Caffillis; and thairfoir the said allegiance aucht to be repellit, in respect of the Dittay, as it is sett down.

THE JUSTICE Repellis the allegiance, in respect of the Dittay.

Forder, allegis that the principall actouris is nocht discussit. Anfuerit, aucht to be repellit, in respect of the Dittay beiring airt and pairt; and that the principall committeris ar fugitiue, and thairby hes tane the cryme vpone thame.

It is allegit, concerning *the Slauchter of Dalrumpill*, that the auld Laird re-peitis the haill allegiances maid aganis the Act of Parliament, vnder trest, cre-deit, power, assureance, &c. And for Young Auchindrane, sayis, that Dalrumpill was nawayis vnder his power, credeit or assureance; becaus it is nocht qualifeit, that he was vnder the young Lairdis power; and thairfoir, can nocht infer Treafone aganis him. The Aduocat anfueris, aucht to be repellit, in respect of the Dittay.

THE JUSTICE, be Interloquoutour, Suftenis the Dittay, as it is consauet, alsweill aganis the young Laird as his father.—Quhairvpoun the Aduocat askit instrumentis.

#### ASSISA.

Sir James Scrymgeour of Dudope,	Duncane Bayne of Tulliche,	Williame Sinclair of Blaufe,
kny <sup>t</sup> , elder, Constable of Dundie,	Dauid Weir of Auchtiefardill,	George Seatone of North-Rig,
Sir George Elphinstoun of	Patrik Stewart of Baithie,	Johnne Corbett of Arboill,
Blithifwod, kny <sup>t</sup> ,	Vithreid McDowell of Mondork,	Patrik Carkettill of Markill,
James Scrymgeour, younger of	Robert Merfer of Salene,	Johnne Kneilland of Fofkane,
Dudope,	Mathow Brisbane of Raslene,	Sir Dauid Woid of Craig, knycht.

My lord Aduocat tuik instrumentis of the fweiring of the Assyse. My lord Aduocat askit instrumentis of the fweiring of the Dittay, be Bessie Dalrumpill, moder to vmq<sup>l</sup> Williame Dalrumpill, in that article thairof, concerning the Murthouring her sone.

THAIREFTIR, my lord Aduocat, ffor verificatioun of THE DITTAY to the perfones of Assyse, repeatit to thame the notorietie of the fforfaltour in Parliament of Thomas Kennydie of Drummvrchie, for the tressonabill Murthour of the Laird of Culzeane; repeatit the Hoirning vset aganis the said Thomas, Cloncaird, Thomas McAlexander, and remanent thair complices; and the citatioun of the Laird of Auchindrane elder, for the said crymes, in anno 1602; producis the Hoirning vset be the Laird of Culzeane aganis Auchindrane, ffor the intendit



Murthour of the said Laird of Culzeane, in anno 1597 ; and repeittis the Laird of Auchindranes Confessioun thairof, in Judgment. And for verificatioun of the said Laird of Auchindrane elder his giltines of the Laird of Culzeanis Murthour, and of the giltines of his sone and James Bannatyne, of the Murthour of William Dalrumpill, producet the Hoirning execute aganis thame for the said cryme, in ffebruar 1608 ; quhairby, thay ganging to the horne, and fleing frome the Law, thay haif tane vpoune thame the giltines of the saidis crymes.

To prove that *Auchindrane elder ressauit the Letter* sent to him be Mr Robert Mure, contening aduerteifment of Culleanis dyet, and broght to him be Williame Dalrump, Walter Mure of Cloncaird being present, producet the Deposition of James Mure of Fleit, markit with the Letter O. *pagina tertia* ; the Deposition of James Gordoun, O. p. 5 ; the Young Laird of Auchindranes awin Declaratioun, O. p. 6. And that M<sup>c</sup>Adame carreit aduerteifment from Auchindrane to Thomas of Barganie thairof, produceit James Gordones Deposition, markit with the said Letter O. p. 10.

For Auchindranes *knowledge of Cullanes Murthour*, vses the Deposition of the Laird of Cauldwell, markit with the Letter G. p. 1, beirand, that Auchindrane schew to them, that he knew of Cullanes Murthour, befor it wes done, and wald nocht stay it. And vses lykwayis the Deposition of James Mure younger of Auchindrane, his sone, O. p. 6, beirand, that he knew that his father was hevelie suspectit of the Slauchter of the Tutour of Cassillis.

To verifie Auchindrane's *keeping of Williame Dalrump in his hous of Auchindrane*, in the chalmer in the turnepyk-heid, and in the barne of Auchindrane, schortlie eftir the Slauchter of the Laird of Cullane ; vses the Deposition of Young Auchindrane, E. p. 6, and D. p. 5 ; the Deposition of Johnne Mure of Woidland, L. p. 6 ; the Deposition of Johnne Mure, callit Blak-byres, O. p. 1 ; and of James Gordoun, O. p. 5 et 10.

To verifie Auchindranes *sending of Dalrump to Arrane*, quhilk Auchindrane denyes ; vses the Deposition of Patrik Dalrump, H. p. 5 ; of Johnne Mure, in Blak-byres, O. p. 1 ; of James Mure of Fleit, O. p. 4. ; off James Gordoun, O. p. 5 et p. 10.

To verifie *Dalrumpillis sending to Flanderis*, be Auchindrane, quhilk Auchindrane denyis ; vses the Deposition of Walter Mure in Glenheid, A. p. 2 ; off Johnne Mure, in Blakbyres, O. p. 1 ; of James Mure of Fleit, O. p. 2 et 3 ; of James Gordoun, O. p. 5.—And that the Lady Auchindrane *caust Williame Dalrump change his name*, and call him self *Williame Mure* ; vses the Deposition of James Mure of Fleit, O. p. 9 ; and of James Gordoun, O. p. 10.

To preve Williame Dalrumpellis being in Walter Mure of Glenheidis hous, *after his returning frome Flanderis*, to wit, vpone the Thurisday befor his Mur-

thour, quhilk Auchindrane denyis ; vſes the Depoſitioun of James Dalrumpill, G. p. 1 et 2 ; and of Walter Mure, in Glenheid, A. p. 2.

To preve *the bringing of Williame Dalrumpile from Glenheid*, be James Cunningham, at directioun of the Laird of Auchindrane, quhilk he denyis ; vſes the Depoſitioun of Walter Mure, in Glenheid, A. p. 2 ; and of James Gordoun, O. p. 5.

To preve the Lairdis of Auchindrane, elder and younger, thair *meitting with Williame Dalrumpile*, in the way betuix Auchindrane and Chapel-Donane, and keiping cumpanie and conference with him the ſpace of ſevin or aucht myles, quhill thay thre and James Cunynghame come to Chapel-Donane, quhilk Auchindrane preſſis to deny ; vſes Auld Auchindranes Depoſitioun, E. p. 2 ; and Young Auchindranes Depoſitioun, E. p. 7 ; the Depoſitioun of Andro M<sup>c</sup>Alexander, B. ; Johnne Mure of Woidland, C. ; Patrik Bannatynes Depoſitioun, D. p. 1 ; Young Auchindranes Confeſſioun, D. p. 5 ; James Dalrumples Depoſitioun, G. p. 1 et 2 ; Williame Roife, L. p. 5 ; Johnne Mure in Carvell, L. p. 1 ; James Bannatyne, M. p. 1.

To verifie *the bringing of Williame Dalrumpile*, be James Bannatyne, *to the SANDIS OF GIRVEN*, to the Lairdis of Auchindrane, elder and younger, and MUR-  
THERING HIM VNDER nycht, in that place ; making ane hole for his burrall, and caſting of him in the ſea ; vſes the Depoſitioun of Johnne Mure of Woidland, C. ; Patrik Bannatynes, D. p. 1. ; James Dalrumpillis, G. p. 1 et 2 ; David Merſeris Depoſitioun, L. p. 4 ; Williame Roife, L. p. 5 ; Johnne Mure in Cairve, L. p. 7 ; James Bannatyne, M. p. 1 et 2 ; Johnne Mure in Blak-byres, O. p. 2 et 11 ; James Gordoun, O. p. 5 ; James Pennycuiks Depoſitioun, maid 27 of Maij ; the Young Laird of Auchindranes Depoſitioun, F. p. 2, beirand, that he hard be the bruit of the cuntrie, that his father knew of Dalrumples Murthour, becaus he was fugitiue.

To verifie that *Auchindranes denyall that he knew Williame Dalrumpile*, or that he brocht him M<sup>r</sup> Robert Mures Lettir, is vntrew ; and that he knew him, and reſſaut the ſaid Letter from him ; vſes the Depoſitioun of James Dalrumpile, G. p. 1 et 2 ; James Mure of Fleit, O. p. 3 ; James Gordoun, O. p. 5 ; the Depoſitioun of James Mure, younger of Auchindrane, D. p. 5.

To verifie *James Mure*, younger of Auchindrane, *his knowlege of Williame Dalrumpill*, and of his keiping quyet in Auchindrane ; and of his being at hame, immediatlie befor his Murthour ; and his father and the deponneris meiting and conference with him in the way betuix Auchindrane and Chapel-Donane, the day befor his Murthour, and thair cuming altogidder to Chapel-Donane that nycht ; produceit the Depoſitioun of the ſaid James Mure, younger of Auchindrane, D. p. 5. *Item*, the Depoſitioun of the ſaid Laird of Auchindrane younger, D. p. 7.



To verifie the dilligence, craft, and subtilitie vset be the Lairdis of Auchindrane, to suppres and eschew the tryell of Williame Dalrumpillis Murthour, and of thair awin giltines thair of ; firft, my Lord Aduocat vses the verificatioun of thair intentioun to Murthour Hew Kennydie of Garriehorne, onlie devyset and attemptit be thame, to cullour thair going to the horne, and to eschew the haynoufnes of thair fleing fra the law and tryell of thair giltines, of sic ane horrible and abhominable Murthour as Dalrumpillis ; the Depofitioun of James Dalruple, K. p. 1 et 2 ; and the Depofitioun of James Bannatyne.

Defyres lykwayis the Affyse to haif confideratioun of thair continuall refoirt and friendship with James Bannatyne, eftir the faid Murthour ; and thair being at the horne for the famyn ; thair fuffering the reproches and iniuries, be woird and deid, offerit be him to thame, quhilk thay wald nevir haif induret, gif thai had nocht bene affrayit, that, thai difcoirding with him, he fould haif discoverit thair giltines of the faid Murthour ; vses the Depofitioun of Patrik Bannatyne, D. p. 3 ; the Depofitioun of Auld Auchindrane, M. p. 3 ; and of James Mure of Fleit, O. p. 3.

The geving be the young Laird of Auchindrane to James Bannatyne, ane Lyfrent Tak of his rowme of Chapel-Donane, all writtin with Young Auchindranes awin hand, contening fourtie penneis be yeir of deutie, denyit and menfuorne be Young Auchindrane ; and thairefter confeffit, quhan the Tak was recoverit and producet, E. p. 8.

The deilling of Young Auchindrane, be him felff and his freindis, with James Bannatyne to go to Ireland, and furneffing of him, to that effect, ane boit, meit and drink, quhilk Young Auchindrane denyit ; vses for verificatioun thair of, the Depofitioun of Allane Pyper, L. p. 3 ; David Marfchellis Depofitioun, N. p. 1, et O. p. 4 et 8 ; David Mure, in Girven, his Depofitioun, O. p. 4 ; and James Bannatynes, O. p. 8.

That Young Auchindrane wrait ane Letter with the faid James Bannatyne, and in his fauour, to Thomas Kennydie of Drummurchie, the Kingis forfalt Tratour ; vses for verificatioun thair of, the Confeffioun of the faid Young Laird of Auchindrain, O. p. 7 ; and the Depofitioun of Williame Kennydie of Garfar, O. p. 8.

To preve that the fermes (*rents*) of Chapel-Donane, was continuallie payit to James Bannatyne, fen his banifhment ; vses the Depofitioun of James Roife, tenant thair, L. p. 5.

To preve the furneifing of pleniffing, money and neceffaris be the Auld Lady Auchindrane to James Bannatyne, continuallie, fince his going to Ireland ; vses the Depofitioun of Williame Pyper, L. p. 1 ; David Marfchell, L. p. 4 ; Williame Roife, L. p. 5 ; James Roife, L. p. 5 ; James Gordoun, O. p. 10 ; and be Auchindranes awin Letter fent to James Bannatyne ; Moyfes Lokhartis Letter to James

Bannatyne ; Young Auchindranes Letter sent to James Bannatyne ; the Lady Auchindranes thre Letteris to James Bannatyne ; and hir Letter to James Bannatynes wyfe.

The perfewar defyres the Assyse to haif confideratioun, as of ane verrie materiall circumstance, that James Cuninghame, being the man imployit be Auchindrane to keip Williame Dalrumples quyet in the place of Auchindrane, and to convoy him fra Glenheid to Chapel-Donane, the nycht befor his Murthour, quhairby he, being for the tyme, his actuall fervand, and in his hous of Ballachtoule the nycht of Dalrumpillis Murthour, and thairby mair abill to haif discoverit the circumstances of the Murthour nor (*than*) ony vther ; the Laird of Auchindrane hes absentit him, for eschewing of the said tryell : And how the said James Cuninghame, being in the Laird of Caldwellis hous, and the Erle of Abercorne geting knowlege thair of, haifing, as ane Counsallour, commandit Caldwell (*Mure*) to exhibeit Cuninghame befor the Counsell ; he, contrair to his promiseis, sufferit him to escaip : He being challengeit for it befor the Counsell, grantit the promiseis, and declairit that Cuninghame was sent to his hous be the Lady Auchindrane ; and that, contrair to his promiseis, he sufferit him to escaip ; ffeiring, gif he had enterit him befor the Counsell, he fould haif done harme to his freind. For the quhilk, he become in the Counsellis will ; as his Deposition beiris, H. p. 1.

As lykwayis, how Auchindrane elder directit the said James Cuninghame, by the way to the Laird of Vaynes hous, in Angus, causing him change his name, and to call him self *Williame Broun*, and geving him that name, quhan he recommendit him to the Laird of Vayne, albeit the man was the said James Cuninghame ; Quhilk Auchindrane denyis ; bot the contrair is provin be James Gordoun, O. p. 5 et 10 ; be the Laird of Vayne, O. p. 11 ; Andro Lokhart, O. p. 12, and George Blakis Deposition, maid at Lundoun, 28 Maij.

Forder, it is desyrit that the Assyis will consider the grit substance contenit in the Letter writtin be Auchindrane to his sone, with his awin hand, impudentlie denyit be him ; and nevertheles cleirly verifeit be the Depositionis of David Drummond, seruitour in the Castell, E. p. 15 ; and be Thomas Home, Constable, *ibid.* ; and be the Declaratioun maid be my Lord of Mar, in Counsell ; quhilk the Lordis of Secreit Counsell, present in this Judgment, hes verifeit.

Thay haif to confider the Lady Auchindranes adverteiffing of James Bannatyne, be Letters, of all the Dyettis of proces led betuix the Laird of Auchindrane and her sone ; and hir recommending of him to Thomas Kennydie of Drum-murchie, hir brother ; provin be Williame Pyper, L. p. 1 ; James Gordoun, O. p. 10 ; and be hir awin Miffaue Letter to James Bannatyne.

The Lady Auchindranes absenting hir self, and nocht compeirance befor the Counfall, quhan scho wes charget thairto, vnder the pane of Hoirning, to compeir and Depone hir knowlege of the crymes quhair of hir husband and sone ar



accused ; Thomas Mure, sone to Auchindrane, and Andro Sinclair, half brother to Auchindrane, thair going to the horne, for nocht compeirance to depone in the saidis crymes, quhilk of necessitie man be presumeit to proceid of the stay maid to thame be Auchindrane, elder and younger, for feir that thair Depositiones sould discouer the giltines of the saidis Lairdis. The lyk man be presumet of Thomas Wallace, Johne M<sup>c</sup>caig, and dyuerse vtheris of the Lairdis servandis, going to the horne, for the lyk cause.

Thay haif also to confidder verrie cairfullie, the Laird of Auchindranes hyring James Pennycuik to go to Ireland to Murthour James Bannatyne ; denyit be Auchindrane, and verifeit be the Deposition of the said James Pennycuik, and George Small his servand. And the lyk directioun sent be Auld Auchindrane with George Blak to Ireland, to Williame Carmichell younger of Rowntrie-croce ; verifeit be the Depositiones of George Small, O. p. 11, and be the Examinationes of the said James Pennycuik and George Blak, in Lundoun, in May last.<sup>1</sup>

Last, thay haif to confidder the Letter sent be Auld Auchindrane to the Laird of Stair,<sup>2</sup> and the forme of Band send thairwith, to haif bene obtenit, subscryuit be the Laird of Stair, and his freindis, of the name of Dalrymple.

IN respect of the quhilkis premisses, verifeing the crymes lybellit, and haill materiall circumstances thair of, with so cleir evidences and manifest probatioun, as na man could haif expected, in so covered and craftie Murthouris ; quhairby all dout of obscuritie and scruple is cleirly removet ; in caice the said Assyse or ony pairt of thame fall happin so unhappellie to forget thame selfis, as to clange<sup>3</sup> the saidis Lairdis of Auchindrane, elder and younger, or the said James Bannatyne, quha hes Confessit his awin giltines, in Judgement ; my lord Aduocat protestis for Wilfull and manifest Errour ; and for all payne that of the Law can follow thairupoune.

IT IS ANSWERIT be the pannell to the perticularis aboue writtin, that the samyn, nather in haill nor in pairt, aucht to be respectit ; and speciallie, in sa far as the samyn is foundit vpon Deposition of Witnesse ; because, it is speciallie provydit be the Act of Parliament, maid in the yeir of God I<sup>m</sup>. V<sup>c</sup>. fourscore sevin,<sup>4</sup> cap. 90, that in all causses Criminall, the haill proces and probatioun, and vther instructiones quhatsoever, ather be Writ or Witnesse, fall be alleget, ressonet and deducet in presens of pairtie accusit, in face of judgment, and na vther wayes ; quhilk is accoirding to the Cowmoun Law ; seing na witnesse can be ressaivit *contra non*

<sup>1</sup> It may be stated here, once for all, that unluckily the DEPOSITIONS, LETTERS, and other productions, which are here so regularly quoted by their proper numbers and pages, are lost ; at least, if among the Records of the Justiciary Court, are in a room filled with loose and unarranged papers, tied up in bundles in such a manner, as to render any ordinary search entirely hopeless—as it would occupy many months' constant investigation. <sup>2</sup> John Dalrymple, chief of that name. <sup>3</sup> *Cleanse* ; find innocent, acquit. <sup>4</sup> Anno 1587.

*citatum*; to the effect that the pairtie may be hard to oppone aganis thame. And trew it is, that all thir Depositiones and writtis, vset be my Lord Aduocat, and speciallie the saidis Depositiones of Witnesse, hes bene reffaut out of presens of pairtie; the pairtie nevir being summonit to object aganis thame, done extraiudiciall, and nocht in Judgement: And thairfoir, quhatsoever the Lordis of Counfall, *per medium inquisitionis*, hes done of befoir, out of presens of pairtie, aucht nawyis now to be respectit be the Assyse; accordring to the decisioun of the Act of Parliament: for, as in Ciuile causses, na fayth will be gevin to ony Witnesse out of presens of partie, *multo minus in Criminalibus*.

And now, ansuering perticulerlie, first, as to the Forfaltour of Thomas (Kennedy) of Barganie, (Drummurchie,) thair is na thing producet. Nixt, he wes nocht forfalt for the factis lybellit, bot only for the burning of the house of Auchinsoule. *Tertio*, it tuiches nocht our cause. As to the Hoirningis, the pannell vses fyve feuerall Relaxatiounes of Auchindrane, elder and younger, *respectiue*; quhilk thay producet. And albeit the Lairdis of Auchindrane, elder and younger, war put to the horne, for thair nocht compeirance, the first dyet, yet that importis na taking of the cryme upone thame; becaus, thay being giltie for vther crymes, and speciallie, schuiting of pistolettis, for the quhilk thing mycht haif bene pwneist be the lawis, thay durst nocht compeir, quhill first thay had obtenit ane Remissioun of the saidis crymes, quhilk thay mycht lauchfullie do; becaus, thay knew certanlie, that thair going to the horne wald be purget be thair compeirance and offer to Tryell. As lykwayis, Young Auchindrane compeirit at the first Dyet; and also Auchindrane elder wald haif enterit willinglie, and to that effect offerit to compere<sup>1</sup> and tak his Remissioun for the pistolettis, but culd nocht obtene the samyn; as is notour to my Lord Chancellor and Thesaurer.<sup>2</sup>—As to the repetitioun of the Deposition of *James Mure of Fleit*, and *James Gordoun*, it is ansuerit, *ut supra*. And forder, in caice the pairtie had bene wairnit, as he was nocht, he wald haif repellit the said James Muir, he being ane vagabund, without ony residence, nocht worth the Kingis vnlaw;<sup>3</sup> and richt sua, that he was denunceit rebell and put to the horne, for steilling of tua horse and thre oxin fra the Tutour of Nuntoun; and also, for steilling of ane quhyte naig out of the landis of Skeltoun. Lyk as, the Tutour of Bombie, to move him to be ennemie to Auchindrane elder and younger, and to depone aganis thame, he aggreit<sup>4</sup> the Tutour of Nuntoun and the said James Mure, anent the steilling of the said guidis. And forder, the Laird of Blairquhand hes promeist him geir and guid deid, to depone aganis thame;<sup>5</sup> and (Mure) hes now becum his servand.

<sup>1</sup> Compromise; make a composition, or purchase his Remission from the Crown.

whom, it will be remembered, were then sitting as Assessors.

<sup>2</sup> Both of whom, it will be remembered, were then sitting as Assessors. <sup>3</sup> Not being worth, *i. e.* unable to

pay the fine or *amerciament* to the king, for his own appearance, &c.

<sup>4</sup> Reconciled them,

and made up their quarrel.

<sup>5</sup> For the reason of Blairquhand's feud with Auchindrayne, see Hist. of the Kennedyis, p. 19, &c.



And as to Gordoun, can nawayis be respectit, becaus he was nocht aucht 3eiris,<sup>1</sup> the tyme of the committing of the factis quhairvpone he was examinat. Lyk as, the pannell defyres that Gordoun may be presentit in presens of the Assyse, and confrontit with the pannell.—Forder, it is allegit be the pannell, that the Depositiones for (of?) the said James Mure and James Gordoun, and all vtheris of the lyk nature, aucht nawayis be respectit; becaus, it is of veritie, that the lybell and Dittay consists of tua pairtis; the ane substantiall, to infer the pwneischment lybellit, viz. the committing of the factis lybellit; and the advyse, consent, persuasioun, instigatioun, causing, command, counsell, and ratihabitoun, quhillkis ar the only substantiall poyntis contenit in the lybell and Dittay: And the rest of the poyntis of the said Dittay are only presumptiones, coniecturis, and liklienes.<sup>2</sup> And feing, the speciall cause quhy the Justice Sustenit the lybell, was the advyse, presumptioun, instigatioun, counsell, command, assistance, and ratihabitoun gevin, be the Auld Laird of Auchindrane, to the saidis Thomas Kennydie, for Murthouring of the said Laird of Culzean; and that thair is na thing of the said substantiall poyntis provin be nane of the Depositiones; quhatsoever Depositiones is maid be the saidis tua persones, or ony vther remanent Witneses, in materis of the lyk nature, anent ony probabilities or presumptiones, albeit thai war maist violent presumptiones, and indoutit, thay can produce na sentence condampnatour<sup>3</sup> in Criminall caussis, bot only ar adminicles to the tortour and questioune. And forder, the Depositiones of the saidis tua persones, being only anent the ressaite of ane Letter, nocht contening the contentis and qualitie thair of, can nawayis induce ony presumptioun, far less probatioun. *Item*, it is to be rememberit, that thir Depositiones tuiches nocht Young Auchindrane. *Item*, tuiching that pairt of Young Auchindrane, and Caldwellis Deposition, thay prove nathing, nather of the fact, nor yit of the knowlege. As also Young Auchindranes Depositiones previs far les; becaus he mycht haif lauchfullie deponit that his father was suspect befor he was pannellit.

And forder, as to the Depositiones of *Young Auchindrane*, and *Johnne Mure of Woidland*, thay can work nathing, feing thai preve na pairt of the Dittay, or factis thairin contenit; ffor as to Young Auchindranes Depositiones, anent his knowlege of Dalrump to haif bene in his fatheris hous, that previs na pairt of the Dittay. And, quhair it might appeir, be the said Deposition, and vtheris Depositiones conforme thairto, that the said Laird of Auchindrane is improvin, as quha deponit that he never knew the said Dalrumpill,—it is ansuerit, that the same can impoirt na probation of ony pairt of the Dittay; becaus, gifand<sup>4</sup> and

<sup>1</sup> Eight years old.

<sup>2</sup> Probabilities, *likelihoods*.

<sup>3</sup> Condemnatory.

<sup>4</sup> Giving or allowing for the sake of argument, but not granting; a common form of expression used in ancient legal proceedings, when Counsel was illustrating a point by arguments, &c.

nocht grantand that the pairtie pannellit had maid ane leising,<sup>1</sup> or vareit and bene inconstant, and sa waverit in his Deposition, the same can impoirt na probatioun; speciallie, quhair the said vntreuth, &c. is nocht in the substantiall pairtis of the Dittay, bot in vther accidentis and externall circumstances. And as to Johnne Mure of Woidlandis Depositiones, it can nawayis be respectit, for thir particular caussis:—first, he is tennent removeable<sup>2</sup> to the Erle of Cassillis, and his household servand; nixt, he is Chalmerlane and factour to ane grit pairt of his lordschipis landis; bot in speciall, is Bailzie of the Barronie of Dalrumples. *Secundlie*, he was vpone the ground, in companie with the Erle of Cassillis, at the slauchter of Barganie, at quhilk time Auchindrane was deidlie hurt. *Thridlie*, he was also in companie with the Erle of Cassillis, at the persute of Auchindrane, in his awin hous. *Fourtlie*, he was in companie with Hew (Kennedy) of Garriehorne, and his convoy throw the landis of Auchindrane, quhair he come in bragging maner, and socht Auchindrane at his awin hous. *Fyftlie*, befor he was examinat befor the Counsell, the Erle of Cassillis causit him sett down sic woirdis as his lordschip thocht expedient, and to be subscryuit with his hand; quhilk he nawayis durst alter, befor the Counsell; *et sic prodiit testimonium*. The quhilk writ was producet to him in Counsell, befor he wald depone; quhairby he nicht keip my lordis injunctiones.

ITEM, as to the Deposition of *Johnne Mure of Blakbyres*, it previs na pairt of the Dittay, becaus he deponis nathing of knowledge that he hes of Auchindrane, bot a repoit that he had of vther servandis. And forder, the said Johnne could nevir haif bene witnes fra the beginning, ffor thir caussis:—Becaus, he slew the Laird of Auchindrane's seruand callit Williame Geddies, for the quhilk he was baneischet the countrie; nixt, he come in vpone fair promiseis and conditiones maid to him be the Erle of Cassillis, to purches to him ane Remission for that Slauchter, and for the quhilk caus, he promiseit to the said Erle to depone quhat he desyret: And last, the said Johnne Mure hes intruset<sup>3</sup> him self in ane grit pairt of Auchindrane's lands, and thereby<sup>4</sup> thinkis to bruik<sup>5</sup> the samyn.

As to *Patrik Dalrumples* Depositiones, na fayth can be gevin thairto, becaus he is uncle to the murtherit man.

It is ansuerit, to the Deposition of *Walter Mure*, and to the rest of the Depositiones befor the allegit Presbiterie, that the saidis Depositiones can mak na faith; becaus thai ar extra-judiciall, na proces depending aganis ony pairtie, na pairtie haifing intres being callit, bot only ane naikit conventioun of tua or thre Ministeris, nocht Presbiteriallie convenit, quha had na power to tak sic Depositiones: And as the saidis Depositiones, gif thai had bene tane to the saidis Mi-

<sup>1</sup> An untruth or falsehood; *leising*.

<sup>2</sup> Tenant at will.

<sup>3</sup> Intruded; thrust himself into.

<sup>4</sup> By perjury, or giving false evidence, &c.

<sup>5</sup> Enjoy; possess as his property.



nifteris in ane Ciuile caus, wald haif maid na faith, far les in ane Criminale. *Secundlie*, the said Walteris Deposition previs na pairt of the Dittay: And albeit the Depositiones war trew and valid, yit thay ar ineffectuall; becaus, albeit it war grantit that Dalrump was fend to Flanderis, that impoirtis nocht the probatioun of ony Dittay.

ITEM, it is answairit to *James Dalrumples* Deposition, that the same can nawayis work aganis thir persones pannellit: Becaus, in the first pairt of the said Deposition, he deponis nothing aganis thame: And as for the last pairt, beir- ing ane plott to mak ane onsett vpone Garriehorne, the samyn can nawayis work aganis the persones pannellit; nather can his Deposition be regairdit, in respect he deponis his awin turpitude, viz. the forgeing and contriveing of the slauch- ter of Garriehorne devysit be him self, as is confessit; and quhilk devyse of his, he counsellit the persones pannellit to put in executioun; and sua, he being de- vyser and contriver of the fact, he can never be hard to depone in prejudice of the persones pannellit. And to purge the onsett maid vpone Garriehorne be Young Auchindrane, the veritie is, that the caus of that onsett was accidentlie, they meitting togidder at the end of the Toun of Air, and Young Auchindrane meiting him in the way, had just caus to mak the onsett vpone him: first, becaus he had tane his fatheris bluid, and nixt, he was at the Slauchter of his mother- brother.<sup>1</sup> And forder, the said James Dalrumpillis Deposition can nawayis be respectit, becaus he is ferdis of kyn<sup>2</sup> to Williame Dalrumpill, quha is flane, and is secund and thridis to the Laird of Culzeane. And forder, befor he was pre- sent in Counsell to depone, he was movet to depone the samyn, vncitet,<sup>3</sup> be my Lord of Abercorne, quhairof he maid adverteisment thairefter to the Laird of Auchindrane and desyret him to sett him; becaus he had put all that he had, be submissioun, in Sir Claud Hammiltone's handis.

ITEM, as to the Deposition of *M<sup>c</sup> Alexander*, it preves na pairt of the Dit- tay nor factis lybellit, bot rather purges the samyn; and forder, can mak na faith, becaus it declairis, that the Lairdis of Auchindrane war content to cum and tuich the corps,<sup>4</sup> sua that<sup>5</sup> thay mycht do the samyn in Air, my lord of Cassillis nocht being thair. And to verifie the samyn, produces ane Instrument.<sup>6</sup> And forder, at that tyme Young Auchindrane was deidlie hurt; and sa could nocht cum. And forder, the said Deposition can nawayis be respectit, becaus it is extra-judiciall, and one in presens of the partie adversar, viz. the Erle of Cassillis.

<sup>1</sup> Uncle; mother's brother.

<sup>2</sup> Within the fourth degree of relationship.

<sup>3</sup> Without having

received lawful citation. <sup>4</sup> Alluding to the well-known popular test, or ordeal, of *calling upon the ac- cused or suspected person to come forward and touch the corpse of the murdered party!* The superstitious notion then held was, that THE CORPSE WOULD BLEED, immediately on the approach or touch of the Mur- derer! Powerful use of this circumstance has been made by Dramatists and writers of Romance. See a variety of interesting notices in the APPENDIX to this Trial, with an enquiry into the origin and prac- tice of our ancestors in such cases. <sup>5</sup> On condition; provided that, &c. <sup>6</sup> A Notarial attestation.

ITEM, as to *Patrik Bannatyne's* Deposition, it aught nawayis to be respectit, for thir cauffis:—*First*, becaus he is secund and thridis of kyn with Culzeane, quha is ane pairtie accuser; as also to the Erle of Cassillis: *Nixt*, becaus he is brother to James Bannatyne, quha is *socius criminis*, and is callit and accuset for the samyn cryme: And *last*, his Deposition can mak na fayth, becaus the samyn proceedis onlie *ex auditu*, be relatioun of his brother James Bannatyne; in the quhilk Deposition, he confesses the said James Bannatyne to be thryfe contrair<sup>1</sup> in his relatioun. And sua, his Deposition, depending vpone ane contrair relatioun, makis na fayth.—Aganis the haill Depositiones depending vpone *James Bannatynes* relatioun, it is allegit,—gif James Bannatynes fall, all his relationes man fall.

And forder, as to *Williame Roifes* Depositione, it is allegit, that the samyn can nocht be respectit, becaus Williame Roifes wyfe and the Laird of Culzeane ar thrydis and ferdis of kyn. As also, his wyfe is father-sister to James Bannatyne, quha is accuset of the same crymes.—It is allegit aganis the Deposition of *Johnne Mure in Curver*, that the samyn can nawayis be respectit: Becaus the samyn is only ane relatioun made be James Bannatyne: *Secundo*, becaus the samyn is contrair to the Dittay; in sa far as the Dittay beiris, that James Bannatyne, haifing brocht Dalrump to the Sandis of Girven, left him behind him, and raid forwardis to the tua Lairdis of Auchindrane, quhair the Auld Laird conferring with him, the Young Laird past to the said Dalrump; and eftir ane space, Auld Auchindrane and Bannatyne cuming neir thame, he slew him: And in this Deposition it is confessit, that James Bannatyne sould haif said to the Deponer, that Young Auchindrane drew this Dalrumpill after him, and slew him; quhairby it is euident, that James Bannatyne is contrair, insafar as the Deposition beiris, conforme to the Dittay.

As to the Deposition of *James Bannatyne*, it aucht nawayis to be respectit, for thir argumentis.—*First*, becaus he hes tane the cryme vpone him, and for the samyn hes maid offeris baith to the Kirk and pairtie: *Secundlie*, he standis yit at the horne vnrelaxit: As also, is vnder the censure of excommunicatioun; and so is nather Godis man nor the Kingis: *Thridlie*, he is secund and thridis of kyn to the Laird of Cullane and the Erle of Cassillis: *Ferdlie*, he is cum in vpone promeis and conditioun of his lyfe, quhilk was set down to him be Josias Stewart, bruther to my Lord Vchiltrie, James Stewart, and the Laird of Girvenmaynes; and his Band gevin to that effect, that he fall cum baith saif to Scotland and returne saif to Ireland. Eftir meiting and conference in Ireland, and quhat he had sett down the conditiones, he come over to Buit to his cousing the Laird of Cames,<sup>2</sup> to quhome he schew the conditiones, and brocht Cames brother,

<sup>1</sup> Contradictory.<sup>2</sup> From Ireland to the Island of Bute, to his cousin, . . . Bannatyne of Kames.



callit Rannald Bannatyne, with him to the Largis, quhair he mett with James Stewart, quha brocht him to Kilwinning; and than Jofias and James Stewartis mett with him befyde Irwing, to haif sett down the conditiones perfytlie, for his fure returning to Ireland, quhilk fould haif bene put in Rannald Bannatynes handis; bot, vpon fair promeffis, he was movet to leve Rannald behind him: And thairefter, he wes brocht to my Lord of Abercorne, with quhome he was tuentie dayis, or thairby: And thairefter, he was fend to Cliddisdail, to the Laird of Corhous;<sup>1</sup> and fua, be this progres, it is evident, quhat hes bene the indirect deilling of James Bannatyne, fra the beginning. Speciallie, quhan fouir ane pairtie is accuset for ane cryme, and is fugitiue for the fame, as in this caife, he can nevir be hard, be his Confessioun and Depositioun, to work ony preiudice to ony vther pairtie; nather can his Depositioun work, fa mekill as the tortour, to the parties, vnles he first be fubiect to the tortour him self; as is obseruit in the Justice Courtis of all Christiandome: Nather can his Depositioun be regairdit aganis Young Auchindrane, becaus the samyn proceidis vpon malice aganis him; infafar as he was informet that Young Auchindrane had offerit to the Thesaurer, for cleiring of his awin innocencie, to set caution, vnder the pane of Fourtie thowfeand pundis, to exhibeit the said James Bannatyne befor the Justice:<sup>2</sup> And it is nocht to be prefumet, that ane man gilty of ane haynous cryme, being at his awin libertie, wald willinglie cum in to his awin deid,<sup>3</sup> bot vpon promeffis and conditionis. And forder, this argument is infallable; na gritter fayth can be gevin in this matter to James Bannatyne, nor gif<sup>4</sup> Dalrumples, vpon his deid-bed, had maid his Declaratioun that he was flane be Auchindrane, elder and younger: Bot trew it is, that na fayth wald haif bene gevin thairto, without vther probatioun. This was cleirly decydit, quhan as Robert Ramsay, notter in Stirling, was execute to the death, confessing that the Instrument of Denunceatioun maid be him self, quhairto he was notter aganis the Tennentis of Halbarnes and Auldlistoune, was fals, and past constantlie to the deid with it; yit, quhan as the caus of Improbatioun was advyset be the Lordis of Counsell,<sup>5</sup> thay respectit nather his first, secund, nor thrid Depositioun, in preiudice of the producer, accoirding to the Cowmoun Law; becaus the Confessioun of ane malefactor may weill preiudge him self, bot na vther.

It is Anfuerit to the remanent Depositiones, depending vpon James Bannatyne's relatioun—aucht nocht to be respectit, *vt supra*.

As to the Depositiones of *James Pennycuik*, thay aucht to mak na fayth, be-

<sup>1</sup> Bannatyne of Corhous, in the county of Lanark. <sup>2</sup> They omit a material part of the offer, viz. to present him 'dead or alive!' It being their purpose to have him murdered in Ireland, *by authority*, and thus for ever to have suppressed evidence of their nefarious wickedness!

<sup>4</sup> Than if Dalrymple upon his death-bed.

<sup>5</sup> When the process of Reduction, for the purpose of annulling and setting aside the Instrument, was advised before the Civil Court.

caus he is ane personage infamous and notoriouſſie knawin to be infame ; he is denuncet rebell and put to the horne at the instance of Capitane Williame Rig, for ſteilling of his cloick and his ſuord, accompaneit with ſevin vtheris, betuix Leyth and Ed<sup>r</sup>, vnder clud of nycht : And this Hoirning, ſtanding for ane ma-niſt Ryote and Oppreſſioun, is ſufficient to mak him infame : And produceit the Hoirning for veryfeing thair of : *Secundlie*, the Depoſitioun of James Penny-cuik can nocht be regairdit, in reſpect the ſamyn is improvin, in the ſpeciall poynt thair of, befor the Lordis of Secreit Counſell ; in ſa far as he, haifing de-ponit the Obligatioun reſſaut be him from Auchindrane for the ſowme of Four-ſcoir pund, to haif bene gevin for Murthering of the ſaid James Bannatyne—the contrair thair of was veriſeit befor the ſaidis Lordis, and the ſaid Obligatioun (proven) to haif bene gevin for borrowit money : Lyk as, the Witneſſes quha war examinat thairupoun, deponit, that thai ſaw the numeratioun<sup>1</sup> of the ſaid money. And ſua the ſaid deponer being improvin, in the maiſt ſubſtantiall poynt of his Depoſitioun, thair aucht no credeit to be gevin to the reſt. Forder, the ſaid Depoſitioun concernis na pairt of the Dittay, nather ſubſtantiall nor circum-ſtances thairin contenit. Laſt, he is *teſtis ſingularis*, deponeing vpone his awin turpitude, viz. that he was hyret to the Slauchter of ane man ; and thairfoir, his Depoſitioun can nocht be regairdit ; ſpeciallie, haifing conſideratioun to the circumſtances thair of, viz. that vncoactit or compellit, he paſt furth of Scotland to London, to mak his Depoſitioun to his awin guid-brother,<sup>2</sup> Sir James Ham-miltoun, in the quhilk he confeſſis him ſelf to be reſtranit fra his allegit pre-tences, and to mak the ſaid Depoſitioun for the love and reverence he bure to my Lord of Abercorne, quhome the perſones pannellit acknowleges<sup>3</sup> as pairtie. Quhilkis haill circumſtances, concurrand with the notorietie of his bypaſt lyfe, vereſeit be the Decreit of Secreit Counſall, his Depoſitioun can mak na fayth.

As for the Depoſitiones of *George Blak*, the ſamyn can mak na fayth : becaus he deponeſ that the Laird of Auchindrane ſould haif hyret ane Williame Car-michell, being ane diſcreit Gentilman, *integre fame*, is nevir examinat thair-upoun ; and ſua the ſaid Georges aſſertioun, being *teſtis ſingularis* in that Depoſitioun, can nocht worke.

To the preſumptioun obiectit aganis *Young Auchindrane*, beiring, that gif he had nocht bene giltie of the Murthour of Dalrump, he wald nocht haif ſufferit the iniurious woirdis and langage of James Bannatyne ; it is anſuerit, that gifand the preſumptioun war trew, yit it is nawayis pregnant to infer Treafone aganis Young Auchindrane, ſeing na ſubſtanciall fact is provin. And forder, the caus of his forbeiring of him, at that tyme, was, in reſpect the ſaid James Bannatyne vtterit his iniurious woirdis and boiſting, in his drukinnes,

<sup>1</sup> Telling, or counting out of the money.

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

<sup>3</sup> Recognise.



quhairvnto he is alwayis subiect. As lykwayis, it was na honour<sup>1</sup> to Young Auchindrane to put handis in his awin man, being in that estait : Lykas, he was reconfeillit with him, at the requeist of Williame Kennydie of Garfar, quha was examinat befor the Counsell.—It is anſuerit, to the prefumptioun concerning the Tak<sup>2</sup> maid be Young Auchindrane to James Bannatyne, quhilk Young Auchindrane denyit that he nevir gaif any to the said James, quhill<sup>3</sup> the samyn was provin and producet, &c. ; that the samyn prefumptioun is nawayis sufficient to infer the cryme of Treasoun ; becaus the same is nocht ane prefumptioun concerning the committing of the cryme lybellit, bot only ane illatioun<sup>4</sup> vpoun ane vnnecessar consequence ; ffor it nawayis followis that, albeit ony Gentilman gaif ane Tak, for nocht, to ony of his servandis or dependeris, that thairfoir he was airt and pairt with him in committing of ane tressonabill act ; vnles it war sufficientlie verifeit to haif bene done for that caus ; nor yit dois the production of the Tak mak Young Auchindranes Depositioun to be vntrew ; becaus it is neur provin that the Tak was gevin to James Bannatyne ; bot, be the contrair, the samyn was tane out of Thomas M<sup>c</sup>Allexanderis kift, in quhaish handis it was confignit, quhill the conditiones betuix thame war endit ; viz. that the said James sould haif maid richt to Young Auchindrane of the sowe of I<sup>m</sup> (1000) merkis, quhilk he had vpone Langschawis land, quhilk he could nocht than presentlie do, in respect the said James had maid his awin wyffe assignay thairto ; quhilk Assignatioun is producet in judgement : Nather is it probable that gif the Tak had bene maid to the said James, conforme to the prefumptioun, bot the samyn wald haif bene put in his awin hand, and nocht confignit in ane thrid perſones hand.

[My Lord Aduocat takis instrumentis of James Bannatynes Declaratioun maid judiciallie be him ; quha being demandit, ‘ Gif the Tak grantit to him be Young Auchindrane was delyuerit to him self ? ’ Declarit, it was first delyuerit to him, and thairefter, be consent of him self and Young Auchindrane, it was put in the handis of Thomas M<sup>c</sup>Allexander, vpone Auchindranes feir that the deponent had allegit the production of that Tak sould haif done him grit harme.]

As to the Depositioun of *Allane Pyper*, it aucht nocht to be respectit, becaus he is tennant to my Lord of Caffillis of the foure merk land of Sallachan ; and forder, the said Depositioun proves nathing, nather of the substance nor circumstances of the Dittay. As to the Depositioun of *Williame Roise*, can mak na fayth ; becaus his wyfe and the Laird of Cullane are thridis and ferdis of kyn : And forder, the payment of the maill and deutie inferris na prefumptioun. As to the Depositioun of *Williame Pyper*, anent the Lady Auchindranes furneissing of James Bannatyne, aucht nocht to be respectit, becaus he is man, tennent, and

<sup>1</sup> It would have been dishonourable.<sup>2</sup> Lease, or *tack*.<sup>3</sup> Until.<sup>4</sup> Inference. Lat. *illatio*.

fervand to the Erle of Caffillis ; as also, is tennent removeable to the Erle of the foure merk land of Sallachan ; nixt, he fauld his maister Ardmillane and Thomas of Bargany to my Lord of Caffillis ; for the quhilk he prameist him V<sup>c</sup> merkis. It is anfuert to the presumptioun anent *the Laird of Cauldwallis* Depositioun, of the suffering James Cunninghame to pas away, contrair to his promes, that the samyn is nawayis pregnant aganis the perfonnes pannellit, feing thair is na fact or deid contenit in the same, allegit to be done be thame. It is anfuert, to the presumptioun resulting vpone the Letter producet—First, the same wirkis nathing aganis Young Auchindrane, becaus it is ane Lettir allegit writtin fra his father to him, never ressaunt be him ; and sa can infer na preiudice aganis him : *Item*, it can work nathing aganis the father, becaus the samyn is nocht subscriyuit be him ; lyk as, he denyis the samyn being re-sent ; and thairfoir, he nocht confessing the samyn, nor being subscriyuit be him, can work nathing aganis him : And quhair as, it wald appeir the same to haif bene delyuerit to the Counsell be my Lord of Mar, quha is allegit to haif ressaunt the samyn fra the Constable,<sup>1</sup> quhilk Constable is allegit to haif ressaunt the same fra Dormond, ane of the ordineris of the Castell ; and the said Dormond is allegit to haif ressaunt the samyn fra Auchindrane elder, to haif bene delyuerit to his sone : The samyn can mak na fayth, ffor albeith my Lord of Mar and the Constable thair Depositions may be trew, as the perfonnes on pannell will nocht impunge the samyn, yit it followis nocht bot, that Dormond hes bene suborned be the vnfreindis of the saidis perfonnes to mak the said narratioun to the Constable : to the effect that thairby he mycht caus ane falsseit Letter cum in the Counfallis handis :—And to mak the said mater mair cleir, the said Laird of Auchindrane elder offeris to preve and verifie instantlie, be dyuerse famous witneffis subscriyveand, and, in speciall, be James Pennycuik, ane of the perfonnes producet aganis him, and vtheris, &c., that Eduard Mekiljohnne, sumtyme seruitour to James Prymrois,<sup>2</sup> come to the Laird of Auchindrane, thay being baith wairdit in the Tolbuthe, and said to him, ‘ Sir, I haif sene 3our writ of befoir ;’ and being demandit, ‘ Quhair ?’ anfuert, ‘ I was imployit to counterfute ane Letter of 3ouris, allegit directit be 3ow to be Castell of Ed<sup>r</sup> to 3our sone,<sup>3</sup> the quhilk contenit ane half-throche of paper<sup>4</sup> on bayth be sydis, and was nocht subscriyued ; the quhilk I counterfute as neir 3our hand writt as I think was possible.’ Being demandit, ‘ How was it be pis writt quhilk I am now wryting ?’ Anfuert, ‘ It was sumthing smaller.’ Being demandit, ‘ Quhat was be caus be Letter was nocht subscriyuit ?’ Anfuert, ‘ It was to mak the matter mair suspitious !’ ffor, sayis he, ‘ it wes gevin me vpone

<sup>1</sup> The Constable of Edinburgh Castle, viz. Thomas Hume.

<sup>2</sup> Clerk to the Privy Council.

<sup>3</sup> Directed from Old Auchindrane, then in the Tolbooth of Edinburgh, to his son, then in ward in the Castle.

<sup>4</sup> A half *through*, or half a sheet of writing-paper, then usually of the size which is now termed ‘ foolscap.’



ane grit secreit in the Tolbuthe, and I nevir reveillit nor opnit þe matter quhill now ! James Pennycuik ſpeiris at him, ‘ Quha gaif 3ow this ? ’ Anfuerit, ‘ I will keip þat to my ſelf ! ’

As for the doingis of *the Lady Auchindrane*, the ſamin can nawayis preiudge hir huſband or hir ſone, ſcho being ane woman ; and hir abſenting of hir ſelff was for ane lauchfull cauſe, viz. ſeiknes, authorizet be ane lauchfull Teſtimoniall.

As for *Thomas Mure* and the reſt going to the horne, for non compeirance, it can be no pregnant preſumptioun to infer Treafone vpon the perſones pannellit.

*Eduard Mekill-Johnne*, being ſend for, and preſenting him ſelff, ſuorne and examinat, deponis, that he reſſaut the Letter direct be Auld Auchindrane to his ſone, being wairdit in the Caſtell of Ed<sup>r</sup>, fra my Lord of Mar, in preſens of Archibald Prymrois, writter, to be coppeit be the Deponer. Eſtir the coppieing quhairof, the deponer, ane grit ſpace thaireſtir, cuming to the Tolbuith of Ed<sup>r</sup>, and finding the Laird of Auchindrane wryting at ane buird, he come to him and ſaid as followis : ‘ Laird of Auchindrane, I think I haif ſene 3our writ of befoir.’ Quhairvnto Auchindrane anſuerit, ‘ Quhair ſaw 3e it ? ’ The Deponer replyt, ‘ I remember I coppeit ane Letter verrie lyk 3our writ, quhilk I reſſaut to coppie fra ane Noble man ! ’ Bot wald nocht declair to him the Noble man his name that gaif the directioun : And as to the alleget declaratioun than maid be the deponer, that he counterfute the ſaid hand writt, denyis the ſamyn ; bot that the ſamyn was coppeit be him, be directioun, as ſaid is. Quhairvpone my lord Aduocat aſkit inſtrumentis.

*Archibald Prymrois*, alſo preſent, being ſworne, Declairis, that he was preſent quhan my Lord of Mar delyuerit the Letter to Eduard Mekil-Johnne to be coppeit ; quhilk my Lord than declarit, was interceptit betuix Auld Auchindrane and his ſone ; and the ſamyn Letter being than preſentit be my lord to the Deponer, he verrie hardlie could get the ſamyn red, being ſa evill writtin and evill ſpellit ; Bot to put Auchindrane in remembrance anent that matter, the ſamyn Letter being producet to the Lordis of Secreit Counſell, eſtir intercepting thair-of, and ſchawn to the Laird of Auchindrane, and he than inquyrit, ‘ Gif he knew that Letter or the hand writ thairof ? ’ Auchindrane anſuerit, ‘ It was nocht his hand-writ, bot was verrie lyk it.’ And being deſyret to reid the Letter, he red the ſamyn in thair Lordſchipis preſens, verrie diſtinctlie, without ony ſtope : At quhilk tyme, the Lordis of Secreit Counſell, my Lord of Dumbar being preſent, cauſit Auchindrane wryte with his awin hand ane particuler anſuer of all that was demandit him in that matter, to the end thai mycht the better recognoſce and try quhidder the ſamin was writtin be him or nocht : And forder, the deponer knawis nocht.—Quhairvpoun my Lord Aduocat alſe aſkit Inſtrumentis.

IN fortificatioun of THE VERIFICATIONIS producet be the Aduocat, and vſet

to the Assyse, my lord Advocat affirmes, that it is lauchfull and vsuale to the Lordis of his Maiesteis Secreit Counsell to examine Witnesse, out of presens of pairtie, in all crymes tressonable; quhais Depositiones being product to the Assyse, makis full faith, vnles thai be impugnet be sum lauchfull particular exceptioun proponit aganis the samyn; and can nocht be impugnet, for want of power in the examinaturis; or the Depositiones was ressaut, the pannell nocht being callit thairto.—The Depositiones of *James Pennycuik* and *George Blak*, tane at Court, ar lauchfull, as tane by expres command of the Kingis Maiestie, and in presens of ane of the Lordis of his Counsell of this Kingdome.—It is absurd to excuse the pannellis going to the horne, for the tressonabill cryme lybellit, for feir, gif he had compeirit, to haif bene challanged for pistolettis; seing, his being fugitiue for this cryme, inferris aganis him presumptioun of Treasoun: And in caice he had compeirit, his schuitting of pistolettis without ony harme done with thame, wald haif inferrit na forder danger, nor (*than*) the panes of ane fyne.—The persewar neidis nocht to produce *Thomas Kennydeis fforfaltour* for this cryme, becaus the samyn being deducet in Parliament, is iudget nottour to all the subiectis, and na man can pretend ignorance thairof.—The Relaxationes product, purges nocht the presumptioun of thair giltines of the crymes contenit in the Hoirningis; becaus, Auchindrane elder was nocht relaxit fra the hoirning, for lying (in wait) for Collayne in Mayboill, quhill efter his reconciliatioun with the pairtie; at the quhilk tyme, na man was to persew him: Nather was he relaxt fra the horne for the tressonable crymes lybellit, quhill he was tane and imprisonet in the Tolbuith of Edinburgh, and sa could nocht eschew his tryall.—To the obiectioun aganis *James Mure of Fleit*, it is vntrew and malicious: And he being confrontit with the Deponer, Auchindrane proponit na objectioun aganis him, that tuichet ather his fame or welth.—Attour, the persewar takis instrumentis, that *the Erle of Cassillis*, being fuorne, in presens of the Assyse, vpoun the obiectioun offerit to be verifeit be his aith, hes declairit the samyn to be vntrew. And lykwayis, that *Sir Williame McClellane of Auchleane, kny<sup>t</sup>*, being fuorne vpone the poynt of Thift, and reconciliatioun thairof, offerit to be provin be his aithe, he declairit the samyn to be vntrew: And forder, he declairit, befoir the Assyse, that gif ony imputatioun could be laid to James Mure for the fuspitioun of that Thift, the samyn was cheslie to be imput to Auld Auchindrane, quha houndit him out to the doing thairof.—To the obiectioun aganis *James Gordoun*, for his youthe, the tyme of the factis quhairvpone he hes deponit, anfuers that he was past ten yeir auld, befoir the committing of the first of the saidis factis; And being now ane man of perfyte age, may lauchfullie depone of thingis done quhan he was young, the samyn being recent in his memorie.—Attour, the said James, being confrontit with the Laird of Auchindrane, he than deponit



nathing aganis his persone, age, nor lauchfulnes of his Depositione.—To the generall objection, that the Depositiones in Criminall caussis makis na probation, bot ar presumptionis and caussis of tortour, it is manifestlie vntrew, and contrair to the Law and practiques of this cuntrie.—To the objection, that the Depositiones concerning *Mr Robert Mures* Letter ar generall, and preves nathing, it is vntrew ; becaus the Depositiones contenis, that the Letter buir aduerteisment to Auchindrane of the Laird of Culaynes dyet to Edinburgh.—For the Depositiones maid be *Caldwell* and *Young Auchindrane*, referris the consideratioun of thame to the Assyse, it being out of dout, that nather Young Auchindrane wald hurt his father, nor Caldwell his freind, be thair Deposition.—The objectiones aganis *Woodland* ar proponit in jeast ; becaus at all tymes quhan he cumis to the toun, he vissitit the Defenderis, his freindis,<sup>1</sup> in ane freindlie maner.—For *Johnne Mure*, callit of *Blakbyres*, he was Auld Auchindrane's houshold servand, sa lang as he had ane hous, and senfyne hes duelt in Blakbyres, vpone Auchindrane's land, familiar with his Lady and him self, frie of all perfute, conviction, hoirning, or suspitioun of cryme. And the persewar takis instrumentis of the *Erle of Cassillis* Declairatioun to the Assyse, that his lordschip nevir maid promeis to Blakbyres, to purches<sup>2</sup> to him Respett, Remission, or vther fauour, for his compeirance.—The *Depositionis* maid to the *Presbiterie*, ar verrie lauchfull and formell ; haifing the force of ane Inquisition, for tryell of ane murthourit man and the authoris thairof.<sup>3</sup>—*Walter Mure* was tenent and servand to the pannell, and convoyit by the way<sup>4</sup> by his meanis, becaus he mycht haif controllit his denyall of his sending James Cuninghame to the said Walter Mures hous for Williame Dalrump.—*James Dalrump* his Deposition is lauchfull, albeit thai allege it to be maid to his awin turpitude, and that, be his awin confessioun, he is *socius criminis* ; becaus in abhominable and extraordinar crymes, sic as Murthour vpone set purpois, complices ar lauchfull Witneffis, and thair Depositionis makis full faith ; becaus it is considerit be the Law-makeris, that sic secrete and denyable crymes, can nocht possiblie be provin, bot be complices. James Dalrumpillis kynreid with Cullayne and the Erle of Cassillis, can nocht mak him suspect, becaus he is sister-sone<sup>5</sup> to the Lady Auchindrane, and sister-bairnis<sup>6</sup> with Young Auchindrane, and sa presumet of the Law to beir gritter affectioun to thame.

The persewar desyres the Assyse to remember Auld Auchindrane's Declariatioun, in thair presens, that James Dalrumpill maid him adverteisment to set

<sup>1</sup> In this instance, and indeed generally throughout this Trial, the term '*freind*' signifies relative or blood-relation, as in the preceding reference to Caldwell, &c. <sup>2</sup> Procure. <sup>3</sup> An inquest or precognition held for the purpose of discovering the perpetrators of a murder ; and for bringing them to justice for their crimes, if guilty. <sup>4</sup> Put out of the way. <sup>5</sup> Nephew. <sup>6</sup> Cousin-german.

him,<sup>1</sup> quhilk detectis his fauour to the defenderis, and his vnwillingnes to depone to thair prejudice.

*Patrik Bannatynes* Deposition man mak fayth, becaus it was maid quhan he was the Kingis lauchfull subiect, frie of all cryme; and his kindreid with the Erle of Cassillis, can nocht mak him suspect; becaus, sen the feid,<sup>2</sup> he hes bene in speciall freindschip and familiaritie with the Defenderis; quhilk thai can nocht deny: Nather can the said Patrikes Deposition, nor the Deposition of ony of the remanent Witneffis, be impungeit, as foundit only *super auditu*, and be relation of James Bannatyne; becaus that relation was maid be James, quhan he was in verrie grit freindschip with the Lairdis of Auchindrane, elder and younger, and ressaute many fauoris and suppoirtis fra thame.—The Defenderis impungis *Johnne Mure in Curveris* Deposition anent the pulleing of Williame Dalrumpill af James Bannatynes hors; bot never answers to the materiall poyntis thair of, anent thair sending of Cuninghame for Dalrumpill to Glenheid; convoying of him to Chapeldonan; sending for him to Girven Sandis; and Murthouring of him thair.—*James Bannatynes* Deposition man mak full fayth, albeit he be at the horne, and excommunicat for this cryme; but hoirning and excommunication can nocht work samekill aganis him as his awin Confessioun; quhilk Confessioun can nocht stay him to be Witnes, seing he is so necessar a Witnes, as without him na probatioun can be had in this caus, bot be his Deposition; except, be the Confessioun of the remanent defenderis, quhair of thair is no hoip, in respect of thair effronterie, obstinacie, and induration. His kinreid with the Erle of Cassillis and Cullzeane is proponit in scorne; becaus the Lairdis of Auchindrane can nocht deny, bot that the said James was professit pairt-taker with thame, in all feidis and querrellis aganis the Erle of Cassillis, and assistit thame in the Invasioun of Garriehorne for his Slauchter. Thair allegiance, that he comes in vpoun promise and condition of his lyfe, is absurdlie qualifeit, as grantit be thame quhois protection and saif conduct can (nocht) saif ane hair of his heid. Thair allegiance of his malice aganis Young Auchindrane is impertinent, in respect of Young Auchindrane furneissing and sending of him out of the countrie, and recommending of him, be his Lettres, to his uncle; and of the fauour and help maid to the said James Bannatyne senfyne, be the Lady and the pannellis remanent freindis. Quhair thay propone, that he wald nocht haif willinglie cum in to his awin deid; it is faiffer for him to cum in and depend vpone Godis fauour and the Kingis mercie, or failzeing thair of to die, weill prepairit in ane Christiane resolution, vpone the scaffold, nor<sup>3</sup> to haif bene in hourlie danger to haif bene murthourit, be procurement of the Defenderis, as he mycht haif bene in danger—nocht haifing lafour to haif callit for Godis mercie.

<sup>1</sup> To cite him as a witness.

<sup>2</sup> Feud.

<sup>3</sup> Rather than.



*Robert Ramsay's* practique is impertinentlie citet in this caice; becaus he deit for his manifest periurie, and false and contrair Depositiones, justlie working aganis him selff; quhilk maid nocht the evident<sup>1</sup> to fall, and sa verifeit na punisheable falsset aganis ony vther. Bot heir, thair is ane actuall Murthour, quhair of the Lairdis of Auchindrane ar provin als giltie as James Bannatyne.—The persewar takis instrumentis that *James Pennycuik*, being solempnelie suorne befor the Assyse, hes ratifeit, in thair presens, his haill Depositiones maid in Ingland. His Hoirning makis him nocht infamous, becaus it proceedis vpon ane Decreit of Secreit Counsell, quhilk can nocht be gevin in ane mater impoirting infamie; besyde, that sen<sup>2</sup> the said Hoirning, he remanit prissoner dyuerse oulkis in the Tolbuith of Edinburgh, quhair ony man that lyket to haif accuset him mycht haif drawin him to pannel, in despyte of his heart.—The Deposition of *Mr Johnne Edmestoun* aganis him can nocht be respectit; becaus Mr Johnne is infamous, being deprehendit and tryit authour of ane infamous lybill aganis the Lordis of Secreit Counsell, Seffioun, Prelattis of this Kingdome, and Magistrates of this Burgh.—Quhair thay allege that James Pennycuikis Deposition concernis nocht this Dittay, the persewar declairis, that he vses his Deposition as ane probatioun of ane consequent fact, quhilk cleiris exceidinglie the preceiding Murthour of Dalrump: ffor Auld Auchindrane wald nevir haif hyret ane man to haif murthoret James Bannatyne, gif James Bannatyne had nocht bene able to haif verifeit aganis Auchindrane ane mair dangerous cryme. He is nocht meirlie *testis singularis*, becaus his Deposition is strenthened by the Deposition of his servand *George Small*; and his Deposition vpon his allegit turpitude can nocht repell him in this caice; becaus he is, in effect, ane complice with thame aganis quhome he deponis, and hes purget his giltines thair of, be his tymous repentance, and desisting frome the prosecution of the said purpos. His Deposition can nocht be elydit<sup>3</sup> be ony thing writtin to him be Sir James Hamiltoun; becaus that Deposition is maid judicall, alsweill be his Declaratioun, befor the Lordis of his hienes Secreit Counsell, in Ingland, and be his approbatioun of his haill Depositiones, this nycht, in presens of the Assyse. *George Blakis* Deposition is verrie famous,<sup>4</sup> and can nocht be drawin in suspicioun, vpoun the allegiance of ony malice consauet for want of fourtie merkis of fie.—*Young Auchindrane*s suffering of the iniureis offerit to him be James Bannatyne, standis cleirly verifeit be the reiterat Depositiones of *William Kennydie of Garfar*, he being confrontit with Young Auchindrane.—*Auld Auchindrane*s denyall of his Letter to his sone, can nocht be respectit, seing it is so cleirly verifeit to the Counsell, be Daud Dormond, and Thomas Home, Constable of the

<sup>1</sup> The writing or Title-deed referred to in his case.  
elidere.

<sup>2</sup> Since.

<sup>3</sup> Evaded; got quit of. Lat.

<sup>4</sup> Worthy of credit.

Castle, and the Erle of Mar, quho ar Witneses aboue all exceptioun, that the samyn was fend be Auld Auchindrane to his sone.—The persewar repeatit the Depositiones maid be *Archibald Prymrois* and *Eduard Mekill-Johnne*, in judgement; and namelie, that pairt, quhairby Archibald Prymrois callis my Lordis of Counsell treulie to memorie, that Auld Auchindrane, at the verrie first sicht of his Letter, red the samyn so ryplie and perfytlie, as gif he had it perquier,<sup>1</sup> quhilk no vther man, nor<sup>2</sup> the wryter of the Letter, was able to haif done. Repeatit lykwayis the said Eduard Mekill-Johnnes Deposition, quhairby the treuth of his copying of Auchindranes Letter to his sone, at the desyre of ane most honourabill and famous Noble-man, detectit the knaverie and compleote of ane socieatie of malefactoris and dyverse.<sup>3</sup>

Finallie, the persewar repeatit the just suspitioun consaует vpone the pannellis absenting of his wyfe, sone, and brother.

THE DEFENDERIS allegis, that the Young Laird of Auchindrane is frie of the presumptioun of the Hoirning, becaus he compeirit at the day.—Auld Auchindrane is nocht pannellit for lying at wait aganis the Tutour of Cassillis, at Maybole; and sua, na presumptioun can arryse vpone that Hoirning. As for the rest, thay ar purget be compeirance.—As for that pairt anent *James Gordoun*, he being confrontit with Auchindrane, he opponit nothing at that tyme, ather concerning his youthe or vtherwayis; answers, that was nocht the place convenient; bot now, *debito tempore*, in this Judgment, he proponis the samyn, conforme to the Act of Parliament; and all vtheris of the lyk nature.—It is answerit to that article, ‘that Depositiones ar manifest probationes,’ that the Depositiones vpone conjectouris and presumptiounis of na Law nor practique, ar manifest probatione, bot only sufficient to induce tortour: And trew it is, that all the Depositiones lybellit ar vpone conjectouris.—*Walter Mure*, eftir that Auchindrane younger was twyse enterit, and Auld Auchindrane lang in the Tolbuthe, was duelling actuallie in his awin hous, tanè and apprehendit be the Erle of Cassillis, and demittit be his lordship; and sa, his absenting him self can nocht be presumet for this cause.—The malice of *James Bannatyne* towardis Young Auchindrane is cleir, becaus he will preve, be James Gordoun, ane of the witneses producet aganis him, that James avowit to haif Young Auchindranes lyfe, becaus he offerit to the Counsell to inbring him vnder the pane of Fourtie thousand pundis.—The Depositione of *Mr Johnne Edmestoun* is nocht vset as ane sufficient probatioun; but his Deposition, with the vther Deponer with him, aganis quhome thair is na suspitioun, is mair pregnant to tak away James Pennycuikis Deposition, than James Pennycuikis Depositione is to infer Treason:

<sup>1</sup> By heart; by rote. Fr. *par cœur*.

<sup>2</sup> Excepting; but.

<sup>3</sup> Detects the knavery and plot (conspiracy) of a society, or association, of malefactors and bankrupts (*dyvouris*)



As *James Pennycook* is at the horne, sa *George Small*, his seruand, is at the horne, for the same fact ; and *George Small* deponis nathing in speciall.—Last, the perones on pannell defyres your honouris of the Assyse to haif consideratioun of the lybell and Dittay ; as the samyn was admittit be my Lord Justice, viz. that the speciall poynt making the samyn relevant, was, that *Thomas Kennydie* of *Culzeane* was flane be the advyse, instigatioun, causeing, command, counsell, and ratihabitoun of *Auchindrane elder*, quhilk is the first pairt of the Dittay ; quhair-in, thair is nathing provin aganes *Auchindrane elder*, of those substanciall poyntis ; nather can the samyn be ony wayes imputtit to *Auchindrane younger*. And as for the secund pairt, quhilk is lybellit conjunctlie aganis *Auchindrane elder* and younger, and *James Bannatyne* ; the substanciall pairt quhairof is the allegit committing of the Slauchter of *vmq<sup>le</sup>* (*William*) *Dalrumpill* : And the rest of the haill lybell, ar only accidentis, conjectouris, and presumptiones ; and feing na pairt of the substanciall poyntis is provin, albeit the haill actiones, presumptiones, and conjectouris war provin, quhilk is nocht grantit ; off all law and equitie, obseruit in all cuntreyis, the maist that can be inferrit thairupoune, is the tortour of the perones aganis quhome the presumptiones ar militant ; quhilk specialle man haif place in the persone of *Young Auchindrane*, aganis quhome few or nane of the presumptiones ather contenit in the Dittay, or proponit by<sup>1</sup> the samyn, dois militat.

VERDICT OF THE ASSISE. Quhilkis perones of Assyse, eftir accusatioun of the saidis perones on pannell, be Dittay, of the Treffonabill and crewall Slauchteris and Murthouris *respectiue*, aboue specifeit, and suering that article thairrof, anent the Murthour of the said *William Dalrump*, be the said *Bessie Dalrump*, his mother ; and eftir productioun of the haill Depositiones aboue writtin, and vther writtis and probatioun for cleiring of the Pannellis guiltines of the saidis crymes, be our said souerane lordis Aduocat ; the saidis perones of Assyse remouet altogidder furth of Courte, to the Counsal-hous of the said *Tolbuthe* ; quhair thai, be pluralitie of voitis, electit and choiset the said *Sir James Scrymgeour* of *Dudope*, kny<sup>t</sup>, chancellor ; *Reffonet* and voitit vpone the crymes contenit in the said Dittay, and haill circumstances thairrof ; and being ryplie and at lenth advyset thairwith, togidder with the haill writtis and probatioun vset and producet be our souerane lordis Aduocat, for instructing thairrof ; togidder with the Pannellis objectiones proponit be thame, and thair preloquitours aganis the samyn, with my Lord Aduocattis ansueris maid thairto ; thay reenterit agane in Court, quhair the saidis perones of Assyse, be the mouth of the said *Sir James Scrymgeour* of *Dudope*, kyn<sup>t</sup>, thair chancellor, Pronuncet and gaif furth thair determinatioun vnder writtin, subscryuit be the said chancelloris hand, quhairof the tennour followis.

<sup>1</sup> Independent of ; besides ; *forby*.

“ The Affyse, for the maist pairt, efter reffoning and voiting vpon the first article of the said Dittay, find **JOHNE MURE ELDER OF AUCHINDRANE** to be Giltie, culpable, and convict of airt and pairt of the treffonable and crewal Murthour of vmq<sup>le</sup> Sir Thomas Kennydie of Culzeane, kny<sup>t</sup>, committit in forme and maner contenit in the first pairt of the Dittay. AND siclyk, the saidis persones of Affyse, for the maist pairt, findis and declairis the said Johnne Mure elder of Auchindrane, and **JAMES MURE OF AUCHINDRANE YOUNGER**, and ather of thame, to be Giltie, culpable and convict of airt and pairt of the treffonable and crewal Murthour of vmq<sup>le</sup> Williame Dalrump, in maner specifeit in the Dittay.—AND last, thai all, in ane voce, findis and declairis the said **JAMES BANNATYNE**, callit of Chapel-Donane, to be Giltie, culpable, and convict of airt and pairt of the said treffonabill Murthour of the said vmq<sup>le</sup> Williame Dalrump, committit be the saidis persones, in maner contenit in the Dittay.”

**SENTENCE.** Efter the pronunceing and declairing of the quhilk determination and delyuerance of the saidis persones of Affyse, “ **THE JUSTICE**, in respect thair of, be the mouth of Alexander Kennydie, dempster of Court, decernit and adiudget the saidis Johnne Mure of Auchindrane elder, James Mure of Auchindrane younger, his eldest sone and appeirand air, and James Bannatyne, callit of Chapel-Donane, and ilk ane of thame, to be tane to the mercat croce of the burcht of Edinburgh, and thair, upone ane scaffold, thair heidis to be strukin frome thair bodeyis: And all thair landis, heritages, takis, steidingis, rowmes, possessiones, teyndis, coirnes, cattell, inficht pleniffing, guidis, geir, tytillis, profiteis, commoditeis, and richtis quhatfumeuir, directlie or indirectlie pertening to thame or ony of thame, at the committing of the saidis treffonabill Murthouris, or senfyne; or to the quhilkis thay, or ony of thame, had richt, claim, or action, to be forfalt, escheit, and inbrocht to our souerane lordis vse; as culpable and convict of the saidis treffonabill crymes.”

Quhilk was pronuncet for **DOME**.

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#### APPENDIX OF PAPERS AND DOCUMENTS ILLUSTRATIVE OF THE TRIAL OF THE MURES OF AUCHINDRAYNE.

##### I. LETTER *by Sir Thomas Hamilton of Byres, knight, to a Nobleman at Court, relative to the Trial of the Laird of Auchindrayne and his Son, &c.*<sup>1</sup>

[THE following LETTER is a rough draught of a Letter transmitted by Sir Thomas Hamilton to some Nobleman high in power and favour at Court, (probably the corrupt Earl of Somerset); and is evidently intended for the King's perusal. This successful Lawyer and Statesman knew well how to

<sup>1</sup> Dec. 11, 1601.—Now, on the tent of December, ane variance being betuix the Erll of Cassillis and the Laird of Bargany, thay mett in Carrik, quhair the Laird of Bargany and sindrie wtheris war slayne, and diuerse Gentilmenne hurtt. This was on 11 day of December, 1601. And on the 12 day of Maij, 1602, Thomas Kennedy, brother to the Laird of Bargany, slew Schir Thomas Kennedy of Colzeane, kny<sup>t</sup>, quha had beine Tutour of Caisillis, in the rewendge of the slauchter off his brother. The quhilk Fead continewis as yitt onreconseellit.—*Anon. MS. Hist. of Scotland*, Adv. Library, A. 4. 35.



please his Majesty's taste for flattery—but, if this is to be taken as a specimen, King James must have been much more of a glutton than an epicure! In the same Collection from which this is taken (*Hadington's MSS.*, Adv. Library, Edinburgh), there is preserved another draught, which is evidently the original, and is extremely corrected and altered—but it is so characteristic, that it shall also be preserved here in the original state, though merely a fragment.

‘HONORABILL AND VERTUOUS LORD,

‘BEING informit be ane wourthie freind, that your lordschip wes very desyrous to have ane trew and ample relation of the proces deduced aganis the Lairdis of Auchindrane elder and younger, for the Mourthouris of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrimple, I wes exceeding glaid to have rencountred that occasion to offer to your lordschip this discours, as an earnest of my faithful disposition to expres my thankfulness in matters of greater moment, when ever God should grant me the abilitie to performe any seruice worthie of your honour, and correspondent to that great obligatioun whairin your singular fauour and courtesies haue exceidinglie engaged to your lo. Bot when I had written at lenth, all that did concerne that pourpose, and had it reddie to be sent to your lo., report cumming to this cuntrie of his Maiesteis gracious pardoun granted to James Bannatyne, whairas I did confaue that all men wald acknowledge it as ane commendabill effort of his Maiesteis most iuste, gracious, and judicious clemencie; yet, finding that some deuclish peopill als venomouslie inclyned to find mater of calumnie in his Maiesteis most vertuous actionis, as the wespe to suck poyson out of the sweitest and most holesome floures, I have delayed my first proiect, to send to your lo. the simpill discours of the proceeding aganis those malefactouris, quhill (*until*) efter Tryell of all that has bene murmured aganis his Maiestie in any circumstance of this action, I might mak the more full and perfyte report, alswell of the materiall circumstances of the proces, as of these incidentis, whairin his Maiestie, having exprested his rare and wonderfull iugement, his vnalterabill constancie and . . . . .’]

[HONORABILL AND VERTUOUS LORD.]

KNOWING, by informatioun of ane wourthie freind, that efter your lordschip hard the vulgar report of the conuictioun and pyneifment of THE LAIRDIS OF AUCHINDRANE, ELDER and YOUNGER, for the *Mourthour of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrumpill*, yow did desyre to have a full and verie particular relation of the whole proceedingis of that mater, becaus my being ey witnes from the beginning to the last act of that proces, makis me abill to giue ane true accompt of euerie circumstance thairof; and the great fauoris and courtesies ressaued of your lo. haue engaged me in stronger bandis of dewtie nor<sup>1</sup> want of abilitie will permit my seruice to discharge; I haue presumed to send to your lo. this discours, rude, informall, and voyde of all ornamentis except treuth, as ane earnest of my desyre to proue thankfull to your lo. and obedient to your commandementis; whilk should haue soner cum to your lo. handis, had not this tyme of vaicance<sup>2</sup> impeded me to find, so speidellie as I did wish, the helpis of sum scrollis of the lawers and clerkis, to whom the deduction of that proces was speciallie committed; I did coniecture that your lo. cheif respect in this desyre wes to have the *justice of his Maiesteis directionis*, in that action, maid als manifest to the worlde as thay ar in the sight of God, and persuaision of his owne conscience (albeit his prouidence, wisdom, iustice, and mercie haue fund peopill als abill to suck venome owt of these Royall vertues as the wespe to extract poyfoun furth of the most beautifull and healthfull floures, whilk in thay owne place,<sup>3</sup> I have remarked, naikedlie, as does best befeme treuth,) acknowledging how vnhabill I am to giue the dew luster to these eminent and abundant vertues; and thairfore, if your lo. fall ever think that proces wourthie of the sight of the worlde, I know your wourth and bontie has gevin your lo. power and ane great many rare and excellent spirits, who will be glad to bestow the best floures of thair ingyne and learning, to giue the right foyle to that whilk may concerne his Maiestie, in fame, or your lo.

<sup>1</sup> Than. <sup>2</sup> Time of Vacation, when the Courts of Justice do not sit, and when the Lawyers are frequently in the country. <sup>3</sup> The own or proper place.

in contentment. And, to the effect the proces may the more easelie to vnderstand, before I cum to the Report thair of, I will premit (*premise*) ane trew Narration of the first motiues which invouled the Laird of Auchindrane's evill nature in the labirinth of these mischevous interpryffes; which, be the justice of God, and his Maiesteis admirabill prouidence and inflexibill constancie, being brocht to light, have overthrowne his life and fortunes.

ANE TREW NARRATION of the first Motiues which invouled the Laird of  
*Auchindrane's evill Nature, &c.*

YOUR lo. hes heir the particular Discours of ane Proces, whilk, vpon dyueris respectis, many wyse men have judg'd to be verie memorabill. Sum, remarking the bad nature of malicious men, who, measuring be thair owne merciles disposition, the affection of vther menis hairtis, can never hope to ressaue frie pardon of those whom thay have mightelie offendeit; and thairfore, forgetting the courtislie ressaue of those who have remitted to thame great iniuries, faillies nocht to requit thair gude with evill; and at their first aduantage, to bereave those of thair lyfe from whom thay ressaue thair owne, as *Auld Auchindrane* did to *Sir Thomas Kennedie of Cullayne*.

Vtheris, did consider, with horrou, the craft and diligence of the Devill vfeis keip in his bondage those who he anis fetteris in his snaires; offering to thame allurements to facilitat to thame the Interpryffes, whilk, in thair worldlie considerationis thay judge most liklie to procur the wished endis of thair proiectis; as *Auld Auchindrane's* resolution to cut af all meanis of discouerie of his guiltines of *Cullayne's Mourthour* be the *Mourthouring of Dalrumpill*; whairin his sin apperis to have bene so odious in the sight of God, as, for his pvneishment, God permittit his sone to be invouled in the guiltines of that sam haynous cryme, as ane preparatiue of the vther ruyne of that house: Whilk succedding altogidder contrare to thair expectatione, and the verie elementis concurring to the discouerie of thair secret sin, that did not oppin thair eyes and hairtis to sie that manis wit is fillie before God, and that thair strenth is bot dust; bot thay fall be blinded with the presumptioun of thair owne jugement; and thairby thipking, that if *Bannatyne*, who wes ey witnesse and actour with thame of *Dalrumpilis Murthour*, wer killed, that thair rested no vther meanes to proue thame guiltie thair of; whilk being constantlie denyed be thame, wald lykwyse cleir *Auld Auchindrane* of *Cullaynes Murthour*. Thay intended to vse *Penicuke* in the *Murthour of Bannatyne*; and feiring lest *Penicuke* might efteruardis discover that he had bene moved be *Auld Auchindrane* to kill *Bannatyne*, being fugitiue, as pairtaker with *Auchindrane* and his sone in *Dalrumpilis Murthour*, it aucht (to) put all men in iuste suspicioun that it wes done, for cutting away the meane of the discouerie of *Dalrumpilis Murthour*; thairfore it wes thought expedient that *Quintene Mure* of *Auchneill* should kill *Pennicuke*, in reuenge of his *Mourthouring Bannatyne*; and swa, *Auchneill*, knoweing no thing of *Dalrumpilis Murthour*, and being not onlie innocent of *Bannatyne's* *Murthour*, bot the avenger thair of, he should be frie of all suspicioun of the fyrst *Murthouris*, and thay secured of all probatioun that could have bene led aganis thame thairanent; whilk being disapoynted, be *Pennicukis* remorse, and *James Bannatyne's* resolution to end his dangeris and miseries, ather be his Maiesteis mercie, or, be ane setled resolution, to accept his death, as the just pvneishment of his great finnis, in patience. It is evidentlie remarqued that the courses, grounded vpon the presumptioun of ane manis owne wit, ar the verie instrumentis whilk God vfes to confound thame in the folie of their owne imaginationis.

Nather could wyse men neglect to admire, how loath the Devill is to quyte his possessioun of ane sinneris soule; having so contended to menteane *Auld Auchindrane* in his denyall and impenitence, that efter his convictioun, when his constancie could nothing avail him, thair wes no appearance that he should either confes or publictlye repent the crymes for which he was condemned; whill (*until*) efter ane notabill conflict betuix his sone (*Young Auchindrane*) and the Devill, who still perswaded him, that thair wes no hope of mercie to ane sinner, who had wilfullie and oft periured him self, with horribill execrationis; sum godlie Bischoppis and Ministeris, be lang conference, and many comfortabill af-



furanceis gevin to him of the reddines of Godis frie grace and mercie to all finneris, who, with vnfeyned repentance, ar displeased for thair sinnes; and can dispose thair foules to hope for pardoun, and beg it at his handis;—he wes moved to mak plane and particular declaratioun of the vnbappie *Murthour of Dalrimpill*, committit be his father and him self, according to *Bannatynes* Confeffioun and thair convictioun. Quhairby, finding his conscience wonderfullie disburdened, and his foule fullie repleineiffed with assured hope of Goddis abundant mercie; did cheirfullie dispose him self to death, as the only way to ane better and ever permanent lyfe; and vsing his best persuationis to his father, that as they wer joyned by bloude, and lykwayes conioyned in the equall guiltines of so hynous ane sin, so he wald consent that thay might joyne in repentance and trew conuersioun; he did so muche pervale with him, that being assisted be the godlie travels of the Bischopis and Ministeris, the father wes broght to so frie and sensibill contritioun, as, in the last houres of thair lyfe, and at the tyme of thair death, thair godlie resolutioun to mak haist to ressaue the eternall joyes, whilk thay expected assuredlie at Goddis merci-full handis, gave als great confort to the behalderis of thair Executioun, as thair wicked lyves had bene offenseine, to thosfe who knew the actionis thairof.

THE dependance of this Proces kept menis myndis in great suspens, dyuerflie distracted, in the expectatioun of the incertane event thairof; the vulgar multitude, alwayes piteing fuche as ar miserabil, without respect of the dangerous consequence of the impvritie of fuche crymes, wishing saistie and releif of the prisoneris: wyse and godlie men, longing for the plaine discouerie and exemplar pvnishment of the haynous transgressouris, whairof, in thair conscience, thay judged the defendaris culpabill; and vthers, disallowing the preparative of the long imprisonement and rigourous Tryall, ever glaid to fie the appeirances of thair escaip; till God, in his owne appoynted tyme, be fuche meanes as ar before reherfed, did justlie determine this long dowsfsum cause.

And albeit I have many tymes earnistlie considered, both the groundis of this cause, and meruellous incidentis and accidentis in the progres thairof, yet no thing hes ever appeired so strange and extraordiner to me, as the blindnes or rather malice of ane great number of oure peopill of all fortis; who, forgetfull of oure happines in the wyse, equitabill, clement, and moderat regime of oure most excellent King, became dowsfull of the justice of his directionis, in this cause, [For whan I call to memorie, the whole course of his lyfe, from his first concepcioun to this hour, and do compaire the same with the regnes and lyves of vther Kingis, I think we have more reason, with thankfulness to God, to acknowledge his regne, to be the renouatioun of ane golden aige, nor be<sup>1</sup> malicious pryeing in his holie intentionis and iuste doingis, to resemble thosfe, who, vewing most pure and precious ieuellis, dois not so mutche delyte thair eyes with the presence thairof, as exercife thair curiositie to espy taches<sup>2</sup> in thame.] For God, having, as it dois weill appeir, decreed in his eternall wifdome, to appoynt oure King to be the instrument of more happines to this Ile, nor<sup>3</sup> in oure wifhes we durst haue requyred: knowing, that the wonders of his preferuatioun, and of the happines of his most rare, most excellent, and most difficill actionis, fould mak his Maiestie more august and venerabill, it fall be easie to any man, who fall with ane honest mynd and vnpartial ey, consider the course of his yeiris, manifestlie to remark, that it hes bene ane continueall exercife of perfyte virtue, beautified with the ouercumming of all fuche difficulties as the wifdome and courage of man could foircast; and whan the dangeris did exceed that measour, than did God visiblie interpone the strenth of his owne hand, as the pledge of his loue, and prouf of his caire, not to suffer a King, so necessar for the Christian worlde, to be ouer suddenlie translated thairfra, to thosfe blissingis, whilk in end he hes prepared for him, amang his most deir Elect. Bot to deduce the abrege of his lyfe to the owne right ordour, we must acknowledge, that it pleesed God, in his eternall wifdome, to assigne the meanis of his convoy vnto this worlde, to be the happie conjunction of two of the most nobill, beautifull, and hopefull Princes, who at that tyme wer to be fund vpoun earth; the fuce<sup>4</sup> whairof, being forefene be the Devill, in his viperous wifdome, to

<sup>1</sup> Than by.      <sup>2</sup> Flaws, blemishes.      Old Fr. *tasche*.

<sup>3</sup> Than.

<sup>4</sup> Henry Darnley and Mary Stewart,

Queen of Scots.

<sup>5</sup> Success.

be the overthrow of his kingdome, in this Ile,<sup>1</sup> he did stir vp vnfaithfull subiectis to be instrumentis of so terribill tempestis and deidlie stormes, that his Maiesteis lyfe wes, in his motheris wombe, reduced so neir to the durris of the death, as the tender and most delicat stay of that faire excellent lady, be the accursed poyntis of the crewall daguers of hir faithles treasonabill subiectis, Murthouring in hir owne presence ane of hir seruandis;<sup>2</sup> bot as hir courage, surpassing the imbecillitie of hir sexe, and ouercumming her dangeris, did offer this ritche present to the worlde, in the year of God 1566; whairbye, his Royall parentis, hauing confaied so extraordinarie joy, as thay did accompt it to be the perfectioun of thair earthlie felicitie. God, who will not suffer those who he hes destinat<sup>3</sup> to ane more happie habitatioun, to abuse thame selfis with the delytis of the vayne schaddowes of this lyfe, suffered the hellish complottis of damned subiectis, so far to preuaile aganis thame, as the vertuous actionis of the King his father, being interrupted be that most execrabil Tragedie, practised and performed be that infamous and never-aneuch abhorred traitour, *Bothuell*, aganis his lyffe. The contagious exampill of that vnnaturall Treasoun, did so infect the mynd of ane great number of hir Maiesteis powerfull subiectis, that thay wer not afrayd to ryse in oppin rebelloun aganis hir, lay violent handis vpoun hir sacred persoun, confyned hir libertie within the miserabill boundis of the wylde and vnwholsome *Craig of Lochlevin*, force hir to the abdicatioun of hir Royaltie; and whan, as the dexteritie of hir courageous devyse, faithfullie assisted be sum of hir vncorrupted subiectis, had fred hir furth of that miserabill bondage, hir rebellis did suddanlie assembl thair forceis, and in oppin Battell, ouerthrowing that number of dewtifull subiectis who did assist hir, did so maliciousslie pursue that victorie, as scho could nocht find in the whole boundis of that lairge Kingdome, which was hir natieue inheritance, ane place of saif retrait; wharby hir hard destinie, dryving hir to seik refuge in England, sche found be effectis, that '*incidit in Scyllam cupiens vitare Caribdim*,' not enioyeing in it hir libertie one houre, during the whole space of eighteen yeiris of hir lyfe spent in that Kingdom. Bot these afflictionis of hir lyfe, did sa strengthen hir mynd aganis the terrouris of death, and prepare hir so happelie for the entrance to ane better lyfe, that whan the catastrophe of hir miseries brocht hir to ressaue death, efter ane manner so rare and vnaccustomabill to ane Princeffe of hir birth and estait, as the hardest harted beholders, touched with the strangenes of that rigourous exampill, were driven to extreme grief and compassioun; hir godlie resolution and invincibill courage wes so constant, that scho appeired nocht onlie content bot joyfull, that God, haveing vsed hir troubles in this lyfe for ane expiatioun of hir sinnes, had gevin hir so full assurance of his mercie and fauour, whairfof scho promiseid to hir self, be the beginning of that dayes passage, ane most blissed and endles fruitioun.—Be thir meanes, his Maiestie being destitute of these helpes of Royall educatioun, whilk the caire and knoulege of so excellent parentis wald have procured to him, and standing subject to the danger of the cruell plottis of those who, having treasonable overthrowne his parentis, could never think thame self frie of impunity for so vnpardonabill Treasoun, so long as he, who, besyde the commoun interest of Princes in the pvneismment of vsurpeing Traitoures, wes bund, be dewtie of bloude and nature, to pvnes those who had vsed so butcherlie violence aganis the lyves, libertie, and estate of his parentis. Yit God, in his Providence, did so cairefullie wache over him, as haveing disperfed that tracheourous combination, and with progres of tyme turned thair wittis and vapines<sup>4</sup> of these rebellis to wourk aganis vtheris; his Maiesteis lyfe wes not onlie thairby preserved, bot his quarrell wes be thame reuenged. During this tyme and thir dangerous passages, his Maiestie, growing in graceis and yeiris, and finding his realme so miserable disordered, as be the ciuill factionis and warris, not onlie the accustomed barbaritie of the Bordouraris and Hielandmen wes increaffed, bot, be infectioun, had so polluted the whole cuntrie with crueltie and diffensions, that publict factionis, and privat deidlie feidis, did so disquyet everie manis estait, as thair jakkis, knapcaes, plait-sleves, and pistoles, wer als ordinar apparrell, to the most pairt, as thair doublettis and breachis; becaus, whatever wes the cause of thair conventionis or

<sup>1</sup> In allusion to the overthrow of the Papal power in Scotland, and the blessings to follow from the Reformation of Religion.    <sup>2</sup> Alluding to the murder of David Rizzio.    <sup>3</sup> Predestinated.    <sup>4</sup> *Wappinnis*; weapons.



meittingis, fightis or frayes wes the occasioun of thair departing, not onlie at Parlementis, conventionis, tryftis, and mercatis, bot lykwayis at Churcheyerdis and Churches, and places appoynted for exercyses of Religioun. The purgatioun of so extraordinar and vniverfall corruptioun, being the task of his Maiesteis<sup>1</sup> . . . . .

Bot that which I have ever thocht most strange and vnnaturall, in all this action, is, that efter so many, so lairge and sensibill praiffes of his Maiesteis pietie, iustice, clemencie, extended to all the cornaris, and almost to all the particular<sup>2</sup> perfonis of his Kingdome, so many subiectis sould haue bene fund, who, in fauour of two men of so wicked lyfe, sould so lightlie have regairded, and so maliciousslie detracted his Maiesteis directionis, gevin for tortouring of *Young Auchindrane*, and refusing libertie to him self and his father, efter so many yeiris imprisonement: Never considering how his Maiestie, being evrie way iuste and equitabill, had, in thir menis particular, so small cause to vse thame with rigour, that if the aspired opinion of his cleir conscience had not certanlie perswaded him of thair guiltines, he wald never have either vexed thair perfonis, or restrained thair liberties, aganis the courses of ordinar iustice of his kingdome.

It is foulishe presumptioun in subiectis to think, that the Kingis whom God hes chossen as his lieutenantis, to regne ouer so great Nationis, sould haue hairtis of no greater excellence than the vulgar fort! If God had not prepared the hairt of Solomon, in his youth, to command the houris child<sup>3</sup> to be devyded betuix hir and hir neighbour who claimed the leving bairne, what Judge in the world could certanlie have determined to which of the two the living childe did belong? Whilk nevertheless, Salomon, be ane sentence, seming at first most cruell and vniust, did in end most admirablie determine,<sup>4</sup> to the manifestatioun of the singlar wisdome, whilk God had put in the Kingis hairt.

When oure King, the trew Salomon of oure aige, and the most Godlie, wyfe, and learned King that ever bure ane Regall crowne in any Christian kingdome, trowelie representing, having fra his owne infancie gevin fo extraordinar promissis of his iugement<sup>5</sup> . . . . .

THE just determination of the Proces which did long depend aganis THE LAIRD OF AUCHINDRANE and his eldest sone, having greatlie contented the myndes of manie faithfull subiectis; not that thay did reioice in the calamitie of Gentilmen of that fort,<sup>6</sup> bot becaus thairby, the iustice of God, in the discoverie and pynishment of most subtil and dark crymes, was maid manifest to hard hearted and vnbelieving peopill; hes also buffied many menis pens to send the report thair of to thair freindis abroad; whairin, albeit at first I did intend to keip silence, and remit the publicatioun of that memorabill action to those who wer more curious and skilful nor myself; yet, calling to my remembrance sum notabill circumstances, which, during the incertane event of that procedure, did giue bauldenes to peruerfed peopill, to calumniat the true iustice of his Maiesteis directiones; which now, to his differued commendatioun, is approued to the whole worlde; I have since thought it my duetie, truelie to informe your lordship (whom I know to be so curious and cairefull of no thing as of his Maiesteis honour) of the whole substance of that perfute, craving your Lo. pardoun, if omitting sum parcellis, scairce necessarie to be recorded, I fall tak bouldenes, in place thair of, to remark, that in the course and progres of the most notabill actionis of his Maiesties lyfe and regne, whair of no Prince's aige and fortune hathe ever bene more fertile, his holiest, happiest, and most iuste intentionis have never bene frie of the bitter sting of calumnious detractaris.

In this Discours, I will not follow his methode, *qui in medias res non secus ac notas auditorem rapit*, bot studie to mak the mater so plane to your Lo. as possibill I can, be deduction of the occasionis whilk inuolued Auchindrane's evill nature, in the laberinth of these mischevous interpryses, which,

<sup>1</sup> This is left unfinished; a page is left blank to fill up the rest. <sup>2</sup> Individual. <sup>3</sup> The well-known story of 'the Judgment of Solomon.' Sir Thomas had, in the course of the long digression which he made regarding the King's 'rise and progress,' touched on very dangerous ground, and travelled very far out of his way, for the purpose of lavishing the most fulsome praise; being certain that the Letter would be subjected to his Majesty's perusal. <sup>4</sup> Terminate; result.

<sup>5</sup> Here the scroll again breaks off, and three blank pages are left, for farther digression and flattery. <sup>6</sup> Rank; condition in society.

be the justice of God and his Maiesteis inflexibill constancie, being broght to light, have ouerthrowne his lyfe and fortunes.

BE birth, he (JOHN MURE OF AUCHINDRANE) was a Gentilman of wourshipfull discent, succeding to that inheritance, which his prediceffouris in bloude and name had possessed almost foure hundreth yeires. By marriage of the dochter of Sir Thomas Kennedie of Barganie, one of the mightiest subiectis in the cuntrie whair he dwelt,<sup>1</sup> having increffed the strenth of his freindschip and presumption of his haire; and thinking, that no thing could impeid the absolute power of *Barganies* freindschip, in Carrik, bot *the Erle of Cassillis howse*, whilk, be ane long discent of vertuous Nobilmen, for wourthie seruices done to thair Princes and cuntrie, had disserued and ressaued so lairge recompensis in landis, honouris, and iurisdictionis, as extending thair branches in all the corneris of that cuntrie, and keiping faithfull dewtie and obedience to thair Prince, they had, be lawful meanes, obtaned aduantage of honour and commandement ouer all thair nightbouris; till of lait, the father of this Erle deceassed, and leiving his sones infantes, thair did not rest of that cheif howse, any man, abill to menteane the dignitie and rightes thair of, bot for *Sir Thomas Kennedie of Cullayne*, brother to the deceassed Erle, and vnkle and *Tutour* to this Erle of Cassilis; whom, vpone emulation and inuie, before mentioned, Auchindrane intended to Murthour: ffor which pourpose, having associat to him self nyne or ten weill chosen compliceis, thay, vpon the . . . . day of (January), or thairby, in the yeir of God 1597, come to the towne of Maybole, whair *the Laird of Cullayne* maid than his ordinar residence, and tryeing<sup>2</sup> that he wes at supper in the house of (*Sir*) *Thomas Nisbet*, and wes thairfra to go to bed to his owne ludgeing; Auchindrane and his complices darned<sup>3</sup> thame felfis in (*Sir*) *Thomas Nisbetis* gairdine, throw which the Laird of Cullaynes way lay to his owne howse, and, in his passage, having delaished<sup>4</sup> at him aucht or ten schot of hagbuttis and pistolettis, in the boundis of ane strait allay, yit he being saif of any hurt thairwith, and persaving thame with thair suourdis, most cruellie to persew his lyfe, he being alone, (becaus his seruandis, not thinking that any man had reason to offer him harme, did not attend him,) he was forced for his saiftie to fle; in which chaice thay did approche him so neir, as he had vndoutedlie bene ouertane and killed, if he had not aduentured to rin asyde and couer him self with the ruines of ane decayed house, whilk, in respect of the darknes of the night, they did not persawe; bot still followed to his ludgeing, and searched all the corneris thair of, till the confluence of the peopill of the towne<sup>5</sup> resorting, whair thay hard suche a fray, forced thame to retire. For which schamefull and barbarous attempt, the said Sir Thomas Kennedie of Cullayne, having socht redress be law, did thairby dryve Auchindrane in suche danger of ruyne, as necessarlie did constrayne him to couer his malice with schew of repentance: And for satisfacioun of his bypast offence, and gadge<sup>6</sup> of his future dewtie, to offer his eldest sone in marriage to Sir Thomas Kennedie's dochter: Whilk, be intercession of freindis, being accepted, and thairefter the marriage accomplisshed, the Laird of Cullayne did so affect the gude of the Laird of Auchindrane and his howse, as it was no les dere to him nor<sup>7</sup> his owne; considering, that in thair hopes and wisches, it wes to be possessed be the posteritie of thair conioyned discentis.

In which termes, materis continowed, vpoun Cullayne's pairt, faithfullie and in haire, and vpone Auchindranes, in trefonabill professionis; whilk,<sup>8</sup> be the deceas of *Sir Thomas Kennedie of Barganie*, his sone, *Gilbert Kennedie of Barganie*, ane young Gentilman of great courage, succeding to him, his inexperienced youth wes seduced be Auchindrane to beleve, that the tyme wes proper to raise his house, from the secund place in the cuntrie to the first, be the ouerthrow of the *Erle of Cassilis* house; whilk he proponed not to be difficill, for many probabill reasonis: Which, finding approbation, in the ambitious mynd of the young Gentilman, all occasionis of haitrent wer so fostered be seditious instruments on ather syde, that in schort tyme the pairties wer broght to suche profession of inimitie, as *the Laird of Barganie*, intending, in contempt of the Erle, to go by his zet,<sup>9</sup> in his passage from Aire to

<sup>1</sup> In the Bailliary of Carrick and shire of Ayr.    <sup>2</sup> Ascertainning after enquiry; discovering.    <sup>3</sup> Concealed; hid; secreted.    <sup>4</sup> Let off; fired. Old Fr. *delascher*.    <sup>5</sup> Maybole.    <sup>6</sup> Pledge. Fr. *gage*.    <sup>7</sup> Than.    <sup>8</sup> Until.    <sup>9</sup> Contemptuously to go past the Earl's gate, without so much as enquiring after his health, he being his Chief, &c.



. . . . ., and the Erle, resolving rather to die nor<sup>1</sup> digest that publick indignitie; having bothe strenthened thame selfis with suche forceis, as vpon so suddane occasioun thay could assembl;<sup>2</sup> thay rencountred vpon the ffeildis, neir the Erles howse of . . . . ., whan floure or ffyve hundred men entring in flight, it wes verie liklie that the eagernes of the Cheiffis sould have broght thair peopill to great butcherie, if *Barganies* courage had not carried him so headlong to the rasche invasioun of the *Erles* peopill, lying at cover, vnder the advantage of ditches, as him self rassaving ane deidlie musket schot, and *Auchindrane*, being also maid vnhabill to brak his horse, be ane verie dangerous schot in the theigh, thair trowp, wanting leaderis, fled, and left the feld to the Erles better fortune. -

: Which, no thing abating *Auchindrane's* malice, he did not cease to stir vp *Thomas Kennedie*, brother to the lait slayne *Barganie*, to be assistand to him, in daylie ambushes, for the *Erles* death; whairin, not prevailling, in respect of the Erles power and circumspectioun; at last, *Auchindrane*, determining rather to ouerthrow honour, promes, conscience, and all bandis of dewtie, nor<sup>3</sup> to misf sum sort of reuenge; he concludit to Murthour the before named *Sir Thomas of Cullayne*, ane mater most easie to be atcheved; becaus the Gentilman wes, in his owne consait, fullie secured of all parrell fra thair factioun, for that he had absteaned from assisting his newew the *Erle* in his querrell aganis *Barganie*, alsweill becaus he wes godfather to *Gilbert Kennedie of Barganie*, as that his mother and the Erles grandmother be his father, wes ane dochter of the house of *Barganie*: Which respectis, making him exceidinglie to regrait thair vnnaturall inimitie, he thought it more agreabill to his dewtie to referue him self newtrall, in thir vnhappy diffentionis of his kinsmen; thairby, to watche occasionis and referue equall credit and trust of bothe pairties, to be ane instrument of thair reconciliatioun, nor be his kyndnes to one of his kinsmen, be vnnaturall and vndewtifull to the vther.

In this estait, being onlie intente to his owne adois,<sup>4</sup> whilk in the moneth of . . . . ., in the yeir of God . . . . .,<sup>5</sup> did requyre his resort to Edinburghe, thair to consult with his lavers in his wechtie buffines; he send his seruand to Maybole, to seik *Auchindrane*, and aduerteis him of his purpose; with direction, if he missed him thair, that he sould certifie him, be Letter, of his intended journey; to the effect *Auchindrane* might, wpon the nixt day, meit him vpon the way, at . . . . ., and informe him of any thing he wald wish him to do for him in Edinburghe, seing it wes bot one travell for him to do his freindis buffines and his owne. This seruand of *Cullaynes*, missing *Auchindrane* in Maybole, desyred *Mr Robert Mure scholemaister at Maybole*, to wryte ane Letter of that substance to *Auchindrane*; who did so, and sent it be ane boy of his schole, called *William Dalrumpill*, who finding *Auchindrane* at his house of *Auchindrane*, with his cusing, *Walter Mure of Cloncaird*, ane deidlie ennemie to the *Erle of Cussillis*; so sone as he fand him self certified of *Cullaynes* pourpose and dyet, he dismissed the boy, commanding him to returne bak in haist, caireing the Letter with him; directing him farder to schaw to his maister and *Cullayne's* man, that he had not fund him at his howse: And immediatlie thairefter, resolved with his cusing *Cloncaird*, that this occasioun of reuenge of *Barganies* Slauchter, be *Cullaynes* Murthour, wes nocht to be oneflipped: And, efter sum deliberatioun, concluded vpon the choise of the actouris, and maner of the execution; making aduerteisment thairof, alsweill by Letter sent to *Thomas Kennedie of Drumvquhie*, be *Makadam*, futeman to *Young Auchindrane*, as by message to *Cloncaird*; who, finding *Thomas* most reddie to embrace that opportunitie, the said *Thomas Kennedie*, *Walter Mure of Cloncaird*, and foure or fyve seruandis with thame, weill armed and horsed, convoieing thame selfis neir the way appoynted be *Cullaynes* Letter, for his meiting with *Auchindrane*, did ly at await, till *Cullaynes* by-cumming; who, being in full securitie of his dangerles estait, ryding vpoun ane paissing naig,<sup>6</sup> and having with him ane seruand onlie, thay suddentlie surprysed him, and with thair pistoles and suourdis gaue him ane number of deedlie woundis:

<sup>1</sup> Than. <sup>2</sup> See a full account of these proceedings in 'THE HISTORIE OF THE KENNEDYIS' before referred to—and also ORIGINAL PAPERS in this Appendix. <sup>3</sup> Rather than be deprived of some sort of revenge against the name of Kennedy. <sup>4</sup> Affairs; concerns. <sup>5</sup> 11th May, 1602. <sup>6</sup> A pacing, ambling nag; a hackney, for his journey; not a swift and powerful horse, by which he might possibly have escaped. See 'The Historie of the Kennedyis.'

And, nocht content to haue so barbarouſſie and traitronſſie bereft him of his lyfe, ſpoyled him of ane thowſand merk of gold, being in his purſe, ane number of golden buttonis vpon his coat, and ſum ringis and vther jouallis: For the which villanous fact, the actuall *Mourthouraris* being firſt outlawed and thairefter fforfalted, and *Auchindrane*, vpoun vehement preſumptionis of his devyſe and cauſing execute ſo execrabil ane cryme, being ſummond to vnderly the law, did bouldlie compeir: And ſeing that the perſewaris, for want of ſufficient evidences, wer not than to aduenture his Tryell, fearing that he might be clenged,<sup>1</sup> and ſo, perpetuallie fred of that cryme; whan he ſaw them adiourne thair perſute, he ſeemed greived thairat, as bragging exceidinglie of his innocencie, whairof he had gevin pruiſ, be offering him ſelf to tryell of law, if thair wer within the kingdome any man of *Cullaynes* kinred or freindſhip, who wald advow<sup>2</sup> him any wayes participant of the devyſe or execution of that Murthour, he wald reddelie offer him ſelf in that querrell to the tryell of *COMBAT* to the death: And ſo, wanting ane pairtie,<sup>3</sup> wes diſmiſſed; more frie, in the perſuaſioun of the moſt pairt of ſuche as wer preſent, nor in his owne conſcience, whilk geiving him many alarmes, that ſo long as *Dalrumpill*, who wes carrier of the Letter, wes within the cuntrie, the mater might be diſcovered be him. Heiring that *Young Cullayne*, ſone to Sir Thomas Kennedie, had begun to try him verie rudelie, Auchindrane drew Dalrumpill to his houſe, and keiped him cloiſe, be the ſpace of nyne or ten oulkis;<sup>4</sup> whairwith the boy weireing exceidinglie, he ſent him thairefter to the *Ile of Arrane*, to the *Laird of Skelmurlie*,<sup>5</sup> his great freind, willing him to keip him as ane boy of *Thomas Kennedie of Drumvquhies*: Whair he being reſſaued and reteaned ane long ſpace, the boy, finding him ſelf neglected and vnprovyded of many neceſſaris, returned to *Muncown*, to the houſe of ane vncle of his owne;<sup>6</sup> which came no ſoner to Auchindraneſ knouledge, bot incontinent he ſent for him to his houſe of Auchindrane, whair he of new kept him cloiſe, whill, be paction with ane of his couſingis, called *James Mure of Fleet*, he ſend him to Leith, to be tranſported to the *Low-cuntries*, to ſerue as ane ſodgeour in the *Lord Balcleuchis Regiment*;<sup>7</sup> hoping that he might aither thair end his life, be ſuche accidentis as daylie befallis to ſouldiouris, or at leaſt be ſecure from diſcouerie or perſute of ſuche as he did ſtand in feare off. But whan the ſenſeles blindnes of his conſcience had gevin ſentence of perpetuall ſecuritie to him from all diſcouerie of his abominabil tranſgreſſioun, in reſpect of *Dalrumpillis* abſence, be the ſpace of fyve or ſax yeiris; the ey of Goddis juſtice, whilk never ſleipis, convoyed him back to Aire, the place of his natiuetie, whar, having onlie ſtayed with his mother and ſiſter ane night or two, he did addreſs himſelf to *Auchindrane*, who, aduer-teiſed of his returning, and thairby ſtinged with fearfull tormentis of conſcience, he take ordour for Dalrumpillis ſtay in the howſe of his ſeruand, *Walter Mure of Glenheid*: And the next day, in the afternone, being the . . . day of September, in the yeir of God . . . ,<sup>8</sup> he ſend his houſhald ſeruand, *James Cuninghame*, to bring him to him; and rencountering with thame, in his way from his howſe of Auchindrane to ane vther howſe of his, called *Ballachtowle*,<sup>9</sup> him ſelf and his ſone, *Young Auchindrane*, had conference with *Dalrumpill* ane great pairt of the way, till they came neir the Houſe of *Chapeldonan*,<sup>10</sup> perteaning, by inheritance, to Auchindrane, and poſſeſſed be his tennent and allye,<sup>11</sup> *James Bannatyne*, with whom thay left that night *William Dalrumpill*, calling him be ane changed name, '*William Montgomerie*.' Whair he ſtayed all the next day, whill, be directioun of *Auld Auchindrane*, James Bannatyne did bring Dalrumpill, about ten a klok in the night, to the *Sands of Girvan*, whair John Mure, elder of Auchindrane, and James Mure, younger of Auchindrane, wer attending<sup>12</sup> thair cuming: At meitting, *Auld Auchindrane* begane to declaire to his man *Bannatyne* that he

<sup>1</sup> Literally *cleansed*; acquitted.

<sup>2</sup> Avow; openly challenge.

<sup>3</sup> Pursuer or prosecutor.

<sup>4</sup> Weeks.

<sup>5</sup> Sir

Robert Montgomery. He married Margaret, eldeſt daughter of the Laird of Drumlanrig, Sir William Douglas.

<sup>6</sup> It cannot be traced who this individual was.

<sup>7</sup> SIR WALTER SCOTT, who raiſed a regiment of his name, and ſerved in the Wars of Maurice, Prince of Orange, againſt the Spaniards. For his ſingular merit and ſervices, he was, Mar. 16, 1606, created Lord Scott of Buccleuch, being the firſt perſon of that celebrated Family who had been ennobled. His ſon, Walter, ſecond Lord Scott of Buccleuch, alſo commanded a Regiment in the ſervice of the States of Holland, and was created Earl of Buccleuch, Lord Whitecheſter, and Eskdale, Mar. 16, 1619.

<sup>8</sup> 1607.

<sup>9</sup> Situated near Girvan.

<sup>10</sup> Situated about a mile and a half from Girvan, on the ſea-ſhore.

<sup>11</sup> Kinnisman

to his wyfe' is deleted, and 'allye' interlined.

<sup>12</sup> Waiting. Fr. *attendre*.



had bene in perpetuall feare, since *Cullaynes Slaughter*, to be difcouered as guiltie thair of;—that for efchewing that danger, he had fent furth of the cuntrie this *Dalrumpill*, who broght to him the Letter of aduerteifment of Cullaynes dyet; and whan as he had materis at that poynt, as be his traelis,<sup>1</sup> *Young Cullayne* and *Thomas Kennedie* wer maid to allow of the conditionis whilk he had fet downe for reconciliatioun of thair querrell, for the Murthour of Cullaynes father, this man wes vnbappellie returned, be whom his whole devyfe wald be difapoynted, and his danger renewed. That he faw no remeid bot to red *Dalrumpill* furth of this lyfe, fince he could not vtherwayes be kept out of his way. Whairvnto *Bannatyne* making anfuer, that it wes ane cruel pourpofe to Murthour the poure innocent youth, speciallie feing thay might fend him to *Ireland*, to be faillie keiped thair, till the agrieance wes perfytted betuix *Cullayne* and *Drumvrquhie*: Auld Auchindrane femed to inclyne fumwhat to that expedient; and in the uncertaintie of his refolution, turning towardis the pairt whar his fone fluid, of pourpofe, as appeired, to have confulted with him, *Young Auchindrane* perfaved thame no foner (draw) neir, bot, thairby affuring himfelf of thair affiftance, in executioun of that whilk his father and he had formerlie concluded, he did violentlie invade *Dalrumpill*, rufhed him to the ground, and never left him till, helped by his father, with his handis and kneis he had ftrangled him. And then, thinking to have buried him in the *Sandis*, whirby no mark fould remayne<sup>2</sup> whilk might raife any fufpicion of his Murthour, in that place, thay preaffed to mak vfe of ane fpead and fchoule whilk *Young Auchindrane* had broght with him for the pourpofe; bot finding that no hole wes foner caffin be thame in the Sand, bot wes alfone filled agane with the water and fand that fchot in it, thay wer forced, efter lang travell, to draw him in the fea, alsfar as they durft wade, hoping that ane vtterlie wind<sup>3</sup> fould carie his deid corps to the *Coaft of Ireland*: Whilk not fuccceeding according to thair expectatioun, the corps ftaing all the nixt day in the verie place whar they left it, they paffed that day in meruelous anxietie, for feir of difcouerie; till the nixt night, fearcheing the corps to have buried it, they could not, be any fearcher, find it, becaus the winde had carried it to the Sea, whair it wes toffed continuallie be the fpace of fyve nychtis, till the Fryday following, that God, deineing (*deigning*) to vfe that meane, for manifef-tatioun of thair hid iniquities, broght *Dalrumpilis* corps bak to the verie place whair, fex or feven dayis before, he had been Murthoured: Whilk being perfaved be fum cuntrie peopill, the corps wes cairied be thame to the nixt Churche yaird, and thair buried.

Bot the report of fo ftrange ane accident, having raifed fufpicion in the *Erle of Caffilis* and fum of his friendis, who had heard of *Dalrumpilis* returning in the cuntrie, that it might be he had pairt in that turne, it wes thought fit be the Erle and dyueris of the Ministrie<sup>4</sup> of that boundis, that intimation fould publictly be maid in Aire, being the heid burgh of the fchyre, and at the Paroche-Kirkis to landward, that fuche ane corps, being fund deid vpoun the coaft, wes to be fene at the *Churche of Girvan*. Whilk being accordinglie publeiffed, the corps wes raifed, and amongs vtheris, fighted be *Dalrumpilis* mother and his *fyfter*, who efter diligent confideration of the proportion and markis of his bodie, affured thamefelfis and vtheris, that he wes the mourthoured man! The opinion of *Auchindrane*s guiltines of that Murthour becam fo vniverfall, as it began to be talked of amongis his owne feruandis and in his owne houle, and thairby himfelf, his fone, and thair man *Bannatyne*, fo confused, as thay knew not how to cleir thaime felf of that vylde imputation; till going to Aire, and meitting with *James Dalrumpill*,<sup>5</sup> cusing germane to *Young Auchindrane*, by his mother, he did informe thame of the fchamefull opinion wes had of thair guiltines of that foule Murthour; advyfyng thame, that feing it wes not faif for thame, to offer thame felfis to the Tryell of Law, for ane Murthour, whair of all men thoght thame fo guiltie; and if thay, being challanged be the *Erle of Caffilis*, fould be fugitive for fo haynous a cryme, thair freindis could not with credit do for thame.<sup>6</sup> It was fitter, that they fould kill *Hew Kennedie of Garriehorn*, fervant to the Erle of Caffilis, for dyueris proba-

<sup>1</sup> Pains; trouble.

<sup>2</sup> By burying him within the flood-mark; so that, on the reflux of the tide, all marks of the struggle and foot-marks, &c. might be effaced.

<sup>3</sup> An off-shore or outward wind.

<sup>4</sup> Clergy; Ministers.

<sup>5</sup> 'Sisteris sone to the Lady Auchindrane, and so cusing,' deleted.

<sup>6</sup> Support or maintain them, while fugitive.



bill querrellis whilk thay had against him : Whair of the occasion did presentlie offer, in respect of his being singill<sup>1</sup> in *Aire* ; whilk being done, thay might ever pretend, that the danger of that cryme, and feir of the rigour of the Erle, wes the onlie caus for the whilk thay wer fugitiue ! In whilk caice, nevertheles, thair freindis might, without reproche, do for thame ; becaus, albeit the fact wes vnlauffull, it wes not dishonest, since it procedid vpon professed querrelis, and might be done publictly ; and so, thay be fugitiue, without infamie ! They presentlie imbrased the expedient, and provyding thame selfis of pistoles and vther armour, thay invaided Gariehorne,<sup>2</sup> schott thair pistoles, and vsed all vther meanes to have killed him. Bot finding, that it wes ane mater more difficill, to ouirthrow ane gentilman, armed with gude courage, in ane lauffull defense, nor<sup>3</sup> to Murthour innocent men, voyde of apprehension of danger and meanes of defence, all that thay reported of that inuasion, wes ane hurt of Young Auchindrane in his right hand, whairby he became almost lame of it.

Be this new iniurie, THE ERLE OF CASSILLIS persaving that thair lyves wald end, before thair malice aganis him sould diminish, he resolued to strenghen him self be all suche aduantage as Law sould giue him ; and having chalenged thame bothe for the *Murthour of Dalrympill*, and for the Inuasioun of his seruand with prohibit vapis,<sup>4</sup> thay go to the horne ;<sup>5</sup> professing alwayes, that if thair vsing pistoles aganis *Gariehorne* might be remitted to thame, thay wald ever be reddie to enter and abyde Tryell of *Dalrumpillis Murthour*. Bot his Maiestie, being trewlie informed of thir proceedingis, efter serious consideratioun of the circumstances, than consaued so constant ane opinion of Auchindrane and his sones guiltines of Dalrumpillis Murthour, that he assured him self, that if thay wer tane and dewlie examined, thay wald vndoutedlie be brocht to confesse it. And thairbye, inspyred with his accustomed zeale to justice, gave secret Commissioun to the Erle of Abercorne, that he wald not omit ony occasion to apprehend those suspected personis ; whairin the Erles diligence had so gud succes, that within schort space, he did rencounter and tak *Auld Auchindrane*, and enter him prisoner in the Towbuith of Edinburgh ; whair of, hes sone had no soner knouledge, bot imagining with him self, that it wer easie for his father and him self to conceall thair crymes, be obstinat secrecie, if *Bannatyne* sould not be brocht,<sup>6</sup> by examination and confrontation, to reueale the treuth and discredit thair denyall ; he instantly raid to *Ballintrae*, whair *Bannatyne* wes for the tyme, persued him, for all thair saisties, to retire to *Ireland* ; provyded and furneissed him with victuallis and necessaris, ane bot<sup>7</sup> for his transport, recommended him, by his Letteris, to his vncle *Thomas Kennedie of Drumvirkie*,<sup>8</sup> gave him assurance that be his absence, he sould not tak any proffit of the land quhilk he had of thame, nor no vther help, whil thay wer abill to mak to him. And be *Bannatynes* remove, becoming confident, did suspend his Horningis, be caution for his compeirance to vnderly law ; desyring no thing so muche as that he might be precipitatly put to ane Assyse ; vpon hope, that the lak of verification, in ane mater so clandestine and obscure, and the assistance of his great and gude freindis, sould procure to him vndouted absolutour ;<sup>9</sup> and thairby, being frie of all dangeris of law, wald be more abill to procure his ffatheris libertie and declaratioun of his innocencie. Bot, being anis entered, examined, and vpon great caution<sup>9</sup> lett to libertie, and thairefter his cautioner charged to re-enter him, he, remitting no jote of his former confidence, compeired the day appoynted, and being than re-examinat, and be the commendabill industrie of my *Lord Chancelar*, and vtheris of the Counfall, appoynted for his Tryall, drawne in sum materiall contrarietie ; vpon signification thair of to his Maiestie, directioun wes returned, that not onlie he sould be reteaned, bot if he wer obstinat, sould be coerced, be *Tortour*, to discover the trewth ! Whilk being accordingly performed, be those of his Maiesties Counfall, to whois secrecie and faith that charge wes committed ; the *Young Auchindrane*, pairtly confirmed be the strenth of his great courage, vnappellie bestowed in

<sup>1</sup> Single ; unaccompanied.

<sup>2</sup> Hew Kennedie of Garieborne, called in the Act of Secret Council, Feb. 5, 1602, 'The Guidman of the Ballot,' probably from being Lessee or tacksman of that farm.

<sup>3</sup> Than.

<sup>4</sup> Wappinnis, weapons, which were by Act of Parliament prohibited from being used by private gentlemen, excepting in his Majesty's service.

<sup>5</sup> Permit themselves to be denounced rebels and put to the horn, by virtue of Letters of Horning passing under the Signet, rather than present themselves for trial, as was previously arranged.

<sup>6</sup> Boat.

<sup>7</sup> One of the forfeited murderers of Sir Thomas Kennedy.

<sup>8</sup> Acquittal. Lat. *absolvere*.

<sup>9</sup> Bail ; security.



pruiffis of that kynd, and pairtlie be the craftie advyfes and aduerteifments of his ffather, convoyed to him be the counfile of fum thair welwillaris, who tuke the advantage of the cairelefines of thair keiparis; he did endure the extremitie of that infufferabill torment, with fuche conftancie, that whairas, it wes hoped that the veritie of the accusation and extremitie of payne fould have forced him to ane trew Confessioun, the event proved fo far contrarie, as he refolving, with filence, and fouffrance of ane fchort payne, to redeme his libertie, and to adde the hope of many yeiris to his lyfe.

The moft pairt of thofe who hard of the event of that Tryall, the forme whairof wes muche miflyked, did confane fo constant opinion of his innocencie, as not onlie the vulgar fort did publeis the fame, and regrait the extraordinar rigour vfed aganis him, bot fum Nobilmen and Counfallouris did affist his Supplicationis for his libertie, alledgeing many reafonis, why, with reafon, it could not be refused him: That ane man of his birth and qualitie had reffaued hard aneuch meafour, being *put to Tortour* for ane cryme whilk nather did concerne his Maiefties perfone nor eftait, albeit, efter fo gude prouif of his innocencie, be his fingular conftancie in fuffering that tryell; whilk no thing could have refifted, bot the integritie of ane vnspotted confcience; he fould not be ouercharged with ane fecund oppreffion, in denying to him his natiue and lafull libertie; fince he did offer aither to vndergo preffent tryell, or, if his ennemies did rather chufe, to prorogat it to ane tyme more fit for thame, he wes content to find caution, not vnder the pane of ane thoufand merkis prefcripyed be Act of Parlement to ane man of his eftait, bot, for removing of all fcruple of his not compeirance, he fould bind his freindis vnder the payne of *Twentie Thoufand poundis* for his re-entrie, whanfoever he fould be charged to that effect: Which wes fo oft requyred and vehementlie preafed, that my Lord Chancellor, ouercum with the continouall importunitie of *Young Auchindranes* favouraris, did yeild, that aduerteifment fould go from the Counfall to *HIS MAIESTIE*, of *Auchindranes* fate, and of the inclination of ane great pairt of the Counfall to yeild to the fam. Whairwith, his Maieftie, no whit diverted from his former refolution, fignified his pleafour to be, that in no caice, nor vpoun no condicioun, he fould have ony libertie; being refolved in his confcience, that he wes moft guiltie of that Mourthour; and that God, in his iuftice and appoynted tyme, wald manifest the fam: Whairby, my Lord Chancellor, ftrenthened be the exprefs Warrant of his Maiefties directioun, proceeding of his Royall motiue and certain knowledge, did fo dewlie obey his Maiefties command, that many tymes thairefter, whan the moft pairt of the Counfall, abufed with vntrew probabilities, and inclining to muche prepofterous pitie, did preafs that *Young Auchindranes* Supplication might be red and refaue anfueir from the Counfall, be the voices of the moft pairt of thofe who wer prefent, according to the inftitution thairof and cuftume inviolablie obferued.

My Lord Chancelar, perfaving, be thair vttering of thais preconfaued opinions, that be pluralitie of votes it wald be ordaned that libertie fould be granted to *Auchindrane*, vpoun caution, vnder great fowmes for his re-entrie whan he fould be charged; did oppone to thair opinioun, grounded vpoun the vfuall forme of that judicatour, his Maiefties expres commandement, proceeding from his abfolute Royall power, whilk he wald never bring in queftioun, fince no man could deny that his Maieftie, vpoun caufes knowne to him felf, might commit and reteane in wairde any of his fubiectis, who in his confcience he knew to differue the fam; and that it wes prefumption to his fubiectis, speciallie Counfallouris, any wayes to conteft in that poynt, efter his Maiefties lafull pleafour fo oft and fo exprefflie declared.

My nobill Lord, it wer heir verie eafie for me to iuftifie the courfe of *HIS MAIESTIES* proceeding in this particular, and not onlie refute the popular error of the prefumptuous multitude, bot alfo, with infallibill reafonis, to condemn the vntymous pitie of fum of better fort, nather remembring the obligatioun of thair place, nor the pruiffis of fo many bypaff accidentis, whairin his Maieftie, voyde of all paffioun and particular,<sup>1</sup> and onlie moved by confcience, and loue of iuftice, had fumwhat diuerted from

<sup>1</sup> Partiality; bias, or leaning to the *quarrel* or caufe of either of the parties.

the common pathe of ordinar Justice, without respect to popular murmour; so let the world to see, in end, be his most notabill conclusionis, how his purposes, tending to vnpartiall Justice, wer assisted be the fauour of God, and be heauenlie inspirationis, conducted to endis, confortabill, and almost miraculous! Bot, becaus I salbe more abill persitlie to performe that pairt, whan in the end of this action I salbe strengthened be the credit of ane faithfull and conscionabill Affyse, and muche more be the Confessioun of the pairties, extorted be the power and Prouidence of God, I will referue it that place; and following furth the course of this Narratiue, subioyne thairto the Judicial Procedure and Sentence, whilk was never thought to be in the way of any probabill expectation, till *the Erle of Abercorne*, by secret and instant dealling with sum of his freindis in *Ireland*, fand meanis to tak *James Bannatyne*, and bring him to Scotland, to his howse of Paislay; whair *Bannatyne*, efter the reherfall of all that Tragedie of *Dalrumpills Murthour*, having subioyned the maner of his owne taking, whairin he seemed to acclame sum promeis, maid for the saistie of his lyfe: The Erle did forthwith judge that dealling, so contrare to his honour and his Maiesties intention, as he instantlie assured *Bannatyne*, that he never did intend to have him vpon any futehe conditionis. Bot being vnwilling that whan he sould be presented to justice, he sould reproche to him the brek of condicion maid be any whom he had employed for his apprehensioun, whairby the heararis might tak libertie, either to beleve or not beleve *Bannatyne's* affirmatioun, and thairby bring his honour in question; he gaue to him libertie to go frie out of his house, with assurance, that for the space of ten dayes he sould be vnperfused be him or any of his, geving him space to provyde for his saistie, either within this realme, or be removing furth thairof; aduerteifing him thairwithall, that that terme being expyred, he wald bestow his owne travels and the assistance of all the friendis he had in the world to apprehend him, whairever he might be had, either quick or dead! So *Bannatyne*, being left to ane bodelie libertie, whilk neuer fred him of terrour of conscience, and fear of death, alswell in respect of the suorde of his Maiesties Justice hanging aboue his head, as that endles persute, whilk he knew *the Erle of Abercorne* did intend against him; bot most of all, in respect of his knouledge, that *Auchindrane* had, of lait, devysed and prateifed many meanes to cause *Murthour him* in *Ireland*, thairby to prevent the danger quhilk *Bannatynes* Confessioun might bring vpon him, if, be falling in *the Erle of Abercornes* handis, he sould have bene broght to Edr, examined and confronted with him and his sone: Being also informed, that whan *Young Auchindrane* caused deale with *the Erle of Dumbar* for his libertie, he had offered that his cautioneris sould bring *Bannatyne* in, *either quick or deid!* The Erle had verie judiciouslie answered, that he did well believe that *Young Auchindrane*, being frie, wald vnfaynedlie do his best to bring in *Bannatynes* head, whairof for his pairt he wald be sorie, as losing ane of the best meanis of the discouerie of thair guiltines, whairof he in his conscience wes resolved! Thir consideratiounis did force *Bannatyne* to prostrat him self at the Counsals seit, offering him self, without any condition, to reveill the whole treuth of that *Murthour*, and to verifie all that he sould say in *Auchindrane* and his sonis face; hoping, be the assistance of Gods gude Spirit, to bring thame to ane Confessioun of that vndenyabill treuth; onlie craiving, that if the Counfall fand him trew in all his speachis, and to be ane meanes to discouer the wickednes of these men, who, having drawn him unhappellie in the participation of thair mischief, had so ingratelie and wickedlie devysed to *Murthour him* self, thar Lordschips wald be pleased to recommend him to the Kingis mercie, whois pleasour he sould joyfullie fullill, wer it in his lyfe or in his death!

He wes commanded to mak ane trew Narration of *the maner of Dalrumpills death*; whilk being writt be the Clerk of Counfall, and *Auld Auchindrane* broght in and examined and confronted with him, and being contrare to him in all the poyntis of his Deposition; afferming impudentlie, that *Bannatyne* wes seduced and conduced be his vnfreindis (*enemies*), for desyre of his lyfe and landis, to avow these vntreuthis vpon him. Thay wer so directlie opposite to vtheris, as *Auchindrane* appeired more craftie and *Bannatyne* more simple and trew in his Deposition; bot bothe of thame so confident, that not



onlie evrie ane of thame menteaned thair owne Declaratioun; bot whare as Bannatyne had prostrat him self vpon his kneis, and directing his eyes and handis to Heaven, had, with tearis, exhorted Auchindrane 'to have remorse of his great wickednes, and to confes that Murthour, whilk God wald not suffer him any longer to conceale! Assuring him, that if he had bene innocent of that cryme, all the land of the Kindome, ze<sup>1</sup> the saiftie of his owne lyfe, sould never haue perswaded them (him) to pre-judge his maister, who he had so deirly loved and followed in many dangeris, whairin he had ad-ventured his lyfe and estait, without feir or respect of the best subiectis in the cuntrie.'—AUCHINDRANE answered, that 'he hoped God wald nocht so reiect him, as to permit him to confes so infamous vn-trewth of him self, and douted not bot God wald move Bannatyne to beir witnes to his innocencie, and how, be what perones and meanes, he had been seduced fallie to accuse him!'

Whairby, the Counfall, being broght in admiration<sup>2</sup> of so great obstinacie, and hoping that the sone, being confronted with *Bannatyne*, might be fund perhappis less confident: When thay wer broght in thair presence, and examined, confronted, re-examined, and tryed, be all the best meanes that the experience or jugement of wyfe and well affected Counsalouris could affurd; nothing wes hard bot direct contrarieties, confidentlie confirmed be execrabil oathes! So dyueris whole dayes being spent in Examination of these pairties, and many Witneses who wer thought ony wayes abill to furneis light to this obscure caice.

At last, whan no hope of any farder discouerie wes expected, THE LORDIS OF SECREIT COUNSALL concluded, that vpoun the . . . day of July instant, these perones sould be put to thair TRYALL: And for that pourpose caused Summond ane sufficient number of Gentilmen of gud report, to pas vpon thair ASSYSE; and did lykwayes appoynt my Lords President,<sup>3</sup> Secretar,<sup>4</sup> Justice Clark,<sup>5</sup> Meidhop,<sup>6</sup> Killyth,<sup>7</sup> and Wrightisland,<sup>8</sup> to be ASSESSOURIS to the Justice in this singular cause, whairin the inclination of the peopell wes so fauorabill to *Auchindrane* and *his sone*, that verie many did allege, that it wes requisit that *Bannatyne* sould be first put to an Assyse; and being convict, as of necessitie he behoued to be, in respect of his owne Confessioun, and Execute to the death, as he had well deserved; his constant ratification vpon the scaffald of his former Depositionis, and seilling the same with his bloude, at his death, might than put thame in sum opinion of *Auchindrane's* guiltines, whairof vtherwayes thay had never sene any appeirance. Bot the Lordis of Counfall, thinking it more agreabill to reason, that<sup>9</sup> . . . [those?] who wer thought all guiltie of ane fact, sould go to ane com . . . [mon Assise?] and that the gentilmen of Assyse, whois consciences . . . [might?] susteine the charge of the Judgement to be gevin in so we . . . [ightie?] a cause, sould have all the thrie Defendaris at ones in thair presence, that so thairby thay might be resolued of whatsoeuer thay sould think fit to demand of thame. Thair Lordschipis followed thair first ordonnance, and vpon the said [17<sup>th</sup>] day of Julie, efter ellevin a klok, cumming to the ordinar place of Jugement, did cause bring the Defendaris from thair feueral prifonis to the bar, whair Sir Thomas Hamilton of Byres, Knight, his Maiesties Aduocat, compeiring as persewar, did exhibit ane DITTAY aganis the saidis Defendaris, desyring my LORD JUSTICE to put thame to the Tryall of ane Assyse; who, intending no wayes to preiudge the Defendaris of the benefite of Law, gave to thame libertie to name those whom thay desyred to be forespeakeris<sup>10</sup> for thame in thair defence; who naming<sup>11</sup> ['Mr Johne Russell, Aduocat, Mr Thomas Nicolsone, Aduocat, and Josephe Myller, Aduocat,'] thay wer presentlie called be thair names; and having accepted vpon thame the Defenfe of the *Lairdis of Auchindrane*, elder and younger, the Dittay wes oppinlie red in jugement: Aganis which *James Bannatyne* did not oppone any thing; bot declaired, that as he wald not vse any defence why this mater sould nocht pas to the knouledge of an Assyse; so when the

<sup>1</sup> Yea.<sup>2</sup> Astonishment.<sup>3</sup> Sir John Preston of Fenton-barns, President of the Court of Session.<sup>4</sup> Sir

Alexander Hay.

<sup>5</sup> Sir John Cockburn of Ormiston.<sup>6</sup> Sir Alexander Drummond, an Extraordinary

Lord of Session.

<sup>7</sup> Sir William Levingston, an Extraordinary Lord of Session.<sup>8</sup> Sir Lewis Craig.<sup>9</sup> The MS. torn at this and the following places, which the Editor has supplied from conjecture, within brackets.<sup>10</sup> Counsel, or *Prelocutors*.<sup>11</sup> Left blank. The names within brackets are taken from the Record.

Affyse fould be chofen, he fuld mak thair burding light, granting in thair prefence fo muche of the Dittay as concerned him, albeit he tuke God to witnes, that he wes the maift innocent of the thrie.

Thairefter Mr<sup>is</sup> Johne Ruffell and Thomas Nicolfoun, having exponed to my Lord Justice the groundis of the caufe, the qualitie of the Defenderis meriting fauour and respect, the rigour vfed aganis thame in thair lang captiuitie, and extraordinar Tortour of the young man, did craive, that thay might have the benefite of law, whilk allowed to the Defenderis citatioun vpoun fiftene dayes wairning; whairby, reffaving the Copie of the Summondis, containing the Inditement to the whilk thay wer to anfuwer, thay might, be that fpace, be advyfit of thair wyfe freindis and learned Counfall, to prepar thair juft Defenis. Whairvnto it wes anfuwered, be his Maiefties Aduocat, that thair defyre could not be granted in this caufe, be reafoun, the crymes whairof thay wer to be accused wer treasonabill; in which caice, ane prifoner, being broght from his Maiefteis prifon to the bar, wes, be the ordour of this Judgement,<sup>1</sup> put to prefent Tryall, without any delay or continewation; whilk, with no reafons, could be granted to thame at this tyme; becaus, thrie yeiris ago, thay had bene fummoned for the fame crymes, vpon xv dayes wairning; at whilk tyme, they going to the horne, for thair contumacie, the Auld Laird wes takin be his Maiefties Commiffion, the Young Laird relaxing his [Summondis and enterin] had bene deteaned be his Maiefties direction; fo that they had not onlie fyvetene dayes, bot full thrie yeires to prepaire thair defenis.

The Defenderis than alledged, that the fummonds, produced be the Lord Aduocat, could not juftlie feclude thame of thair defyre of delay, becaus the Dittay this day produced be him, wes fo different from the tenour of the ould Letteris, in many fubftantiall heidis, and did fo aggravat the cryme, be many circumftances, nowayes mentioned in the former Letteris, that it wes eafie to my Lord Justice and the Lord Affeffouris to difcerne, that no thing conteaned in the former Letteris, could have gotin thame information to prepaire thair Defenfes aganis the tenour of the Dittay now layd to thair charge. Which, being considered be the Lord Justice and Affeffouris, and the auld Letteris and prefent Dittay exactlie conferred;<sup>2</sup> be Interlocutour, thay ordained prefent proces, refufing to give the Defenderis any vther copie of the Dittay, or delay of proces, till the nixt day.<sup>3</sup>

## II. PROCEEDINGS BEFORE THE PRIVY COUNCIL OF SCOTLAND, *in reference to the Feuds and Conflicts recorded in the preceding Trial, &c.*

(i.) WARRANT of Privy Council, (*Apud Edinburgh, Decimo tercio Decembris, 1601.*) commanding the Earl of Caffillis to fet Mure of Auchindrane and others at liberty.

FORSAMEKILL as it is vnderftand to the Lordis of Secrete Counfall, that at the lait CONFLICT and Combat, quhilk hapnit and fell out betuix JOHNNE ERLE OF CASSILLIS, and certane his freindis, on the ane pairt; and GILBERT KENNEDY OF BARGANY, and certane his freindis, on the vther pairt, vpoun the ellevint day of December instant; the faid Erle tuik and apprehendit . . . . . MURE OF AUCHINDRANE, DAVID KENNEDY of *Maxuelftoun*, and certane vthers of the faid Laird of Auchindrane and Barganyis feruandis; and prefentlie hes thame in his custodie and keiping: And in respect of the Slauchter and bluid quhilk hapnit and fell out at the faid Conflict, it is verie fufpitious that the faid perfonis fould be sufferit to remane in the powar and handis of the faid Erle. THAIRFOIR, the faidis Lordis Ordanis Letteris to be direct, chairgeing the faid *Erle of Caffillis* to defist and ceis fra all proceeding aganis the perfonis foirfaidis, tane and apprehendit be him at the faid Conflict, be vertew of his office of Bailjerie, or of ony powar or commiffioun grantit to him for that effect; difchairgeing him

<sup>1</sup> The practice of this Tribunal.      <sup>2</sup> Collated; compared with each other.      <sup>3</sup> Here the Narrative ends abruptly. As the Report of the Trial is so full, it is likely that the writer had abandoned his original intention of giving a report of the proceedings which took place at the Trial—but merely to resume his Narrative, and continue it down to the period of their execution. This, however, if ever completed, has unfortunately been kept out of the scrolls. An account of the subsequent conduct of these atrocious criminals between the period of their condemnation and execution, must have possessed great interest.



thair of and of his office in that pairt: As alsua, chairgeing the said Erle to caus sett the said *Laird of Auchindrane* and *David Kennedy of Maxwellsoun*, and all vtheris personis tane be him at the said Conflict, at frie libertie, within the toun of Air, without ony violence or harme to be maid to thame be the way, within tuentie four houris nixt efter the chairge; vnder the pane of rebellious, &c. And, gif he failzie, &c., to denunce him rebell, &c.

(ii.) *WARRANT of Privy Council, (Apud Halyruidhous, quarto Februarij, 1607,) to denounce JOHN MURE of Auchindrane and others.*

## SEDERUNT.

Lennox,	Fyvie,	Lowdoun,	Kinlofs,	Previe feill,	Kilfyth,
Chancellor,	Vchiltrie,	Maister of El-	Haliruidhous,	Aduocat,	Tracquir,
Angus,	Newbottle,	phingstoun,	Thesaurar,	Collectour,	Brunt-Iland,
Mar,	Spynie,	Rofs,	Comptrollar,	Clericus Regiftri,	Sir Patrik Mur-
Wyntoun,	Roxburgh,	Dunkeld,	Justice-Clerk,	Elimofinar,	ray.

ANENT oure souterane lordis Letteris, raised at the instance of Sir George Home of Spott, knycht, his Maiesteis Thesaurer, and Mr Thomas Hammiltoun of Drumcairne, his Maiesteis Aduocat, for his hienes enterefe; makand mentioun: That quhair, vpoun the ellevint day of December instant, *JOHNE MURE of Auchindrane*, Thomas Kennedy of Drummurchy, Hew Kennedy of Bennan, Walter Mure of Cloncard, Hector Kennedy in Bargany, John Mcalexander in Auchingregane, Thomas Mcalexander his broder, James Bannatyne in Chapeldonane, John Cathcart of Carloun, John Cathcart younger of Carloun, Johnne Eccles of Kildonane, Williame Irwing, Thomas Wallace seruitour to the Laird of Bargany, John Mcalexander of Dalreoch, Thomas Dalrumpill brother to the Laird of Stair, Gilbert Kennedy in Pynmachir, Gilbert Ramsay seruitour to the Laird of Bargany, Moses Lokhart brother to the Laird of Bar, David Kennedy in Maxvelstone, Alexander Kennedy sone to Hew Kennedy in Craigneill, Robert Kennedy seruitour to Walter Mure of Cloncard, Mairtene Wilsoun in Newark, Robert Campbell in Carmychell, Williame Cauldwell of Lochirmos, Williame Kennedy in Garfer, John Mure of Craigskeane, John Mure in Quhytleis, Robert Wallace of Holmstoun, George Angus notar in Air, Symone Gilmour thair, Peter Hammiltoun thair, Andro Kennedy thair, Henry Dalrumpill thair, Hew Kennedy thair, James Blair thair, John Blair thair, George Dumbair thair, George Mcalmont thair, James Dumbair thair, and . . . Kennedy cowpar thair, with convocation of his hienes leigeis, to the nowmer of . . . personis; all bodin in feir of weir, with jakis, corslettis, secrettis, lancis, and vtheris waponis, *inuafue*, and with muscattis, hacquebuttis, and pistolettis, prohibit to be worne be the lawis of this realme, Actis of Parliament and Secrete Counfall, come furth of the burgh of Air, towardis the toun of Mayboill, resolut and disposit to haue attemptit some heich interpryse aganis *JOHNE ERLE OF CASSILLIS*, in cais thay had found him vpoun the feildis: *LYKES AS*, thay persaving the said Erle and some of his frendis and servandis to be vpoun the feildis, befyd the toun of Mayboill, thay immediatlie set vpoun thame, schot and dischairgit a nowmer of muscattis, hacquebuttis and pistolettis among thame, quhairwith thay slew vmq<sup>le</sup> . . . Spence, maister of houshold to the said Erle, and hurt and woundit findrie vtheris of his servandis: Quhairthrow, as thay haue convocat his hienes leigis in armes, without powar or commissioun, sua haue thay violat his hienes lawis and Actis of Parliament, maid aganis the beiring and weiring of hacquebuttis and pistolettis; and with that, thay haue brokin his hienes peace, to the disturbance and schaikin lowfe of the hail estait of that cuntrey, without remeid be prouydit. AND anent the chairge gevin to the saidis *JOHNE MURE OF AUCHINDRANE*, &c. to haue compeirit personallie, befor the Kingis Maiestie and Lordis of Secrete Counfall, at ane certane day bigane, to haue ansuerit to the premisses, and to haue vnderlyne sic ordour as sould haue bene tane thairanent; as alsua, tuicheing the obseruatioun of his hienes peace and keiping of guid reull and quyetnes in the cuntrey, vnder the paine of rebellious and putting of thame to the horne: With certificatioun to thame, and (if) thay failzeit, Letteris sould be direct *simpliciter* to put

thame thairto: Lyke as at mair lenth is contenit in the said Letteris, executionis and indorfationis thair-  
of. Quhilkis being callit, and the saidis Persfewaris compeirand personallie, and the saidis Johne Mure  
of Auchindrane, &c. being oftymes callit and not compeirand, The Lordis of Secrete Counfall thair-  
foir Ordains Letteris to be direct, to denunce thame rebellis, and put thame to the horne, and to  
escheit.

(iii.) DECRET OF ABSOLVITOR, (*Apud Haliruidhous, quinto Februarij, 1602,*) by the Privy  
Council, in favor of JOHN EARL OF CASSILLIS and others, 'for convocation of his hienes  
lieges, and beiring and weiring of hacquebuttis and pistolettis, breking of his hienes peace.'

## SEDERUNT.

Chancellor,	Fyvie,	Blantyre,	Secretar,	Prevey seill,	Kilfyth,
Ergyll,	Lowdown,	Haliruidhous,	Comptrollar,	Aduocat,	Sir Patrik Murray,
Angus,	Roxburgh,	Thesaurar,	Collectour,	Tracquir,	Elimosinar.

ANENT oure fouerane lordis Letteris, raised at the instance of Sir George Home of Spot, knycht,  
hie hienes thesaurer, and Mr Thomas Hammiltoun of Drumcairne, his Maiesteis Aduocat, for his hie-  
nes interesse; makand mentioun: That quhair, vpoun the elleuint day of December instant, JOHNE  
ERLE OF CASSILLIS, Johne Corrie of Kelwod, Hew Kennedy of Penquhirry, Johne Daidfoun of  
Pennyglen, Oliver Baird of Culleingie, Patrik Mcilveane elder of Gremmat, Johne Mcilveane zonger  
of Gremmat, Hew Kennedy of Garryhorne, vtherwayis callit *the Guidman of the Ballot*, George  
Fergusoun of Thraif, Alexander Schaw tutour of Gremmat, Johne Mure of Wodland, Johne Mure of  
Kingmarloch, Johne Dik of Barbesburie,<sup>1</sup> Hew Kennedy of Dangar, Anthone Kennedy zonger of  
Barfalloch, Johne Mure merchant in Mynyboill (Maybole), Quintene Crawford zonger of Silliholl,  
Johne Kennedy of Smetoun, Williame Kennedy of Turneberry, Johne Campbell in Barnefurd, Johne  
Smyth zonger in Cassillis, Johne Calderwode in Girmerstoun, Johne Fultoun in Giltryhill, Johne  
Fultoun in Mosend, Alexander Baxter porter, Williame Harlaw hagbutter, Robert Fultoun in Gil-  
tryhill, Johne Fultoun in Bargennoch, David Fultoun his brother, Thomas Fultoun in Giltrie, Tho-  
mas Wode in Cassillis, Quintene Tod in Cassillis, James Daidfoun in Burnemoith, Johne Daidfoun  
his sone, Johne Mcolme in Mcolmestoun, Johne Malcome in Blairbouy, Johne Bell in Mcolmestoun,  
Thomas Mortoun in Cassillis, Johne Mortoun his broder thair, Johne Mcary thair, Johne Smyth in  
Dalrumple-holme, Williame Hunter thair, James Corry in Bray of Dalrumple, David Mcquhorta in  
Batlewand, William Campbell in Bra thair, Robert Cunynghame in Bateistoun, Johne Smyth in Drum-  
goblis, &c.<sup>2</sup> all men, tennentis, servandis, and proper dependaris vpoun the said Erle, with convoca-  
tioun of his Maiesteis leigeis, to the nowmer of . . . . hundredreth perfonis, all bodin in feir of weir,  
with jakis, steil-bonnettis, corslettis, lancis, and vtheris waponis invasiue, and with hacquebuttis and  
pistolettis, prohibite to be worne be the lawis of this realme and Actis of Parliament; come in hostile  
and weirlyk maner furth of the toun of Mayboill, and lay at await for vmq<sup>le</sup> GILBERT KENNEDY of  
*Bargany*, his freindis and servandis, as thay wer comeing the hie way fra the burgh of Air towardis  
the said Lairdis awne duelling hous, and invadit and persewit thame of thair lyffis, schot and dischair-  
git a nowmer of hacquebuttis and pistolettis at thame, quhairwith findrie of the said Laird of Barga-  
nyis company wer hurt and woundit; and at that same tyme, thay schamefullie, cruellie, and vnmer-  
cifullie *slew the said vmq<sup>le</sup> Gilbert Kennedy of Bargany*: QUHAIRTHROW, as thay haue convocat his  
hienes liegeis in airmes, without ony lauchfull Warrant or authoritie, sua haue thay violat his hienes  
lawis and Actis of Parliament maid aganis the beiring and weiring of hacquebuttis and pistolettis, and  
with that, thay haue brokin and dissoluit his hienes peace in that cuntrey; quhairby mony inconveni-  
entis are lyke to fall out, to the trouble and disquyeting of the haill cuntrey, without remeid be pro-  
vydit. AND anent the chairge gevin to the saidis Johne Erle of Cassillis, *Capitane Johne Forrester*,

<sup>1</sup> Barbestoun.

<sup>2</sup> A List of one hundred and thirty more names follows. They are unnecessary to be inserted here, though they might no doubt be of some local interest. None of them are persons of rank.



Mr Cristopher Cokburne, Quintene Craufurd, Patrik Reidpeth, Williame Maitland, Williame Fleming, Alexander Forbes, household-men to the said Erle, Anthone Kennedy younger of Balfcheroch, Arthour Kennedy his brother, Mr Williame Boyd, Andro Cuninghame, David Girvan, Thomas Kennedy, David Cathcart, Alexander Baxter, Williame Harlaw, David Craufurd, David Gray, John Blair, alsua his householdmen and servandis, John Corrie of Kelwode, Hew Kennedy of Penquhirry,<sup>1</sup> &c. to haue compeirit personallie: As alsua anent the charge gevin to the said Erle of Cassillis, to haue enterit and presentit the personis particularlie aboue writtin befor the Kingis Maiestie and Lordis of Secreit Counfall at ane certane day bigane, to haue ansuerit to the premisses, and to haue vnderlyne sic ordour as sould haue bene tane thairanent; as alsua, tuicheing the obseruatioun of his hienes peace and keiping of guid ruell and quyetnes in the cuntrey, heirefter, vnder the paine of rebelloun and putting of thame to the horne, with certificatioun to thame and<sup>2</sup> thay sailzeit, Letteris sould be direct *simpliciter* to put thame thairto; lyk as at mair lenth is contenit in the saidis Letteris, executionis, and indorsationis thairrof. QUHILKIS being callit, and the saidis persewaris compeirand personallie, and the said *John Erle of Cassillis* being lykwayis personallie present, for him self, and in name of the remanent defendaris foirsaidis; quha producit tua Commissionis, subscryuit be his Maiestie, and past his hienes Register and Signet: The ane aganis *Blaquhane younger*,<sup>3</sup> Girvenmanis, Hew Kennedy of Bennan, Thomas his brother, and Walter Mure of Cloncard, quhais names ar insert in the said Commission with his Maiesteis awne hand, knowing thair misdeidis, geving powar to the said Erle of Cassillis to convocat his hienes liegeis, and to searche, feik, tak, apprehend and persew, *with fyre and sword*, the personis aboue writtin, and to weir haquebuttis and pistolettis to that effect; as the said Commission, of the dait the nynt day of Julij, the zeir of God Im.Vjc. and ane zeiris, at lenth beiris: And the vther Commission, direct to the said Erle, for the persute, taking, and apprehending of *Robert Gordoun of Barnerino*, Alexander Gordoun of the Hillis, Williame Mcneillie, Alexander McKie of Balseir, and Thomas Kennedy of Drummurchy, as suspect guilty of Murthour, Oppressioun, and Ressett of Thift; as in the said Commission, geving powar to the said Erle to convocat his hienes liegeis, assiege houffis, raise fyre, and persew the saidis personis with all extremitie, and beiring dait the tuentie-ane day of July Im.Vjc. and ane, at lenth is contenit: Be vertew of the quhilkis Commissionis, the said Erle allegit, that he had lauchfullie proceidit in the haille action aboue writtin, quhairvpoun he wes accuset, feing the said *Thomas Kennedy of Drummurchy* and the said *Walter Mure of Cloncard*, and dyuerse vtheris his Maiesteis rebellis, vpone quhome the said Erle presentlie producit Horning deulie execute and registrat, and quha standis zit at the horne vnrelaxt, wer present and vpoun the grund with the said vmq<sup>le</sup> *Gilbert Kennedy of Bargany*, the tyme foirsaid; and the said Erle, being in executioun of his Maiesteis Commissionis, in searching and seiking of the said Thomas, and of the remanent personis thairin contenit, all that fell out in that mater wer lauchfull. QUHAIRUNTO it wes ansuerit be the said Mr Thomas Hammiltoun, that the said first Commission can be na Warrant nor authoritie to the said Erle; becaus that lang befor the committing of the crymes aboue writtin, quhairvpoun he is now accusit, the same Commission wes dischaigit be his Maiestie, for the haille personis thairin contenit, except Young Blairquhane; and lauchfull intimatioun and publication wes maid to the said Erle of the said dischaarge, lang befor the said tyme, viz. in the moneth of August lastbypast; quhilk the said Aduocat referrit to the said Erles aith: And sua, in respect of that dischaarge, and that the said Laird of Blairquhane Younger wes not in cumpany with the said Laird of Bargany the tyme foirsaid, the same Commission can be na Warrant to the said Erle: And as to the last Commission, it was ansuerit be the said Aduocat, that the same can be na sufficient Warrant to the said Erle; becaus the same Commission wes not deulie registrat aganis the said Thomas Kennedy of Drummurchy, bot his name insert thairin, lang efter the same wes past the Register

<sup>1</sup> Here the remainder of the names are repeated.<sup>2</sup> If.<sup>3</sup> Blairquhan.

and Signet : And thair was na powar nor licence contenit in the said last Commissioun for beiring and weiring of hacquebuttis and pistolettis ; and seing his Maiesteis Register is the reull be the quhilk the said Commissioun sould have been directit, the same can be na Warrant to the said Erle : Vnto the quhilk it wes replyit be the said Erle, that, albeit the first Commissioun wes dischaigrit aganis the haill personis contenit thairin, except *Young Blaquhane*, zit it stude in full force and effect aganis him ; and he being his Maiesteis rebell, and continewing disobedient to his Maiestie, and being a ordinary hantar and keipar of cumpany with the said Laird of Bargany, oftymes ofbefoir and senfyne, and suspectit to haue bene with him that day, he had gude Warrant and powar to searche him quhairneuer he mycht get knowlege of his being : And as to the said last Commissioun, it wes replyit be the said Erle that he had a special Warrant and directioun fra his Maiestie, to the Keipar of the Register, to register the said Commissioun, as it wes productit to the Register ; quhilk Warrant he productit befor the saidis Lordis ; sua that it was lauchfull to him to insert ony names thairin, quha wer rebellis, or guilty of sic crymes, in his plesour : And albeit thair wes na mentioun maid in the last Commissioun of hacquebuttis and pistolettis, zit, in respect of the first Commissioun standing vndischarget, as said is, and that the last Commissioun gaif him powar to vse all weirlyk ingyne quhilk he could deuyse for apprehensioun of the personis thairin contenit, the executioun of the same, in forme and maner as it fell out, was lauchfull : And forder, it wes replyit be the said Erle, that he being the ordinar Judge and Magistrat of the cuntrey, and not a privat persone, thair sould na sic dischARGE haue bene purchest quhill<sup>1</sup> first he had bene wairnit to the geving thair of, and that the personis, in quhais fauour the same wes grantit, had gevin thair obedience to his Maiestie, and purgit thame selfis of the Horningis quhilkis thay vnderlay. WITH the quhilkis Anfueris and Replyis, and dyuerse vtheris the ressonis and allegationis of baith the saidis pairteis, the Lordis of Secrete Counsell being weil and ryplie advyset,—THE LORDIS of Secrete Counsell FINDIS and DECLAIRIS the tua Commissiounis aboue written, productit be the said Erle, to be guid, valid, and sufficient ; and that thairby he had gude powar and autoritie to searche and seik the saidis personis, and vse the same Commissiounis. AND thairfor the saidis Lordis Affoizis<sup>2</sup> *simpliciter* the saidis Defenderis fra that pairt of the saidis Letteris, tuicheing the convocatioun of his hienes liegeis, and beireing and weiring of hacquebuttis and pistolettis, and breking of his hienes peace : And Decernis thame quyte thairfra in all tyme comeing, and of all offence (that) may be impute to him in the vsing of the saidis Commissiounis.

(iv.) ACT of Privy Council, *The Laird of Cullane against Williame M<sup>c</sup>Phadrík*.<sup>3</sup>

ANENT our souerane lordis Letteris, reasit at the instance of JAMES KENNEDY of Culzeane, making and mentioun : That quhair, albeit his Maiestie, be the space of aucht yeiris syne, maid and set furth diuerse edictis and Proclamatiounis, prohibiting and discharging all his heyneis leigeis, that nane of thame sould resset, supplie, nor intercommoun with *Thomas Kennedy, Thomas M<sup>c</sup>Alexander, Thomas Wallace*, and *William Irving*, during the tyme of thair rebelloun and remaneing at the horne, for the odious, cruell, and detestable Murthour of vmq<sup>le</sup> Sir Thomas Kennedy of Culzeane, father to the said complenair, committit be thame, in maner specifeit in the said Proclamatioun, vnder certane panes mentionat thairintill. Nochtwithstanding, it is of treuth, that *William M<sup>c</sup>Phedrice*, servitour to the Laird of Girvanmanis, hes continewallie, and almaist ilk day sen the dait of the said Proclamatioun, aganis the tennour of the same, resset, suppleit, and intercommonit with the said *Thomas M<sup>c</sup>Alexander*, and remanent rebellis abouenameit, within his awin duelling house in Air ; hes keipit mony tryftis and meitingis with him, as namelie, vpoun the xxvj Junij, 1<sup>m</sup>. Vj. and aucht yeiris, the said *Thomas M<sup>c</sup>Alexander* being in his dwelling hous in Air ; and informatioun thair of being maid to *JOHNE ERLI OF CASSILLIS* and the said Complénair, and thay haueing warrand, power, and commissioun for the persute of the said *Thomas M<sup>c</sup>Alexander*, and being than vpoun the feildis agaitward<sup>4</sup> towards him, it is

<sup>1</sup> Until.  
apprehend him.

<sup>2</sup> Absolves ; acquits.

<sup>3</sup> *Regist. Secr. Conc. (Acta)*, Aug. 3, 1609.

<sup>4</sup> On the road or gait to



of treuth that the said William McPhedrice, being vpoun the knowlege and counfall of the said Erll and the said Complenaris said purpois aganis the said Thomas, he lap on horse and convoyit him self fecritellie away to the said hous, quhair the said Thomas wes for the tyme, and thair intercommvnt with him, reveillit, and discloft vnto him the said purpois and plat layd down for his persute: And that he mycht the more sauffie eschew, the said William McPhedrice horfit him on his awin horse, and pat him away; in heich and proud contempt of his Maiesteis auctoritie and lawis. For the quhilk the said Williame aucht to be persewit and pvnist in his persone and guidis, to the terroure of vtheris to commit the lyke heirafter. And anent the charge gevin to the said William McPhedrice to haue compeirit personalie before the Lordis of Secrite Counfall this present thrid day of August instant, to haue ansuerit to this complaint, and to haue hard and sene sic ordour tane thairanent, as appertenit; vndir the pane of rebellion and puting of him to the horne: with certificatioun to him and<sup>1</sup> he failzet, Letteris sould be direct *simpliciter* to put him thairto; lyke as at mair lenth is contenit in the saidis Letteris, executionis, and indorfationis thairof; quhillkis being callit, and the said persewar compeirand personalie, and the said Defender being oftymes callit, and not compeirand, The Lordis of Secrite Counfall thairfoir Ordanis Letteris to be direct to Officearis of airmes, schireffis in that pairt, chargeing thame to pas and denunce the said Williame McPhedrice his Maiesteis rebell, and to put him to the horne; and to eschete, &c.

(v.) ACT of Privy Council, *The Kingis Aduocat aguinft Johnne Mure.*<sup>2</sup>

ANENT our fouerane lordis letteris, reasit at the instance of Sir Thomas Hammiltoun of Bynnie, knycht, aduocat to our fouerane lord, for his hienes interesse, makand mentioun: That quhair the cruell, unworthie, and detestabill Murthour of vmq<sup>le</sup> SIR THOMAS KENNEDY of Culzeane, knycht, and of vmq<sup>le</sup> WILLIAME DALRUMPLE, sone to Williame Dalrumple in Aire, haueing thir mony zeiris bigane lyne obscure and hid, and no perfyte discouerie nor knowledge being had of these who wer the cheiff and principall divisaris, practizaris, and conspiratouris in the same Murthour, the said Aduocat is now informed that the personis following, thay ar to say, JOHNNE MURE, cook in Auchindrane, *Thomas Wallace*, seruitour to Auchindrane, *Andro McAlexander*, sometyme seruitour to *James Bellindane*<sup>3</sup> in Chapildonane, *James McCaig*, sone to Adam McCaig, in Girvane, and *George Small*, in Plesance, doeth know something in that mater, and can gif some licht, evidence, and probable presumptioun and circumstanceis, for cleiring of the same: Quhairfore, necessar it is, that thay be examinat heirvpone, in preface of the Lordis of his heyne Preuey Counfall. AND anent the charge gevin to the saidis Johnne Mure, cook, Thomas Wallace, Andro McAlexander, James McCaig, and George Small, in Plesance, to haue compeirit personalie, befoir the Lordis of Secrite Counfall, this present xx day of Junij instant, to haue ansuerit to suche thingis as sould haue bene speirit at thame tuitching the Murthour of the personis foirsaidis, vnder the pane of rebelloun and puting of thame to the horne; with certificatioun, &c. The Lordis ordanis Letteris to be direct, &c., chargeing to pas and denunce the said personis, who compeirit not, his Maiesteis rebellis, and put thame to the horne; and to eschete, &c.<sup>4</sup>

(vi.) SUSPENSION, *James Bannatyne, in Chapeldonall.*<sup>5</sup>

ANENT oure fouerane lordis Letteris, reasit at the instance of *James Bannatyne in Chapeldonall*, makand mentioun, That quhair as, he is informed he is denuncit rebell and put to the horne, be virtew of Letteris, reasit at the instance of *Johne Erll of Cassillis* and Sir Thomas Hammiltoun of Bynnie, kny<sup>t</sup>, his Maiesteis Aduocat for his heyne interesse, ffor the complenair his allegeit not compeiring personallie before the Lordis of Secrite Counfall, at ane certain day bygane, to haue ansuerit to ane complaint maid be the said Erll and Lord Aduocat vpoun him, tuicheing his allegit beiring and weiring of

<sup>1</sup> An, if. <sup>2</sup> Reg. Secr. Conc. (Acta), Jun. 20, 1611. <sup>3</sup> Bannatyne. At this period the name Bannatyne was indifferently spelt, Ballendyne, Bellenden, Bannatyne, and Ballantyne. <sup>4</sup> A similar entry occurs, of the same date, to denounce 'THOMAS MURE, sone to (Johne) Mure of Auchindrayne, and ANDRO SINCLAR, half-brother to the Laird of Auchindrane, for not appearing to answer at ane certane day bygane.' <sup>5</sup> Regist. Secr. Conc. (Acta), Sep. 27, 1611.

hagbuttis and pistolettis, and invading and persewing of *Hew Kennedy of Garrihorne* and *Thomas Mcquhary*, both seruitouris to the said Erll, and schooting and dischairing of pistolettis at thame, &c. The Lords suspended the said Letters, *simpliciter*, on the ground of Bannatyne's not having been cited to appear, &c.

### III. PROCEEDINGS IN PARLIAMENT, *as to the Forfeiture of Thomas Kennedy of Drummurchie, for the Burning of Auchinsoull,—Murder of Sir Thomas Kennedy, &c.*

#### (i.) *The Forfaltie of Thomas Kennedy.*

Apr. 26, 1604.—SIR Thomas Hamiltone, King's Advocate, took instruments of the Production of the Summons of Treason and executions, &c. in Parliament.<sup>1</sup>

Jul. 11, 1604.—The Summons and other documents were again produced in Parliament,<sup>2</sup> which were of new verified in presence of the Lord Commissioner, (John Earl of Montrose,) and hail Estaittis: And siclyk, the said Aduocat producit Lettres of Relaxatioun, relaxand the said *Thomas Kennedy* frome all proces of Horning led and deducet aganis him, for quhatfumeuir cause. And thaireftir, the said *Thomas Kennedy* being thryse callit at the tolbuith windo, to haue answerit to the said Summondis of Treassoun, he comperit nocht to ansuer thairto, and thairfoir the said Aduocat (estir that the foirfaid caus of the said Summondis of Treassoun wes fundiu relevant be the saidis hail Estaittis aganis the said Thomas Kennedy of Drummurchie) ffor preving of the pointis of the said Summondis of Treassoun aganis the said Thomas Kennedy, and of the reffoun and cans contenit thairin, repetit the Depositiones of the Witnesses reffaut, admittit, sworne, and examinat in presens of the saidis hail Estaittis vpoun the foirfaid reffone and cause; and als repetit the notorietie of the fact of the Burning, and the said Thomas Kennedy acknowlegeing his awin giltines, and taking of the saidis crymes vpoun him, throw being fugitiue and denuncit Rebell for nocht comperance befor our said fouerane lordis Justice and Lordis of his hienes Privie Counfall *respectiue*, in maner contenit in the Lettres of Horning rasit thairvpoun: And lykwayis, the said Aduocat producit diuerse vtheris wryttis and probatiounes, for preving of the said Summondis of Treassoun, and desyrit the saidis Estaittis of Parliament to advyse the foirfaidis probatiounes, and to gif furth thair Dome and Sentence thairintill, according to justice. And thaireftir, the foirfaidis hail probatiounis and Summondis of Treassoun being red, hard, sene and considerit be the saidis Estaittis, and they thairwith being ryplie advysit, the saidis hail Estaittis of Parliament FINDIS, Decernis, and Declaris that the said Thomas Kennedy of Drummurchie hes committit TREASSOUN, in Raifing of the said Fyre, and Burning of the said Place of AUCHINSOULL, in maner speceifeit in the foirfaid Summondis: AND thairfoir, Decernis and Ordanis THE DOME vnderwritin to be pronuncit and gevin furth aganis him, be the mouth of David Lyndefay, dempster: Off the quhilk Dome, the tennour followis.

DOME. This Courte of Parliament schawes for Law, that the said THOMAS KENNEDIE of Drummurchie hes committit Treassoun in Raifing of Fyre and Burning of the said Place of Auchinsoull, pertenyng to the said Duncane Craufurde, the tyme and in maner speceifeit in the said Summondis of Treassoun, persewit be his hienes said Aduocat, for his grace entres, aganis him: And thairfoir Findis and Declaris, That the said THOMAS KENNEDIE hes amittit, and tynt, and Foirfaltit for euir, all his landis, heretages, rowmes, possessionis, gudis, and geir quhatfumeuir, belanging to him ony maner of way, and quhilkis he hes, had, nicht haue, or clame, within this Realme of Scotland: And Decernis the famin to haue appertenit and to appertene to our said fouerane lord, to be confiscat, and to remane with his hienes, as his propertie, in all tyme cumming. And als Findis and Declaris, that the said THOMAS KENNEDIE hes amittit and tynt his fame, honouris, and dignitie: And he to be pvnist as ane Tratour, conforme to the Lawes of this realme. And this I gif for Dome.

<sup>1</sup> *Acta Parl.* iv. 260.

<sup>2</sup> *Acta Parl.* iv. 267.



(ii.) THE SUMMONDIS OF TRESSOUN of *vmq<sup>te</sup>* WALTER MURE OF CLONCARDE, *past fra simpliciter be our souerane Lordis Aduocat.*<sup>1</sup>

Jul. 11, 1604.—THE quhillk day Maister Thomas Rollok, depute for Sir Thomas Hammyltoun of Monkland, knyght, Aduocat to our souerane Lord, and in his hienes name reproduct, in presens of ane nobill and potent lord, Johne Erle of Montrose, Lord Grahame and Mukdok, Great Commissionar of this present Parliament, and in presens of the haill Estaittis thair of, the Summondis of Treaffoun vnderwrittin ; quhilkis wer product be the said Aduocat, ofbefoir, at Edinburgh, in presens of the Lordis of Articlis, vpoun the tuentie aucht day of Aprile last bipast : Off the quhillk Summondis of Treaffoun the tennour followes.<sup>2</sup>

[SUMMONS OF TREASON *against Thomas Kennedy of Drummurchie and Walter Mure of Cloncarde.*<sup>3</sup>]

JACOBUS, Dei Gracia Rex Anglorum, Scotorum, Gallorum et Hibernorum, &c. Fideique defensor : Dilectis nostris Leoni Regi Armorum, Albanie, Snawdoun, Merchemont, Rothesay, Ilay, Ros, Bute, Carrik, Ormond, Vnicorne, signiferis ; David Bryfoun, Robert Stewart, Alexandro Dowglas et Jacobo Chalmeris clauigeris nostris ; necnon Joanni Fergusfoun et Joanni Wilkesfoun nuncijs, et eorum cuilibet, coniunctim et diuifim. Vobis precipimus et mandamus quatenus legitime summoneatIS THOMAM KENNEDIE *de Drummurchie*, fratrem germanum quondam Gilberti Kennedie de Barganie, personaliter, si ejus personalem presentiam habere poteritis, seu aliter apud locum sui domicilij et habitationis ; ac etiam apud cruces forales burgorum nostrorum de Air, Irving, Mayboll ac apud portus nostros de Air et Leith, et alia loca necessaria, super premonitione sexaginta dierum, eo quod dictus Thomas de presenti extra regnum nostrum Scotie morari dicitur. Necnon summoneatIS legitime ROBERTUM MURE, fratrem germanum et heredem apparentem quondam *Walteri Mure de Cloncarde*, JOANETAM MURE eius sororem germanam, personaliter, si eorum personalem presentiam habere poteritis, vel secus apud locum suorum domiciliorum et habitationis ; ac etiam dictos Robertum et Jonetam aliosque agnatos et cognatos dictj quondam Walterj Mure de Cloncard, omnesque alios interesse habentes vel habere pretendentes, necnon Tutores et Curatores dictorum Robertj et Jonete Mures, si quos habent, apud dictos cruces forales dictorum burgorum nostrorum de Air, Irving, Mayboll, et alia loca necessaria, quod compareant coram nobis et nostris Commissionarijs et Locum tenentibus, necnon coram Regni nostri Scotie Ordinibus, Edinburgi, vicesimo die mensis Aprilis proxime futuri, in Parlamento nostro incipiendo decimo die dicti mensis, hora caufarum, cum continuatione dierum ; ad respondendum nobis, necnon ad instantiam dilecti et fidelis nostri consiliarij Domini Thome Hammyltoun de Monkland, militis, nostri Aduocatj, pro nostro interesse, dictum viz. THOMAM KENNEDIE *de Drummurchie*, pro sua nefaria, scelesti, facinorosa, et proditoria Occisione et Interemptione quondam Thome Kennedie de Coiff militis<sup>4</sup> per se suos complices et consortes secum conspiratores in dicto Homicidio, per summum nefas vt sequitur, perpetrato, vndecimo die mensis Maij, anno domini 1602 : NECNON pro suo scelesto, nefario, et manifesto Furto, cum violenta rapina coniuncto, vulgariter vocat. *Stuth-reiff*, marsupij seu crumene dicti quondam Thome Kennedie de Coiff militis, cum magna pecunie summa auro et argento signato, summam duorum millium mercarum extenden. quam dictus quondam Thomas cum eo portabat ; cum varijs annulis aureis, gemmatis et alijs, ac multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. in ipso actu Homicidij perpetrat. : NECNON pro sua proditoria et nefaria Obsidione, per se et suos complices, ad numerum quinquaginta virorum armatorum, Mansionis et Maneriei terrarum de AUCHINSOULL, jacen. infra vicecomitatum nostrum de Air ; ad quod, per occasionem subscriptam, dilecta consanguinea nostra JEANNA COMITISSA DE CASSELLIS, comitata septem vel octo seruis ac comitibus confugerat, salutis sue causa, cum dicta Domina Jeanna et eius serui iter

<sup>1</sup> *Acta Parl.* IV. 271.

<sup>2</sup> Here the Summons which has already been given is inserted.

<sup>3</sup> To prevent repetition, this Summons (which is a transcript of the other against Drummurchie, with the additions relating to Cloncard) has been preferred.

<sup>4</sup> A mistake for Cassilis. However, Sir Thomas was often so designed.

facerent a domicilio suo de INCHE in Galloudia, versus aliud suum domicilium in Villa de MAYBOLL, in balliatu de Carrik et infra vicecomitatum nostrum de Air, decimo octauo die mensis Maij ultimo elapsi, 1603. Et pro maleuolo, crudeli, nefario, abhominabili, et scelesto Incendio Maneriej, in quod, causa euitandi periculi mortis, dicta Domina Jeanna Comitissa de Cassellis et serui sui confugerunt; e qua manfione et manerie de Auchinsoull, cum idem maneriem combustam essent vndique et conflagraret, metu mortis vehementia flammarum et fumi egredi coacti sunt, vbi post egressum dicte Domine Joanne Comitisse de Cassellis quondam HUGO KENNEDIE, frater germanus et heres apparens dilecti nostri consanguinej Joannis Comititis de Cassellis, Domini Kennedie, Joannes Mcilveiane junior de Grwmiett, Joannes Dik de Barbastoun, Andreas Cunynghame in Knokdone, Quintinus Craufurde, Robertus Hay, Willielmus Kennedie, serui et comites dicte Comitisse pro tempore, per dictum Thomam Kennedie de Drummurchie et suos complices captiui facti sunt, et vt infra dicitur abducti, et in privatis carceribus detenti. ET PROPTEREA, dictum Thomam ad videndum et audiendum se crimen Lese-Maiestatis per decretum et censuram nostri Parlamenti et regni Scotie Statuum incurrisse; et ideo, tanquam reum, Lese-Maiestatis puniri debere, capitali et ultimo supplicio; necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum et tenementorum, que dictus Thomas in regno nostro Scotie habet, habere, vel clamare poterit, in futurum. NECNON, dictos ROBERTUM MURE, fratrem germanum et heredem apparentem dicti quondam Walterij Mure de Cloncarde, et JONETAM MURE eius sororem germanam, omnesque alios cognatos et consanguineos dicti quondam Walteri, ac tutores et curatores dicti Roberti et Jonete, si quos habent, omnesque alios interesse habentes vel habere pretendentes, ad videndum et audiendum, per regni nostri Ordines in Parlamento nostro supradicto decerni et declarari, quod dictus quondam Walterus Mure de Cloncarde fuit et est reus Lese-Maiestatis, vt qui fuit actor, factor, et perpetrator dicti. criminum cum dicto Thoma Kennedie de Drummurchie modo et forma quibus infra dicitur. PRO QUIBUS eiusdam quondam Walteri memoria et fama damnari et aboleri debet, ac eius omnia bona mobilia et immobilia, terre, tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere potuit, ad nos pertinere decerni debeat; et quod ab eisdem dictus Robertus frater et Joneta eius soror, omnesque alij ab eo descendentes, debent excludi imperpetuum, propter rationes et causas subsequentes. PROPTEREA quod in Parlamento nostro tento apud burgum nostrum de Edinburgh, in Scotia, vicesimo nono die mensis Julij, anno domini 1587, per nos et tres dicti nostri regni Ordines statutum est, quod si contigerit aliquem subditorum nostrorum dicti regni Scotie, qui habet terras sibi hereditarie pertinentes, viz. vt vulgariter in dicto statuto dicitur *ony landit man*, fore legitime et secundum juris ordinem, aliquo tempore post dictum statutum futuro, de manifesto furto et vi rapine admisto, id est *Stouth-reiff* esse convictos, incurrant propterea crimen et penam Lese-Maiestatis, hoc est omissionem et forisfacturam vite, terrarum, et bonorum; prout in dicto statuto apertissime continetur. SED sic est in rei veritate, quod dictus THOMAS KENNEDIE de Drummurchie, et prefatus quondam WALTERUS MURE de Cloncarde, cum suis complicitibus et consortibus, numero septem, armis, machinis bellicis, et sclopis, prohibitis et lege vetitis, instructi, et equis insidentes, dicto duodecimo die mensis Maij 1602, existentes Rebelles et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis clare constare poterit; et ex precogitata feloniam dictum Thomam Kennedie de Coiff militem, imparatum et non-opinantem, ac iter facientem, vno seruo comitatum, a domicilio suo de Coiff versus dictum burgum nostrum de Air, ac inde profecturum Edinburgum negotiorum suorum gerendorum causa, apud Capellam Sanctj Leonardi nuncupat. dimidio miliaris a dicta Vrbe de Air distan. aggressi sunt, ac eundem invaserunt machinis bellicis ac lanceis transfixerunt et crudeliter occiderunt, et furto, rapina, et vi furtum comitante, id est *le Stouth-reif*, ex marsupio et crumena dicti quondam Thome Kennedie de Coiff predictam summam bis mille marcarum in auro signato, *lie Roif-nobillis*, et *Fyve-pund-peices*, *Angell-nobillis*, et *Portingall-doucattis*, violenter furati sunt et abstulerunt, cum varijs annulis, gemmatis, ac alijs, et multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. Pro quoquidem crimine, coram Justiciario nostro vocati,



ut lege subirent, contumaces facti Rebelles declarati sunt, et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis satis clare constare poterit. AC ETIAM statutum est, per aliud actum Parlamento illustrissime memorie quondam Jacobi V. Scotorum Regis, avi nostri, tenti et inchoati, apud Edinburgh, vicesimo secundo Januarij, anno 1538, quod si quis combuserit aliquos in domibus suis, reus Lese-Maestatis erit: Ac etiam, quod omnes Combustiones domorum vel granorum, et omnia Incendia voluntaria seu malitiosa, fiant crimina Lese-Maestatis; idque in odium Incendiariorum, quos leges propter criminis atrocitatem feuerius plecti jubent; sicut in eodem statuto plenius continetur: Quodquidem statutum in Parlamento nostro tento apud Edinburgh, quinto die mensis Decembris, anno domini 1567, repetitum et renovatum est, idque merito crescente in regno nostro Incendiariorum numero et audacia; prout in dicto statuto posteriori latius continetur: SED sic est, quod dictus THOMAS KENNEDIE de *Drummurchie* et dictus quondam WALTERUS MURE de *Cloncarde*, comitati circiter quinquaginta armatis equitibus, per insidias obsiderunt iter dicte dilecte consanguinee nostre JEANNE COMITISSE DE CASSELLIS, proficiscentis e domicilio de Inche in Gallovidia, in vicecomitatu nostro de Wigtoun, versus aliud domicilium suum in Villa de Mayboll et balliatu nostro de Carrik et vicecomitatu de Air, die xvij<sup>o</sup> mensis Maij, anno domini 1603, et equis citatis in dictam dilectam nostram consanguineam, et eius seruos ac comites, inpetum facientes, iter et viam publicam deferere, metu vite sue, compulerunt: Illa autem cum refvgii causa versus Mansionem quandam de AUCHINSOWLL, quam tum inhabitabat *Duncanus Craufurde de Auchinsowll*, cum comitibus et seruis suis citatis equis accederet; qui locus, cum ad effugium commodus videtur, et viderunt ex eo loco dilectam consanguineam nostram seruos et comites eius nisi domo incensa extrahi non posse, illico illato igni domum et eius ambitum vndique incenderunt, e qua crescente fumo et irrumpentibus flammis, ad extremum periculum omnes redacti, in manus dictorum Latronum Incendiariorumque dilecta nostra consanguinea cum suis seruis et comitibus, deditione facta, captiui devenerunt; ex quibus vnus, nomine Joannes Mcgrane, flammis superatus predictam domum combustam egressus priusquam respirare potuerit, crudeliter et nefarie gladijs et machinis bellicis, a dictis Thoma et quondam Waltero et complicibus predictis crudeliter interfectus est: Ac reliqui comites dicte nostre consanguinee, viz. HUGO KENNEDY, frater germanus et heres apparens dicti dilecti nostri consanguinei et consiliarij Joannis domini de Cassellis, Joannes Mcilveyane junior de Grwmnett, Joannes Dik de Barbestoun, Andreas Cunynghame de Knokdone, Quintinus Craufurde, Robertus Hay, Willelmus Kennedy, per dictos Latrones, Predones, et Incendiarios captiui facti sunt, et eorum arbitrio abductj, et per eos in domibus, fortalijs, et Castris de Ardftinchell, et lie Coiff de Craignett, infra dictum vicecomitatum nostrum de Air, proditorie custoditi et detenti sunt, per dies quindecim, aut eo circiter; Nec ab illa captiuitate liberati et redempti fuerunt, donec per se et fidejussores suos obligarentur, quod dictum dilectum consanguineum nostrum Joannem Comitem de Cassellis, cui vt domino et hero suo seruire tenebantur, omnino defererent, et si secus facerent, magnam pecunie summam soluturos se promitterent, compulsis etiam diris seipfos deuouere, si contra fecissent: IN QUO, non solum Latrocinij, *Stuthreif*, Insidiationis viarum, ac proditorij Incendij crimine irritati sunt; sed etiam, proditorie Vfurpationis autoritatis nostre reos sese facerent. Ac vt hec omnia notoria fiant, idem Thomas Kennedie de Drummurchie ac dictus quondam Walterus Mure de Cloncarde vocati coram Dominis Secreti Consilij nostri responsuri predicto proditorio crimini Incendij et Captionis dictarum liberarum personarum et liegiarum nostrorum et alijs supramentionatis, contumaces effecti sunt; Ac propterea etiam Rebelles nobis declarati et denunciati sunt; prout in Literis nostris, ea de re executioni mandatis, latius continetur. QUARE, dictus THOMAS KENNEDIE de *Drummurchie*, per Decretum et censuram Parlamento nostri et regni nostri Ordinum crimen Lese-Maestatis incurrisse decerni; et ideo, tanquam reus Lese-Maestatis puniri debet capitali et vltimo supplicio, necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum, et tenementorum, que dictus Thomas in regno nostro Scotie habet, vel clamare et habere poterit in futurum; ac etiam per dictum nostrum Parlamentum et regni nostri Ordines decerni et

declarari debet, quod dictus quondam WALTERUS MURE *de Cloncarde* fuit et est reus dictj criminis, Lese-Majestatis, vt qui fuerit actor, factor, et perpetrator dict. criminum respectiue supramentionat. cum dicto THOMA KENNEDY de Drummurchie, modo et forma antedict. ; pro quibus, etiam eiufdem quondam Walteri memoria et fama aboleri et damnari debent ; ac etiam eius omnia bona, mobilia et immobilia, terre et tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere vel clamare potuit, vel prefatus Robertvs et Joneta agnati, cognati, consanguinei, et omnes ab eo discendentes, habere vel clamare potuerunt, in futurum, ad nos pertinere decerni debent, et ab eisdem dictus Robertus nunc frater germanus et dicta Joneta soror germana dicti quondam Walteri, et omnes alii ab eo discendentes, ascendentes, collaterales, et alii quicunque, excludi debent imperpetuum, propter rationes et causas suprascriptas ; intimando supradictis personis, et eorum cuilibet, respectiue, quod sine dictis die et loco cum continuatione dierum comparuerint, siue non, nos, dictusque noster Justiciarius in premissis, iusticia mediante, procedemus et procedet. INSUPER, citetis peremptorie, coram testibus, Alanum Cathcart de Drumjowan, Petrum Algeo seruum Magistri Jacobi Donaldsfoun Aduocati, Davidem Craufurde, Alexandrum Craufurde seruos Domini de Kerse, Duncanum Craufurde, Joannem Mure de Tarquyne,<sup>1</sup> Jacobum M<sup>c</sup>artour in Knokdone, Gilbertum Mure de Auchinsoull, Gilbertum Kennedy de Monunfoun, Arthurum Kennedie filium Davidis Kennedie de Balscherroche, Joannem Wilsoun in Dalrumpill, Archibaldum Gellis coquum, Hugonem Kennedie de Garryhorne, Allanum M<sup>c</sup>tir in Layne, Jacobum Gowdie in Lauderdall, Jacobum M<sup>c</sup>trutour in Traboyak, ad comparendum coram nobis dictone nostro Justiciario, dictis die et loco, cum continuatione dierum, ad perhibendum fidele testimonium in causa predicta, sub pena legis. Et presentes Literas debite executas et indorsatas earundem latori reddatis. Et vos qui presentes executi fueritis, sitis ibidem dictis die et loco, coram nobis seu dicto nostro Justiciario, portantes vobiscum summonitionis vestre testimonia inscript. pro premissis vel ipsos testes. Ad quod faciend. vobis et vestrum cuilibet, coniunctim et diuisim vicecomitibus nostris in hac parte, nostram committimus potestatem. DATUM sub testimonio nostri magni sigilli, apud Edinburgh, xij die Februarij 1604, et regni nostri Scotie tricesimo septimo, anno Anglie, Gallie et Hibernie primo.

THE quhilk Summondis, with the executiones and Indorsationes thair of, wer producit be the said Sir Thomas Hammyltoun of Monkland knycht, Aduocat to oure souerane lord, in presens of the said Erle of Montrose, Great Commissionar of this present Parliament, and baill Estaittis of the samin Parliament, first vpoun the tuentie sext day of Aprile last bipast ; and thaireftir the samin wes producit in thair presens, and presens of the Lordis of Articlis, upoun the tuentie aucht day of the said moneth of Aprile last bipast : Vpoun the quhilk tuentie aucht day of Aprile, the said Sir Thomas Hammyltoun, Aduocat to oure souerane lord, in his hienes name, past *simpliciter* fra the persute of the said ROBERT MURE, brother germane and apperant air to the said v<sup>m</sup>q<sup>le</sup> *Walter Mure of Cloncairde*, and *Jonet Mure* his sister, and thair Tutouris and Curatouris, for thair interessis ; as also, past *simpliciter* frome the haill ressones, haill pointis and articlis contenit in the said Summondis of Treassoun, beirand and contenand as is abonewrittin, sua far as the samin extendis or may be extendit to the saidis *Robert* and *Jonet Mures*. Lyk as, also this instant day, in presens of my Lord Great Commissionar and haill Estaittis of Parliament, the said Sir Thomas Rollok, Aduocat depute, in absens of the said Sir Thomas Hammyltoun, principall Aduocate, lykwayes past *simpliciter* frome the persute of the saidis *Robert* and *Jonet Mures*, and thair saidis Tutouris and Curatouris for thair interessis ; and also past *simpliciter* frome the haill ressones, haill pointis and articlis contenit in the said Summondis of Treassoun, sua far as the samin extendis or may be extendit to the saidis *Robert* and *Jonet Mures*, and thair saidis Tutouris and Curatouris : Lykas, the said Sir Thomas Hammyltoun, principall Aduocat foirsaid, vpoun the said xxvij day of Aprile last bipast, had past *simpliciter* frome the samin, of befoir, in presens of the saidis Lordis of Articles. Vpoun the quhilkis haill premissis, the said Robert Mure, for himself and his said sister, askit Instrumentis.

<sup>1</sup> In *Act. Parl.* IV., 269, he is described *Johne Mure de Carquhene*.



IV. LORD FOUNTAINHALL'S *Abstract of the Case of Mure of Auchindrayne*.<sup>1</sup>

THE story of the fact is remarkable. AUCHINDRANE, having conceived a deadly feud against THE TUTOR OF CASSILLIS, comes one day to Maybole, with intention to kill him, assaulted him under night, thought to have killed him, had he not been rescued by some of his neighbours. For which fact, Auchindrane and his complices past to the horne. (The Horning was produced by the Advocat.) At lenth, this enmity was taken away, not only by publick and sworn reconciliation, but also by marriage of the said *Auchindrane's eldest sone on the Tutor's daughter*. After which, *the Tutor* lived with *Auchindrane* in all friendship, trust, and assurance imaginable. And going in to Edinburgh, and willing to do *Auchindrane's* busines there, as weill as his oune, he caused his man leive at *the School-master of Air* his house, a Letter for *Auchindrane*, signifying that he was going for Edinburgh to-morrow, and would gladly meet with him at the West end of Air, at the Duppils, or<sup>2</sup> he went. This advertisement was sent with a schoolboy called WILLIAM DALRIMPLE, who delivered it to old Auchindrane, sitting with *Walter Muir of Cloncaird*; who, immediately upon his reading of it, sent back the boy, and entreated him to say, that he had neither got him, nor delivered him the Letter. Then, resolved with the said Walter, to advertise THOMAS KENNEDY of *Drummurphy* of the certainty of Culzain's journey, and the way he intended to ride; advising him to use that occasione to revenge himselfe on him. The advertisement, with this advice, (he) sends with on<sup>3</sup> *Macadam*, as is clearly proven by the Deposition of Witnессes. *Drummurphy*, by the advertisement, counsell, and instigation foirsaid, waites the gentleman, in the place he had tryfted<sup>4</sup> *Auchindrane*; and most treasonably murderours him. Wheirfor,<sup>5</sup> *Drummurphy* stands forfaitured by Act of Parliament.

He, having turned fugitive, was much assisted and supported by *Auchindrane*; who, fearing that discovery of his accession to the said treasonable Murther might be made by the said *William Dalrumple*; to eschew it, caused him first to be secretly conveyed to his house, wher he keiped him long quiet; at last, sent him to Arran, to *the Laird of Skelmorly*. After some tyme, returning from thence, he sent him away with one that was going to the wars in Flanders, hoping he sould never see him againe. Wheir, having stayed some tyme, the boy longed to returne. Being returned, and *Auchindrane* getting notice theirof, he was troubled—immediately fetched him to his hous, and put him with ane JAMES BANNATYNE, in *Chapeldonald*, his tennent; whom he caused fetch him with him to THE SANDS OF GIRVAN, at 10 a'clock of even; wher they murdered him, and throw him in the Sea, so far as they could waid.

This treasonable Murder, with all its circumstances, is most clearly made out, by the Depositions of Witnессes, who also deponed of a speciall friendship after that, pretended to the said *James Bannatyne*; so that they gave him a life-rent Take<sup>6</sup> of Chapeldonald. Then they perswaded him to go out of the way to Ireland, giving him a Letter of recommendation to *Drummurphy*: And after he was there, he lacked for nothing. Frequent correspondence betwixt him and *Auchindrane* and his wyfe: Then, caused *James Cunninghame*, his seruand ther, who knew of their concealing of *William Dalrumple*, absent himself, for eschewing of tryall. Also, *the Lady Auchindrane*, for the same reason, absented herselfe.—Proven by Witnессes, that *Auld Auchindrane* would have hyred *James Pennyquick* to go to Ireland, and their to murder *Bannatyne*.—Then he wrote to *Stairs*, that because he was bruted for the slaughter of *William Dalrumple*, he was willing to tranfact with him theirof.<sup>7</sup>

<sup>1</sup> From *Fount. Abstract of Books of Adjournal*, MS. Adv. Library. It was thought proper to preserve the account given by this eminent Lawyer;—but at same time, it appears unnecessary to point out to the reader in how many particulars his *traditional* Account differs from the Record; which renders it probable that his lordship wrote from memory, or noted down the facts from reports then prevalent. <sup>2</sup> Before; ere. <sup>3</sup> One. <sup>4</sup> Appointed to meet.

<sup>5</sup> For which fact. <sup>6</sup> Tack; lease. <sup>7</sup> That is, he was willing to enter into terms of compromise with the relations of the deceased. As they were not wealthy, he considered he could, through the mediation of their Chief, the Laird of Stairs or Dalrymple, easily bribe them to silence; so as either to procure from them 'Letters of Slains,' or at all events, get them to abstain from prosecuting him and his son for the Murder.

All which are so clear evidences and manifest probations, as could hardly be expected, in so covered and crafty Murthers.

V. ILLUSTRATIONS *relative to the POPULAR SUPERSTITION of touching the Corpse of a Murdered person, as an ORDEAL or TEST for the discovery of the Innocence or Guilt of suspected Murderers.*

(1.) OPINIONS *entertained by the Ancients on the subject of the Blood.*

FROM the earliest periods of History, sacred and profane, it appears to have been the general opinion of mankind, in all Nations, that the soul, as well as the vital principle, *had their existence in the blood.* This idea was greatly strengthened by the strong and repeated testimonies afforded in the Sacred Scriptures, under the Mosaic dispensation; where it is expressly laid down, as an undeniable principle, that THE BLOOD, with the spirits therein contained, is *the seat and support of life.*<sup>1</sup> Without multiplying quotations from the Pentateuch, which are extremely numerous, it is enough for the purpose of this enquiry, to instance the frequent injunctions of Moses to the Children of Israel, *to abstain from blood.* One of the most remarkable of these passages is, '*Blood with THE LIFE thereof, which is THE BLOOD thereof, shall ye not eat;*'<sup>2</sup>—and the same injunction was repeated throughout the Law of Moses, in almost every various form, which the wisdom and sagacity of the Legislator could devise. It is not unworthy of remark, that the early Christians strictly observed this command, which had been repeated by the Apostles, to abstain from '*things strangled, and from blood.*' This Divine command having been given to the Jews, in the subordinate instance of abstaining from the blood of the lower animals, in making use of their flesh for the ordinary purpose of food, it was by no means unnatural that they should have thence concluded, that THE LIFE or vital principle resided in the blood *after Death*, even after its particles were apparently dissolved, and after the whole mass had returned into its native dust.

A similar opinion is to be found in *Lucretius*<sup>3</sup> and other profane writers, as *Empedocles*, *Critias*, &c. who held that THE SOUL *was a suffusion of blood about the heart*—and consequently, that *it is the blood itself.*<sup>4</sup> According to this opinion, *Homer* gives death the epithet, *purple*: πορφύρεος θάνατος.—*Iliad*, v. 5, 83;—*Virgil* likewise alludes to it: '*Purpuream vomit ille animam.*'—*Æneid* ix., v. 349. '*Undantoque animam diffundit in arma cruore.*'—*Æneid* x., v. ult. Nor are we without frequent instances of this in our English poets. *Milton* says of *Abel*,

'He fell, and deadly pale,

Groan'd out his soul with gushing blood diffused.'

*Sir Robert Blackmore* also has the following passage:

'Gasping he lay, and from the griesly wound  
The crimson life ebb'd out upon the ground.'

*Lee*, in the tragedy of *Nero*:

'With many a wound she made her bosom gay;  
Her wounds, like floodgates, did themselves display,  
Through which life ran in purple streams away.'

And *Cowley*, *David* 4:

'His life for ever spilt, stain'd all the grass around.'

It was likewise a very early popular opinion, among profane Greek and Latin authors, that the blood

<sup>1</sup> *Gen.* ix. 4. See also *Levit.* &c. *passim.*

<sup>2</sup> In modern times, that highly distinguished physician, *HARVEY*, the discoverer of the circulation of the blood, maintained the hypothesis, that *the blood was actually possessed of a living principle*, and that the life of the whole body is derived from it; in which opinion he was supported by the celebrated *Mr John Hunter*, and other anatomists and physicians of eminence. It would be foreign to the subject of this Notice to enter minutely into the opinions of modern writers, who are extremely divided upon the point.

<sup>3</sup> 'That they know well, the soul consists in blood.' *Creech's Lucret.* B. iii. p. 43. <sup>4</sup> '*Aristotle de Anima*, lib. I. c. 2; *Cicero*, *Tuscul.* 1; *Macrobius* on the dream of *Scipio*, lib. I. c. 14; *Tertullian* of the Soul, cap. 4.



springs naturally towards that part whence a blow is received<sup>1</sup>—and they also affirmed that the soul pursued with enmity a Murderer of the body.<sup>2</sup> In conformity with this latter idea, we find that *the blood*, according to the ancients, and especially the Jews, was figuratively, but most emphatically, represented as *crying to Heaven for vengeance!*—and that that cry could only be appeased by the shedding of the blood of the Murderer. In the powerful language of Holy Writ, the Almighty, when denouncing Cain, the first murderer, is represented as exclaiming to him, ‘*The voice of thy brother’s blood crieth unto me from the ground!*’

Accordingly, in pursuance of this sentiment, the Jews had an *Avenger of blood*, who was the next of kin to the murdered person—and whose awful, but imperious, duty it was, relentlessly to pursue the Murderer to the death.

There is no doubt that this ancient opinion of *the life being in the blood*, continued to be entertained by THE EARLY CHRISTIANS of the Western Churches of Europe, so late as the tenth century. An able writer<sup>3</sup> asserts, that ‘the Holy Church throughout the world did, in its first and purest, and even in the darker ages of the tenth century, or later, observe and keep the precept to abstain from eating blood—and that the Churches of the East and of the South, to this day, reproach the Western Church with the violation of this Apostolical constitution.’ On this point it may likewise be remarked, that *Tertullian* is said to have written in defence of the doctrine, that the soul was *indissolubly* connected with the blood.

From these few scattered hints, the application of the doctrine to the instance in question appears to be natural and easy. The *soul* of a murdered man was considered to linger about *the body* until the Murderer could be convicted, and his blood shed to appease the *manes* of the deceased. According to the remains of this superstitious principle, which are still to be traced in modern times, in various countries, but especially in Great Britain and Ireland, and in Germany, &c., the prevailing idea was, that (even after the blood was dried up and the corpse decayed and mouldered into a mere skeleton, nay, though disjointed into separate bones and fragments) the TOUCH OR PRESENCE of the MURDERER would act upon these decayed relics, and that *the life* or blood would, upon Appeal being made, return to manifest the Murder.

A very curious instance of this branch of the superstition has been preserved by Sir WALTER SCOTT,<sup>4</sup> who, in an early work, relates the circumstances in his usual felicitous manner:—‘Two young men, going a-fishing in the river Yarrow, fell out; and so high ran the quarrel, that the one, in a fit of passion, stabbed the other to the heart with a fish-spear. Astonished at the rash act, he hesitated whether to fly, give himself up to justice, or conceal the crime; and, in the end, fixed on the latter expedient, burying the body of his friend very deep in the Sands. As the meeting had been accidental, he was never suspected, although a visible change was observed in his behaviour, from gaiety to a settled melancholy. Time passed on, for the space of *fifty years*; when a smith, fishing near the same place, discovered an uncommon and curious *bone*, which he put in his pocket, and afterwards showed to some people in his smithy. The Murderer being present, now an old white-headed man, leaning on his staff, desired a sight of the little bone. But how horrible was the issue! *No sooner had he touched it, than it streamed with purple blood!* Being told where it was found, he confessed the crime, was condemned, but was prevented, by death, from suffering the punishment due to his offence.’

## (2.) INSTITUTION of the BAHR-RECHT or LAW OF THE BIER, and FORM of the CEREMONIAL.

THERE cannot be a doubt that, from very early times, TESTS or ORDEALS were instituted by the common consent of almost all Nations, for the detection of hidden and atrocious cases of Murder, which had baffled all the ordinary methods of judicial scrutiny. The mysterious doctrines taught by the Metaphysicians of the dark ages, on the subject of an *universal sympathy* and *antipathy* existing in nature, would lead those who believed in their theories to approve of such an obvious Test as that

<sup>1</sup> See quotation from *Lucretius*, ‘*Idque petit corpus*,’ &c. in *Del Rio’s* and *De L’Ancre’s* notices. <sup>2</sup> *Plato*, &c.  
<sup>3</sup> Dr Deacon. <sup>4</sup> *Minstrelsy of the Scottish Border*, II. 425.

of compelling suspected persons to come forward and *touch the murdered corpse*—and accordingly, the *BAHR-RECHT*, or *LAW OF THE BIER*, was early recognized, even by Judicial authority, throughout all civilized Europe. It is extremely probable, that such a striking ceremonial as that just referred to, would first be seized upon by the Clergy; for it would tend, in a great measure, to strengthen their own hands, while it would also promote the interests of ‘Holy Mother Church;’ and, at the same time, the almost miraculous discovery of secret crimes would directly lead a superstitious and ignorant people to give God the glory, and to ascribe to His immediate presence and intervention, the detection and subsequent punishment of the Murderer.

Perhaps it may be premised, that, properly speaking, the recognized ORDEALS or Appeals to the immediate interposition of God, being what was termed the *Vulgaris Purgatio*, or *Judicium Dei*, were the *Judicium Ferri callidi*, *Aquæ, et Ignis*, i. e. Trials by RED-HOT IRON, FIRE, and WATER. In process of time, the JUDICIAL COMBAT, the ORDEAL OF THE CROSS,<sup>1</sup> and the CROSSED,<sup>2</sup> or consecrated bread and cheese, were added to the other Appeals. In the East, no less than nine Ordeals are still in use, viz. the Balance, the Fire-ordeal, the Water-ordeal, the Poison-ordeal, Trial by the Cosha or three draughts of consecrated water, the Rice-ordeal, the Ordeal by hot oil, the Ordeal by a red-hot Iron ball or lance-head, the Ordeal by Dharmarch, or drawing forth from a jar of certain Images, cloth, &c. Amongst all these various forms, the touching of a Murdered corpse is not reckoned as a proper Ordeal; but, as will be immediately shown, it was adopted and recognized as a Test, or popular Ordeal, both on the authority of the Church and of the Criminal Tribunals of civilized Europe.

In regard to THE FORM OF THE CEREMONIAL, it must have been extremely imposing; and especially, when regulated by the Church, who increased the otherwise solemn spectacle by Processions, the exhibition of their holy relics, lighted tapers, and all the usual machinery of the Romish Church, was admirably calculated to have inspired the guilty mind of the already conscience-struck Criminal with awe and terror, and eventually compel him to confess his enormous crimes, in the face of the assembly.

The mangled body of the murdered person was stretched upon a bier, covered with a fair linen cloth, and placed before the High-Altar; when, after a procession of Priests hymning an anthem, the suspected person was conducted forward to the High-Altar, where, after performing his devotions, the face of the deceased was uncovered before him. He was then called upon to place one hand upon the mortal wound, and often the other upon the mouth of the deceased—and, in that posture, to invoke Heaven to attest his innocence—at the same time calling down its curses and instant vengeance on his head, should he, after such asseverations, be guilty. If, on his approaching the body, or during the above ceremo-

<sup>1</sup> Two pieces of wood were prepared exactly like each other; but on one of them was the form of the Cross. Both being wrapped up in fine wool, were laid on the altar, and after prayers, &c., a Priest approached the Altar, and took up one piece, which if it proved to be that on which the Cross was cut, the accused was found innocent. Other solemnities, unnecessary to be noted, also took place.

<sup>2</sup> This primitive Ordeal was thus performed. A piece of barley bread and a piece of cheese were laid upon the Altar; and, after various Prayers, at length the Priest fervently petitioned, that ‘if the party accused was guilty, God would send his angel *Gabriel* to stop his throat, that he might not be able to swallow that food.’ This ended, the accused advanced to the Altar, took up the bread and cheese, and commenced eating. If he swallowed deliberately and freely, he was declared innocent—but if he could not swallow them, he was pronounced guilty! This coincides with the Eastern Ordeal of the Rice, &c., and originates in this well-known circumstance, that persons labouring under violent mental excitement, such as accusation of a crime of which they are conscious of guilt, are, in a great measure, deprived of the natural supply of *saliva* necessary for the process of mastication and deglutition; and, consequently, it would generally happen, that the strong mental struggle under which the accused was suffering, would be the means of preventing his fulfilling, what, at first sight, appears so foolish and simple a Test. It is hardly necessary to remind the reader, that barley bread which has been baked for several hours, requires a considerable quantity of liquid to enable one to swallow it. The pungency of the cheese would act as a sufficient stimulant to assist an innocent person who was required to undergo this Ordeal; but would merely increase the confusion and hasten the discomfiture of one whose mouth was already parched with conscious fear and remorse. It was almost universally noticed, that the guilty greedily snatched large mouthfuls, under the mistaken idea of getting sooner over with it!—and that usually a second or a third attempt to swallow produced cough and constant choking, so as to force them to desist, and either to confess their crime, or permit sentence to be passed against them in silence. On the other hand, innocent persons leisurely ate the portion given them, with little or no inconvenience. It will be found, upon examination, that many similar Ordeals and rites proceeded on the like minute knowledge of natural causes.



nial, the blood should gush from the mouth, nostrils, or wound—this was held sufficient evidence of his guilt.

The reader may here be reminded, that the Ceremony, thus shortly and imperfectly described, was only reserved for *extreme cases*, where all legal proof had failed; and where there was strong circumstantial evidence to implicate the party accused, either as ‘guilty actor, art, or part’ of the Murder. It is impossible to state precisely what Nation first practised this Ordeal,—but it was obviously founded on a deep knowledge of human nature. Few even of the most hardened and practised villains could have undergone such a Test unmoved; and when it is considered that the act was performed in the presence of the Judges, Clergy, and the accusers, it would generally be easy to distinguish between the confusion of an innocent person accused of the crime, and the terror and conscience-struck countenance and demeanour of the Murderer; and even should he have nerve enough to brave the worst part of this severe Ordeal, his very confidence and studied boldness would prove the means of his detection. The accidental bleeding of the corpse, also, might overthrow the assumed courage of the Murderer,—and, in fact, was often the means of producing the most abject Confession of the crime; and compelled the recreant felon to utter cries for mercy, which even *the torture* had failed to extort.

Nothing can so well illustrate this remarkable Ceremonial, as the following powerful passage from the pen of the greatest living writer of this age, who has bestowed much attention on such subjects; and has done more towards the elucidation of the manners, customs, and superstitions of this country than any preceding author. ‘The eastern window, richly and variously painted, streamed down a torrent of chequered light upon the high altar. On the bier placed before it were stretched the mortal remains of the murdered man; his arms folded on his breast, and his palms joined together, with the fingers pointed upwards, as if the senseless clay was itself appealing to Heaven for vengeance against those who had violently divorced the immortal spirit from its mangled tenement. . . . . The face was bare, as were the breast and arms. The rest of the corpse was shrouded in a winding-sheet of the finest linen, so that, if the blood should flow from any place which was covered, it could not fail to be instantly manifest. . . . . He paused before the Bier, and his voice faltered, as he swore by all that was created in six days and six nights, by Heaven, by Hell, by his part of Paradise, and by the God and author of all, that he was free and sackless of the bloody deed done upon the Corpse before which he stood, and on whose breast he made the sign of the Cross, in evidence of the Appeal. No consequences ensued. The body remained stiff, as before. The curdled wounds gave no sign of blood.’<sup>1</sup>

Another writer, to whom the Antiquities and History of England has been vastly indebted for the large stores of information rescued by him from sources which may be termed as generally inaccessible, even to the great bulk of antiquaries, has, in a posthumous work, professedly undertaken for the purpose of illustrating the Superstitious observance now under consideration, embodied the result of his enquiries in the following striking passage.<sup>2</sup>

‘BARON. At thy request th’ Ordeal is prepared :  
I grant thee this appeal ! What, though it claims  
With me no faith ? By custom authorized,  
Let it be made. At least, this good results,  
We better satisfy the common mind.

BENEDICT. Experience, good my Lord, has often proved

<sup>1</sup> Sir Walter Scott’s *Fair Maid of Perth*, vol. ii. p. 306.      <sup>2</sup> Strutt’s *Test of Guilt, or Traits of Ancient Superstition*; Quarto, Lond. 1808, p. 79;—a posthumous work of the celebrated English Antiquary, Joseph Strutt, published by his son. Unfortunately Mr Strutt did not live to compose the notes which he had intended to prepare illustrative of this remarkable subject, which would have put the Public in possession of all that was worthy of knowing about it. As it is, the Editor has done his best to pave the way, by providing materials for some abler and more successful Antiquary doing justice to such an enquiry, in a regular treatise.

That Providence, in such Appeals as these,  
Has manifested suddenly its power,  
And struck the guilty mind with sharp remorse—  
Enforced confession—or abash'd the heart,  
That, coward-like, th' offender has shrunk back  
Confused, and manifested signs of guilt  
Too plain to be mistaken.

BAR. I, indeed,  
Have heard such tales.—Well, Father, then proceed.

BEN. Before the holy Altar lies the corpse—  
Here let th' accused come—and come with him  
All his accusers—no exception made:  
They all must touch the body. 'Tis with us  
To scrutinize with care each countenance—  
For then 'twill be an index of the heart,  
Unless the heart be callous to all good,  
Devoid of feeling, nay, be changed to stone.

BAR. Proceed—and may success clear up my doubt!  
But miracles, I ween, are out of date.

BEN. Let young Fitzhugh approach—and bring with him  
All his accusers.—Now begin the rites.

*[A procession of priests, singing a dirge—and when ranged on both sides of the altar, conclude with a chorus.]*

BEN. HENRY FITZHUGH, come forward!—Touch the corpse—  
May Holy Saints protect the innocent!

HENRY. Thy mangled body, Dorothy, I touch—  
And make, with all my soul, Appeal to Heaven!  
Ah! could those ghastly wounds bot speak, they would  
Proclaim mine innocence!—But I submit.

BEN. Pass on, my son.—You see, no change appears—

*[Aside to the BARON.]*

Come forward, his accusers—and first, thou,

*[To GRIM.]*

Most loud against him—touch, and make Appeal!

GRIM. Why should I touch her? No! I will not yield  
To such fond Superstition!—I stand not  
Within the pale of accusation!—No!

BEN. What then can hinder thee to make Appeal?  
If thou be guiltless, Heaven is thy friend!

GRIM. Or friend or foe, I will not make Appeal!

BEN. Thou art afraid.—Thy conscience is not clear!

GRIM. 'Tis false!—I'm innocent!—Well, if I must  
Join in the folly—What is to be done?

BEN. Look up to Heav'n, and touch the breathless corpse.

*[GRIM strikes his hand down suddenly—and then starts from the body.]*

RALPH. See! Where Grim touch'd, the blood has gush'd afresh!—

.....



Letter Earl of Cassillis to his Brother  
to kill Auchindrain

Mye wile of taffee and comode of mye self  
we feare some of our brotheres of the house of  
at his delys this tye lair of sufficiencye by  
of me see much and a thankfull puzur to my  
and yme of ye peace of mye friende and  
biddyn to be 6 ye by in and of no respone  
and insonfess to be by being my respone  
puzur immediate of mye smything of the  
and / at some some we respone some insonf  
sats, we see our to be the some gentillmen of  
fir velle as sally insonf and and  
we obly we vone some insonf and  
at myeble we see day of february 1602

John earle of Cassillis

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(3.) OPINIONS *relative to the abstract question, whether the CORPSE of a Murdered person BLEEDS on the touch of THE MURDERER? And the causes and consequences of such an exhibition.*

It is the Editor's conviction, that the most satisfactory, as well as the most faithful, manner of treating matters of an abstruse and forgotten description, such as the Superstition under examination, is, to afford to the reader miscellaneous extracts from writers of various ages and countries, who have commented on the subject. Besides being the plan laid down at the outset of this work, this mode enables the reader to examine their theories and conclusions in the very language of the respective authors themselves, many of whose works are now of rare occurrence, and are very seldom consulted, excepting for the explanation of similar facts.

In the preceding remarks it has been shown that the ancient opinion was, that the Soul of a Murdered person lingered about the body, until appeased by the discovery of the foul deed, and by the subsequent shedding of the Murderer's blood. It is obvious, therefore, that on the original institution of this Test or Ordeal, during the earlier and in the dark ages, the purpose of requiring the accused to prove his innocence *before the Corpse*, originated in the idea and belief, that by the Murderer's approach, and especially by his polluted *touch*, the Soul was excited to an instant manifestation of its indignation, *by appearing in the form in which it was supposed to subsist, viz. in that of blood.*

(i.) To commence, then, with the examples alluded to, *Delrio*,<sup>1</sup> who is the great authority on such subjects, remarks, 'Cadaver coram occifore, propter præcedentem contactum, sanguinem folet fundere. Refp. Varias reddi causas, quidam miraculo tribuunt; quidam casui, quo factum fit aliquando, ut cadaver tum cruorem mitteret, cum præfens erat reus Homicidii. Recensui alio loco multas hac de re sententias et auctores laudavi:<sup>2</sup> Neque adhuc dum video, quid solidius adferatur illa antipathia, ex vehementi odio occisi in occiforem; quod qualitatem latentem et arcanam imprefferit corpori, cum cadavere permanentem: Et huc referendum illud *Lucretii*:

Idque petit corpus mens unde est faucia amore.

Namque homines plerumque cadunt in vulnus, et illam

Emitat in partem sanguis, unde icimur ictu.

Etfi cominus est, hostem ruber occupat horror!

Ut fit vivi amantis et mortui hostis comparatio.<sup>3</sup>—In treating of ORDEAL BY WATER he thus expresses himself:—'Octavum argumentum, teste *Binsfeldio*, Indicium homicidii ex cadauere sanguinante coram occifore petatum, *videtur soli Divino miraculo adscribendum*: Ergo sentiendum similiter de fagis supernatantibus? Respondeo, quid de antecedente sentiam, hoc opere non semel me indicasse; sed esto, fit adscribendum *miraculo*: An eadem ratio huius probæ? Dicis non probas. Ego qui nego discrimen dabo. Nulla in sanguis illa missione causa fubeft suspicionis de pacto cum Dæmone; nihil illic miscetur superstitiofi: non queritur illic a Deo signum; et proinde nec Deus tentatur,' &c.<sup>4</sup>

(ii.) He also mentions in another place:<sup>5</sup>—'Ex communi opinione Doctorum et Judicum, si cadaver positum coram reo sanguinem emittere inciperet vel ex vulnere, vel ex ore, vel ex naribus, hoc indicium quidam magni faciunt, et de ejus cum alias a me disputatum hoc eodem opere. Ego istud indicium nunquam existimarem sufficere ad torturam, quicquid graves doctores quidam in contrarium dixerint.<sup>6</sup> Moveor, quia verè est indicium remotum, et quasi prodigiosum, de cujus cum non constat, et incertissimum, quod nullo jure vel causâ juridicè probatâ nobis constat, et tortura maximi est prejudicii. Quare nisi accedant fama, minæ, inimicitia, vel simile adminiculum, nunquam ad torturam ex

<sup>1</sup> Disquisitionum Magicarum libri sex, &c. *Martini Delrio*, Edit., *Venetiis*, 1606. Lib. i. cap. 3, q. 40. <sup>2</sup> Comment. in Octaviam Senecæ, ver. 127. <sup>3</sup> Sic Lemnius, lib. 2; De occultis naturæ miraculis, cap. 7; Langius, epist.

40. Pictorius, Dialog. 9; Gemma, lib. 1; De caracterism, cap. 6. <sup>4</sup> *Delrio*, Lib. iv. cap. iv. quæst. v. de

proba aquæ frigidæ, &c. <sup>5</sup> *Delrio*, lib. v. p. 25. <sup>6</sup> Post *Ang.* et *Parid.* *Boerius* decis. 166; *Blanchus* de ind.

ad l. fin. de quæst. n. 408; *Carrer.* tract. de indic. ; Indi. 27, n. 2; *Novel.* regu. 184; *Menoc.* de arb. cas. 270. n. 16; et de præsu. l. 1, q. 89, n. 128; et alii.

hoc indicio Deum timenti judici procedendum, affirmavit *Farina*. nu. 156 post Ant. Gomez, lii. fufé et prudenter hoc discutientem d tom. 3 cap. 13 a num. 15, et *Marfil*. in pract. et diligenter num. 181. *Mafcard* et alios.

(iii.) ANOTHER author, who was Counsellor of State to King Louis XIII of France, makes the following interesting observations, under the Title,—‘DES ATTOUACHEMENS DES HOMMES : *Sçavoir si vn Meurtrier s’approchant, ou touchant le corps d’un homme qu’il a meurtry, en peut faire reiaillir du sang.*—’ JE commenceray par ce traict commun, que le Corps d’un homme meurtry, estant touché ou approché de Meurtrier, fait reiaillir du sang, tesmoignant qu’il entre aussi-tost en accusation, et crie vengeance contre luy, voulant comme tirer à compassion tous ceux qui le voyent, et comme les esmouuoir à lay en faire auoir raison. *Theodoric* vit dans vne escaille ou tect de poisson, qui luy fut seruy à table, la teste de *Symmachus*, qu’il avoit tué, laquelle le menaçoit, versant du sang en quantité, dequoy il eut si grande frayeur, qu’il en mourut bien-tost apres. Et ne sçay si ce qu’on dit y est nécessaire qu’il faut que ce soit vn corps fraichement assailliné. Veu qu’un homme d’honneur, faisant le procez à vn Meurtrier, m’a asseuré, que, l’ayant approché du corps qu’il nioit auoir tué, ietta du sang par le nez assez abondamment, apres le seizième iour de l’homicide commis. Sur quoy *Del-Rio* dit, qu’il ne voit aucune raison plus solide que celle de l’antipathie qui est entre le Meurtrey et le Meurtrier, et leur haine, la quelle aggrave certaine qualité latente et cachée, et la tient imprimée dans le corps demeurant encore avec le cadaver; employant là-dessus ces vers de *Lucrece* : “ Idque petit,” &c.<sup>1</sup> Comme s’il auoit quelque conuenance et raport, entre vn amy viuant, et vn ennemy mort !

‘ Mais la verité est, qu’on ne sçauroit colliger de là nulle sorte de charme, causé par la veuë ou par l’attouchement, vn corps mort estant bien d’autre nature, que celui d’un homme viuant. Et de dire que c’est quelque dissension cachée, qui tesmoigne l’inimitié qui est entre eux, laquelle ce corps ainsi outré, fait encore paroistre apres la mort, le declarant par ceste emission de sang. On ne sçauroit rendre nulle raison valable de ceste dissension. Et se peut dire, qu’aucuns ont auancé et tenu ceste experience pour veritable, pour l’auoir parauanture essayée ou veuë vne seule fois et par cas fortuit. Car il se peut faire que le corps d’un homme mort, qui a demeuré seize iours gisant en repos en quelque lieu, estant remué pour souffrir quelque visite de Chirurgiens, esmouuera par ce mouuement le sang qui s’est retiré és veines, et le fera fortir en abondance. Mais cela n’arriuera pas plustost en la presence du Meurtrier, que du Juge qui luy fait le procez, ou deuant quelqu’autre que ce soit.’<sup>2</sup>

(iv.) THROUGH the kindness of DR SAMUEL HIBBERT, late Secretary to the Society of Antiquaries of Scotland, F.R.S.E., &c. whose philosophical, geological, and antiquarian researches have justly entitled him to a very conspicuous rank in the literature of his country, the Editor has an opportunity of giving the following interesting extract from a rare volume in his Collection, entitled,—‘*Physiologia Epicuro-Gassendo-Charltoniana* : or a Fabrick of Science Natural, upon the Hypothesis of Atoms, &c. &c. By Dr Walter Charleton, Physician to the late Charles, Monarch of Great Britain.’ London, 1654. In this singular treatise, the author, in discussing ‘the cause of the fresh cruentation of the Carcass of a Murthered man, at the presence and touch of the Homicide,’ thus expresses his opinion :—‘THE cruentation (and, according to some reports, the opening of the eyes<sup>3</sup>) of the Carcass of a Murthered man at the presence and touch of the Homicide, is, in truth, the noblest of antipathies : And scarce any writer of the secrets or miracles of nature, hath omitted the consideration thereof. This Life in Death, Revenge of the Grave, or loud language of silent Corruption, many venerable and Christian Philosophers have accounted wholly miraculous or supernatural, as ordained and effected by the just judgement of God for the detection and punishment of the inhumane Assailline !

<sup>1</sup> The same verses as in *Delrio*’s quotation are here repeated. <sup>2</sup> DR L’ANCRE, Conseiller du Roy, Lud. XIII. en son Conseil d’Estat, sur l’Incredulité et Mescreance du Sortilege. Quarto, Paris, 1622, fol. 153. The curious reader is likewise referred to the following old authorities,—*Vair*, l. 2, c. 10, De Fascino. *Del Rio*, de Contactu. *Lemnius*, de Occultis naturæ miraculis, cap. 7, &c. <sup>3</sup> See the Case of *Jane Norkott*, afterwards quoted, p. 192.



And, lest we should seem too forward to expunge from the mind of any man the belief of that opinion, which to some may be a more powerful argument than the express command of God, to deter them from committing so horrible and execrable a crime as Murder, we shall so far concur with them as to conceive this effect to be Divine only in the *institution*, but merely natural in the *production* or *immediate causes*. Because the appearance seems not to transcend the capacity of natural means, and the whole syndrome and series of its causes may be thus explained. It is an opinion highly consentaneous, that in every vehement passion there is formed a certain idea, as well of the object whereupon the imagination is most intent, as of the good or evil connected unto, and expected from, that object; and that this idea is, as it were, impressed, by a kind of inexplicable sigillation upon the spirits, at the same instant the mind determineth to will the present prosecution or avoidance of the object; so that, by the mediation of the spirits (those angels of the mind), the same idea is transmitted to the *blood*, and, through the arteries, diffused into all parts of the body, as well into the nerves and muscles, which are inservient to such voluntary motions as are requisite to the execution of the decrees and mandates of the will concerning the prosecution or avoidance of the object. This being so, we may conceive that the phanfy of the person assaulted by an assassin, having formed an idea of hatred, opposition, and revenge; and the same being characterized upon the spirits, and by them diffused through the blood; though the blood become much less fluid in the veins after death, by reason the vital influence and pulfick faculty of the heart, which animated and circulated it, is extinct, yet, because at the presence of the Murderer, there issue from the pores of his body such subtle emanations as are consimilar to those which were emitted from him at the time he strove with, overcame, and killed the patient; and those emanations entering the dead body, doe cause a fresh commotion in the blood, remaining yet somewhat fluid in its veins, and, as it were, renew the former colluctation or duell betwixt the yet wholly uncondensed spirits of the slain and those of the Homicide; therefore is it that the blood, suffering an æstuation, flows up and down in the veins to seek some vent or Sallyport, and finding none so open as in *that part wherein the wound was made*, it issues forth from thence! And where the Murthered person is destroyed by strangulation, suffocation, or the like unbloody death, so that there is no manifest solution of continuity in the skin or other exterior parts of the body, in that case it hath been observed that the carcass bleeds at the *mouth* or *nose*, or both; and this only because in all vehement strivings, and especially in colluctation for life, the spirits and blood flow most plentifully into the arteries and veins of the head, as is visible by the great redness of the eyes and face of every man that fights; and where the blood fixeth in most plenty, there will be the greatest tumult, æstuation, and commotion when it is ferment, agitated, and again set afloat, by the Discordant Effluvia emitted from the body of the neer approaching or touching Murtherer—and, consequently, there must the vessels suffer the greatest strefs, distension, and disruption, or apertion of their orifices.

This passage fully explains the extraordinary opinions which were formerly entertained by the most eminent physicians, in England, during the reign of King Charles II.

(v.) DR HIBBERT likewise transmitted the following extract from the well-known work, entitled, 'Ludovici Lavateri Theologii eximii de Spectris, Lemuribus, variisque præfagitionibus Tractatus vere aureus.'—'Aliquis à latronibus interceptus fuit; accedentibus latronibus ad cadaver, *statim cœpit recentem sanguinem stillare*, aut aliis signis præsentiam latronis significari. *Plato*, 1, Legum 1,<sup>2</sup> tradit eorum qui occisi sunt animas, sæpe interfectorum animas hostiliter insequitendi. *Marcellus Ficinus* fortè contingere putat, ut occisi hominis vulnus etiam jacente cadavere in eum qui vulneraverat, si modò ille cominus inflet, vulnus ipsum inspiciens, sanguinem rursus ejiciat, quod quidem evenire *Lucretius* affirmat, et Judices observarint. *Dido* apud *Virg.* minetur *Æneæ*: Et cum frigida mors anima se duxerit artus, omnibus umbra locis adero; dabis, improbe, pænas.—Similis locus est apud *Horat.* et alios

<sup>1</sup> Lugduni Batav. Apud Henricum Verbiest. Anno 1659.

<sup>2</sup> Lib. xvi. cap. 5, De Animorum Immort.

Poetas. Latro affedit mensæ, everso poculo, vinum per solidum lignum mensæ manavit omnium magna admiratione.'

To conclude these Notices, the Editor, without offering farther observations on this branch of the subject, presents a variety of other extracts, all bearing on the same point, and tending to show the universal concurrence of Lawyers, Divines, Historians, Physicians, and Philosophers, in the ancient opinions already related as obtaining so general a belief over the civilized world, and especially in Europe.

(vi.) 'IN a secret Murther, if the dead carkasse be at any time thereafter handled by the Murtherer, it will gush out of blood; as if the blood were crying to Heaven for revenge of the Murtherer.'—*King James VI, Dæmonologie*, p. 136.

(vii.) 'I HAVE heard, by credible report, that the wound of a man murthered, renewing bleeding at the presence of a dear friend or of a mortal enemy. Divers also write, that if one pass by a murthered body (though unknown), he shall be stricken with fear, and feel in himself some alteration, by nature.'—*Scol's Discovery of Witchcraft*, p. 170.

(viii.) 'WHO can allege any certaine and firme reason, why the blood runnes out of the wounds of a man mured, long after the Murder committed, if the Murderer be brought before the dead bodie? Galeotus Martius, Jeronymus Maggius, Marfilius Ficinus, Valleriola, Joubert, and others, have offered to say something thereof.—Who (I pray you) can shew why, if a desperat bodie hang himsele, suddenlie there arise tempests and whirlewinds in the aire?'—*Living Librarie*, fol. Lond. 1621, p. 283.

(ix.) 'WHY dead bodies bleed in the presence of their Murtherers? Because nothing is so hidden from Justice as Murder, they use not only torments of the body, but also the torture of the soule, to which its passions doe deliver it over, of which *Feare* discovering itselke more than the rest, the Judges have forgotten nothing that may make the suspected person fearefull. For, besides their interrogatories, confronting him with witneses, sterne lookes, and bringing before him the Instruments of Torture, as if they were ready to make him feele them, they perswade him that a carkasse BLEEDS in the presence of his Murtherers, because dead bodies being removed doe often bleed; and then, he whose conscience is tainted with the *synterefs* of the fact, is troubled in such sort, that by his mouth or gesture he often bewrayes his own guiltinesse, as not having his first motions in his owne power.'—*Five Philos. quest. answered*, 4to, Lond. 1653.

(x.) In the *Athenian Oracle*, I. 106, there is inserted a particular relation of a corpse falling a-bleeding at the approach of persons supposed to have in any way occasioned its death. The phenomenon is thus endeavoured to be accounted for. 'The blood is congealed in the body for two or three days, and then becomes liquid again, in its tendency to corruption. The air being heated by many persons coming about the body, is the same thing to it as motion is. 'Tis observed that dead bodies will bleed in a concourse of people, when Murderers are absent as well as present; yet legislators have thought fit to authorize it, and use this trial, as an argument at least, to frighten, though 'tis no conclusive one to condemn them.' *Vid.* also p. 193.

(xi.) 'IT is a thing known, yea, by many undeniable instances witnessed, that marvellous discovery of concealed Murder, by the bleeding of the body, upon the touch of the Murderer! I confess, it

<sup>1</sup> 'What is it that should make men's guilt so legible oft in their countenance, even when they study most to conceal it; and thus cause them give their tongue the lie, yea, bewray to bystanders whether they will or not some



should be hard to assert the lawful and warrantable practice of such an Appeal to so extraordinary and stupendous a sign from the Lord, where Scripture goeth not clearly before us. But, on the other hand, such a thing so surely tried for such an end, and in the case where all ordinary means of discovery have been wanting, I think, calleth us to a serious remark thereof, while it so visibly seemeth to witness his hand who doth make inquisition for blood!

(xii.) SIR KENELM DIGBY takes it for granted that a Corpse often bleeds on such occasions—and thus accounts for the phenomenon. ‘And to this cause, peradventure, may be reduced the strange effect which is frequently seen in England, when, *at the approach of the Murderer, the slain body suddenly bleedeth afresh*. For certainly the Souls of them that are treacherously Murdered by surprise, use to leave their bodies with extreme unwillingness, and with vehement indignation against them that force them to so unprovided and abhorred a passage! That Soul, then, to wreak its evil talent against the hated Murderer, and to draw a just and desired revenge upon his head, would do all it can to manifest the author of the fact! To *speak* it cannot—for in itself it wanteth the organs of voice; and those it is parted from are now grown too heavy, and are too benumbed, for to give motion unto: Yet some change it desireth to make in the body, which it hath so vehement inclination to; and therefore is the aptest for it to work upon. It must then endeavour to cause a motion in the subtlest and most fluid parts (and consequently the most moveable ones) of it. This can be nothing but THE BLOOD, which then being violently moved, *must needs gush out at those places where it findeth issue!*’

(xiii.) EXTRACT from a Letter, the Rev. H. Cross, Caithness, Jun. 11, 1712, to the Rev. Robert Wodrow.<sup>2</sup> ‘Some Murthers in this cuntry have been discovered, *by causeing suspected persons touch the deid corps*; which *upon their touching have immediatly bled*; wherupon some have confessed guilt, and have been executed. I cannot tak up time in telling the particular circumstances thereof.’

(xiv.) MR BURNETT,<sup>3</sup> in treating of presumptive evidence, remarks, that ‘in various Trials for Murder, we find the notion of *the corpse bleeding, if touched by the Murderer*, a circumstance founded on. In *Stewart Abercrombie’s Case*,<sup>4</sup> we see it stated, in the Information for the prisoner, as a circumstance in his favour, that he had, without fear or dread, gone and touched the body of the person murdered. And in the Case of *Howatson*,<sup>5</sup> before Lord Justice-Clerk Cockburn, we find it stated and insisted on as a strong circumstance of suspicion against him, *that he had refused to go to the lifting of the corpse*. This even is stated as one of the circumstances in the Interlocutor of relevancy; and perhaps rightly so, on the supposition of *the popular belief of THE MURDERER’S TOUCHING THE CORPSE*.’

(4.) PARTICULAR INSTANCES *where the CORPSES of Murdered Persons have been TOUCHED, as a TEST OF GUILT—REMARKABLE CRIMINAL TRIALS, in which this circumstance was founded on—THE OPINIONS OF LAWYERS, &c.*

(i.) THE earliest recorded notice which the Editor has been able to find, in British History, of this superstitious custom, is in Buchanan’s History of Scotland;<sup>6</sup> who relates, that, in A.D. 972, after the atrocious Murder of KING DUFFUS<sup>7</sup> by the assassins hired by Donald, Governor of the Castle of Forres, they ‘carried him out so cunningly a back way, that not so much as a drop of blood appeared,’

secret trouble and sore they have within? Doth it not clearly show the power of Conscience, which hath such authority on men, that without violence or constraint from others, doth even force them to confess the truth, and supply the room of witnesses.’—*Fleming’s Fulfilling of the Scripture*, 3d edit. Glasg. 1681.

<sup>1</sup> *Ibid.* <sup>2</sup> WODROW MSS. Orig. Letters. Quarto, XIX. ‘Remarkable Providences.’ Adv. Library, Edinburgh. No traces can be had of the particular instances to which the Rev. Gentleman alludes. They would doubtless prove of much interest, could they be still discovered. <sup>3</sup> *Burnett on Crimes*, p. 529. (Note.) <sup>4</sup> Jan. and Feb. 1718. <sup>5</sup> James Howatson, tried for Murder, at Dumfries, May 1727. <sup>6</sup> *Buchanan’s History of Scotland*, Ed. 1762, i. 247. <sup>7</sup> Son of King Malcolm I. He was murdered A.D. 972.

&c.—‘ The executioners of that bloody fact were sent out of the way by Donald ; because there is an opinion, *received from our ancestors*, which as yet obtains amongst the vulgar, *That BLOOD will issue from a dead body, many days after the party's being murdered, IF THE MURDERER BE PRESENT ; just as if the fact had been newly committed.*’ This takes it for granted, that the understanding was, that *the TOUCHING of the corpse* must have been infinitely more available, towards the discovery of the Murderer.

(ii.) RAPIN<sup>1</sup> records a circumstance, as having occurred at the interment of KING HENRY II. of England, A.D. 1189. That monarch having fallen sick at *Chinon*, caused himself to be carried into the Church, before the Altar ; where, after confessing himself, and expressing repentance, he expired. ‘ His corpse was removed to Font-Evrand, in Anjou, where he was buried, according to his own order. An extraordinary accident rendered the funeral of his body very remarkable. His son RICHARD (*Cœur de Lion*) coming to meet the funeral pomp, in order to attend his father to his grave, upon his approach THE BLOOD in great abundance gushed out of the mouth and nostrils of the corpse ! RICHARD, though naturally very hard hearted, was so moved at this sight, that he burst out into tears, and openly accused himself of being the occasion of his father's death.’ *Hume*<sup>2</sup> adds, that ‘ he exclaimed, agreeably to a vulgar SUPERSTITION, that he was his father's MURDERER !’

(iii.) BUT, without attempting too laborious an investigation of our early Historians and Chroniclers on so insulated a point, it is enough for our purposes to preserve the memory of such Cases as have been peculiarly striking, and which have occurred nearer to our own times. Accordingly, one of the most remarkable instances of *Touching* as a Test of Murder,<sup>3</sup> is the Case of the Murder of JOHAN NORKOTT, wife of Arthur Norkott, the incidents of which were fortunately preserved amongst the papers of *Sir John Maynard*, Sergeant at Law,<sup>4</sup> and afterwards one of the Lord Commissioners of the Great Seal of England, &c. who noted the particulars at the Trial, at the bar of the King's Bench, 4th Car. I. (1628.) This eminent Lawyer's Notes are followed here, as closely as possible, in his own words.

‘ *Johan Norkott* having been murdered, the question was, How she had come by her death ? The Coroner's Inquest, on view of the body, and Depositions of *Mary Norkott*, *John Okeman*, and *Agnes* his wife, inclined to find JOHAN NORKOTT *Felo de se* ;—for the evidence persuaded the Coroner and Jury that she was found dead in her bed, the knife sticking in the floor, and her throat cut—that the night before, she went to bed with her child, her husband being absent—and that no other person, after she had gone to bed, came into the house—the Examinants lying in the outer room, and they must needs have seen or known if any stranger had come in. Whereupon the Jury gave up to the Coroner their Verdict, that she was *Felo de se*.

‘ But afterwards, upon rumour among the neighbourhood, and their own observation of a variety of circumstances, which manifested, that she did not, nor, according to those circumstances, could possibly murder herself—the Jury, whose Verdict was not yet drawn into form by the Coroner, desired that the Body, which had been buried, might be taken up out of the grave. The Coroner assented to their desire ; and THIRTY DAYS after her death, she was taken up, in presence of the Jury and a great concourse of people ; and, in consequence of what transpired, the Jury altered their former Verdict.

‘ The persons accused were tried at *Hertford Assizes*, and Acquitted ; but so much against the Evidence, that *Judge Harvey* expressed his opinion, that it were better an Appeal were brought, than so foul a murder should escape unpunished.

<sup>1</sup> Rapin, Fol. Lond. 1784, i. 221.

<sup>2</sup> Hume's Hist. of England, 8vo. Edin. 1805, i. 484. See also *Bened.*

*Abb.*, p. 547. *Brompton*, p. 1151. *Mat. Paris*, p. 107.

<sup>3</sup> See also *Gent. Mag.* (Sep. 1731,) i. 395. *Ellis's*

*Brand's Popular Antiquities*, ii. 543. <sup>4</sup> See *Howell's State Trials*, xiv. 1324. But especially *History of the Works of the Learned*, for the year 1739, Art. 12, to which curious publication *Sir John Maynard's Papers* were originally communicated by *Dr Rawlinson*.



‘ Accordingly, at the ensuing Easter term (*Pascha*, 4 *Car.*), they were tried on the Appeal, which was brought by the Young Child against his father, grandmother, and aunt, and her husband *Okeman*.<sup>1</sup> *The Minister of the Parish*<sup>2</sup> where the Murder was committed, deposed, “ That the Body being taken up out of the grave, *thirty days after the party’s death* ; and lying on the grass, and the four defendants being present, *were required each of them to TOUCH THE DEAD BODY*. *Okeman’s* wife fell upon her knees, and prayed to God to shew a Token of her Innocency, or to some such purpose—her very words I have forgot. The Appellees *did touch the dead body* ;—whereupon *the brow of the dead*, which before was of a livid and carrion colour,<sup>3</sup> begun to have a *dew or gentle sweat* arise on it, which increased by degrees, *till the sweat ran down in drops on the face*. The brow turned to a *lively and fresh colour*, and the deceased opened one of her eyes and shut it again : And this opening the eye was done *three several times*. She likewise *thrust out the ring or marriage finger three times*, and pulled it in again ; and the finger dropped blood from it on the grass.”

‘ SIR NICHOLAS HYDE, *Lord Chief Justice*, seeming to doubt the Evidence, asked the Witness, “ Who saw this besides you ? ” Witness. “ I cannot swear what others saw—but my Lord, (said he,) I do believe the whole company saw it ; and if it had been thought a doubt, Proof would have been made of it, and many would have attested with me.” The Witness observing some admiration<sup>4</sup> in the auditors, he spake further. “ My Lord, I am Minister of the Parish, and have long known all the parties ; but never had any occasion of displeasure against any of them, nor had to do with them or they with me, but as I was Minister.—The thing was wonderful to me, but I have no interest in the matter ; but as called upon to testify the truth, that I have done.”—Whereupon, applying himself to the *Chief Justice*, he said, “ My Lord, my brother, here present, is *Minister of the next Parish adjacent*—and I am assured saw all done that I have affirmed.”

‘ Therefore that person was also sworn to give Evidence, and did depose, in every point, viz. *the sweating of the brow—the change of the colour—opening of the eye—and the thrice motion of the finger*, and drawing it in again. Only, the first Witness added, *that he himself dipped his finger in the blood which came from the dead body*, to examine it—and he swore *he believed it was blood !*’

*Sir John Maynard* adds, ‘ I conferred (my Notes) afterwards with *Sir Edward Powell*, Barrister at Law, and others, who all concurred in the observation—and for myself, if I were upon oath, can depose, that these Depositions (especially of the first Witness) are truly reported, in substance.’

‘ The other Evidence was given against the Prisoners, viz. the Grandmother of the Plaintiff, and against *Okeman* and his Wife—that they confessed they lay in the next room to the dead person that night, and that none came into the house till they found her dead the next morning ; therefore, if the did not Murder herself, they must be the Murderers. To that end further proof was made.

‘ *First*, That she lay in a composed manner in her bed, the clothes nothing at all disturbed, and her child by her in bed.—*Secondly*, Her throat cut from ear to ear, and her neck broken ; and if she first cut her throat, she could not break her neck in bed, nor *contra*.—*Thirdly*, There was no blood in the bed, saving there was a tincture of blood on the bolster whereon her head lay—but no substance of blood at all.—*Fourthly*, From the bed’s head there was a stream of blood on the floor, which run along till it ponded in the hollows of the floor, to a very great quantity ; and there was another stream of blood on the floor at the bed’s foot, which ponded also on the floor, to another great quantity,—but no continuance or communication of blood of either of these two places from one to the other, neither upon the bed—so that she bled in two places severally : And it was deposed, (that on) turning up the mat of the bed, there were clotts of congealed blood in the straw of the mat underneath.—*Fifthly*, The

<sup>1</sup> The individuals on whose Depositions the original Verdict had been pronounced.    <sup>2</sup> ‘ A very reverend person, as I guessed, of about seventy years of age. His testimony was delivered gravely and temperately—but to the great admiration (*wonder, astonishment*) of the auditory.’    <sup>3</sup> ‘ That was the verbal expression, *in terminis*, of the Witness.’

<sup>4</sup> Wonder, astonishment, amazement.

bloody knife was found in the morning sticking in the floor, a good distance from the bed; but the point of the knife, as it stuck, was *towards the bed*, and the *haft* or handle *from the bed*.—*Sixthly*, There was a print of the thumb and four fingers of a left hand. *Sir Nich. Hyde*, Chief Justice, said to the Witnefs, “How can you know the print of a left-hand from the print of a right-hand, in such a case?” *Witnefs*, “My Lord, it is hard to describe—but if it please that honourable *Judge* to put his left-hand upon your left-hand, you cannot possibly place your right-hand in the same posture.” Which being done, appeared so.

‘The Defendants had time to make their Defence—but gave no evidence, to any purpose.

‘THE JURY departed from the bar—and returning, *ACQUITTED Okeman*, and found the other three *GUILTY*; who, being severally demanded, “What they could say, why Judgement should not be pronounced?” said nothing—but (saying that) each of them said, “I did not do it! I did not do it!”

‘JUDGEMENT was given accordingly, and the Grandmother and the Husband executed; but the Aunt had the privilege to be spared execution, being with child.

‘I inquired if they confessed any thing at their Execution; but did not, as I was told.’

(iv.) THE next case which shall be mentioned, is that of *MARIOUN PEEBLES*,<sup>1</sup> *alias* *Pardone*, spouse to *SWENE*, in *Hildiswick*, who was, on March 22, 1644, sentenced to be strangled at a stake, and burnt to ashes, at *the Hill of Berrie*, for *WITCHCRAFT* and *MURDER*. Marion and her husband having ‘ane deadlie and venefical malice in her heart’ against *Edward Halcro* in *Ovure*, and being determined ‘to destroy and put him down,’ being ‘transformed in the lyknes of ane pellaack-quhail, (the Devill changing her spirit, quhilk fled in the same quhail,)’ and the said *Edward* and other four individuals being in a fishing-boat, coming from the Sea, at the North-banks of *Hildiswick*, ‘on ane fair morning, did cum under the said boat, and overturnit her with ease, and drowned and devoired thame in the fey, right at the shore, when there wis na danger wtherways.’ The bodies of *Halcro* and another of these hapless fishermen having been found, Marion and *Swene* ‘wir sent for, and brought to see thame, and to lay thair hands on thame, . . . . dayis after said death and away-casting, quhaire thair bluid was evanished and defolved, from every natural cours or caus, shine, and run; the said umquhill *Edward* bled at the collir-bain or craig-bane, and the said . . . . ,<sup>2</sup> in the hand and fingers, gushing out bluid thairat, to the great admiration of the beholders—and revelation of the judgement of the Almytie! And by which lyk occasionis and miraculous works of God, made manifest in Murders and the Murderers; whereby, be many frequent occasiones brought to light, and the Murderers, be the said proof brought to judgment, conuict and condemned, not only in this Kingdom, also this countrie, but lykways in maist forrin Christiane Kingdomis; and be so manie frequent precedentis and practising of and tuitching Murderis and Murdereris, notourlie known: So, the foirsaid Murder and Witchcraft of the saidis persons, with the rest of their companions, through your said Husband’s deed, art, part, rad,<sup>3</sup> and counfall, is manifest and cleir to all, not onlie through and by the foirsaid precedentis of your malice, wicked and malishes<sup>4</sup> practifes, by Witchcraft, Confessionis, and Declarationis of the said umquill *Janet Frazer*, Witch, revealed to her, as said is, and quha wis defyrit by him to concur and assist with you to the doing thereof; but lykways be the declaration and revelation of the justice and judgementis of God, through the said issuing of bluid from the bodies!’ &c.

(v.) A SIMILAR and very remarkable instance is related in the following Trial: In the Dittay of *CHRISTIAN WILSON*, *alias the Lanthorne*,<sup>5</sup> accused of Murder, Witchcraft, &c., (which is founded

<sup>1</sup> See *Dr Hibbert’s Hist. of Orkney*, &c. to which this remarkable Trial is appended.

<sup>2</sup> The name left blank.

<sup>3</sup> Rede; advice.

<sup>4</sup> Malicious.

<sup>5</sup> The name given her at her baptism by the Devil. From *Collection of Original Documents*, belonging to the Society of Antiquaries of Scotland, MS. As a specimen of the other charges, take the following: “*William Richardsone*, in *Dalkeith*, haiving felled ane hen of the said *Cristianes* with ane stone, and wpone her sight therof did imediatly threatne him, and with ane frowninge countenance told him, that he ‘should newer cast ane vther stone!’ And immediatly the said *William* fell into ane franicie and madnes, and



upon the examinations of James Wilson, Abraham Macmillan, William Crichton, and Fyfe and George Erskine, &c. led before Sir William Murray of Newtoun, and other Commissioners, at Dalkeith, Jun. 14, 1661,) it is stated, that ‘ Ther being enimitie betuixt the said Christiane and Alexander Wilfone her brother, and shoe having often tymes threatned him, at lenth, about 7 or 8 monthes since, altho’ the said Alexander was sene that day of his death, at three houres afternone, in good health, walking about his buffnesse and office; yitt, at fyve howres in that same night, he was fownd dead, lying in his owne howse, naked as he was borne, with his face torne and rent, without any appearance of a spot of blood either wpon his bodie or neigh to it. And altho’ many of the neiboures in the toune (Dalkeith) come into his howse to see the dead corpe, yitt sho newar offered to come, howbeit her dwelling was nixt adjacent thairto; nor had shoe so much as any feiming greiff for his death. Bot the Minister and Bailliffes of the towne, taking great suspitione of her, in respect of her cairiage, comandit that shoe showld be browght in; bot when shoe come, shoe come trembling all the way to the howse—but *shoe refused to come nigh THE CORPS or to TUITCH it*, saying, that shoe “ nevir tuitched a dead corpe in her lyfe!” Bot being earnestly desyred by the Minister, Bailliffes, and hir brother’s friends who was killed, that shoe wold “ bot *tuitch the corpes soflie*,” shoe granted to doe it—but before shoe did it, the Sone being shyning in at the howse, shoe exprest her selfe thus, humbly desyring, that “ as the Lord made the Sone to thyne and give light into that howse, that also *he wald give light to discovering of that Murder!*” And with these words, shoe TUITCHEING *the wound of the dead man, verie soflie*, it being whyte and cleane, without any spot of blod or the lyke!—yitt IMMEDIATLY, *whill her fingers was wpon it*, THE BLOOD RUSHED OWT OF IT, to the great admiratioun<sup>1</sup> of all the behoulders, who tooke it for *discoverie of the Murder*, according to her owne prayers.—For ther was ane great lumpe of flesch taken out of his cheik, so smowthlie, as no rafor in the world cowld have made so ticht ane incisionne, wpon flesch, or cheis—and ther wes no blood at all in the wownd—nor did it at all bleed, altho’ that many persones befor had tuitched it, whill<sup>2</sup> shoe did tuitche it! And the howse being searched all over, for the shirt of the dead man, yitt it cowld not be found; and altho’ the howse was full of people all that night, ever vatching the corpes;<sup>3</sup> neither did any of them tuitch him that night—which is probable<sup>4</sup>—yitt, in the morneing, his shirt was fownd tyed fast about his neck, as a brechame,<sup>5</sup> non knowing how this come to pafs! And this Cristian did immediatlie transport all her owne goods owt of her own howse into her dowghter’s, purposing to flie away—but was therwpon apprehendit and imprisoned.’

(vi.) THE next instance which shall be cited, refers immediately to the Case of THE MURES OF AUCHINDRANE; being an extract from a ‘ RELATIONE of quhat past betwixt the Commitie<sup>6</sup> and MR JAMES MITCHELL,’ &c.<sup>7</sup> January 18, 22, and 24, 1676. In the course of the pleadings as to the lawfulness of inflicting Torture, the following interesting passage occurs. “ Bot in this preparative, the practife is wnparalleled, to put a perfon to it be such a *Tortour*, to turne (contrarie the cowerse of nature and expresse law of God) to be his own accuser; no, not in *Peiter Aroy*, the Highland Rober

tooke his bed, and newer rose agane, but died within a few dayes: And in the tyme of his sicknes, he alwayes cryed owt, that the said Cristiane wes present befor him, in the liknes of ane gray catt! And some tyme eftir his death, James Richardsons, nephew to the said Williame, being a boy playing in the said Cristiane her yaird, and be calling her *Lantherne*, shoe threatned, that ‘ if he held not his peace, shoe sowld cawse him to die the death his nephew (uncle) died of!’ Whairby it would appeare that shoe tooke wpon hir his nepheas (uncle’s) death.”

<sup>1</sup> Wonder; amazement. <sup>2</sup> Until. That is, many previous trials had been made of other persons suspected, or of those who were near neighbours, perhaps living at enmity with the deceased, who had voluntarily offered themselves to this solemn ordeal, or had been called upon thus publicly to attest their innocence of his blood. <sup>3</sup> Holding the *lyke-wake*.

<sup>4</sup> Can be proved, by testimony or probation. <sup>5</sup> The large collar which goes about a draught-horse’s neck.

<sup>6</sup> Of the Estates of Parliament. <sup>7</sup> *Wodrow’s MSS.* as to ‘ the Sufferings,’ Adv. Lib. xxxvi. Quarto, No. 2. This Document relates to the Tortures used to *Mitchell*, who had been accused of an attempt to Murder, by shooting a pistol at *Archbishop Sharpe*, and the *Bishop of Orkney*, Jul. 9, 1668, &c. 29 Car. II, Jan. 7, 1677. See for the particulars of her Trial, *Salm. State Trials*, p. 334, &c.

and Murthrer ! Bot he, being legalie convicted himself, was put to *the Tortour*, to cause him declare who was his confederats and affociats in committing of such horrid crymes. Bot if any man shall object that about THE LAIRD OF AUCHINDRANE, I answer : 1st, 'Thair is no paritie in the cawse ; be-cawse he was accused of an horrid and privat Murther, quhair thair was altogether penurie of Witnesses, and not of a deutie contraverted be Apostats : 2dly, GOD, in a soveraine and singular way, *witnesed it from Heaven, by his own immediate hand, and proved the Deed against him ! viz. the Corpes of the man Murthered, being buried in Girvane Kirk-yard, as a man cast away at sea, and cast owt thaire, the Laird of Coleaine, whose servant he had beine befor, driming<sup>1</sup> of him in his sleipe, and that he had a muse-marke wnder his left pape ;<sup>2</sup> and when he awook owt of his sleipe, wpon searck, found it to be trwe—came to the place, and taking wpe the Corpes owt of the place quhair they were buried, found him to be Murthered. Wpon which, he *sumoned in all the men in that pairt, to towck the Corpes, as the custum was in such cafes ;* and all compeiring, except the saids Laird and his son, who were the Murtherers ; and his dwelling house and familie being neire to the place, *ane young chyld of his, MARIE MURE be name, seing the people, went to the place ; and when she drew neire to the Corpes (to the admiration of all the people,) did spring owt wpon her in abundance of blood !* Wpon which they were apprehended and put to tryell."*

(vii.) A VERY singular incident is related by *Law*, in his 'Memorials.'<sup>3</sup> Two men having been executed at Glasgow, Jun. 14, 1683, for the Murder of a gentleman (David Monroe) at Inchbelly-bridge ; in consequence of the enormity of the offence, their bodies were appointed to be hung up in irons. For this purpose, the bodies of the Criminals were conveyed to the spot, where, according to the terms of the Sentence, they were to be gibbeted. *Law* relates, that "Though their entrails were taken out, and their bodies cleansed from all blood, yet when it (the body of one of the culprits) came to the place where the Murther was committed, *did gush out in blood, in the arm which was cut ; testified to be a truth by the beholders ; which was a testimony of their guilt !*"

(viii.) Of a like nature with the last instance, a strange story is told in the *Biographia Scoticana*, which has likewise been elsewhere repeated. That a few days after Mr James Guthrie was executed, and his head placed upon the Netherbow Port of Edinburgh, *Middleton's* coach coming down that way and passing through the Port, *several drops of blood fell from the head upon the top of the coach ;—which, as the legend goes, 'all their art and diligence could not wipe off !'* Physicians were called, and desired to enquire if any natural cause could be given for this event—but they could give none ! "This odd incident being noised abroad, and all means tried, *at length the leather was removed, and a new cover put on !!!* But this was much sooner done, than the wiping off the guilt of this great and good man's blood upon the shedders of it, and the disgrace from this poor Nation !"

(ix.) FEW instances of this description are entitled to the consideration which the following Case possesses, as well in a legal as in a philosophical point of view. In the very remarkable Scottish Trial of PHILIP STANFIELD,<sup>4</sup> for *Parricide*, (executed Feb. 15, 1688,) the circumstance of the body of Sir James Stanfield of Newmills, who was Murdered near Haddington, in Dec. 1687, *having bled on the touch of his son Philip, the Parricide*, was urged and argued with the utmost earnestness, in Court. *James Muirhead*, Surgeon, one of the Witnesses, swore, that "upon the prisoner's affixing to lift the body of his deceased father, Sir James Stanfield, after it had been sewed up,<sup>5</sup> and clean linen

<sup>1</sup> Dreaming.

<sup>2</sup> A mouse mark under his left breast.

<sup>3</sup> *Law's Memorials*, p. 252.

<sup>4</sup> See *Howell's*

*State Trials*, XI. 1371.—*Salmon's State Trials*, p. 610.—*Fountainhall's Decisions*, I. 484.—See also *Fountainhall's Diary*.—*Arnol's Criminal Trials*, p. 33, Note.

<sup>5</sup> The body had been opened and examined, by *Judicial authority*, for the purpose of determining the precise cause of the deceased's death. The surgeons to whom this remit had been granted, reported, that Sir James had died from *strangulation*, not from drowning—and that the idea of *felo de se*, which had been attempted to be proved by the son, was utterly impossible.



put on, it DARTED OUT BLOOD *through the linen, from the left side of the neck, which the pannell TOUCHED*—but, that when he (the Witness) and the other Surgeon, *James Crawford*, put on the linen, and stirred and moved the head and neck, before, *he saw no blood at all!*"

This fact was corroborated by other Witnesses—and it is, perhaps, worthy of notice, as the most striking peculiarity of that Case, that Sir James had not been stabbed, shot, or assassinated by the cutting of his throat—but was *strangled*, and then thrown into a water; so that there was no *external wound* on the neck.

A singular feature in this Case of Stanfield, is the rank and eminence of the Public prosecutors, *Sir John Dalrymple*, younger of Stair, *Sir George Mackenzie*, and the gravity with which these superstitious circumstances are argued. The Dittay states, "When his father's dead body was sighted and inspected by Chirurgions, and the clear and evident signs of the Murder had appeared, the body was sewed up, and most carefully cleaned; and his nearest relations and friends were desired to *lift* up his body to the coffin:<sup>1</sup> And accordingly, *James Row*, merchant (who was in Edinburgh at the time of the Murder), having lifted the left side of Sir James, his head and shoulder, and the said *Philip* the right side; his father's body, though carefully cleaned, as said is, so as the least blood was not on it, did (ACCORDING TO GOD'S USUAL METHOD OF DISCOVERING MURDERERS) *blood afresh upon him, and defiled all his hands*; which struck him with such a terror, that he immediately let his father's head and body fall with violence—and fled from the body!—And, in consternation and confusion, cried, *Lord, have mercy upon me!*—and bowed himself down over a seat in the Church, (where the Corpses was inspected,) wiping his father's innocent blood off his own murdering hands, upon his cloaths!" But as the arguments are fortunately preserved, and as they shew many of the peculiarities of these superstitions, and give the reasonings of the most eminent Lawyers of that time, it may be proper, and can hardly fail to be interesting, even to the general reader, to enter a little into details.

*Sir Patrick Hume*,<sup>2</sup> Counsel for Philip Stanfield, urged, that this is but a superstitious observation, without any ground, either in Law or reason. And *Carpzovius* relates, *Part 3, quest. 122, no. 31*, that several persons had been unjustly challenged, and that he, in his own experience, had *seen a dead body bleed*, in presence of the person who was *not guilty!* And *Matheus de Criminibus* is of the same opinion, *Tit. 16, de questionibus*, num. 12, "de sanguine porro de Cadavere profluente, quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falsa sint—ratio vero idonea nulla reddi possit, non putaverim indicium ad Torturam sufficiens esse, non enim sapientis Judicis est incerto experimento credere, quod certa ratione dirimendum est." And the truth is, *the occasion* of the dead body's bleeding was, that the Chirurgeon that came out to visit the body did make an incision about the neck, which might be the occasion of the bleeding;—and also the very moving of the dead body, when it was taken out of the grave and out of the coffin, might occasion the bleeding; especially, seeing the body did not bleed for some time after, which certainly was made by the motion and by the incision: As also, a further evidence that it could not be the defender's *touching* the body, the Chirurgions did likewise touch the body, as well as he, and several others present; so that the bleeding could no more be ascribed to *his touching*, than the touching of the other persons present.

*Sir James Dalrymple*, Lord Advocate, answered, that "although the deceased's servants had made *a mutiny against the Burial, till the Corps were sighted*, yet the pannell caused bury the Corps that same

<sup>1</sup> This may, no doubt, have been resorted to, for the purpose of proving Philip's participation in the Murder—but, of itself, this ceremony is still universally observed in the middle and lower ranks of life; and is a most affecting spectacle to those who are so deeply interested. It is called "the chesting" or "coffining" of the corpse—a duty almost never (in Scotland) intrusted to hirelings—but is most solemnly performed by the nearest relations, as the last endearing act of respectful and affectionate regard, which they can offer, to the breathless remains of those who had been nearest and dearest to them.

<sup>2</sup> Along with this gentleman were Sir David Thoires, Mr William Monniepenny, and Mr William Dundas, as counsel for the prisoner.

night' without shewing them !" After Warrant for raising the body had been obtained, the inspection by Surgeons, and the touching, as before detailed, took place; when the pannel let his father's head fall to the ground, and cried out, O God !—and ran away and went to a desk in the Church, where he lay groaning and in confusion, and durst never return to touch the Corpse. And that as there could no *natural* reason be given, but an ordinar and *wonderful Providence of God in this kind of discovery of Murder*, so the fact was never more evident and sure. Though half a dozen of persons were bearing the Corpse, *no man's hands were bloody but the pannels !* That the Corpse being two entire days in the grave, in that weather and season, the blood, by the course of nature, was become stagnant and congealed—so that the former tossing and lifting of the Corpse, and even the incision itself, had occasioned no such effusion, but only some water or gore—but upon *the first touch* of the pannel, *the Murderer*, there appeared *abundance of liquid florid blood !*

*Sir David Thoires*, in reply, argued, that the falling of blood from the wound could neither be a ground nor presumption for guilt—and though the pannel was *surprised* to see his father's blood, yet the same did only proceed from *natural duty and affection*, and not from any apprehension of guilt ! *Sir Patrick Hume* added, that he offered to prove, that *the pannel had touched his father's body before the incision*, AND IT DID NOT BLEED.

*Sir George Mackenzie*, in his address to the Jury, asserts that ' GOD ALMIGHTY *himself was pleased to bear a share in the testimonies which we produce ; that* Divine power which makes the blood circulate during life, *has oft-times, in all Nations, opened a passage to it, after death upon such occasions,—but most in this case !*

The sentence of the Court was, that he should be ' hanged on a gibbet till he be dead—and his tongue to be cut out and burnt upon a scaffold—and his right hand to be cut off and affix on the East Port of Haddingtoun—and his body to be carried to the Gallowlee, betwixt Leith and Edinburgh, and there to be hanged up in chains,' &c.

(x.) BESIDES the class of notices which has already been afforded, it is natural to expect that vestiges of so prevalent a superstition should appear in the ancient Popular Poetry of all Nations. The Editor's present leisure and opportunities do not admit of his entering upon so wide a field as that just alluded to, for the illustration of such an enquiry. It is sufficient to mention, generally, that such traces do appear in the Ballads of Scotland, England, Germany, and other European Nations. The ancient Romance also, and the Drama of all these countries, abound with allusions to this superstition ; and some of them make use of the ceremonial of touching the Corpse, as a powerful aid in exciting the feelings, and in heightening the interest of the reader, or auditory.

As a specimen of one of the Scottish Ballads illustrative of this superstition, the Editor may cite the conclusion of the Romantic Ballad of *Young Huntin*, or *Earl Richard*,<sup>2</sup> as it is too long for insertion at length :—

“ PUT na the wite<sup>3</sup> on me,” she said,

“ It was my may<sup>4</sup> Catherine !”

Than they hae cut baith fern and thorn,

To burn that maiden in.—

‘ It wadna tak upon her cheik,

Nor yet upon her chin,

Nor yet upon her yellow hair,

To cleanse the deidly sin !

<sup>1</sup> The same night the body had been found in the water, having been incrustated with frozen ice, owing to the inclemency of the season ; the Murder having been perpetrated in the month of December, during a storm. <sup>2</sup> See *Minstrelsy of the Scottish Border*, II., 420—*Herd's Ballads*—*Chambers's Ballads*, &c. <sup>3</sup> Blame. <sup>4</sup> Maiden.



' *The Maiden touch'd the clay-could Corpse,*  
 A DRAP IT NEVER BLED;  
 The Lady laid *her* hand on him,  
 And soon *the ground was red!*

' Out they hae ta'en her, may Catherine,  
 And put her mistress in.  
 The flame tuik fast upon her cheik,  
 Tuik fast upon her chin,  
 Tuik fast upon her fair bodye—  
 She burn'd like hollin green!' <sup>1</sup>

(xi.) BEFORE concluding these notices, it may be remarked, for the benefit of the curious inquirer into the superstitions of his native country, that absurdities greater by far than this Test or Ordeal have been gravely stated and maintained, even before the Supreme Criminal Tribunal of Scotland. Perhaps the most extraordinary instance of this description occurred in *the Trial of THE MARQUIS OF ARGYLL*,<sup>2</sup> before Parliament, 1661, where the Indictment, after setting forth a variety of alleged Murders and cruelties, proceeds, 'That THE LORD from Heaven did declare his wrath and displeasure against the aforesaid inhumane cruelty, by striking the tree whereon they<sup>3</sup> were hanged in the said month of June, being a lively fresh growing ash-tree, at the Kirk-yard of *Dunoone*,<sup>4</sup> among many other fresh trees with leaves. THE LORD struck the said tree immediately thereafter, so that the whole leaves fell from it, and the tree withered, never bearing leaf thereafter, remaining so for the space of two years; after which, being cut down, there sprang out of the very heart of the root thereof a *spring like unto BLOOD, popling up, running into several streams all over the root; and that for several years thereafter*,<sup>5</sup> till the said Murderers or their favourers, perceiving that it was remarked by persons of all ranks resorting there to see this *Miracle*, they caufed hock out the root,<sup>6</sup> covering the whole with earth, which was full of the said matter like blood!'

There cannot be a doubt that the foregoing Case, monstrous and shocking in the extreme as it is, is merely an *improvement* upon the popular Superstition we have been considering; and the inference they wished to deduce from the whole matter is,—that '*blood will have blood*,—that God will not suffer Murder to pass over unavenged, even in this world;—and farther, that if man fails to discover guilt, the Almighty will, by *extraordinary* and even *miraculous* means, disclose the Murderer's horrid secret.

<sup>1</sup> Green holly.    <sup>2</sup> *State Trials*, (old Edit.) III. 422, and VII. 379.—*Howell*, XI. 1380.    <sup>3</sup> The persons thus mercilessly murdered by the commands of Argyll, and massacred by his followers, were thirty-six in number; who were hanged on this single tree, being 'special gentlemen of the name of *Lamond*, and vassals to *Sir James Lamond* of Innerin,' (that Ilk.) And on the same day, they 'Murdered with durks, and cut down with swords and pistols,' a number of other unhappy creatures, among whom *John Lamond* in Auchinshallach, 'who being about the age of fourscore years, &c. they most cruelly and barbarously stabbed with *durks* and *skanes* at the ladder-foot.' *The Provost of Rothesay* was shot through the body thrice, yet finding some life in him, they thrust at him with durks and skanes, and at last cut his throat with a long durk; others they cast into holes, their victims 'spurning and wrestling, whilst they were suffocated with earth; having denied to them any time to recommend themselves to God!' These are part of the atrocities of the Marquis's followers, detailed in the remarkable Dittay above alluded to; and besides this, they murdered and massacred a number of innocent women, and inhumanly left their bodies as a prey to ravenous beasts and fowls, and 'young and old, yea suckling children, some of them not one month old!' The reader is referred to the *State Trials* for other particulars, which are too circumstantial to be enumerated here.    <sup>4</sup> An ancient Castle on the Clyde, of which the Family of Argyll are still the nominal heritable Keepers. It has long since been razed with the ground. The *Dun*, on which it was situated, has a very peculiar and commanding form, and is a beautiful and picturesque object from the opposite coast, and from the river. The 'Kirk-yard' is still surrounded by lofty trees.    <sup>5</sup> *Ovid's Metamorphoses* are a trifle to this; but still such execrable and almost blasphemous ravings were not only tolerated, but gravely discussed before Parliament! It ought, however, to be kept in mind that the fanaticism which then prevailed had a large share in producing this gross and shocking exhibition, which can only be viewed as solemn mockery of all judicial proceedings, and indeed of every thing sacred.    <sup>6</sup> Dig up; extirpate.

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

Jul. 24.—ALEXANDER DUMBAR, Younger of Kilbowak;<sup>1</sup> Robert Dumbar, his brother; Niniane Dumbar, sone to Williame Dumbar of Hemprigis; James Dumbar, sone to Gawin Dumbar, Archedeane of Murray; Thomas Falconer, seruitour to the said Alexander.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Alexander Dumbar of Waftfield (Scheref of Murray); committit the first day of Junij last: And contraveining of the Actis of Parliament, in beiring and schuiting of pistolettis, &c.

## PERSEWARIS.

Johnne Dumbar of Waftfield, as brother to the defunct; Sir Thomas Hammiltoun.

## PRELOCUTOURIS for the Pannell.

Mr Johnne Ruffell, Mr Thomas Hoip, Mr Thomas Nicolfoun, Aduocatis; the Constable of Dundie, elder, the Laird of Monymusk, the Laird of Halkertoun.

The Justice, of consent of ather parteis, continewis this dyet to ffryday nixt. The Assyse wairnit *apud acta*, ilk persone, vnder the pane of twa hundreth merkis.

(Jul. 26.)—The Justice continewis this dyet, as ofbefoir, with consent of ather pairtie, to Wednisday nixt, &c.

(Jul. 31.)—The persewar passis *simpliciter* fra the persute of the persones on pannell; and is content that thai be put to libertie. Quhairupone the pannell askit instrumentis.—Compeirit Patrik Dumbar of Blarie, and producet the Counfallis Warrant to the Justice, quhairof the tennour followis.

**WARRANT for the Dumbaris libertie.**

JUSTICE, Justice Clerk, and 3our deputis: Quhear as, Alexander Dumbar of Kilboyak,<sup>2</sup> (&c.) are to be presentit befor 3ow this present day, to vnderly the lawis for pe slauchter of vmq<sup>le</sup> the Scheref of Murray: And We, vnderstanding that pe pairtie persewar will nocht insist in the persute of pir persones, bot ar content and will consent that pai be put to libertie and fredome: Thairfoir 3ow fall tak guid cautionn of thame, that pai fall compeir befor his Maiesteis Justice, the thrid day of pe nixt Justice-air of the scherefdome quhair pai duell,<sup>3</sup> or soner vpone a fyftene dayis wairning, and vnderly pe law for the Slauchter foirsaid; vnder pe panes contenit in the Actis of Parliament: And this cautionn being fund, 3ow fall put them to libertie and fredome, and suffer pame pas quhair pai pleis: Quhairanent pir presentis fall be 3our Warrant. AT EDINBURGH, the last day of Julij, 1611.

AL. CANCELL<sup>r</sup>. JO. PRESTOUN.

Patrik Dumbar of Blarie and Robert Falconer of Ballandro became cautionne for thame, coniunctlie and seuerallie, to the effect aboue writtin.

THE Justice, accoirding to the directioun of the former Warrant, ordanit the saidis persones on pannell to pas frie, and nocht to returne to the said Tolbuthe furth of the quhilk thai war brocht. Quhairupone Alexander Clerk, ane of the Bailleis of Edinburgh, askit instrumentis.

<sup>1</sup> See Jul. 31, 1616.

<sup>2</sup> The rest of the names are recited.

<sup>3</sup> Elgin.



**Egyptians remaining within the Kingdom after Proclamation.**

Jul. 31.—MOYSES FA, DAVID FA, ROBERT FA, and Johnne *alias* Willie FA, Egiptianis.

Dilaittit for Abyding and remaining within this Kingdome, they being Egiptianis; contrair the tennour of the Actis of Parliament.

**THE ÆGIPTIANIS DITTAY.**

MOYSES FA, DAVID FA, and JOHNNE FA, 3e ar indytit and accuset; That quhair, be Act of Parliament haldin at Edinburgh the xxiiij day of Junij, the 3eir of God Im.Vjc. and nyne 3eiris, it was statute and ordanit that all the vagabundis, foirneris<sup>2</sup> and cownone thevis, cownonlie callit ÆGIPTIANES, sould haif past furth pairof, and nevir returnet within pe samyn, eftir pe first day of August, the foirfaid 3eir of God Im.Vjc. and nyne 3eiris, vnder the pane of deathe: And that it sould be leifum to all his Maiesteis guid subiectis, or ony of thame, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alsweill men as wemen, as cownone, notorious, and condempnet Thevis, only to be tryt be ane Assyse, that pai ar callit, knawin, repete, and haldin in<sup>3</sup> Egiptianis: NOCHTPELES, 3e and ilk ane of 3ow being vagabundis, foirneris, cownone thevis, repete, callit, and haldin Egiptianis, in contempt of his Maiestie and his Lawis, hes presumet to remane in this Kingdome, and hes nocht depairtit and abiddin furth pairof, sen pe said first day of August, pe 3eir of God Im.Vjc. and nyne 3eiris foirfaid; bot be the contrair, 3e and ilk ane of 3ow hes remanet within this Kingdome, in contempt of pe said Act of Parliament, and ar notoriousslie knawin to be Egiptianis, and sua repete and haldin: And pairfoir 3e and ilk ane of 3ow aucht to be demanit to pe death, and suffer pe panes pairof; conforme to the said Act of Parliament.

PERSEWAR, Mr Robert Foullis, substitute to our souerane lordis Aduocat.

The Pannell, viz. Moyfes Fa, producet ane Licence, grantit to him be the Counsell; quhilk the Aduocat acceptis, *in quantum*.—It is allegit be the Aduocat, that the conditiones specifeit in the Licence grantit to Moyfes Fa is nawayis keipit be the pannell, viz. that he sould find caution for fulfilling the perticular injunciones specifeit in his Licence: Quhilk caution,<sup>4</sup> for his nocht entrie afoir<sup>5</sup> the Counfel, is vnlawit in the pane and penaltie of ane Thowfeand pundis; and the cautioner being charget for payment to the Thesaurer of the said penaltie, hes past to the horne: And thairfoir, in respect of the wordis of the Act of Parliament, and of the nocht payment of the penaltie, as also in respect that the conditiones specifeit in the Licence is nocht keipit, the said Moyfes Faw hes fallin vnder the danger of the said Act of Parliament, and the pane of daith inflictit vpon him; and the remanent persones, his complices, aucht and sould be praneist to the daith, conforme to the said Act: And protestis for Wilfull Errour aganis the Assyse, gif thai acquit, according to the said Act: And produces the Counfallis Act contrair the cautioner, quhair he wes vnlawit in the sowne;<sup>6</sup> togidder with the Letteris of Hoirning vsiet aganis him: And repeittis the Deposition of James Ballache, testifeing the said Moyfes being in companie and societie with the Egiptianis, and of his geving Band to the said James, for redressing of dyuerse Thiftis: And repeittis the Act of Parliament to the Assyse.

<sup>1</sup> See Jul. 19, 1616.  
<sup>5</sup> Before.

<sup>2</sup> Who forcibly take free quarters, &c.  
<sup>6</sup> The sum or amount.

<sup>3</sup> As.

<sup>4</sup> Cautioner;

THE Justice, nochtwithstanding of the allegiance proponit be the said Moyfes Fa, vpone the pretendit Licence producet be him; and in respect of the answair maid thairto be the Aduocat, referrit the samyn Dittay to the knowlege and tryell of ane Assyse.

VERDICT. The Assyse all in ane voce, be the mouth of Williame Murehead, mercheand burges of Edinburgh, chancellor, stand, pronuncet, and declairit the saidis Moyfes Fa, David Fa, Robert Fa, and Johnne *alias Willie* Fa, notoriousslie knawin to be Egiptianis, at the leist sua repute and haldin, to be ffylit, culpable, and convict of contravening the tennour of the said Act of Parliament, in thair contemptuous remaining and abyding within this kingdome, continuallie, sen the said first day of August, in the foirsaid yeir of God I<sup>m</sup>. fax hundreth and nyne yeiris, expres contrair the tennour of the said Act.

SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be hangit quhill thai be deid: And all thair moveabill guidis and geir pertening to thame, to be escheit and inbrocht to our souerane lordis use, as culpable and convict, &c.

### **Abiding from the Raid of the Isles.**

Sept. 17.—JOHNNE M<sup>c</sup>MILLANE in Merkelloch, Johnne M<sup>c</sup>Millane in Bank, and Cuthbert M<sup>c</sup>millane in Drumreische.

Dilaitit for contravening of his Maiesteis Proclamatioun, maid in the yeir of God I<sup>m</sup>.Vj<sup>o</sup>. and aucht yeiris, in nocht passing fordward with his Maiesteis Lieutenant to the Raid of the Ilis.

For releif of thair Cautioneris, and in respect that thai thame selfis ar na ffriehalderis nor landit gentilmen, haifing nather landis nor rentis, bot ar removeable Tennentis, and sa nocht comprehendit vnder the saidis Proclamatioun, thay thairfoir compeirit this day and place, in the hour of caus, and offerit thame selfis to the Tryell of the Law, and to vnderly the rigour thair of, gif it war fund that thai war ony wayis comprehendit vnder the said Proclamatioun: And forder, offerit to mak the Kingis Maiestie assignay to thair haill landis and heritages within this realme, gif thai ony had, at that tyme. In respect of the quhilk premisses, and of thair compeirance this day and place, in the hour of caus, and offer maid be thame in maner aboue specifeit, thay Protestit for thair cautioneris releif; and that thai sould onnawayis be callit, charget, or trubillit for the said allegit cryme in ony tyme cuming.

### **Resset and Intercommuning with Mr Alexander Ruthven, &c.— Gowrie Conspiracy.**

Nov. 7.—DAVID SPALDING of Effintullie.

Dilaitit of the tressonable Resset and Intercowmoning with Mr Alexander



Ruthven, sone to vmq<sup>le</sup> Alexander Ruthven of Freland, and suppoirting of him with money and vther intertenement, he being his Maiesteis declairit Tratour, fforfalt in Parliament, and fugitiue, for airt and pairt of the treassonable assist-ing and pairt-taking with JOHNNE, sumtyme ERLE OF GOWRIE, Alexander Ruthven his brother, in the treffonable Conspiracie devyset aganis his Maieftie, at Perth, vpon the fyft day of August, 1600 yeiris.

THE Justice continewis this dyet to the fourt day of Marche, quhilk is the first Wednisday thair of : And ordanit the defender to find caution for his compeir-ance that day. *Plegio, Johanne Spalding de Innerrydray.*

PRELOCUTOURIS for the pannell, Mr Thomas Nicolfoun, Mr Andro Aytoun.

(Mar. 4, 1612.)—My Lord Advocat desyres that this mater may be con-tinewit to the tuentie day of Maij nixtocum, in respect that, be his Maiesteis Letter, direction was gevin that probatioun shold be ministrat to the Assyse, of the pannellis giltines of the fact lybellit : And that, in the meane tyme, his Maieftie may be acquetit with the informeris slaknes in the persute.

THE Justice continewis this matter to the tuentie day of Maij nixtocum. *Plegio, ut supra.*

PRELOCUTOURIS in defence.

Mr John Russell, Mr Andro Aytoun, Mr Thomas Nicolfoun, Mr James Oliphant.

(Maii 20, 1612.)—Compeirit Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Aduocat to our souerane lord, and declairit, that informatioun was gevin to him be his Maieftie, to follow furth this persute aganis the pannell, his Informeris furneissing probatioun in that matter, vtherwayis to desist : And in respect na diligence is vsed be the Informeris in this eirand, for fortherance of this persute ; he thairfoir declairit, that he wald nocht insist in persute of the pannell, at this tyme, bot desyret that the dyet shold desert.—Quhairupoun the pannell and his prelocutouris askit instrumentis, and protestit, that he be nocht callit, charget, or persewit for the crymes aboue specifeit, in ony tyme cuming. And nochtwith-standing of the premisses, in respect of his innocence of the saidis allegit crymes, as he affirmet, offerit him selff instantlie to the tryell of the Law, dissassenting to all maner of continuatioun ; protesting also, that na Letteris be direct aganis him for the said Cryme in tyme cuming ; becaus this is the fourt dyet keipit be him in this matter.

### Slaughter.

Nov. 8.—JOHNNE FARQUHARSOUN of Innerchald, Allaster Farquhar-foun, his brother, Donald Farquharfoun younger, Allaster Farquharfoun, his brother, James Farquharfoun in Achalater, Johnne Robertfoun of Straloch, *alias Barrone Reid*, Johnne Gairdin in Balliemoche, Findla Farquharfoun in Glenylay.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> James Clerk in Auldranie; committit in anno 1610 yeiris.

Compeirit Thomas Sinclair indueller in Edinburgh, and Robert Auchinlek, wryter, as procuratouris, speciallie constitute be Elspeth Kow the relict, and be Andro Howie, now hir spous, for his entreis; and be vertew of the Letter of Procuratorie grantit to thame, of the dait at Aberdene the third day of November instant, subscryuit be James Davidfoune and Mr Andro Clerk connoteris,<sup>1</sup> in name, and at command, of the said Elspeth and hir spous, past simpliciter fra the persute of the haill perfonen on pannell, &c.

The pannell protestis that thai nor nane of thame be callit or persewit for the said allegit slaughter in ony tyme cuming.

### **Slaughter—Stouth-reif—Shooting of Culverings, &c.**

Nov. 27.—WILLIAME FORBES of Monymusk.

Dilaitit, accuset, and persewit off the crymes following, viz.

FORSAMEKILL as vpone the nynt day of Maij, the zeir of God Im. Vc. fourfcoir zeiris, vmq<sup>le</sup> Alexander Menzeis, sone to vmq<sup>le</sup> Gilbert Menzeis of Culrie, Proveist of Aberdene, being directit be the said vmq<sup>le</sup> Gilbert Menzeis of Culrie, his fath<sup>r</sup>, to vissie<sup>2</sup> ane Halk-nest appointit be him to haif bene keipit and preferuet to our fouerane lordis vse and plesoure,<sup>3</sup> within the Craig<sup>4</sup> of Findoun, pertening heritabillie to the said Gilbert Menzeis, oy<sup>5</sup> to the said vmq<sup>le</sup> Gilbert Menzeis of Culrie, lyand within the Scheref dome of Kincairdin; the said vmq<sup>le</sup> Alexander Menzeis, estir visitatioun of the samyn, and that he had ordanit the tennentis of the saidis landis of Findoun to geve earnestt attendance to the keiping of the said halk-nest<sup>6</sup> for his Maiesteis vse, as said is; he being in sober and quyet maner returne-and thairfra, cumand-agaitwardis to the burgh of Aberdene, trusting in the meane tyme na inquieta-tioun, truble, harme, nor iniurie to haif bene done to him, be ony perfonen; bot to haif frelie past furth the hie way, as his hienes frie subiect, in respect that he had offendit na man, nather be word nor deid: Neuertheles it is of veritie, that the said Williame Forbes of Monymusk, accompaneit with Alexander Robertfoun, Thomas Dik, and . . . . Mylne, then his servandis, and vtheris thair complices, with convocation of our fouerane lordis legis, to the number of aucht perfonen, or thairby; bodin in weir-lyk maher, with secreitis,<sup>7</sup> steil-bonettis, gantiletis, suordis, culveringis, and pistolettis, expresse prohibe-it to be borne, worne, vsed vpone thair perfonen or in thair companeis, privatlie or oppinlie, outwith houffis, or schote with, be the Actis of Parliament, vnder the panes thairin contenit; vpone the said nynt day of May, the yeir of God foirsaid, the said Williame Forbes, with his complices, came tym-ousslie in the moirning, befor the sone-ryseing, to the Cairne<sup>8</sup> of Loriestoun, lyand within the sche-refdome foirsaid, quhair thay darnet<sup>9</sup> thamefelffis, maist obscurlie, behind the said Cairne, with thair

<sup>1</sup> Co-Notaries.

<sup>2</sup> Inspect.

<sup>3</sup> King James VI., like many others of his ancestors of the Royal House of Stuart, was passionately fond of the sport of Hawking, and appears to have spared no expense in procuring the finest breeds, from various parts of Scotland (chiefly from the North of Scotland and from the Western Islands and Orkney.) The choicest kinds seem to have been brought from Denmark and Norway; and, in many instances, the Falconers, who had trained them in those countries, were taken under the King's immediate protection and patronage.

<sup>4</sup> Craig, a precipitous rock or crag.

<sup>5</sup> Grandson; oe.

<sup>6</sup> The books of the Lord High Treasurer abound with entries of payments to men 'for watching a halkis-nest' at such a place, so as to secure the brood, and give timely notice when they were fledged and ready to take wing.

<sup>7</sup> A shirt of chain-mail, secretly worn under the ordinary dress.

<sup>8</sup> A heap or pile of stones, commonly erected on an eminence, which marks the place of sepulture of some remarkable persons. Cairns were often reared to preserve the memory of a remarkable Murder, &c.

<sup>9</sup> Concealed; hid.



chargit culveringis, placet vpon restis,<sup>1</sup> awaiting the said vmq<sup>le</sup> Alexanderis bycuming, for his slauchter : Lyk as, thay lay at await for his slauchter behind the said Cairne, continuallie, fra befor the sone-ryeing, quhill about aucht houris in the moirning; till at last, haifing persauet the said vmq<sup>le</sup> Alexander soliter, him self allane, in sober and quyet maner, cumand by the said cairne, thay, af thair restis, dischargit thair culveringis at him, or euir he was circumspect of thame; and thairwith schote him throw the heart and body with tua bullettis; and thairby, maist schamefullie, crewallie, and vnmercifullie slew him, upone set purpois, prouisioun, be way of Brigancie,<sup>2</sup> in vmbesetting the hie way, and foirthocht fellonie : AND nocht being satisfeit thairwith, thay seing him fall doun deid with the said schote, thay incontinent thairestir ruschet fordwaris to him, and with thair suordis and quhingeris maist schamefullie, crewallie, and tirannouslie gaif the said Alexander nyne bludie woundis about his heart, nochtwithstanding that thay had persauet him lyand deid and slane be thame of befor : AS ALSO, at the samyn tyme, be way of stouthreif, staw,<sup>3</sup> rest, and away tuik with thame his suord, quhinger, cloik, and uther graith being vpon him; had and convoyit the samyn with thame, and disponit thairupoun at thair plefour : And the said Williame Forbes of Monymusk is airt and pairt of the said crewall Slauchter of the said vmq<sup>le</sup> Alexander, and of the Maisterfull stouth-reif of his fuord, quhinger, cloik, and vtheris aboue writin. For the quhilkis, and for contravening the tennour of the said Act of Parliament, in beiring, weiring, and schuiting of the saidis Culveringis, dagis, and pistolettis, he aucht and sould be puneist, conforme to the Lawis of this realme.

PERSEWARIS, Gilbert Menzies of Pitfoddellis, as eldest brother-sone; Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Aduocat, &c.; David Menzeis of Tilliepowreis, as brother.

PRELOCUTOURIS in defence, My Lord of Mar, My Lord of Moirtoun, Mr Thomas Henderfoun, Mr Alexander Peiblis, Mr James Oliphant, Aduocattis.

Efter the reiding of the said Dittay and accusatioun of the said Williame Forbes of the saidis crymes, the Aduocat, with the pairteis persewaris aboue writtin, his informeris, befor all forder proces, past fra that article of the Summondis anent the 'Stouth-reif,' *pro loco et tempore* : As also declairit, that he wald nocht insist vpon that woird of the Dittay beiring 'foirthocht fellonie : ' And adherit allanerlie<sup>4</sup> to the Slauchter and committing thairof, in maner contenit in the Dittay, be schottis of hagbuttis and pistolettis; and in beiring and weiring of the saidis hagbuttis, contrair the Actis of Parliament : Quhairvpon instrumentis was tane be the said Williame Forbes of Monymusk and his prelocutouris; quha, nochtwithstanding thairof, offerit thame selffis reddie to defend for the saidis crymes past fra. And as concerning the Slauchter aboue writtin and remanent crymes lybellit, allegit that the Justice could not put the samyn to the Tryell of ane Assyse, becaus nocht only had the said Williame obtenit tua feuerall Letteris of Slanes fra tua of the brether to the defunct, in respect of thair satisfioun contenit thairin; bot also, the Kingis Maiestie, of his speciall grace and mercie, hes, be his Letteris of Remissioun, pardonit and remittit the said Williame Forbes of Monymusk for the saidis crymes : And for verificatioun

<sup>1</sup> When the culvering or musket was first introduced, the barrel was so heavy as to require a separate staff, called a *rest*, from which a deliberate aim could be taken. The circumstance of the culverings being placed upon their rests, is noted as an aggravation of the crime, and a strong proof of the malice of the parties. Specimens may be seen in *Grose*, or in the more recent publication of *Meyrick* on Ancient Armour, &c.

<sup>2</sup> Fr. *brigand, brigancie*.

<sup>3</sup> Stole.

<sup>4</sup> Alone; only.

thairof, producet tua feuerall Remiffiones, baith vnder the Grit Seill ; the ane, for the Slauchter aboue writtin, daitit vpone the xxvij day of Junij laft, and the vther, daitit vpone the first day of Auguft laftbypaft, for beiring and weiring of the hagbuttis and piftolettis ; and vpone the production thair of askit instrumentis. To the quhilkis Remiffiones, and his Maieftis pardoun fet down thairin, the faid Williame Forbes tuik him selff, and offerit caution to fatisfie fa mony of the kyn and freindis of the faid vmq<sup>le</sup> Alexander as ar nocht fatisfeit alreddie, according to the modificatioun of the Lordis of Sesshoun, and thair Declaratour to be gevin thairintill.

Quhilkis tua Remiffiones, the Justice admittit ; and ordanit the faid Williame Forbes of Monymusk to find the faid Caution for the parteis satisfactioun, in maner aboue specifreit : Quhairupoun the faid Williame Forbes askit instrumentis.

And for obedience of the faid Justice Ordinance, ffand Williame Forbes of Port-Lethem caution with him self, coniunctlie and feuerallie, to fatisfie fa mony of the kyn and freindis of the faid vmq<sup>le</sup> Alexander, as ar nocht fatisfeit alreddie, for the Slauchter aboue specifreit ; conforme to the modificatioun of the faidis Lordis of Sesshoun, and thair declaratour to be gevin thairintill, as law will : Quhairupoun the faid Gilbert Menzeis of Pitfoddellis, as eldest brother-sonne, and the faid Dauid Menzeis, as brother to the defunct, askit actis and instrumentis.

### **Murder under colour of Law—Drowning for a petty Crime, &c.**

[THE Case which follows seems to have taken its origin from feelings of vindictive malevolence, on the part of a Notary in Lanark, a dependent of the Laird of Lee ; who, to gratify his base and revengeful temper, adopted the plan of conspiring against his patron's life and fortune, by accusing him of Murdering a poor man, under colour of Law ! This tale was so well got up, that the Lord Advocate entertained his complaint, and raised Criminal Letters against Lockhart. A more effectual channel was likewise made use of by Weir the Notary, who directly complained, through the Marquis of Hamilton, to the King, who was at all times accessible to such accusations of oppression ; from the double motive of desire to redress the wrongs of his injured subjects, and from his overmastering 'greed of filthy lucre : ' for many were the schemes resorted to by the British Solomon to enrich his coffers with the proceeds of the heaviest fines and pecuniary compositions which could be exacted, as peace-offerings, to appease his Majesty's inflexible justice ! A doubt having arisen in the mind of the Editor as to the truth of the accusation contained in the Criminal Record, he made a pretty extensive search, and has fortunately been enabled to trace the matter to its origin. Without proper vouchers having been produced, the reader would naturally have inferred, from a close inspection of the Record, that the Lord Advocate had been tampered with by some powerful friends of this influential Baron of Lee—and that Lockhart had been really guilty of the atrocious crime imputed to him by his accusers. The Letter from the Privy Council to the King, and the Deposition of Weir, which are appended, satisfactorily explain the matter, and clear the character of the Laird of Lee from the slightest suspicion on this score.]

Dec. 3.—JAMES LOKHART of Lie.

Dilaitit for Drowneing and puting violentlie to death of vmq<sup>le</sup> James Watfone, in Auchcat-burne, and vtheris crymes specifreit in his Dittay.



In respect of the Advocate's absence, he protestis for relief of Johnne Lokhart of Bar his cautioner : And he farther protested for relief of George Auchinleck of Balmanno, cautioner for ' his compeirance befor my Lord Justice and his deputis, in the Tolbuth of E<sup>r</sup>, vpon the xx day of December instant, and that he be nocht haldin to compeir the said day,' &c.

Dec. 20.—Compeirit James Lokhart of Lie, quha proponit and declairit, fforfamekill as he being charget, &c., in the moneth of October lastbypast, to find caution to haif compeirit befor the Justice or his deputis, vpon the saxt day of November thairefter, now lastbypast, in the hour of caus, to haif vnderlyne the Law for the allegit Murthour and putting to death of vmq<sup>le</sup> James Watfone, vnder cullour of Law ; as he that was convict of sic meane crymes, as, be the Lawes of this realme, the dome of death could nocht be inflicted vpon ; and for certane vtheris allegit crymes, at lenth specifeit in the Letteris direct thairanent. The said James Lokhart of Lie, the tyme of the geving of the said charge, being furth of this realme, in the pairtis of Ingland, yit nevertheles, be the advyse of his freindis, in his absence, efter knowlege gevin to thame of the said charge, and for eschewing of the danger of Hoirning contenit in the saidis Letteris, in caice of disobedience, George Afflek of Balmanno became cautioner for his entrie, the said saxt day of November, to vnderly the Law for the saidis crymes ; at the quhilk day, the said George Afflek haifing, in respect of the said Laird of Leyis nocht returning, obtenit of the Lordis of Seffioun thair Lordschipis Warrant, direct to the Justice, for continuatioun of the dyet that day, to this present day : The Justice, for obedience of the said Warrant, of consent of my lord Aduocat, personallie present that day, as persewar, continewit the said dyet to this day. Lykas, the said George Afflek than become caution, &c.

In respect that my lord Aduocat nor na vther pairtie compeirit this day and place, as persewaris, to insist in his persute, being oft tymes callit to that effect, thairfoir Protestit for releif of the said George, &c. Quhilk Protestatioun the Justice admittit : Quhairupoun the said Laird of Lie askit instrumentis.

#### I. LETTER, *the Privy Council of Scotland* to THE KING.

MOST GRACIOUS AND SACRED SOUERANE,

ACCORDING vnto your Maiesteis directioun, send vnto me, for trying of those contradictorie informationis maid to your Maiestie be the MARQUES OF HAMMILTOUN<sup>1</sup> and THE LAIRD OF LEE, anent the executioun of *vmquhile James Watfoun*, and setting to libertie of *Jannet Forrest*, his spous, I caufit warne the Marques and the Laird of Lie to compeir this day, for iustiseeing of thair informationis. The

<sup>1</sup> James, *second* Marquis of Hamilton, a nobleman high in favour with the King, who granted him the Abbey of Aberbrothock, which was erected into a temporal Lordship, appointed him a Privy Councillor, one of the Gentlemen of the Bed-Chamber, Lord Steward of the Household—and subsequently, created him an English Peer, with the titles of Baron Ennerdale, and Earl of Cambridge, Jun. 16, 1619. Besides other great appointments, he was High Commissioner to the Parliament at Edinburgh, August 4, 1621, and was installed Knight of the Garter, Jul. 7, 1623. He died at Whitehall, Mar. 2, 1624-5, ætat. 36. He married Lady Anne Cuninghame, fourth daughter of James, *seventh* Earl of Glencairn.

Marques comperit be Sir Johne Hammiltoun, his brother, who affermed, that Jedeone Weir, notair in Lanerk, and Clerk of the proces led againis the said v<sup>m</sup>q<sup>le</sup> James Watfoun, declairit and shew vnto the Marques, that this Watfoun and his spous wer onlie callit and convict, and Watfoun execute, for steilling of ane lamb, and that the wyffe, after her convictioun, wes sett at libertie. And for verificatioun of this his affermatioun, he exhibite the said Jedeone Weir; who, vpoun examinatioun, confessit that he had gevin this informatioun to the Marques, as alswa to your Maiesteis Aduocat, the tyme of the raising of the Criminall Letteris aganis Lie; as your Maiestie, be his Deposition, heirwith send vp, will persave. The Laird of Lie compeirand, affermed constantlie, that this Watfoun wes callit and convict, vpoun his awin judicall Confessioun; and accordinglie execute, for the steilling of nyne scheepe. And for verificatioun heirof, he producit the proces, writtin enery worde with Jedeone Weiris awne hand; whilk, being showne vnto him, he could not deny the same.

This is all that hes bene tryit in this mater; whairby it appeiris, that the Marques hes bene abused<sup>1</sup> be the said Jedeone Weir, who, vpoun some priuat passioun and miscontentment aganis the Laird of Lie, maid this informatioun. And as for the wyffe, thair wes no thing verifeit aganis hir, bot the stealing of ane lamb, confessit be hir self. Whairupoun she wes dimittit,<sup>2</sup> in respect that the Assise could gif no verdite aganis hir. At this examinatioun, I wes assistit be the Archiebischop of Glasgw,<sup>3</sup> the Erll of Glencairne,<sup>4</sup> the Lord of Scone,<sup>5</sup> the President,<sup>6</sup> Preuie Seill,<sup>7</sup> Secretair,<sup>8</sup> Justice Clerk,<sup>9</sup> Aduocat,<sup>10</sup> and Sir Robert Meluill;<sup>11</sup> who all thocht meete that Warrant and directioun sould be gevin for deserting of the dyet appointit for the Laird of Lies tryale; whilk accordinglie wes done, whill the forder knowledge of your Maties gratus will and pleasour heiranent, whairvnto I fall conforme my self. And so, with my humble and hairtie prayeris vnto God, recommending your sacred Matie and all your royall progenye to his faderlie and devyne protectioun, I rest for ever,

Your Maiesteis most humble and obedyent subiect and seruitour,

(EDINBURGH), 28 Nouember, 1611.

DUNFERMELINE.

TO THE KING his most sacred Maiestie.

II. ; JEDEAN WEIR, his DEPOSITION, 27 Nouemb. 1611, anent Laird Lie Lockhard,<sup>1</sup>  
*referred to in the foregoing Letter.*

JEDEONE WEIR, notair in Lanerk, sworne, and demandit vpoun the forme and maner of the Dittay and accusatioun of v<sup>m</sup>quhile James Watfoun in Lie Mure, and Jonnet Forrest, his spous, and of the convictioun and executioun following thairupoun: Deponis, that the said v<sup>m</sup>quhile James and his spous wer only callit and persewit for the stealing of ane lamb; and that thay wer convict thairof: And that the said James Watfoun wes drownit for the stealing of the lamb; and that the said Jonnet Forrest, his spous, wes sett at libertie: And that this Deponner wes Clerk of the proces; and that the proces is writtin with his awne hand: And this he deponis, so fer as his memorie seruis him. And deponis, that he gaif this informatioun to the Marques of Hammiltoun, as alswa to Sir Thomas Hammiltoun of Byris, knight, his Maiesteis Aduocat.

TENET cum principali, J. PRYMOIS.

### **Theft—Falset (Forgery)—Imposture—Perjury, &c.**

Dec. 12.—DAVID DONALDSOUN, chopman in the Cannogait.

Duped; imposed upon.

<sup>2</sup> Dismissed *simpliciter* from the bar.

<sup>3</sup> John Spotiswood, the

Church Historian, &c.

<sup>4</sup> James, seventh Earl of Glencairn.

<sup>5</sup> David, first Lord Scone, who,

while he was Sir David Murray of Gospertie, was successively Cup-bearer, Master of the Horse, Captain of the King's Guard, and Comptroller. For the share he had in rendering the King so essential service, on occasion of Gowrie's Conspiracy, he got the Barony of Ruthven, with the Abbacy of Scone, which last was erected into a temporal Lordship; and he was afterwards created Viscount of Stormont.

<sup>6</sup> John Preston of Fenton Barns, President of the College of Justice.

<sup>7</sup> Sir Richard

Cokburn of Clerkington.

<sup>8</sup> Sir Thomas Hamilton, afterwards Earl of Hadington.

<sup>9</sup> Sir John

Cokburn of Ormiston.

<sup>10</sup> Sir Thomas Hamilton.

<sup>11</sup> Of Bruntisland, one of the Extraordinary

Lords of Session.



Dilaitit of the ffalsiefeing, fforgeing, and counterfuteing of ane fals Assignatioun, &c. fpecifeit in his Dittay following.

## PERSEWARIS.

Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>, Johnne Alfthunder,<sup>1</sup> indueller in the Cannogait.

DAVID DONALDSOUN, chopman in the Cannogait, 3e ar indytit and accufet, fforamekill as 3e, haifing ingyret<sup>2</sup> 3ourself in the acquentance of Johnne Alfchander, indueller in the Cannogait, ane puir, aged, fimple<sup>3</sup> man, wanting childrene and freindis ;<sup>4</sup> of fet purpois to mak 3our advantage, vnlauchfullie, of him, and to defraud him of that fmall portioun of geir quhilk refted<sup>5</sup> to him for his intertenement,<sup>6</sup> in his decriped and decayed age ; and be 3our flatteris and fubtelteis, promeiffing to him 3our affiftance in his actiones and effairis, with his intertenement in 3our houle ; haifing pairby obtenit of him credeit to handill and pervyfe his writtis and eidentis ; 3e, in the moneth of September, or pairby, in the 3eir of God I<sup>m</sup>.Vj<sup>c</sup>. and ellevin 3eiris, thiftioufflie ftaw and conceillit frome him, and retaynit in 3our handis, tua Obligationis maid to him ; the ane pairof, of the dait the xxj day of Januar, I<sup>m</sup>.V<sup>c</sup>.lxxxxviiij 3eiris, quhairby Johnne 3oung in Dudingftoun was obleift to pay to him the fowme of ane hundreth pundis, and fail3eing pairof to infeft him (in) ane annuel-rent ; and the vper, of the dait the fyft day of Februare, I<sup>m</sup>.Vj<sup>c</sup>. and ten 3eiris, quhairby Johnne and Thomas Carffis was bund to the faid Johnne Alfchunder to pay to him pe fowme of ane hundreth and tuelf pundis : And redelyuering to him pe reft of his writtis, 3e affirmet to him, that 3e had delyuerit to him his haill writtis and eidentis. AND eftir that 3e had thiftioufflie ftowin fra him his faidis Obligationis, in maner and at pe tyme aboue fpecifeit, and had confiderit with 3our felff that pe faidis Obligationes wald be vnprofitable to 3ow vnles 3e war maid assignay pairto, and knowing alfo that pe puir man was nocht altogidder fo fenfles as to denude him felf of his haill guidis, geir, obligationes, and dettis in 3our fauour, being ane ftranger, to quhome he was nawayis obleift, and quhome he had no reffone to truft with his haill moyane and eftait ; 3e, falflie, wicketlie, and effrontellie refoluet to fforge, counterfute, and ffalsifie to 3our felf and 3our awin behuife ane Assignatioun to the faid Johnne Alfchunderis foirfaidis Obligationes and haill remanent guidis and geir : ffor performeance quhairof, knowing that 3e behovet to haif pe affiftance of fum man quho wald tak vpone him pe name and represent the perfonage of the faid Johnne Alfchunder, 3e firft delt with . . . . . Ramfay, ane aged begger, to play that perfonage ; and eftir 3e had craftillie intyfed him to consent pairto, 3it foirfeing<sup>7</sup> with 3our felff the grit and mony

<sup>1</sup> Alexander.    <sup>2</sup> To ingratiate, by artifice and circumvention. From Lat. *in*, and *gyro*, to twist or turn round ; to entwine, &c.    <sup>3</sup> Weak ; facile.    <sup>4</sup> Childless, and having no blood-relations, &c. to care for him in his old age.    <sup>5</sup> Remained.    <sup>6</sup> Livelihood ; maintenance.    <sup>7</sup> Foreseeing



differences, in fauour and stature,<sup>1</sup> betuix him and þe said Johnne Alschunder, wald easilie bewray 3our falsheit, 3e delt with . . . . . Cuthbert, cordiner in the Kowgait, quha haifing refuisset to be actour in so pernicious and wiked ane interpryse, at last 3e delt with Johnne Henrie, cobbler in the Cannogait, and finding him bothe fit and willing to play the pairt of so damnable a tragedie, and knowing that gif his face sould be sene bare and vncoverit, it wald be paireftir easilie discoverid, that he haifing the sicht of bothe his eyis nicht easilie be discernit from Johnne Alschunder, quho is blind of one of his eyis, 3e causit þe said Johnne Henrie cover one of his eyis and þe syde of his face with ane blak clothe, vpone the tuelf day of November lastbypast, and than informet him sufficientlie of all the circumstances necessar to be vsed þe him in the representatioun of the persone of the said Johnne Alschunder, for accomplieffing 3our wicket, pernicious, and fals purpois: And immediatlie paireftir, convoyit him with 3ow to the toun of Leith; and pair travellit with Patrik Glasfurd, notter, to forme ane Assignatioun to 3ow of the foirsaidis Bandis, and of the said Johnne Alschunderis haill remanent guidis; quhilk being done at 3our desyre, 3e paireftir convoyit the said Johnne Henrie, cobbler, to þe wryting-buithe of the said Patrik Glasfurd in Leyth, in quhais presens, and in þe presens of Archibald Norwell, connotour,<sup>2</sup> and dyuerse honest witnesses, altogidder ignorant and innocent of 3our false, dissaueabill, and wicket purpois, the said Johnne Henrie, cobbler, quhome 3e supposed in place of þe said Johnne Alschunder, and quho, of 3our speciall causeing, command, counsell and perswasoun, taking vpone him, falselie and mischantlie,<sup>3</sup> þe name and personage of þe said Johnne Alschunder, gaif command to the saidis connoteris to subseryve to 3ow and in 3our fauouris the foirsaid Assignatioun<sup>4</sup> to the said Johnne Alschunderis Obligationes and guidis. Quhilk being done, and subseryuit be þe saidis Notteris and witnesses insert; and þe Notteris, for dischaarge of pair deutie, haifing proponit to 3ow, that resson and conscience requyret that 3e sould provyde for þe pure auld man Johnne Alschunderis intertenement, during his lyfytyme, 3e consented that pai sould forme ane Bak-Band, obleiffand 3ow to him to þat effect, during his lyfytyme; quhilk 3e subscryued and delyuered to the said Johnne Henrie, affirmeing him self falslie to be the said Johnne Alschunder: AND schortlie paireftir 3e causet registrat the foirsaidis Obligiounes, and gaif in the said Assignatioun to the Register; and

<sup>1</sup> In point of looks, complexion, personal appearance, and stature. O. Fr. *meschant*, wicked, worthless, &c.

<sup>2</sup> Co-Notary.

<sup>3</sup> From

<sup>4</sup> By the Law of Scotland, blind or maimed persons, and those who cannot write, may execute Last-wills and deeds of the greatest importance and solemnity, through the medium of two Public Notaries, who, in presence of four or more witnesses, read over and explain the nature of the Deed to be then completed; and on getting the instructions of the party, write out an official and Notarial schedule, or '*docquet*,' as it is called, attesting the fact, and stating precisely the reason of their being called upon to subscribe the deed in question. On the Notaries adhibiting their official signatures—the witnesses likewise, in attestation of the fact, subscribing their names—the writing is perfectly valid in Law.



pairupoun and vpone the said fals Assignatioun 3e raifet Letteris of Poinding and Intromiffioun, and fallie, wicketlie, and thiftioufflie mellit<sup>1</sup> and intromettit with fourtene fcheip pertening to the said Johnne Alfchunder, flew and difponit vpone tua of thame, fauld and difponit vpone the reft, and waifted and confumed the price pairof in fatisfeing the gluttonie of 3our deboifched<sup>2</sup> affociattis: AND being callit befor þe Lordis of Secreit Counfell, 3e abaid at þe verritie of the said Assignatioun, vpone 3our grit aith, and vpone the perrell of 3our lyfe: LYKAS, 3e haifing abiddin pairat, in prefens of the Lordis of Seffion, and peruredlie avowed the fame to be ane trew evident, eftir that be pair dilligence in 3our Examinatioun, 3e was put frome all cullour of iuftifeing pairof, 3it 3e malicioufflie and impudentlie preifed to cleir 3our felff, and bring wrangus imputatioun pairof vpone 3our innocent wyfe and hir ffather. QUHAIRBY, 3e haif committed the crymes of Thift, Impoifture, Periurie, Falfet, and Diffaitful fuppositioun of ane counterfute perfonage, fallie, wicketlie and diffaueabillie to affume and vfurpe the name and perfonage of the said Johnne Alfchunder, to his diffait, preiudice, and manifft oppreffion, in maner aboue writtin. For the quhilk, 3e aucht to be exemplarlie puneifchet, as ane Theif, abufear, impofture, and periured falfer, and perfuader of ane pernicious villane to vfurpe, affume, and tak vpone him the name and perfonage of ane of his Maieftis trew fubiectis, for his diffait and ouerthrow.

THE perfones of Affyfe being chofin, fuorne, and admittit, eftir accusatioun of new agane of the said Dauid Donaldfoun, be Dittay, in thair prefens and audience, of the crymes aboue writtin, and eftir production to thame, be our said fouerane lordis Aduocat, of ane Decreit of the Lordis of Seffion, of the dait the ellevint day of December instant, finding and declairing the foirfaid Assignatioun allegit, maid and grantit to the said Dauid Donaldfone be the said Johnne Alfchunder, in maner fpecifeit in his Dittay, to be ffals and fenzeit in the felf, forget, and devyfet be the said Dauid; and thairfoir, decerning and ordaning him to be puneifchet in his perfone and guidis thairfoir with all rigour, in exampill of vtheris.

VERDICT. The Affyfe, be the mouth of Johnne Mathie, bonat-maker, chancellor, ffand, pronuncet and declairit the said Dauid Donaldfoune to be Giltie, culpable, and convict of the crymes of Thift, Impofture, Periurie, Falfet, and Diffaitful fuppositioun of the said Johnne Henrie, cobbler, ane counterfute knaif, fallie, wicketlie and diffaueabillie to affume and vfurpe the name and perfonage of the said Johnne Alfchunder, ane pur, aget, fimple man, to his diffait, preiudice, and manifft Oppreffion; in maner fpecifeit and at lenth fett down in the said Dittay.

<sup>1</sup> O. Fr. *mesler*, to intermeddle, &c.

<sup>2</sup> O. Fr. *desbauché*, debauched, worthless, &c.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid; and his haill moveable guidis and geir to be escheit and inbrocht to our souerane lordis vse, as culpable and convict of the saidis crymes:—And lykwayis, Ordanit thir woirdis, ‘FOR THIFT, FOR FALSET, FOR IMPOSTURE, AND PERIURIE,’ to be writtin in grit letteris vpone tua feuerall paperis, and affixt, ane vpone his bak, the vther vpone his breift, the tyme of his executioun. Quhilk was pronuncet for Dome.

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

ASSESSORES *nominat to the Justice be the Lordis of Secreit Counsell.*

Mr Johnne Prestoun of Pennicuik, President of the College of Justice; Sir Richard Cockburne of Clarkingtoun, Lord Previe Seall; Sir Alexander Drummond of Medope; Mr Willame Oliphant of Newtown.

‘**Invasion**’—**Taking Captive**—**Wearing Hagbuts, &c.**

Dec. 21.—WILLIAME DOUGLAS, Younger of Drumlanerig.<sup>1</sup>

Dilaitit of the Invaiding and persewing of Willame Kirkpatrick of Kirkmichell; and for Vsurpatioun of our souerane lordis royall pouer and authoritie, in taking him Captiue and Prissoner at Dreffitland, and thairfra transpoirting him to the place of Drumlanerig, quhair he was detenit; and keiping him in cloise prissone, within the Tour of Drumlanerig, for the space of sax or sevin dayis, or thairby, he being our souerane lordis frie lege; committit vpone the fyftene day of July, 1610 yeiris: And for contravening of our souerane lordis Actis of Parliament, in beiring . . . . . and weiring of hagbuttis and pistolet tis.

PERSEWARIS, Willame Kirkpatrik, appeirand of Kirkmichell; Sir Thomas Hammiltoun of Byres, kny<sup>t</sup>. PRELOCUTOURIS in defence, Mr Alexander King, Mr Thomas Hoip, Aduocatis; my Lord of Angus; my Lord of Wigtoun; Sir James Douglas elder of Drumlanerig; my Lord Sanquhar.

It is allegit—na proces at Kirmichellis instance, becaus he is rebell; and producet the Hoirning for verificatioun thairof, at the instance of the Laird of Cloisburne elder, for nocht payment of the pryces of certane victuall. It is ansuerit, aucht to be repellit, in respect he is relaxt; and producet the Relaxatioun thairupoune.—It is forder allegit, that he is at the horne for nocht payment of the Taxatioune.—Thaireftir, my Lord Aduocat declairit that he had Warrant of his Maiestie to persew, and conforme thairto, declairit he wald insift in the pannellis persute, for the crymes contenit in the summondis.

It is allegit be my Lord Aduocat, that this Hoirning for the Taxatioun aganis Kirkmichell can nocht debar him to persew, becaus, be Act of Parliament, in anno 1597, it is appointit that all Hoirningis execute aganis ony pairtie, fall ather be producet judicillie, or in presens of ane Notter and foure witnesses: And trew it is, that the Registratioun thairof is contrair to the said Act. It is

<sup>1</sup> See the Case of Alexander Kirkpatrick, sone to Sir Thomas K., of Cloisburne, kny<sup>t</sup>, Jun. 28, 1611.



anfuerit that the Act of Parliament in anno 1597 is tane away by a pofteriour Act of Parliament, viz. in anno 1600.—It is allegit be my Lord Aduocat, that this Hoirning is nocht competent in the perfone of the pannell, feing it is nocht execute at the pannellis instance for ane criminall caufe; and forder, the pairtie perfewar is relaxt, albeit he haif nocht his Relaxatioun vpoun him. It is anfuerit, it is verrie competent to allege na proces at the instance of the perfewar, fa lang as he ftandis rebell.

THE Justice, with advyse of the Affeffouris, ffindis na proces at the instance of Kirkmichell, fa lang as he ftandis rebell, vnrelaxt.—Quhairupoun the pannell askit instrumentis.

My Lord Aduocat declairis he infiftis, for his Maieftis intreis, in perfute: quhairupoun the pannell askit instrumentis.

It is allegit, that my Lord Aduocat man (*must*) condiscend in the Summondis: *Firft*, that the pannell, anent the beiring of Pistolettis, thai war borne on his perfone: *Secundo*, gif thai war borne in his companie, man<sup>1</sup> condiscend vpone that perfone: *Tercio, non fuit dolo*, becaus gif any was borne in his cumpany, it was by<sup>2</sup> his knowlege.—It is anfuerit, aucht to be repellit, in respect of the Summondis beiring that the Laird of Drumlangrig and his complices, at the leift ane or vther of thame, buir piftolettis at the tyme lybellit, viz. thais quha ar exprefit in the Summondis, and euerie ane of thame, at the leift ane or vther of thame.

THE Justice, with advyse of the Affeffouris, ffindis the fummondis, as thai ar fett down, to be relevant, beiring that the pannell, with thair complices, lurkit and darnit<sup>3</sup> thame felfis in maner lybellit.—Quhairupoun my Lord Aduocat askit instrumentis.

It is allegit, that the pannell can nocht be convenit for *Williame Douglas of Reidhous*, becaufe the faid Williame, being convenit for piftolettis afoir the Counfell, was fynet be the Counfell thairfoir; and producet ane Decreit of Counfell, for verifeing thairof: And in respect of the Act of Parliament, in anno 1600, can nocht be perfewit afoir the Justice, for that cryme, of new agane.—It is anfuerit, aucht to be repellit, in respect of the Summondis. It is allegit, that Williame Douglas being perfewit at the instance of the pannell, befoir the Counfell, for bering of piftolettis, and the (injury) done to the pannell the tyme lybellit; as the Decreitis beiris: It is thairby tryit,<sup>4</sup> that the beiring thairof was in Kirkmichellis companie, and nocht in the pannellis company: *Secundo*, feing Douglas is fynet befoir the Counsell fen that cryme, as be the faid pofteriour Act of Parliament he fuld nocht be of new perfewit befoir the Justice for that cryme, *per confequentiam* the pannell can nocht be perfewit as haifing Douglas in his companie.—It is anfuerit be the Aduocat, that it is a verrie evill confequence,<sup>5</sup>

<sup>1</sup> Must.    <sup>2</sup> Without; contrary to.    <sup>3</sup> Concealed; hid.    <sup>4</sup> Decided.    <sup>5</sup> A very false conclusion.



and the allegiance aucht to be repellit, in respect of the Summondis.—It is allegit for *Hob Hunter*, that he was deid before the tyme lybellit; quhilk he offerris to preve, be Witnesles present at the bar.—It is ansuerit, that that probatioun can nocht be ressaunt, bot man be tryit be the Assyse.—It is allegit that the Summondis is nocht relevant, except the persones contenit in the Summondis war the pannellis houshold serwandis, or cum furth of his house with him; be his directioun, and that thai<sup>1</sup> war borne *ex mea scientia*: And that na fact or deid is done with pistolettis to the hurt of ony persone, quhilk is nocht exprest in the Summondis.—It is ansuerit, aucht to be repellit, in respect of the Act of Parliament and Dittay foundit thairupoun: And forder, seeing the lyk perfute hes oft tymes bene decydet and fund relevant in this Judgement ofbefoir, desyres my lord Justice to advert thairvnto.—It is ansuerit be the pannell, that the preceis wordis of the Law is not to be respectit, bot *anima et ratio legis*, for the Law-maker is nocht to puneise persones for haifing pistolettis in thair cumpany by<sup>2</sup> thair knowlege, bot<sup>3</sup> the breker of the Law be schuting of pistolettis, and beir- ing of thame of purposis to offend thairwith.—Ansueris the Aduocat, aucht to be repellit, in respect of the Act of Parliament, quhairto he referris him self.

THE Justice, with advyse of the Assessoris, Repellis the allegiances, in respect of the lybell as it is set down, except for *Reidhous*, quhilk the Justice continewis that matter quhill<sup>4</sup> the Counsell be advyset thairwith.

It is forder alleget for the pannell, that feing the Judge has ffund the Dittay relevant, in respect he and his complices darnit and lurkit in maner lybellit; that thairfoir, the pannell can nocht be convenit for *Williame Douglas* beiring of pistolettis; becaus it is cleir, be the Decreit of Counsell producet, that *Reidhous* wes vpone the Ball-grene, playing with him, Kirkmichell, the haill lycht, and sa possibillie could nocht be darnit ofbefoir in the leght; and the persewer is nocht able to afferme that thai war darnit eftir the boillsPELL<sup>5</sup> dissoluit.—It is ansuerit be the Aduocat, it is nawayis contrair, feing Williame Douglas mycht haif bene in Kirkmichellis company afoir none, and with the pannell (efter none).

It is allegit be the pannell, that the taking of ane man is nocht capitall, bot is only persewit as ane Ryote befoir the Counsell; and producet tua practikis<sup>6</sup> led afoir the Counsell for the lyk cryme.—It is ansuerit, aucht to be repellit, in respect of the cowmoun Law and practik obseruit befoir the Justice in the lyk perfutes ofbefoir: Repeittis Dumbrekis practik, M<sup>c</sup>gregouris, and Fintreis for verifieing thairof.—It is ansuerit, for *Dumbrekis* practik, that he is nocht sa

<sup>1</sup> Viz. the pistols.

<sup>2</sup> Without.

<sup>3</sup> Unless.

<sup>4</sup> Until.

<sup>5</sup> After the party broke

up. This term is commonly written and pronounced *Bonspeil*, signifying a contest between two parishes or parties at 'curling' on the ice, archery, golf, &c. It is likely, in the present instance, to have been a match at 'golf,' or, more probably, *foot-ball*, both of them favourite games in Scotland. The *Ball-green* favours this conjecture.

<sup>6</sup> Decisions; instances; parallel cases.



mekill convict for taking of the Kingis frie lege, as for Thift and Stouthe-reif; quhilk he referris to his convictioun.—It is allegit be the Aduocat, that *Dumbrek* is convict of Treffone, for the taking and detening of Meldrum of Aquhorteis, and Andro Meldrum his brother. Allegis the lyk for *M<sup>c</sup>Gregouris*, quha war bayth convict and put to the death for the saidis crymes: And as for *Fintrie*, the Summondis was ffund relevant, albeit he was abfoluet be þe Affyse.—It is anfuerit be the pannell, thair was ma<sup>1</sup> cryme coniøynet in thair Dittayis, nor<sup>2</sup> fimple Taking only, and mair nor ane Taking; and the Law Ordanis *exercitium Privati carceris*, only to be ane cryme, loco, ‘*Jubens*,’ codice, ‘*de Privatis carceribus*,’ et *Baldus ibid.*: Quhilk Law is alfo derogait be ane posteriour Law in that samyn Title, be quhilk (*exercitium*) *privati carceris* is only punifchet *pena* . . . . and the practyk of . . . .<sup>3</sup> is only to puneife *pena pecuniaria*; and allegit Julius Clarus.<sup>4</sup>

It is allegit, the Laird of Kirkmichell, the tyme of his taking lybellit, was at the horne, and be vertew of Letters of Captioun, was tane be the Scheref of the fchyre, quhome the pannell affistit allanerlie<sup>5</sup> in the Taking: And producet the Hoirning and Letteris of Captioun, be the quhilk the Scheref-Depute, Robert Creichtoun, was charget to tak him, being rebell. It is anfuerit, that the allegiance aucht to be repellit, in respect the Letteris quhairupoun the Laird of Kirkmichell is denuncet war fuspendit *simpliciter, in foro contradictorio*, and he relaxt be the fpace of ane half yeir of befoir.—It is allegit be the pannell, that the tyme of Kirkmichellis taking, thair was na Relaxatioun fchawin, and na knowlege was gevin of his Relaxatioun to the Schireff; and fa he was *in optima fide* in taking of the Kingis rebell, nocht knawin to him to be relaxt: And forder producet ane Act, quhair Robert Creichtoun was constitute Scheref-depute. It is forder allegit, that gif the Scheref had been perfewit for Taking of the Kingis fre lege, nocht knawn to him to be relaxt, bot charget to tak him; as na Dittay could be relevant aganis him, in lyk manner, na proces aganis the pannell for being in his companie, and affifting the Scheref at that tyme.—It is anfuerit, aucht to be repellit, in respect of the Summondis, Decreit fufpending the Hoirning, and Relaxatioun producet; and the lybell beiring that Young Drumlanerig and his complices hurt and woundit Robert Creichtoun for ftaying them to flay Kirkmichell; and fua can nevir allege that thai affistit him in execution of his office.

It is forder allegit, that this Dittay can nocht be comptit ane cryme, in respect the perfone tane was the Kingis rebell; and for verifeing thairof, repeittis the Hoirning producet for nocht payment of the Taxation; and thairfoir the Dittay can nocht be put to ane Affyse: Quhilk Hoirning is daitit the xj of Februar

<sup>1</sup> More.    <sup>2</sup> Than.    <sup>3</sup> Obliterated in Record.    <sup>4</sup> An old Commentator.    <sup>5</sup> Only; merely.

1601. It is anfuerit, that it is nocht onlie for Taking of the Kingis frie lege that the pannell is conuenit, bot for Vfurpatioun of the Kingis authoritie.—It is allegit, that except the perfone tane, the tyme of his taking, had bene the Kingis frie lege, it can nocht be fund that the pannell vfurpit the Kingis authoritie.—It is anfuerit, that the taking of ony perfone but<sup>1</sup> Commissioun of the Prince is Vfurpatioun of the Kingis authoritie, quhidder he be rebell or nocht.

THE Justice continewis, with advyse of his Assessoris, Interlocutour vpone the former allegeances to Tyfday nixt.

It is forder allegit, that as of the Law, *bannitus potest impune occidi, sic multo fortius capi et incarcerari*; quhilk is expresse decydit be Baldus, in the foir-faid Law ‘*Jubens*,’ codice ‘*de Privatis carceribus*,’ numero finali: And be Julius Clarus, L. *sententiarum* § *Homicidio*.—It is anfuerit be the Aduocat, that *Banniti*, of the Cowmoun Law, was only thay quha war declairit rebellis for ane capitall cryme.—It is duplyit for the pannell, that of the Ciuill Law, that *Banniti* war alaweill rebellis for crymes, as for pecuniall fowmes; and for preving thair of citit Julius Clarus, L. *sententiarum* § *Homicidium*.

THE Justice Continewis Interlocutour, with advyse of his Assessoris, to Tyfday nixt.<sup>2</sup>

Dec. 24.—Compeirit Williame Douglas, younger of Drumlanerig, quha declairit that he offerit him self reddie to anfuer and abyde tryell vpone the Summondis and Dittay, at the instance of his hienes Aduocat: And als, is content, that nochtwithstanding the Laird of Kirkmichell be rebell, and was declarit be Hoirning the last dyet, to pas fra the said Hoirning vset aganis him, and that he haif place and perfone to stand in Judgement aganis him, and to insist in his persute on the Summondis and Dittay producet aganis him: And in respect thair of, the pannell desyret my Lord Justice to pronounce Interlocutour vpone the allegeances and anfueris maid in this caus vpone Setterday last, quhilk was the last dyet of this proces.

THE Justice Defertis this dyet, and that in respect that my lord Aduocat and the Laird of Kirkmichell, parteis persewaris, quha war oft tymes callit to insist in this persute, compeirit nocht to that effect.—Quhairupone the pannell askit instrumentis; and that nochtwithstanding thair of, he offerit him self to defend accoirding to the Law, for the haill crymes contenit in the Dittay.

(Apr. 24, 1612.)—MY Lord Aduocat declairit that he wald insist for baithe the crymes contenit in the Summondis, alaweill for taking and incarceration, as beiring and weiring of pistolettis.—The pannell, ffor cleiring of his In-

<sup>1</sup> Without.

<sup>2</sup> [On the margin of the Record,] “This haill proces preceeding, be ane Act maid vpone the xxiiij day of Apryle, 1612, is be the Justice, with advyse of the Lordis of Secreit Counsell, ordanit to be deleit furth of the Buikis of Adiornall,” &c.



nocencie of the first pairt of the Summondis, concerning the taking of the Laird of Kirkmichell, &c., producet ane Letter, subscryuit be the Laird of Kirkmichell, and certane famous Witnesse; quhairof the tennour followis.

I, WILLIAM KIRKPATRICK, appeirand<sup>1</sup> of Kirkmichell, Testifeis and declairis, that þe tyme I went with Young Drumlanerig to the place pairrof, quhilk was vpon the xv day of July, 1<sup>m</sup>.Vj<sup>c</sup>. and ten zeiris, it was at my speciall desyre to gang with him, for eschewing of farther inconvenient to my brother and sic vtheris as war in my companie, for allegit wrangis done to his faper; quhairof I was innocent: And declairis þat I wes nocht tane pair against my will; and that efter I come to the Place of Drumlanerig, I was honestlie and courteouslie interteneit, haifing frie libertie to pas quhair I pleisit, as ane frie Gentilman: And being on the morne paireftir oft and dyuerse tymes requyret be Young Drumlanerig to pas quhair I pleaset, I refuset to go forth, in respect of sum informatioun I had ressaunt; and remanet pair against his will, quhill he forcet me to pas away, alwayis with sic forme of courtesie as he could vse to sic ane Gentilman: And that I was nawayis detenit nor keipit as Captiue or Prisoner: And that þe Letteris raist at my inslance aganis him befor þe Justice, was by<sup>2</sup> my knowlege or advyse: Quhilk I testife to be of treuth. AND consentis þat þir presentis be insert and registrat in the Buikis of Counsell or Adiournall: And to that effect, Constitutis Mr Alexander King, aduocat, my Pro<sup>r</sup>, to compeir and consent to þe registering heirof; quhilk is writtin be Williame Penman, wryter in Edinburgh, and subscryuit with my hand, AT ED<sup>3</sup>, the ellevint day of Januar, the zeir of God 1<sup>m</sup>. fax hundreth and tuelf zeiris, befor þir Witnesse, Thomas Greirfone of Bariarg, James Greir his broþ<sup>r</sup>, Sir Williame Greirfone of Lag, kny<sup>t</sup>, James Dowie, wryter, and George Bryce, inserter of þe dait and witnesse heirintill.

KIRKMICHELL, Younger.

Lag, witnes, THOMAS GRIERSONE, witnes, JAMES GRIERSONE, witnes,  
J. DOWIE, witnes, GEORGE BRYCE, witnes.

Compeirit the said Mr Alexander King, as pro<sup>r</sup> for Williame Kirkpatrick, younger of Kirkmichael, and desyrit the samyn to be insert and registrat in the Buikis of Adiornall, to the effect foirsaid; and alledges, that the said cryme of Taking and Incarceratioun of Young Kirkmichell, can nawayis be put to the knowlege of ane Assyse, in respect of the said Letter and contents thairof: And for better securitie, desyret, as of befor, the said Letter and Declaratioun to be insert and registrat in the Buikis of Adiornall, therin to remane *ad futuram rei memoriam*.

My Lord Aduocat takis instrumentis of the production of the said Letter and Declaratioun thairin contenit. The Pannell declairis he will vse na vther defence in this matter, bot the allegiance immediatlie preceiding, and renunes all vther exceptiones proponit be him in this caus of befor for this cryme, or competent to him aganis the same. My Lord Aduocat producet HIS MAIESTEIS LETTER, and desyret the clause following, insert thairintill, quhilk concernis this persute, to be insert in the Buikis of Adiornall; quhairof the tennour followis.

AND as for that vther poynt of your Letter, concerning the forder following of that persute intentit aganis YOUNG DRUMLANERIG, sforasmuch as We understand that he, being laitlie reconceillit to Kirkmichell younger, is to compeir befor our Justice at þe day and place specifeit in your last Summondis raist against him, and pairby (for clearing him selff of that cryme quhairof he is accuset) to alledge that he did naper violentlie apprehend, nor detene the said Kirkmichell. It is pairfoir our speciall

<sup>1</sup> Heir apparent.

<sup>2</sup> Contrary to; without.

pleasour, that at þe foirsaid dyet 3ow continow 3our persute against him, and that vpone his allegeing þe foirsaid exceptioun, 3ow do demand of him, gif he will nocht halilie rely pairupoun, renunceing all vther exceptiones formerlie proponit in his defence : And vpone his Declaratioun that he will do so, 3ow fall than insist for remitting þe Tryell and furdur consideratioun pair of to the Lordis of our Counsell ; insisting, in the meane tyme, earnestlie, that thease vther exceptions heirtofor vsed in his defence, being so dangerous, and by no president warranted, may nocht heireftir be recoirdit in the Registeris of Ad-iornal, as lauchfull or tollerable Defences to be proponit in the lyk Caissis, in ony tyme cuming :<sup>1</sup> Quhairin, nawayis douting of 3our cair and reddines, We bid 3ow fairweill. Frome our Court, ATT QUHYTEHALL, the nynteneth of Merche, 1612.

And in respect thair of, and of the allegiance proponit be the pannell and his Judiciall Declaratioun, that he renunes all his former Defenssis, proponit of befoir in this cause, for this cryme, or competent to him aganis the samyn, except vpone the particuler allegiance foundit vpone Kirkmichellis Declaratioun aboue mentionet, subscriuit be him, and producet be the pannell this day ; first, desyres, according to his Maiesteis commandment, that the tennour of the former Defenssis proponit be the pannell in this cause, be deletit furth of the Register of Ad-iornall ; quhilk the Justice hes presentlie ordanit to be done : And nixt, desyret my lord Justice, that he will be advyset with the Counsell, concerning the allegiance aboue writtin, proponit this day be the pannell. My Lord Aduocat declairit that he past fra the persute of the pannell, for the last pairt of the Summondiss, for the beiring and weiring of pistolettis at this tyme and place : Quhairupone the pannell askit instrumentis.

*INTERLOCUTOR and Decision of the Justice and Lords of Secret Council.*

THE JUSTICE, In respect of this Letter producet be Mr Alexander King, subscriuit be the Laird of Kirkmichell, and circumstances contenit thairin, with advyse of the Lordis of Secreit Counfall, findis that this matter can nocht be put to the knowlege of ane Assyse : And siclyk, in respect that the pannell hes this day past fra the haill former Defenssis proponit be him in this cause, for the said cryme, of befoir, in maner contenit in his former Declaratioun, the Justice, with advyse of the Lordis of Secreit Counsell, sittand this day in Counsell, Ordanis the haill former allegiances proponit in that matter of befoir, to be deletit furth of the Buikis of Adiornall.

Quhairvpone my Lord Aduocat askit instrumentis ; lyk as the pannell also askit instrumentis, vpone the first pairt of said Interlocutour.

**Slaughter.**

Feb. 12, 1612.—ROBERT SCOTT and ADAME SCOTT, Bailleis of Hawik ; Jok Scott, belman in Hawik ; Williame Donald, alias *Nymbill*, in Hawik ; John Lidderdail, thair, callit *Jok the Deacon* ; Hob Scott, thair, callit *Hob the Lonkie* ;

<sup>1</sup> It is obvious that steps had been taken by the Officers of the Crown, in this remarkable Case, to procure the private agreement of the parties ; and on this being effected, the '*dangerus*' Defences, so boldly and ably urged by the eminent Counsel and fore-speakers, would forthwith be expunged from the Record ; or, at all events, never be permitted to be cited as precedents in future. The Defences were accordingly withdrawn, on this understanding, that the matter would be privately adjusted by the Lords of the Privy Council, as umpires. No deletion appears on the face of the Record.



Jok Schorte, thair; and Williame Johnnestoun, seruitour to *Mariones Hob.*

Dilaitit for airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Ellote in Redden, callit Johnne of Rynfiegill, committit within the said Jok Schortis duelling hous in Hawik, in the moneth of July, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and ten yeiris.

PERSEWAR, Bessie Ellote as relict, with the ffyve fatherles bairnes, &c.

PRELOCUTOURIS for the pannell, Mr Thomas Nicholfoun and Lawrence Scott, Advocatis.

The persewar producet the Letteris deulie execute and indorsate; and in respect thair of, and that scho offeris hir self reddie to persew, protestis for the releif of George Elphingstoun of Glenfakisbarneheid, and Williame Elphingstoun his brother, of thair cautionerie.

It is allegit, that the Dittay is nawayis relevant to be put to ane Assyse, in respect that the Dittay beiris that he was fund lying deid in the Irnes;<sup>1</sup> bot it is of verritie, that vpon the morne thaireftir his committing to waird,<sup>2</sup> he hangit him self in his awin belt; and sa, haifing desperatlie put hands in him self, the pannell can nocht be put to the Tryell of ane Assyse, as airt or pairt of his death.—It is ansuerit, aucht to be repellit, in respect the allegiance is contrair to the lybell.

THE Justice remittis the matter, anent the Slauchter of the defunct, and tryell of the treuth of pannellis allegiance, concerning the putting handis in him self, to the knowlege of ane Assyse.

ASSISA, Jok Ellote, in Braidlie, Will Scott, in Braxholme, George Airmestrang, in Grundunfyde.<sup>3</sup>

*Robert Layng*, being suorne, in prefens of the pairtie and Assyse, and being inquyret concerning Jok Ellotes death, quhat he kenis thair of? Deponis, he is ane mercheand; being in the Kirkzaird of Hawik priking sum skynnis,<sup>4</sup> and heir-ing that Jok Ellote was hingand in the steepill,<sup>5</sup> come, vpon the repoint thair of, into the steepill, quhair he saw the defunct hingand, in his awin belt; quhill belt he cuttit, and thair being lyfe in the defunct, was brocht out, bot shortlie thaireftir he deceist.—*Robert Scott*, being examinat and solempnelie suorne in the premisses, *est conformis precedenti, in omnibus*

VERDICT. The Assyse, all in ane voce, be the mouth of James Greiff in Bowmanehill, chancellor, ffind, pronuncet, and declairit the saidis persones, and ilk ane of thame, to be Cleane, innocent, and acquit of airt and pairt of the Slauchter aboue specifeit.—Quhairvpon thai, and ilk ane of thame, askit actis and instrumentis.

<sup>1</sup> *Irons*, or fetters.

<sup>2</sup> After his commitment to prison or confinement.

<sup>3</sup> Niniane

Quhigholme in Peilbrae, (now written *Whigham* or *Wigham*,) and nine other 'Assyfouris' names follow.

<sup>4</sup> Being a leather merchant.

<sup>5</sup> The accomodation for prisoners (in England as well as Scotland) was at this period of the most wretched description. Steeples were often fitted up with fetters in their square or lower parts, riveted into the wall, where these luckless victims were detained until Trial, without any Jail allowance. In cases of Witchcraft, &c., iron collars were added; and it is highly probable that cases of suicide were by no means infrequent, owing to the desperate circumstances of these miserable creatures. See *Sir Walter Scott's Letters on Demonology, &c.*

"RODGER SCOT, Capitane of the Airmetage, Robene Ellote of Dunlabyre, Robene Ellote of Copshaw, Frances Ellote his brother," and nine others of lesser note, "vnlawit and amerciati, ilk ane of thame, in the pane of ane hundreth merkis," for thair nocht compeirance to haif past vpone the Assyse.

### **Reuerend Speeches against the King, his Council, &c.—Thieft, &c.**

Mar. 11.—WILLIAME TUEDIE, callit *Coill-hoill*, in Heuchbrae.

Dilaitit of airt and pairt of certane poyntis of Thieft, &c. : And for certane vnreuerent and disdanefull speiches vtterit be him aganis the Kingis Maiestie, his hienes Counsell, and Justices of peax.

*DITTAY against the Pannell.*

FORSAMEKILL as it is statute and ordanit, be dyuerse Actis of Parliament, alsweill maid in his hienes awin tyme, as in his hienes predicesfouris tyme, of guid memorie, that na maner of persone or persones presume nor tak vpone hand to vtter or geve out sclanderous, reprochefull, or treffonabill speiches, aper be word or writ, aganis HIS MAIESTIE, his Counsell or Nobillitie, vnder the pane of deid ; as the saidis Actis at lenth beiris : Nochtwithstanding quhairof, it is of veritie, that pe said Williame Tuedie, in the moneth of December lastbypast, haifing committit, ofbefoir, dyuerse Oppressiones aganis sundrie of his hienes peceable subiectis, and speciallie aganis Richerd Powrie, Minister at Dawik, quha haifing complenit vpone pe said Williame Tuedie to the Justices of peax within the Sherefdom of Peiblis for pe samyn, thay directit Johnne Mathiesone in Stobo, and James Ruffell, tua of the Constabillis of the said Scherefdom, to summond and arreist him, to compeir befoir thame, in the Tolbuth of Peiblis, at ane certane day, to haif ordour tane with him for the saidis Oppressiones ; quha, accoirding to pair direction, cam and summond and arreistit pe said Williame, first in his Maiesteis name, and than in the name of pe Lordis of his hienes Secreit Counfall, and of the saidis Justices of peax, to the effect foirsaid ; nochtwithstanding quhairof, he, altogidder vnmyndfull of his deutie, first towardis his God, our Souerane lord, and Lordis of his hienes Secreit Counfallis auctoritie, and of the saidis Justices of peax, his hienes Judges and ordiner Magistrattis ; nocht only irreuerentlie, reprochefullie, and sclanderuslie vtterit and gaif vnsemelie speiches to the saidis Constables against the saidis Justices of peax, be saying that he ' wald nocht gif ane scab of his erse for thame ! ' And desyret thame ' to cum and kifs his erse ! ' Bot lykwayis, the said Williame, at pe same tyme, maist treffonabillie, vnreuerentlie, sclanderuslie, and vndewtiefullie said to the saidis Constables, that he ' wald nocht gif pe scab of his erse ' for his sacred Maiestie and Lordis of his hienes Secreit Counsell ; and bad ' his Maiestie and thame cum and kifs his erse ! ' And sua, be vttering of the saidis treffonabill, vndeutifull, vnreuerent and sclanderus speiches, he hes contravenit pe tennour of pe saidis Actis of Parliament, and incurrit the panes of death appointed aganis pe contraverenis pairof : Quhilk aucht and sould be execute vpone him, with all rigour, to the terrour and exampill of vperis. AND siclyk, being Indytit and accuset, ffor cuming, in pe moneth of November 1583, to Carrane-mouth, in Stobo-hoip, and pair thiftiouflie staw,<sup>1</sup> rest, and away-tuik, fra tua cowmoun Thevis, xxiiij auld scheip, quhilkis war stowin<sup>2</sup> be pame furth of Cliddisdail : And for letting the saidis Thevis to frie libertie, and nocht presenting of pame to pe Justice. ITEM, ffor airt and pairt of the steilling and away-taking of ane beir stak,<sup>3</sup> contening tuelf schevis of beir, committit in Januar, 1600 zeiris. ITEM, ffor airt and pairt of the steilling of ane quhite wedder-lamb, pertening to Williame Ruffell in Eistertoun of Stobo, furth of the Knovell-fald ; committit in the moneth of Junij, 1601 zeiris. ITEM, ffor airt and pairt of pe Slauchter of vmq<sup>le</sup> Eduard Curres in Braidfurd, be casting of ane stane at him, quhairwith he strak him ane deidlie straik on the hert ; be the quhilk straik, he tuik bed and dwynet in pe space of ane zeir, and in end deceissit of pe said hurt ; committit in Junij, 1596. ITEM, ffor airt and pairt of the steilling of ane blak zeild<sup>4</sup> kow, fra James Foulden in Harro of

<sup>1</sup> Stole.

<sup>2</sup> Stolen.

<sup>3</sup> Stack of barley.

<sup>4</sup> Barren ; not giving milk.



Stobo, furth of the Hammer-bank, callit the Braid-flak-heid, in the moneth of November, 1607 3eiris. ITEM, ffor airt and pairt of the steilling fra Patrik Mathiesone, in Harro, of ane quhyte 3ow,<sup>1</sup> furth of pe grund of Harro, in the moneth of December, 1607 3eiris. ITEM, for dryveing to ane bucht<sup>2</sup> at pe Blak-hill-stell, in Harro-heid, of aucht 3owis, pertening to Johnne Alexander, in Harro-heid: And ffor the thiftious clipping of the said aucht schein, and steilling and away-taking of the haill aucht fleiffes of woll; committit in the moneth of Junij, 1602. ITEM, ffor airt and pairt of the steilling, cutting-doun, and away-taking of tuelf grit allour-treys,<sup>3</sup> furth of Dawik-woid, in the moneth of August, 1607 3eiris. ITEM, ffor airt and pairt of the Murthour and Slauchter of . . . . Mathiesone, his spouse, be striking her in dyuerse pairtis of hir body, quhairof scho deceissit paireftir. ITEM, ffor Cowmone Thift, Cowmone Resfet of Thift, outputting and inputing of Thift fra land to land, fra cuntrie to cuntrie, baith of auld and new.

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

PRELOCUTORIS for the pannell, Mr Laurence Mcgill and Mr Dauid Aytoun, Aduocatis.

It is allegit, that the pannell aucht to haif bene citet vpone xv dayis wairning. It is answert, aucht to be repellit, in respect the pannell is brocht furth of waird to the Bar; quha hes bene wairdit this foure monethis for the crymes lybellit.—It is allegit that *Johnne Mathiesone* can nocht pas vpone this Assyse, becaus he is pairtie and vpgeter of the Dittay, and is Constable, to quhome the allegit speiches was vtterit. Aucht to be repellit, in respect of the persute at the instance of the Minister of Dawik, quha persewit the pannell afoir the Counsell, for injurie done; and the said Johnne Mathiesone was alredie ressaunt Witness, and examinat be the Counsell; and sa may be ane Assysfour.<sup>4</sup>

#### ASSISA.

Johnne Mathiesone, Constable of the parochin of Stobo; James Ruffell, Constable thair; James Rammage, Constable thair; Johnne Reidschaw in Wester Hoprew; Adame Ruffell, smyth thair.<sup>5</sup>

The Aduocat, for verificatioun of the Dittay, &c., producet ane Decreit of the Lordis of Secreit Counsell, finding the speiches aboue writtin to be cleirlie provin; and protestit for Wilfull Errour, in caise thay Acquit.—The pannell askit instrumentis, that nane compeir to sweir the Dittay.

VERDICT. The Assyse, all in ane voce, be the mouth of the said Johnne Mathiesone, chancellor, ffand, pronuncet, and declairit the said Williame Tuedie to be ffylit, culpable, and convict of the sclanderus, reprocheful, and vnreuerent speeches vtterit be him aganis his Maiestie, his hienes Secreit Counsell and Justices of the peace, in maner specifeit and contenit in the first Article of his Dittay, and Decreet of the Lordis of Secreit Counsell, producet, for verificatioun thairof: And as to the remanent crymes aboue writtin, contenit in the said Dittay, ffand, pronuncet, and declairit the said Williame to be Cleane, innocent, and acquit thairof.—Quhairvpone the said Williame askit instrumentis.

<sup>1</sup> Ewe.

<sup>2</sup> 'Ewe-bucht,' a pen or fold, where sheep are sheltered at night.

<sup>3</sup> The *aller*

or alder-tree. <sup>4</sup> The admission of this person and his fellow-Constables, was contrary to every principle of justice; and very strongly shows how extremely arbitrary the proceedings of the Court were, at this period.

<sup>5</sup> Ten other names are inserted, but they were persons of no note.

THE Justice continewis the pronunceatioun of Dome, to ffryday next, that in the meane tyme he may tak advyse with the Lordis of Secreit Counfell thairanent.

(Mar. 13.)—SENTENCE. The Justice, with advyse of the Lordis of his hienes Secreit Counfell, be the mouth of Alexander Kennydie, dempfter of Court, decernit and ordanit the said Williame Tuedie, in Heuchbra, to be SCURGET through the Burgh of Edinburgh: And thaireftir to be BANISCHET furth of his Maiesteis haill dominionis: And nawayis to returne agane within the samyn, vnder the pane of hanging to the deid, but<sup>1</sup> forder Dome: And being scourget throw the towne, that the Magiftratis of Edinburgh returne him bak agane to his waird, within thair Thevis-hoill, thairin to remane quhill ane schip be provydit to transpoirt him furth of his Maiesteis dominions, in maner foirfaid.

### Slaughter.

Mar. 13.—ALEXANDER FRENCHÉ, Tutour of Thorniedykis,<sup>2</sup> and James Wicht, at Gordoun-mylne, his sifter-sone.

Dilaittit of airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Cranftoun, brother to Patrik Cranftoun of Corfbie; committit be thame vpon the grund and landis of Boun, in the Merse, vpon the tent day of Februare lastbypast, be wounding of him in the heid, leg, and dyuerse vtheris pairtis of his bodie, to the effusioun of his bluid in grit quantitie: Off the quhilkis straikis and deidlie woundis the said vmq<sup>le</sup> Johnne nevir thaireftir convalescit: bot, vpon the first day of Merche instant, depairtit this lyfe, of the saidis hurtis and woundis.

PERSEWAR, Patrik Cranftoun of Corfbie, as brother.

The persewar, be his grit aithe, declairis that he hes most caus to perfew: And fueris the said Dittay to be of verritie, and takis instrumentis thairupoun; and Protestis for Wilfull Errour, gif the Assyse Acquit. As also, for verificatioun thairof, haifing vsfet and producet the Depositiones of certane famous Witneses, quhilk was oppinlie red in Judgement.

VERDICT. The Assyse, all in ane voce, be the mouth of Hew Bell in Blithe, chancellor, ffind, pronuncet, and declairit the said James Wicht to be ffylet, culpable, and convict of the crewal and vnmerciefull Slauchter of the said vmq<sup>le</sup> Johnne Cranftoun. AND siclyk, for the maist pairtis, Declairit the said Alexander Frenché, to be ffylet, &c.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis; and all thair moveable guidis to be escheit and inbrocht to his Maiesteis vse, as convict, &c.

<sup>1</sup> Without.

<sup>2</sup> See the Trial of Sir Patrick Chirnesyde of East Nisbet, and others, Nov. 8, 1616, for Forcible Abduction and Marriage of Adam Frenché of Thornydykes, &c.



**Raid of Glenfrwne—Fire-raising—Slaughter.**

May 8.—DOUGALL M<sup>c</sup>GREGOUR alias *Dougall M<sup>c</sup>candochie*, Callum M<sup>c</sup>gregour callit *M<sup>c</sup>calexter scoir*,<sup>1</sup> and Duncane M<sup>c</sup>carlich Culzame M<sup>c</sup>gregour.

Dilaitit for being in companie with THE LAIRD OF M<sup>c</sup>GREGOUR and his complices, at the Raid and ffeild of Glenfrwne,<sup>2</sup> in the moneth of ffebruarye 1603 yeiris, aganis the Laird of Lufe, his kyn and freindis: And for being in cumpanie with the Laird of M<sup>c</sup>gregour, at the burning of Barnehill, pertening to Colene Campbell of Laweris,<sup>3</sup> quhair thai slew nyne men and thre bairnes; Robert Abroche M<sup>c</sup>gregour, and Johne M<sup>c</sup>ffadrik, being thair with thaim.

THE Justice continewis the puting of the perſones foirſaidis to ane Affyſe to Thurisday nixt.<sup>4</sup>—Thaireftir, the perſones on pannell, be Ordinance of the Counſall, war ordanit to be delyuerit to the Erle of Lynlythgow, and he to hald Court vpone thame, conforme to ane Commiſſioun gevin to the ſaid Erle to that effect.

**Treasonable Intercommuning with John, sometime Lord Maxwell, &c.**

May 16.—NINIANE AIRMESTRANG callit *Ninianes Thome*, ſone to Thomas Airmestrang; and Johnne Amulliekyn, in Cruikis.

Dilaitit ffor the treſſonabill Reſſet, ſupplie, Intercowmoning, and accompaneing of JOHNNE, ſumtyme LORD MAXWALL,<sup>5</sup> his Maieſteis declairit Tratour, fforfalt in Parliament, for dyuerſe crymes of Treafone and Leſmaieſtie, at lenth ſpecifeit and contenit in the proces and dome of fforfaltour deducet aganis him: And namelie, the ſaid Johnne Amulliekyn, for Reſſetting, Suppleing, and Intercowmoning with the ſaid ſumtyme Lord Maxwell, within his awin duelling hous in the Cruikis, and in his barne thairof, vpone the tuentie ſax day of Apryle laſt-bypaſt; at the quhilk tyme, he haifing reſſauit fra the ſaid ſumtyme Lord Maxwell the ſowme of ten pundis; he, for obedience of the ſaid Lord Maxwelllis directioun, paſt thairwith vpone the morne thaireftir to the Toun of Dumfreis, to the ſaid Niniane Airmestrang, quhair thay bocht ane hagbut and ane pair of ſchone,<sup>6</sup> quhilk was delyuerit be the ſaid Johnne Amulliekin to the ſaid Niniane, to be gevin to the ſaid ſumtyme Lord; conforme to the ſaid Johnne Amulliekyn his Depoſitioun, maid be him in preſens of my Lord Chancellor, and vtheris Lordis of his Maieſteis Previe Counſell: AND ſiclyk, the ſaid Niniane, for Intercowmoning and keeping companie with the ſaid Johnne, ſumtyme Lord Maxwell,

<sup>1</sup> M<sup>c</sup>allaster ſcoroch, q. d. *buck-toothed*.

<sup>2</sup> See Jan. 20, 1604.

<sup>3</sup> This perſon is under-

ſtood to have been Colin Campbell of ABERUCHILL, and the *Barnehill*, which is here ſtated to have been burned, is likely to have been ſome appendage of that property.

<sup>4</sup> In conſequence of the

ſubſequent order, n<sup>o</sup> further procedure took place before the High Court of Juſticiary.

<sup>5</sup> See

his Trial, Jun. 24, 1609, &c., III., 28, &c.

<sup>6</sup> Shoes.

declairit Tratour, in the said moneth of Apryle lastbypast, be the space of fyve dayis togidder, in the Langwoid and Schillingtonehill; and for bringing of ane hagbut fra James Louk, and delyuering the same to the said Lord Maxwell, his Maiesteis declairit Tratour; and bringing of the said vther hagbut, with the pair of schone ressaute be him fra the said Johnne Amulliekyn, within the toun of Dumfreis, and delyuering the samyn to the said Lord Maxwell; as at lenth is contenit in thair Dittayis. IN doing quhairrof, the saidis Johnne and Niniane had committit manifest Treasone: And thairfoir, according to the Lawis of this realme, had incurrit the panes and pwneischment of tynsell<sup>1</sup> and fforfaltour of lyfe, landis, and guidis, to be inflictit vpon thame; to the terrour of vtheris.

VERDICT. The Assyse, be the mouth of Dauid Bailzie, burges of the Canno-gait, chancellor, ffind, pronuncet, and declairit, all in ane voce, the saidis Johnne Amulliekyn, and Niniane Airmestrang, and ather of thame, to be ffylit, culpable, and convict of the crymes aboue specifeit in thair Dittay; and that in respect of thair awin Judiciall Confessioun and Depositiones producet.—SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill thai be deid: And all thair landis, heritages, guidis, and geir, gif thai ony haif, to be fforfaltit and escheit to his Maiesteis vse, as convict, &c.

### ‘Unbesetting the hie-way’—Slaughter.

JUN. 3.—GAWIN HORNE in Inner Kethie, and Isobel Jak, mother to the said Gawin.

Dilaitit, accusit, and persewit, that thei with their complecis, being bodin in feir of weir, with swordis, durkis, and vther vapones *invasiue*, laitlie, vpon the faxt day of Januar lastbypast, haifing consaute ane deidlie feid, rancour, and malice causles, aganes wmq<sup>16</sup> Patrik Low in Naderdaill, came vnder silence and clud of nycht to the toun of Nether Kethie, quhair he was going hame to his duelling hous, in maist peciabil maner, vnder Godis peax and our souerane lordis, and thair Vnbefet his hie-way and passage,<sup>2</sup> and crewallie Invauidit him for his Slauchter, hurt and voundit him in his body and breist, with durkis and swordis, to the effusione of his bluid in grit quantitie: Of the quhilkis hurtis he newer convalessit, bot continewing bedfast in grit dollour and diseis thairrof, vnder the cuir of chirurgeneas, be the space of fourtein dayes, or thairby; quhill at last, the said wmq<sup>16</sup> Patrik, vpon the twenty day of the said moneth of Januar, depairtit this lyfe: And swa wes crewallie and vnmercifullie slane be thame; and thei and ather of thame wer airt and pairt of the said crewall Slauchter.

<sup>1</sup> Loss; deprivation.

<sup>2</sup> Waylaid; lurked, or lay in ambush for, for the purpose of ‘besetting.’ See various Trials in this Collection, where this phrase repeatedly occurs. The highway was likewise said to be ‘umbefet,’ when one party blocked up the road with his retainers, for the purpose of *daring* his rival to pass—or to give battle, and thus force a passage, if he could.



PERSEWAR, Andro Low as sone. PRELOCUTOR for the persewar, Mr Williame Livingstoun.  
PRELOCUTOR for the pannell, Mr Johnne Russell, Aduocat.

Protestis for Wilfull Errour in caise they Acquit.

Mr Johnne Russell takis instrumentis, that thair is nane to sweir the Dittay bot ane young boy of saxtene yeir awld ; and swa can mak na faith.—Produces ane instrument subscryuit be the Justice of Peax and the Constabill, for verificatioun of the Slauchter of vmq<sup>le</sup> Patrik Low and cleiring of the samyn, subscryuit be the said Constabill, Johnne Innes of Knockcorth, ane of the Constabillis of peax ; and schawis that Williame Smairt confessit that he hurt and voundit the said vmq<sup>le</sup> Patrik.—Quhilk cryme the pannell alluterlie denyit.

VERDICT. The Assyse, be the mouth of George Leslie in Drumblair, chancellor, for the maist pairt, stand, pronuncit, and declairit the saidis Gawin Horne and Issobell Jak to be Clein, innocent, and acquit of airt and pairt of the said Slauchter.

### **Abiding from the Raid of the Isles.**

Jun. 5.—ROBERT MAXWALL of Potterak, Alexander Fergusone of the Yle, Johnne Charteris in Redingwoid, Johnne Wallace in Carnezeill, Thomas Edzer in Holme, and Mr Samuel Kirkpatrick.

Dilaitit for Contravening the Proclamatioun in abyding fra the Raid of the Yles, in anno 1608.

PERSEWAR, Andro Lord Stewart of Vchiltrie.

My Lord Vchiltrie passis fra perfute of Mr Samuel Kirkpatrick. He also passis from the pursuit of *Hew Douglas* and *Thomas Douglas in Dalvene*.—*Williame Greir* provin to be feik, be the Depositioun of Johnne Broun, Minister of Glencairne.—*James Fergusoun of Crochedow*, provin to be feik, be the said Ministeris Depositioun.

THE Justice continewis this matter to the morne, *in eodem statu quo nunc est*.

Jun. 6.—IN respect na pairtie compeiris this day to insist in thair perfute, Protestis for thair cautioneris releif ; and that thai be nocht charget or trubillit for the said allegit cryme, in ony tyme cuming. And thairupoun askit instrumentis.

### **Mutilation and Demembration.**

Jun. 12.—WILLIAME RUTHERFURD of Synewallis, and George Well his feruand.

Dilaitit for the Mutilatioun and Demembring of James Weir, feruitour to Williame Weir in Softlaw ; committit in februar 1611, of the foremost finger of his left hand.

PERSEWER, James Weir.

PRELOCUTORIS in defence.

Sir Robert Stewart, Mr Johnne Rutherford, Mr Johnne Ruffell, Mr Johnne Dauling.

JAMES WEIR, seruitour to Williame Weir in Softlaw, Dilaitit of airt and pairt of the Mutilatioun of Williame Rutherford of Synewallis of his . . . hand, at the leift of the mid-finger thairof; committit in februar 1611.

PERSEWAR, Williame Rutherford of Synewallis.

PRELOCUTORIS in defence.

The Laird of Blaikwoid, The Laird of Lammington, The Laird Symontoun,  
The Guidman of the Caveris, Robert Hammiltoun, Aduocat.

It is allegit be Mr Johnne Ruffell, that the Dittay is altogidder irrelevant; and thairfoir can nocht pas to ane Assyse: And as to that article of the Dittay, concerning the demembring James Weir of the finger, quhilk is the only point that fould be tryit in this Judgement, nather mutilatioun nor demembratioun is relevant; becaus, except the haill hand had bene cuttit af, it can nocht be comptit demembratioun; and the finger is nocht ane member, *sed tantum est pars membri*. It is forder allegit, that this Dittay aganis Rutherford and his man can nocht pas to ane Assyse, becaus, gif ony mutilatioun or hurting was done to Weir, the samyn was done in Rutherfurd's awin defence, he being in fober maner passand out the hie-way, convoyand ane gentilman to his hors; at quhilk tyme, vnder nycht, Weir, with ane drawin fuord, invaidit Rutherford; and sa, gif ony hurt wes gevin to Weir, it was in Rutherfurd's defence.—It is answert, that the Dittay is relevant, nochtwithstanding of the allegiance; and desyres the Assyse to cognosce, quhidder the samyn was done in Weir's defence or nocht; quhilk Weir altogidder denyis.—It is allegit be James Weir, that the lybell at the instance of Williame Rutherford aganis him can nocht pas to ane Assyse; and gif ony mutilatioun was done to the said Williame Rutherford, the samyn was done in Weir's awin defence.

Compeirit, Williame Lord Cranstoun, Commissiouner for his Maiestie, and desyret my Lord Justice, that thir tua persutes, movet in this Judgement, may be remittit to the Commissiouneris, to be tryit befor thame, feing the factis lybellit was done within the boundis of thair Commissioun: And siclyk, feing thair is ane Court affixt to be haldin within the boundis thairof, quhair justice fall be ministrat to ony pairtie, conforme to the Lawis of this realme.

THE Justice continewis this matter to Thursday nixt, vnto the tyme he be advyset with the Counsell, concerning my Lord of Cranstones desyre.

Lawburrows are granted at the instance of the parties against each other, viz. 'Mr Johnne Rutherford become fouertie and Lauborris for Synlawis and his serwand, &c. vnder the pane of ffyve hundreth merkis, and thre hundreth merkis. William Rutherford of Synlawis for the said Mr Johnne, vnder the pane of thre



hundreth merkis. And James Douglas of Todhoillis for George Weir of Blaikwoid, and for the pannell James Weir, vnder the pane of ane thowfeand pundis, and thre hundreth merkis.'

Thaireftir the Justice absolutelie, without forder continuatioun of this matter, Remittit the tryell of baith thir actiones, perfewit be ather pairtie aganis vtheris,<sup>1</sup> to the Commiffioneris, to be cognosctet and tryet be thame as accoordis of the Law.

### Abiding from the Raid of the Isles.

Jun. 25.—ROBERT HEREIS, in Lafoun, and five others.<sup>2</sup>

Dilaitit for contravening of his Maiesteis Proclamatioun, in nocht passing forward with Andro Lord Stewart of Vchiltrie, his hienes Lieutenent, to the Raid of the Yles, in anno 1608.

PRELOCOUTOURIS in defence, Mr Johnne Halyday, Mr Johnne Belfis.

The perfonen on pannell takis instrumentis of thair compeirance, and declairis that thay war nawayis subiect to the tennour of the Proclamatioun; in respect thai ar nather Erles, lordis, barrones, feweris, frehalderis, or landit gentilmen; and gif the samyn can be tryit<sup>3</sup> that thai war sic men, the tyme of the making of the said Proclamatioun to the said Raid, thay ar content to assigne, and be thir presentis assignis, thair haill landis and heritages to the Kingis Maiestie, &c. And in respect thair is na pairtie perfewer present to insist in thair perfute, protestis for thair cautioneris releif, and that thai be nocht callit or perfewit, for this matter, at ony tyme heireftir.

### Slaughter.

Jul. 1.—ROBERT FORBES, sone to James Forbes of Mylnebowie.

Dilaitit, accuset, and perfewit by DITTAY following.—FORSAMEKILL as he, accompaneit with Williame Forbes, callit of Mylnebowie, and Patrik Forbes his brother, now rebellis and att the horne for the cryme vnderwrittin, and diueris vtheris thair complices, haifing consauit ane deidlie feid, rancour, and malice aganis the said vmq<sup>le</sup> Johnne Ker, vnderstanding him to haif bene att the Kirk-toun of Skene, att the mariage of his wyfes sifter; thay, vpone the fyftene day of October lastbypast, darnit thame<sup>4</sup> in the hie-way, betuix the said Kirk-toun of Skene and the said vmq<sup>le</sup> Johnne Ker guidfatheris hous, in . . . , quhair the said vmq<sup>le</sup> Johnne had his residence for the tyme; and thair, bodin<sup>5</sup> with swordis, dageris, gantilletis, and vtheris wapponnis invasiue, lay att wait all that day for the said vmq<sup>le</sup> Johnnis hame-cumming: Lyke as, about the ewening, vnder silence and cloud of nycht, the said vmq<sup>le</sup> Johnne, lipning for na ewill, harme, or

<sup>1</sup> By both parties against each other. instructed.

<sup>4</sup> Hid; concealed themselves.

<sup>2</sup> This case was continued from Jun. 23.

<sup>3</sup> Proved;

<sup>5</sup> Furnished; provided.

iniurie of ony personnes, bot to haif past hame to his hous in peceabill maner, vnder Godis peax and our souerane lordis, haifing tane his hors with ane young woman on behind him ; in his hame-passing to his said guidfatheris duelling hous, was vmbegett in the hie-way, be the foirnameit persones ; quhair, befor ewir he wes aduertesit of thame, thay, with thair wappinnis foirsaidis, maist schamefullie strak him fra his horse, and maist crewallie inuidit him for his slauchter, gaif him twa crewall and deidlie straikis in the heid with their swordis, and hurt and woundit him in dyverse pairtis of his body ; to the effusioun of his blude in grit quantitie : Off the quhilkis crewall woundis, he newir thaireftir conualest, bot continewand in grit dolour and payne thair of, vnder the cuir of cherurgeonis, be the space of elleuin oulkis<sup>1</sup> or thairby thaireftir ; quhill<sup>2</sup> at last, the said vmq<sup>le</sup> Johnne Ker, in the moneth of Januar lastbypast, deceissit of the saidis deidlie woundis ; and swa wes crewallie and vnmerciefullie slayne be the saidis (persones) : And the said Robert Forbes is airt and pairt of the said crewall slauchter of the said vmq<sup>le</sup> Johnne Ker ; committit vpoun sett purpois, prouisioun, and foirthocht felony.

PERSEWAR,

Johnne Ker at the mylne of Clwny, as father ; Alexander Gordoun of Clwny, assister in this persute.

PRELOCUTORIS for the pannell, Mr Johnne Ruffell, (Advocate.) -

It is allegit, that this matter can nocht pas to ane Assyse, becaus in November 1611, eftir the allegit hurting, this persewar haifing intentit actioun befor the Counsellaganis Williame Forbes of Mylnebowie, and Patrik Forbes, his brother, committeris of the slauchter, to haif hard and sene thame decernit to haif committit ane oppin and manifest Ryote and Oppressioun : ffor preving of the quhilk complent befor the Counsell, the said Johnne Ker vset the pannell as ane witness to verifie the same ; and sua, haifing anes vset him as witness in the said matter, thai can nevir be hard to follow him as pairtie. For verifeing quhair of, producet the Counsellis Act, and ane testificat of his summonding, subscryuit be Alexander Watfone, messinger. Anfueris, thair was na witness led in the proces afor the Counsell ; and albeit at that tyme na knowlege of the pannellis giltines was cleirly knawin, yet that can nocht liberat him fra pwneischment, his giltines being tryit<sup>3</sup> thaireftir.

THE JUSTICE remittis the same to the Assyse.

VERDICT. The Assyse, be the mouth of Alexander Thome in Eister Cairny, chancellor, all in ane voce, stand, pronounceit, and declairit the said Robert Forbes to be Cleane, innocent, and acquitt of the slauchter of the said vmq<sup>le</sup> Johnne Ker ; and of airt and pairt of the said Slauchter.

<sup>1</sup> Weeks.

<sup>2</sup> Until.

<sup>3</sup> Proved ; established.



**Slaughter.**

Jul. 3.—THOMAS MAXWALL of Arenynning,<sup>1</sup> brother to Alexander Maxwell of Logane; Johnne Huttone, messenger in Carlingwark.

Dilaitit of the crymis sett down in the Letteris and DITTAY following. FOR-SAMEKILL as the said Thomas, accompaneit with Johnne Maxwell, sone to the said Alexander Maxwell of Logane, now fugitiue and at the horne for the slauchter vnder writtin, vpone the tuentie nyne day of Apryle lastbypast, haifing consauet ane deidlie feid, rancour, and malice against vmq<sup>le</sup> Johnne M<sup>c</sup>nacht of Kilquhannatie, and vnderstanding that thair was ane tryft<sup>2</sup> affixt to be keipit at the toun of Carlingwark, betuixt him and Dauid Maxwell of Newark, the said day; the said Thomas and Johnne, his brother-sone,<sup>3</sup> and vtheris thair complices, bodin<sup>4</sup> with suordis, quhingeris, and vtheris wapponis inuasiue, come to the said toun of Carlingwark, quhair the said vmq<sup>le</sup> Johnne M<sup>c</sup>nacht was rydeing vp and down, attending vpone the said Dauid Maxwell of Newwarkis cuming, in sober and quyet maner for the tyme, lipning for na harme, iniurie, or persute of ony persone, bot to haif leuit vnder Godis peax and our souerane lordis; and haifing first violentlie drawin him af his horse, and thaireftir compellit him to pas with thame in to Johnne Huttone messengeris hous, in Carlingwark, thay thair, efter dyuerse ruche<sup>5</sup> and hard speiches vtterit to him, drew thair quhingeris and suordis, and within the said hous persewit him for his slauchter: The said Thomas Maxwell grippit him be baith the airmes, and held him, vnto<sup>6</sup> the tyme the said Johnne Maxwell, his brother-sone, gaif him tua straikis, the ane at the hert, and the vther on the left airme: Off the quhilkis, he immediatlie thaireftir deceiffit; and sa was crewallie and vnmerciefullie slane be the saidis Johnne and Thomas Maxwellis: And thay and ather of thame ar and war airt and pairt of his said slauchter; committit vpone set purpois, prouisioun, and foirthocht fellonie; in hie and manifest contempt of our souerane lordis auctoritie and lawis.

PERSEWARIS, Johnne M<sup>c</sup>nacht, burges of Edinburgh, neir kynfman; (Capitane) Charles Geddes of Rachan; [Margaret Gordoun, Lady Kilquhannatie, the relict, with the thrie fatherles bairnes, kyn and friendis of vmq<sup>le</sup> Johnne Maknacht of Kilquhannatie.]

PRELOCOUTOURIS for the pannell, Alexander Maxwell of Logane; Johnne Maxwell of Couhaithe; Robert, Maister of Maxwell; Mr Williame Maxwell of Caveris; Mr Alexander King, Aduocat; Adame Cunninghame, Aduocat; Sir Robert Maxwell of Spottis; The Guidman of Cowhill.

The persewaris, vnderstanding Johnne Huttone to be innocent of the slauchter, passës *simpliciter* fra his persute; quhairupoune Johnne Huttone askis instrumentis.

VERDICT. The Assyse, be the mouth of James Cannane of Killochie, chancellor, all in ane voce, stand, pronuncet, and declairit the said Thomas Maxwell to

<sup>1</sup> In the Dittay called of Aremein.  
furnished.

<sup>5</sup> Rough; uncouth.

<sup>2</sup> An appointed meeting.

<sup>3</sup> Nephew.

<sup>4</sup> Provided;

<sup>6</sup> Until.

be Cleane, innocent, and acquit of the slauchter of the said vmq<sup>le</sup> Johnne M<sup>c</sup>nacht of Kilquhannatie, and of being airt or pairt thairof.

Alexander Maxwell of Logane become plege and fouertie for Thomas M. his brother germane—and Capitane Charles Geddes of Rachan, and Johnne M<sup>c</sup>nacht, mercheand burges of Edinburgh, ather of thame become pleges and fouerteis for vtheris,<sup>1</sup> that thai and ather of thame fall obserue and keip his Maiesteis peax to all our souerane lordis legis, and nawayis to molest or trouble thame in thair perones, guidis, or possessiones, vtherwayis nor<sup>2</sup> be ordour of law and justice; ather of thame vnder the pane of ffyve hundreth merkis.

### Murder under trust—Slaughter—Theft.

Jul. 11.—PETRIE M<sup>c</sup>GILLIEVORICHE in Brachloche.

Dilaitit of the crewall Murthour and Slauchter of Duncane M<sup>c</sup>allaster and M<sup>c</sup>gilliecreist,<sup>3</sup> his tua sifter-sones; and for dyuerse poyntis of thift, (viz.) FOR airt and pairt of the crewall and abhominabill Murthour vnder Trust of vmq<sup>le</sup> Duncane M<sup>c</sup>allaster, his sifter-sones, be schuitting him with ane hagbut throw the body; committit in the moneth of Apryle, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and thre yeiris. ITEM, for airt and pairt of the thiftious steilling, at the leist ressetting, of fourtie fcheip, pertening to the Guidman of Campbell-Burnet. AND for airt and pairt of the thiftious steilling of tua oxin and ane kow, pertening to Johnne Leith in Edingerroche; committit a tua yeir syne, or thairby. ITEM, for airt and pairt of the steilling fra Adame Leith of foure oxin; committit a tuelf yeir syne, or thairby. ITEM, for cowmoun thift, cowmoun resset of thift, outputting and inputting of thift, fra land to land, fra cuntrie to cuntrie, baith auld and new.

PERSEWAR, Mr Williame Oliphant of Newtown, Aduocat to our soueran lord.<sup>4</sup>

#### ASSISA.

Williame Forbes of Monymusk,	George Jope in Cowclarachie,	Mr Johnne Horne, seruant to the
Younger,	Johnne Woid in Mylnebowie,	Laird of Frendraucht,
Mark Mawer of Mawerstown,	Andro Meldrum of Dumbrek,	Johnne Forbes, seruitour to my
Edmond Gradane in Kinloche,	Alex. Irwing, Younger of Lenturk,	Lord Forbes,
Williame Lummisden, brother to	Patrik Mortimer,	George Gordoun, seruitour to the
the Laird of Cuschnie,	Mr Patrik Grant, Minister at	Laird of Lesmoir,
Tho <sup>s</sup> Cowie, burges of Abirdene,	Cromedaill,	Mr Robert Elphinstoun, Tutour
		of Glak.

VERDICT. The Assyse, be the mouth of the said Williame Forbes of Monymusk, chancellor, all in ane voce, fand, pronuncet, and declairit the said Patrik to be ffylet, culpable, and convict, according to his awin Confessioun, set down in his Depositiones, of the crymes *respectiue* aboue specified.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair, vpone ane gibbet, to be hangit quhill he be deid: And all his landis, heritages, &c.,

<sup>1</sup> For each other.      <sup>2</sup> Otherwise than by form of Law.  
in the Dittay or proceedings of this murder of M<sup>c</sup>gilliecreist.  
time, in the Record, as Lord Advocate.

<sup>3</sup> No mention is otherwise made

<sup>4</sup> He appears here for the first



guidis and geir pertening to him; to be fforfault and escheit to his Maiesteis vse, as convict and culpable of the saidis thiftious and abhominable crymes.

### Slaughter, &c.

Jul. 17.—SUBMISSION betwixt GEORGE (*fifth*) ERLE OF CAITHNES, (WILLIAM) LORD BERRIDAILL, his sone, and (JOHN *seventh*) ERLE OF SUTHERLAND.<sup>1</sup>

Compeirit Mr Johnne Manfone and Mr Johnne Sinclair, seruitouris to George Erle of Caithnes, and producet ane WARRANT of THE LORDIS OF SECREIT COUNSALL, anent the deserting of the criminall persutes appointit, *hinc inde*, aganis the Erles of Caithnes and Sutherland, to be disputit and reffonit afor the Justice this day: off the quhilk Warrant the tennour followis.

MY LORDIS of Secreit Counsell, vnto your lordschipis humlie meanis<sup>2</sup> and schawis, we your seruitouris, GEORGE ERLE OF CAITHNES, . . . . . LORD BORRIEDAILL, his sone, ffor our selffis, and in name of our friendis and servandis, quho ar charget in the matter vnderwritten: That quhair, pe xvij day of Julij instant is appointit vnto ws for our compeirance befor pe Justice and his deputis, in the Tolbuthe of Edinburgh, to vnderly the Law, for the slauchter of Neill Nathmarne; the hurting and wounding of Johnne Gordoun of Golfspitour, Donald M<sup>c</sup>ky, fear of Far, and some vther friendis and seruandis to THE ERLE OF SUTHERLAND; the taking and detening prissoner of Angus M<sup>c</sup>William;<sup>3</sup> and for certane vtheris crymes, specifeit and contenit in the Letteris raifit and execute aganis ws at pe instance of pe saidis persones, and of his Maiesteis Aduocat for his hienes intreis: Lyk as, pe Justice intendis to proceed in pis matter aganis ws, althocht it be of verritie, that howbeit we wer most willing and reddie to haif submittit our selfis to the Tryell of the lawis, for pe haill crymes contenit in the saidis Letteris; and for this effect, to haif presentit our selffis in judgement befor the Justice the day foirsaid: Zit it was your lordschipis plesour to burdene ws with ane Submissioun of all matteris questionable betwix ws and the Erle of Sutherland, and M<sup>c</sup>ky and pair freindis; in the quhilk Submissioun, pir matteris ar speciallie and perticulerlie comprehendit: AND seing thay ar now in your lordschipis handis, vnder Submissioun, as said is, the dyett appointit to ws afor pe Justice aucht to desert. Heirfoir we beseik your lordschipis to geve command to the Justice, Justice clerk, and pair deputtis, to desert pe said dyet, and to desist and ceise fra all proceeding pairintill, and to dispens with our personall compeirance: Quhairanent pir presentis salbe vnto thame a Warrant, and your lordschipis ansuer.

APUD ED<sup>a</sup>, xvj Julij, 1612. *ffiat ut petitur.* AL. CANCELL<sup>s</sup>. J. PRYMROIS.

At command of the quhilk Warrant, the Justice ordanit baithe the dyettis appointit, *hinc inde*, to this day to desert.

Lykas, Johnne Gordoun, appeirand of Sydra,<sup>4</sup> compeirand personallie in judgement, in name of Sir Robert Gordoun, brother to my Lord of Sutherland, Duncane M<sup>c</sup>ky, fear of Far, Johnne Gordoun, appeirand of Gordoun of Golfspitour,

<sup>1</sup> *Vid.* Jul. 30, 1612. In order to a proper understanding of this FEUD, reference may be made to *Gordon's History of the Family of Sutherland*, Edinburgh, 1813, p. 317, &c. It would occupy too much space to give a suitable outline of the various disputes in which these families were embroiled.

<sup>2</sup> Complains; literally, *moans*.

<sup>3</sup> *Alias* Herrach (Herraght).

<sup>4</sup> The eldest son of John Gordon of Sidderay.

and producet the Letteris raifit be thame, and remanent complineris infert thairin, aganis my Lord of Caithnes, my Lord of Berriedaill, his fone, and remanent defenderis thairin contenit; be the quhilkis, thay and everie ane of thame ar charget to find cautoun for thair compeirance befor the Justice or his deputis, this day and place, in the hour of caus, to vnderly the law for the slauchter of Neill Nathnear, vmq<sup>le</sup> Airthour Smyth, taking captiue and priffoner of Angus M<sup>c</sup>Williame, *alias* Herrach, but Commiffioun; and dyuerfe vtheris crymes fpecifeit in the faidis Letteris—askit instruments, and protestis for relief of the faid Sir Robert Gordoun, kny<sup>t</sup>, of his cautionerie.

**Slaughter—Fire-raising—Theft—Intercommuning with  
Clan Gregor.**

Jul. 28.—GREGOUR BEG M<sup>c</sup>GREGOUR, fone to vmq<sup>le</sup> Gregour M<sup>c</sup>eane; Gregour M<sup>c</sup>Allaister Galt<sup>1</sup> Johnne M<sup>c</sup>inleithe;<sup>2</sup> Johnne Dow M<sup>c</sup>gilliephadrik V<sup>c</sup>robert; Allaister M<sup>c</sup>allaister V<sup>c</sup>coule; Patrik M<sup>c</sup>gregour Craiginfche; Duncane M<sup>c</sup>coule cheir; Patrik Roy M<sup>c</sup>Gregour, fone to Johnne M<sup>c</sup>phadrik, in Rannache; Gregour M<sup>c</sup>eane V<sup>c</sup>coulcheir; Johnne Dow Moir M<sup>c</sup>gregour, in Rora.

Being all presentit vpone pannell, dilaitit, accuset, and persewit be Dittay, at the instance of Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord, for his hienes intreis, of the crymes *respectiue* following, viz. THE faidis *Gregour Beg M<sup>c</sup>gregour, Gregour M<sup>c</sup>Allaister Galt, Johnne Dow M<sup>c</sup>inleith, and Johnne Dow M<sup>c</sup>gilliephadrick V<sup>c</sup>robert*, ffor airt and pairt of the treffonabill raiseing of ffyre, burning and distroying of the haill houffis and biggingis of Glenlocha and Achallader: And for the Slauchter of . . . . M<sup>c</sup>coleane, bowman to the Laird of Glenvrquhie, with dyuerse vtheris perfones, to the number of aucht perfones: Burning of thre zoung bairnes, dochteris to Johnne M<sup>c</sup>kischak: And for Steilling of fax scoir ky and oxin furth of Glenlyoun, committit in Apryle, 1604. AND siclyk, the faidis *Allaister M<sup>c</sup>allaister V<sup>c</sup>coule, Patrik M<sup>c</sup>gregour Craiginche, Duncan M<sup>c</sup>coule cheir, Gregour M<sup>c</sup>eane V<sup>c</sup>coule cheir, and Patrik Roy M<sup>c</sup>gregour*, fone to Johnne M<sup>c</sup>fadrik in Rannache, being indytit and accuset, ffor airt and pairt of the burning and distroying of the haill houffis and bigingis vpone the fourtie merk land of Abervrchill, pertening to Colene Campbell: And for the Slauchter of Duncane Wobster, Johnne Seatone, Patrik Stavache, Johnne M<sup>c</sup>gillievorich: Burning of the thre dochteris of Johnne M<sup>c</sup>kischak, steilling and away-taking of aughtene scoir ky, faxscoir peife of horsis,<sup>3</sup> aucht scoir fcheip and gait, pertening to the faid Co-

<sup>1</sup> The stranger, or travelled.  
son of rough, or dark John.

<sup>2</sup> M<sup>c</sup>inleiche, son of the leech, or doctor. Query, M<sup>c</sup>indreiche?

<sup>3</sup> One hundred and twenty *piece* of horses, as we say *head* of oxen.



lene: And lykways for burning of the mylne of Bolquhafter, with the haill houffis and bigingis vpon the grund and landis of Carne, Downe, and Dillater, pertening to Robert Campbell of Glenfalloche, and of his haill houffis and bigingis vpon his landis of Ardcancknockaur;<sup>1</sup> committit be thame in the moneth of Junij, 1611. ITEM, the said *Gregour M<sup>c</sup>gregour Beg*, ffor airt and pairt of the Slauchter of vmq<sup>le</sup> Solomon Lany, *alias* Buchannane; committit at the Kirk of Kilmaheug, at tuentie yeir fyne, or thairby. ITEM, the said *Johnne Dow Gilliephadrik*, ffor airt and pairt of the steilling and away-taking furth of Glenfynles of ane grit heirschip<sup>2</sup> of ky and oxin, pertening to the Laird of Lufe and his tennentis: And Slauchter of vmq<sup>le</sup> Johnne Reid, wobster, and Patrik Lang, iervand to the Laird of Lufe; committit vpon the saidis landis of Glenfinles, in the moneth of December, 1602. AND siclyk, the said *Johnne Dow Moir M<sup>c</sup>gregour*, in Rora, ffor steilling and away-taking of ane grit number of guidis,<sup>3</sup> pertening to my Lord Ogilvie, furth of Glenylay: And siclyk, for taking and keiping of the Ileand calit Ileand-Varnak,<sup>4</sup> against his Maiesteis Commiffioner, and herreing<sup>5</sup> and oppreffing of the haill tennentis and inhabitantis of the cuntrie about;<sup>6</sup> taking and inbringing of thair haill guidis and bestiall, to the number of aucht fcoir ky and oxin, xvij fcoir fcheip and gait, quhilkis war eittin and flane be thame, wih in the said Ileand.<sup>7</sup> ITEM, the haill foirnamet perfones indytet and accuset, ffor cownone thift, cownone reffet of thift, cownone foirning,<sup>8</sup> and oppreffing of his Maiesteis peceable and guid fubiectis; and for Intercowmoning with the rest of the furname of M<sup>c</sup>gregouris, fugitiues and at the horne, and fturneiffing of thame with meit, drink, and money; and keiping of tryftis, counfallis, and gadderingis<sup>9</sup> with thame, contrare the tennour of his Maiesteis Proclamations—war all put to the knowlege of ane Affyse of the perfones following.

## ASSISA.

Colene Campbell, appeirand <sup>10</sup> of Glenvrquhie,	James Campbell, feruitour to the Laird of Lundie,	Johnne M <sup>c</sup> dowgall of Raray, Duncan Menzeis of Comereife,
Johnne M <sup>c</sup> farlane of Arrochar,	Duncane Campbell, Capitane of	Williame Sterling of Achyle,
James Campbell of Laweris,	Carrik, <sup>11</sup>	Mr James Schaw of Knokhill,
Dauid Drummond, feruitour to my Lord of Perth,	Johnne Drummond, feruitour to my Lord of Perth, and Chal-	Johnne Buntene of Ardoche,
Alexander Menzeis of that Ilk,	merlane of Stratherne,	Mr James Kirk, feruitour to my
Alexander Schaw of Cambusmoir,		Lord of Argyle.

The Aduocat takis instrumentis of the fwering of the Affyse, and protestis for

<sup>1</sup> Ardchenachrochtan, the now celebrated inn and farm at the Trossachs. <sup>2</sup> Plunder, or spoil.  
<sup>3</sup> Stock, cattle. <sup>4</sup> A small Island, near the western extremity of Loch Katrine, on its north shore, opposite Portnellan. <sup>5</sup> Spoiling; plundering. <sup>6</sup> Circumjacent. <sup>7</sup> The Clan-Gregor had a garrison here, in January 1611; and were besieged by Campbell of Glenurchy's second son, Robert Campbell of Glenfalloch, who abandoned the siege, owing, as is alleged in the *Book of Taymouth*, to a storm of snow. <sup>8</sup> Taking free quarters by violence, &c. <sup>9</sup> Appointed meetings, councils, and gatherings, or convocations. <sup>10</sup> Heir-apparent. <sup>11</sup> Captain of the Castle of Carrik, on the banks of Lochfyne.

Wilfull Errour, in caice thay clange the pannell of the crymes contenit in thair Dittay; in respect of the notorietie thair of, and of thair Confessioun.

VERDICT. Eftir accusatioun of the foirsaidis persones enterit vpone pannell of the crymes *respectiue* aboue writtin, be our said fouerane lordis Aduocat, quhilk was verifeit be thair Depositiones and Confessiounes, maid in presens of ane grit number of the saidis persones of Assyse, the said David Drummond, chancellor, in name of the said Assyse, all in ane voce, exponit, pronuncet, and declairit the saidis persones on pannell, in respect of thair awin Confessioun, to be ffylit, culpable, and convict of the crymes *respectiue* aboue specifeit, contenit in thair Dittayis.—SENTENCE. To be tane to the Burrow-mure of Ed<sup>r</sup>, and thair to be hangit quhill thai be deid; and thair haill landis, heritages, and annuelrentis, takis, possessiones, guidis and geir pertening to thame, to be fforsalt and escheit to his hienes vse, as convict and culpable of the saidis crymes.

**Slaughter — (Pannel ordained to satisfy the Private Party, notwithstanding of the King's Remission, and 'Letters of Slains' from the Eldest Son of the Deceased.)**

Jul. 29.—WILLIAME MURRAY, sone to Williame Murray in Glasfurd, sumtyme servand to James Hammiltoun of Evindaill.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Archibald Stevinfoun, in Gallowfarvene; committit with schottis of hagbuttis and pistolettis, vpone the xxiiij day of Marche, I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris.

PERSEWARIS, Archibald and Thomas Stevinfones, as fones; Agnes Finlay, as relict; Gawin Stevinfone, baxter, burges of Ed<sup>r</sup>, as neir kynfman.

The said Williame tuik him selff to our fouerane lordis Remissioun, grantit to him vnder his hienes Grit Seall, vpone the nynt day of Januar lastbypast, beirand,<sup>1</sup> that his Maiestie, of his speciall grace and mercie, had pardonet and forgevin the said Williame all actioun, cryme, and offence that mycht be imput<sup>2</sup> to him, for airt and pairt of the Slauchter of the said vmq<sup>le</sup> Archibald; and in respect thair of, and of his Maiesteis clemencie, mercie, and pardoun expressit thairin, allegit, that the Justice could nawayis put him to ane Assyse, for the said crymes.—To the quhilk it was ansuerit be the persewaris, that the foirsaid Remissioun is null, and thairfoir sould nocht be admittit; in respect, be Act of Parliament, maid be our fouerane lord and thre Estaitis, in the moneth of Julij, 1593, cap. 174, it is expresse provydit, statute and ordanit, be his Maiestie and Estaittis foirsaidis, that na Respett nor Remissioun be grantit to ony persone or persones, at na tyme thaireftir, that passet to the horne for theft, reif, slauchter, burning, or heirschip, quhill the pairtie skaithed<sup>3</sup> be first satisfeit; and gif<sup>4</sup> the samyn be

<sup>1</sup> Bearing.

<sup>2</sup> Imputed.

<sup>3</sup> Until the party injured, &c.

<sup>4</sup> If.



vtherwayis grantit, without satisfioun of pairtie, all sic Respettis and Remissions to be null, alsweill be way of exceptioun as reply : And trew it is, that the pairtie perfewar is nawayis satisfieit, conforme to the said Act ; and thairfor, nochtwithstanding of the foirsaid Remission, the pannell shuld be put to ane Assyse, for the said cryme.

To the quhilk it was duplyit be the pannell and his prelocutouris, that the foirsaid Remission man<sup>1</sup> be admittit, in respect the samyn is grantit vpon the sicht of ane Letter of Slanes gevin be Andro Stevinsoun, eldest lauchfull sone to the said vmq<sup>le</sup> Archibald, and nerrest of kyn to him, with consent of Agnes Finlay his mother, and Mathow Thomefone, his vncl, beiring satisfioun maid to the said Andro for the said slauchter : And for verificatioun thair of, producet the said Letter of Slanes, of the dait the penult day of Julij, I<sup>m</sup>.Vj<sup>c</sup>. and ellevin yeiris : And vpon the production thair of, togidder wth the Remission aboue writtin, askit instrumentis.

THE JUSTICE, in respect of the Letter of Slanes producet, Admittis the Remission ; and ordanis the pannell to find cautioun to satisfie the pairtie, conforme to the lawis of this realme.—James Murray of Guidisburne, and Gawin Murray of Vdstounheid, become cautioneris, &c.

### Slaughter.

Jul. 30.—DONALD M<sup>c</sup>KY, fear of Far, Johnne Gordoun, younger of Golfpitour, and vtheris.<sup>2</sup>

Dilaitit ffor being airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Sinclair of Stirkco, and James Sinclair of Dyn, and remanent crymes contenit in the Letteris.

Compeirit personallie George Murray, seruitour to my Lady Sutherland, quha producit ane Warrant of the Lordis of Secreit Counfall, &c. off the quhilk the tennour followis.

JUSTICE, Justice clerk, and your deputis. Quhairas, thair ar Letteris direct at pe instance of George Sincler of Dyn, as brother to vmq<sup>le</sup> James Sinclair of Dyn, and mother-brother to vmq<sup>le</sup> Johnne Sinclair of Stirkco, and Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intreis, aganis *Donald M<sup>c</sup>ky*, fear of Far, *Johnne Gordoun*, zonger of Golfpitour, *Adame Gordoun* in Geartie, *Murdo Neill*, *Johnne Williamesoun* in Achines, *Neill Mcallaster Neillsoun* and *Donald Myller*, seruitouris to the said Donald M<sup>c</sup>ky, fear of Far, and remanent perones defenderis, pair complices, contenit in the saidis Letteris, chargeing thame to compeir befor zow, in the Tolbuth of Edinburgh, the penult day of Julij instant, to vnderly the law, for airt and pairt of the Slauchter of pe saidis vmq<sup>le</sup> Johnne and James Sinclairis. And seing all matteris questionable betuix THE ERLE OF SUTHERLAND and M<sup>c</sup>KY, and pair kyn and freindis, on the ane pairt, and THE ERLE OF CAITHNES, his kyn and freindis, on the vther pairt, is be our moyane and travellis submittit ; in the quhilk Submissioun the saidis tua Slauchteris of pe saidis Johnne and James Sinclairis ar speciallie comprehendit, and pe decyding pairof restis in our handis, to be discuffit be ws. It is pairfor our Will, and

<sup>1</sup> Must.

<sup>2</sup> Vid. Jul. 17, 1612.

We command ȝow to DESERT þe said dyet appointit to þe said penult day of Julij instant, for tryell of þe saidis crymes, and nawayis to proceid in vnlawing of the saidis persones defenderis, or þair cautioneris; dispensing with thair non-compeirance, in that respect: Quhairanent þir presentis fall be to ȝow ane sufficient Warrant. Subscryuit be ws AT ED<sup>n</sup>, the xxv day of July, 1612.

AL. CANCELL<sup>r</sup>. LOTHIANE. S<sup>a</sup> T. HAMILTON.

At command of the quhilk Warrant, the Justice ordanit the said dyet to desert, &c.

### **Slaughter—Beiring, Weiring, and Shooting of Hagbutts and Pistolets.**

Jul. 31.—JAMES HALL of Foulebar; Mr Williame Hall, indueller in Dumbarten, his brother-germane; Thomas Stewart, at the Ferrie-boit of Inchynnane.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Johnne Montgomerie, younger of Scottistoun; committit with schottis of hagbuttis and pistolettis, within the burgh of Renfrew, in the moneth of November, the yeir of God I<sup>m</sup>.V<sup>c</sup>. fourfcoir nine yeiris: And als, for contravening of the Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis, schoiteing and slaying of the said vmq<sup>le</sup> Johnne Montgomerie younger thairwith, at the particuler tyme and place aboue mentionet.

#### **PERSEWARIS.**

Johnne Montgomerie, elder of Scottistoun, as father; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOURIS for the pannell, Mr Alexander King, Mr Laurence McGill, Aduocatis.

Sir Johnne Buchannan of that Ilk, kny<sup>t</sup>, become fouertie for Thomas Stewart his entrie, vpone xv dayis wairning, to vnderly the law for the slauchter aboue writtin, vnder the panes contenit in the Actis of Parliament.—The said James Hall, and Mr Williame Hall, his brother, tuik thame selffis to tua feuerall Remissiones, grantit to thame be our fouerane lord; the ane beirand, that his Maieftie, of his speciall fauour and grace, remittis and gevis pardoun to the saidis James Hall of Foulbar, and to Mr Williame Hall, his brother, for airt and pairt of the slauchter of the said vmq<sup>le</sup> Johnne Montgomerie Younger of Scottistoun, and for all actioun and cryme that may follow thairupoun, or may be imput to thame thairfoir; quhilk is daitit at ffalkland, the aucht day of Julij, the yeir of God I<sup>m</sup>.V<sup>c</sup>. fourfcoir fyftene yeiris (1596), vnder his hienes Grit seill: The vther of the saidis Remissiones beirand, that his Maieftie, of his speciall grace and mercie, gevis pardoun and remiffioun to the said James Hall, seruitour to Archibald Erle of Argyle, and to the said Mr Williame Hall, his brother, and to ather of thame, for all cryme and offence that mycht be laid to thair charge, ffor thair beiring, weiring, or schuiting with hagbutis and pistolettis, contrair to his Maiesteis Actis of Parliament, at ony tyme bygane, preceeding the day and dait of the



same Remiffioun, quhilk is daitit at Edinburgh, the tent day of Julij instant, I<sup>m</sup>.Vj<sup>c</sup>. and tuelf yeiris.

THE JUSTICE admittit the samyn, nochtwithstanding of dyuerse allegeances maid be our fouerane lordis Aduocat in the contrair; and Ordanit the saidis persones vponne pannell to find cautioun to fatisfie the pairtie, conforme to the lawis of this realme: Quhairupone the saidis James and Mr Williame Hallis askit instrumentis: And for obedience of the said ordinance, ffand, with thame selfis, Williame Sempill of Foulewood, and James Wallace of Johnnstoun, cautioneris for thame, to fatisfie the pairtie, &c.

**Slaughter, committed by a Youth fourteen years of age.**

Aug. 26.—JAMES MIDDLETOUN, sone to vmq<sup>le</sup> Robert Middeltoun, tailzeour, burges of Edinburgh.

Dilaitit off airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Clement Mauchane, sone to vmq<sup>le</sup> James Mauchane, mercheand, burges of Edinburgh, be streking of him with ane durk, vnder the schorte ribbis, vpwardis, on his left fyde, the lenth of aucht or nyne inches, vponne the *diaphragma*, or midreid, quhilk is ane noble pairt; committit within the burgh of Edinburgh, within the duelling hous or ludgeing of Alexander Hunter, burges thair, vponne the threttene day of August instant: Off the quhilk crewall and deidlie straik sa gevin to him, he nevir thair-efter convaleschet, bot immediatlíe thairefter taking bed within the foir chalmer of vmq<sup>le</sup> Henrie Lummifden, chirurgane, to the quhilk he was led and cayreit, remanit bedfast in grit dollour and pane, vnder the cure of chirurganes, the space of nyne dayis togidder, or thairby; and at last, vponne the xxij day of August instant, about nyne houris afoir none, he depairtit this lyfe, of the said deidlie straik: And sa, was crewallie flane be the said James Middeltoun, vponne set purpois, prouisioun, and foirthocht fellonie; in hie and manifest contempt of our fouerane lordis auctoritie and lawis.

PERSEWARIS, Mr James Mauchane, as brother; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord.

PRELOCUTOURIS in defence, Mr Johnne Ruffell, Mr Laurence M<sup>c</sup>gill.

The persewaris producet the Dittay, with the roll of the Assyse, and desyret proces.—THE JUSTICE Ordanit the Dittay to be red.

Mr Laurence M<sup>c</sup>gill, prelocutour, in name of Johnne Carmichell, decone of the Tailzeouris, Alexander Miller, tailzeour to his Maiestie, and of the mother and certane vtheris the pannellis freindis, befoir ony forder proces, and to eschew forder disputatioun in this matter, offerit to the persewaris, that for thair satisfioun for the slauchter aboue writtin, that thai war content to caus the pannell ather imbrace the Sentence of perpetuall Banischment; or vther wayis, to thair power,<sup>1</sup> to mak sic vther satisfioun, baith of honour and guidis, to the

<sup>1</sup> To the utmost extent of their means.

persewar, as be the advyse of friendis sould be inioynet to him, his lyfe being saifit.—The said Mr James Mauchane, as brother, and persewar of this mater, for ansuer declairit, that, seing his brother is flane, aganis the Law of God and his Maiesteis lawis and Actis of Parliament, refusit altogidder to enter in capitulation of agrement of this matter; and thairfoir desyret that justice be ministrat, accoirding to the lawis of this realme.

THE JUSTICE, in respect of the persewaris ansuer and desyre aboue writtin, Ordanis proces.

It was allegit be the pannell and his prelocoutouris, that this matter sould nocht pas to the knowlege of ane Assyse ffor tua caussis; *ffirst*, becaus he is nocht wairnit vpone fyftene dayis wairning, conforme to the Act of Parliament; *secundo*, he was nocht tane *in fragranti crimine*; in respect be the Dittay it is affirmet, that the fact was committit vpone Thurisday the xiiij day of August instant, and vpone the fyftene day of the said moneth, being Setterday, was tane be the Magistratis of Edinburgh, as suspect giltie and culpable of the said fact, albeit<sup>1</sup> the Magistratis of the said bur<sup>t</sup> had na power sa to do, the tyme limitat to thame being expyret, viz. xxiiij houres allanerlie<sup>2</sup> eftir the committing of the fact; and sa, he nocht being tane *in fragranti crimine*, bot within thre dayis eftir the allegit time of the committing thair of, the pannell, of all equitie, aucht to haif bene summond vpone fyftene dayis wairning.—It is ansuerit be my lord Advocat, that the foirsaid allegiance aucht to be repellit, in respect of the Dittay beiring the slauchter to be committit vpone the xiiij day, be the pannell, and he to be tane and apprehendit be the Magistratis vpone the xv day thaireftir, and committit to waird; quhairin he hes remanit to this hour. And sa, the Slauchter being committit recentlie, and the pannell tane thairfoir *in fragranti crimine*, he aucht to be put to ane Assyse, but<sup>3</sup> ony citatioun preceeding; speciallie, in respect he is brocht fra the prissone to the bar, be the Magistratis, his takeris.

THE JUSTICE Ordanis the pannell to pas to ane Assyse, nochtwithstanding of the former allegiances.

It is forder allegit be the pannell, that my lord Justice can nocht put the pannell to the knowlege of ane Assyse, for this cryme; becaus, be ane text of the Cowmone Law, *de delictis puerorum*, the fyft of *the Decretallis*, it is speciallie declairit, that minoris within xiiij yeiris of age committing crymes, ar nocht *doli capaces*, quhilk can nocht be estimat to be done be thame *ex certa scientia*; and thairfoir, can nocht be persewit thairfoir: Lyk as, in the accident that fell furth be the scolleris of the Grammer-scole of Edinburgh, in slaying of Johnne M<sup>r</sup>morane, being ane bailzie, and in the executioun of his office, this allegiance being proponit in the persute intentit aganis thame for the said Slauchter, it was ffund, be Interloquitour of the Judge, in respect of thair minoritie, that thai war nocht

<sup>1</sup> Although.

<sup>2</sup> Only.

<sup>3</sup> Without.



*doli capaces*, and sa wer affoilzeit,<sup>1</sup> and na perfute followit furth aganis thame : Quhilk practique the pannell repeittis, and sayis, that in respect of the Cowinone-law and practique aboue writtin, he being minor *et non doli capax*, he can nocht pas to ane Affyse for the said cryme. *Secundo*, the slauchter aboue writtin was nocht committit vpone set purpois or foirthocht fellonie ; in respect thair was na querrell betuix the defunct and the pannell ofbefoir, bot only the defunct missing his dager, quhilk was tane fra him be Capitane Erskine, quha also was with him in companie, and was cassin vp be him vpone ane almerie heid,<sup>2</sup> the defunct, for wanting thair of, challanget the pannell, and maist outrageouslie abuset him, baith with langaige and straikis ;<sup>3</sup> lyk as, the pannell, finding him self sa vset, and feing ane durk vpone the buird besyde him, tuik vp the said durk and defendit him self thairwith, vpone the quhilk durk, haldin out be the pannell for his awin defence, the defunct ran him self ; and sa was the caus, him self, of his awin slauchter : And thairfoir, fould nocht pas to ane Affyse.

To the quhilk it is ansuerit, be my lord Aduocat, that the foirsaid allegiance of minoritie fould be repellit, becaus it is nocht condiscendit be the proponer of the said James Middeltones age, quhidder he be past xiiij yeiris or within the samyn, quhilk of necessitie man<sup>4</sup> be condiscendit vpone ; becaus he being past xiiij yeiris of age, *est doli capax*, and sua may be persewit and pwneist to the daith for the slauchter : Always,<sup>5</sup> to mak the matter cleir to my lord Justice, it is affirmet be the persewer that he is past sevintene yeiris of aige, befoir the committing of the slauchter, as is manifest, nocht onlie be ocular inspectioun, bot be the extract of the tyme of his birth furth of the Register of the Kirk-buikis of Edinburgh, he being baptizet vpone the 23 day of Julij I<sup>m</sup>.V<sup>e</sup>.lxxxv.—As to the practique allegit betuix Johnne M<sup>c</sup>morran and the Chancellor of Caithnes sone, and the rest of the bairnes, quhome the pannell allegis to haif bene persewit for the said Johnne M<sup>c</sup>morranes slauchter, it is certane that all the bairnes that war persewit and accuset for that slauchter war within fourtene yeiris of age ; and thair was na Interlocutour gevin in that cause, bot the matter was tane vp be his Maiesteis expres Warrant.—And acceptis the Confessioun of the durk in his handis, and Slauchter thairwith.

Thaireftir the pannell, for satisfeing the desyre of my lord Aduocatis allegiance, condiscendis that he was within fourtene, at the leist fyftene yeiris of age, the tyme of the committing of the slauchter lybellit. And quhair, it is allegit and affirmet that the haill bairnes persewit for Johnne M<sup>c</sup>morranes daith war within fourtene yeiris, thair is na thing producet to verifie the samyn. And last, as to the Tes-

<sup>1</sup> Absolved ; dismissed.  
by words and blows.

<sup>2</sup> Cast or thrown by him on the top of a cupboard or press.  
<sup>4</sup> Must.

<sup>5</sup> Nevertheless ; at all events.

<sup>3</sup> Both

timoniall producet be the perfewar, anent the pannellis baptisme; *ffirst*, it is anfuwerit, that na fayth can be gevin thairto, becaus it is nocht registrat; *secundo*, it hes na witnesse; *tertio*, of the Law, *testibus et non testimonijs credendum est*.—The perfewar repeitis his former answer, with the Testimoniall extractit furth of the Kirkis Register.

The Justice Repellis the allegeances proponit be the pannell; and Ordanis him to be put to the knowlege of ane Assyse.

## ASSISA.

Jon Quhyte, culteller, burges, Edr,	Patrik Craig, mercheand, burges	James Cathkyn, librar, burges of
Johnne Naper, tailgeour in Poket-	of Edr,	Edr,
fleve,	Johnne Mitchelhill, mercheand,	Dauid Laufone, mercheand, bur-
Johnne Gilbert, tailgeour in the	burgess thair,	ges thair,
Cannogait,	Patrik Meayue, couper, burges	Thomas Cuthbertsone, culteller,
Johnne Smyth, mercheand, bur-	thair,	Troyalus Laufone, baxter, burges
ges of Edr,	Robert Zoung, maltman,	of Edr,
Clement Russell, mercheand, bur-	James Halyburtoun, mercheand,	Johnne Johnnestoun, tailgeour,
ges thair,	burgess of Edr,	burgess of the Cannogait.

It was allegit aganis Johnne Quhyte, that he can nocht be admittit vpon this assyse, becaus *ultro citroque gessit se hoc negotio*, in furtherance of this perfewer, in persute of the pannell; and desyret the Judge to tak his ayth thairupoun, and to purge him of partiall counfall; quha being fuorne, declairit, that he had gevin na partiall counfall in that matter: In respect quhairof, the Justice admittis him vpon the Assyse.

The Defender, eftir his accusatioun be Dittay of the Slauchter aboue writtin, vpon his conscience, denyis the samyn; and allegit, that thair was nathing producet to the Assyse to verifie his giltines of that fact.

Mr James Mauchane, perfewer, and brother to the defunct, being fuorne, gaif his ayth vpon the Dittay, that he had just caus to perfew the pannell for the slauchter of his brother: And repeittis to the Assyse the notorietye of the slauchter, in maner set down in the Dittay.—My Lord Aduocat takis instrumentis of the sweiring of the Assyse; and repeittis, for their forder instructioun, the offer maid be the pannell to the perfewer, ather to imbrace the sentence of Banishment, or vtherwayis, in honour or guidis, to mak satisfacioun to thair power; quhairin the pannell hes confest his giltines of the fact, in maner set down in the Dittay. And proteftis, in respect thair of, for Wilfull Errour aganis the Assyse, in caice thay acquit.—It is allegit be the pannell, that the offer allegit maid be him to the pairtie perfewer, in the begyning of the cause, was nocht maid be him, bot be Johnne Carmichell, deacone of the Tailgeouris, and vtheris his brether, the pannellis freindis and weill-willeris, out of thair awin box,<sup>1</sup> quhilk offer was

<sup>1</sup> Out of the box or funds belonging to the Incorporation.



nocht maid to induce ony Confessioun of the cryme, *sed ad evitandum litigationem*.—My Lord Aduocat, as ofbefoir, repeatit the offer, and notorietie of the fact committit; and protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse, all in ane voce, be the mouth of the said James Cathekyn, buikfeller, stand, pronuncet, and declairit the said James Middletoun to be ffylet, culpable, and convict of the crewall slauchter of the said vmq<sup>le</sup> Clement Mauchane; committit at the tyme and in maner specifeit in the said Dittay.—SENTENCE. The Justice, be the mouth of John Dow, dempster of Court,<sup>1</sup> decernit and adiudget the said James to be tane to the Mercat-croce of Ed<sup>r</sup>, and thair his heid to be strukin frome his body; and all his moveable guidis and geir, gif he ony hes, to be escheit and inbrocht to his hienes vse, as convict of the said Slauchter.<sup>2</sup>

### Horse and Sheep Stealing—Theft—Perjury.

Sep. 18.—ALEXANDER IRWING, sone to vmq<sup>le</sup> Gilbert Irwing of Wyfbie, James Irwing, sone to vmq<sup>le</sup> Williame Irwing, brother to the said vmq<sup>le</sup> Gilbert.

Dilaitit, accuset, and persewit, bē Dittay, at the instance of Williame Mannecht in Echt, and Alexander Wilsone, gairdner thair, and be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, aduocat to our souerane lord, off the feuerall pointis of Dittay following, viz.

FOR airt and pairt of steilling and away-taking of thre lynning wobbis furth of the houffis of Gulielandis, pertening to ane pure woman thair; committit in Julij, 1610 yeiris. ITEM, ffor airt and pairt of the steilling of sevin naigis and meiris<sup>3</sup> furth of the landis of Moufwall and Drummwre; committit in the moneth of October, 1610 yeiris. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of aucht scheip furth of Dronnok, fra James Quhyte thair; committit in September, 1609. ITEM, ffor airt and pairt of the steilling and away-taking of tua naigis and ane mere, pertening to Johne Gillefpie, and George Ker, in Robiequhat; committit in October, 1610. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of sax oxin furth of the landis of Lochirgrane, within Drummwre; committit be the said Alexander, in the yeir of God I<sup>m</sup>. sax hundreth and aucht yeiris. FOR the quhilkis feuerall crymes, the saidis Alexander and James Irwingis being arreistit to the Justice Court, haldin be the Commissioneris in the Tolbuthe of Dumfreis the fyftene day of October, I<sup>m</sup>.Vjc. and ellevin yeiris, thay, for thair non-compeirance, war declairit fugitiues and put to the horne, as rebellis and fugitiues, for the saidis crymes. ITEM, the saidis James and Alexander Irwingis war indyttyt and accuset, at the instance of the saidis persewaris, ffor airt and pairt of the steilling and away-taking furth of the waird of Echt of ane gray naig, pertening to the said Williame Mannecht, and of ane broun naig, pertening to the said Alex<sup>r</sup> Wilsoun, gairdner in Echt; committit vnder silence of nycht, vpon the first day of August lastbypast; quhilkis tua naigis war brocht Southe ower be thame to Ed<sup>r</sup> to Thomas Lokeis hous, at the Wast-Point thairof, quhair thai war keptit for the space of thre

<sup>1</sup> This person appears, for the first time, as dempster, in the Record.  
years' imprisonment, the party relents, and Myddiltoun goes into voluntary exile for life. This arrangement is sanctioned by the Privy Council and the Justice, to whom the matter had previously been submitted.

<sup>2</sup> See Nov. 18, 1618, when, after six  
<sup>3</sup> Riding horses and mares.

dayis and thre nyctis; and vpon the . . . day of the said moneth, being Mononday, the ordinar mercat day of the said burgh,<sup>1</sup> presentit thame to the horse-mercat thair of to be fauld, quhair the saidis tua horffis war challanget in thair possessioun, be Airthour Forbes of Sonnahony; and thai thairefter apprehendit and committit to waird within the Tolbuth of Ed<sup>r</sup>, thair to haif remanit quhill thair tryell. ITEM, ffor airt and pairt of the steilling and away-taking of ane horse furth of the Heuch of Duris, pertening to Thomas Frazer, sone to the auld Laird of Duris; committit in Junij lastbypast. ITEM, ffor airt and pairt of the steilling, conceilling, and away-taking of ane blak horse, pertening to Johnne Clark in Auchroffe; committit in the moneth of Maij, 1<sup>m</sup>.Vj<sup>c</sup>. and ten yeiris. ITEM, ffor the detestable and odious cryme of Periurie, in the periureing and menfweiring<sup>2</sup> of thame selffis, the tyme of thair examinatioun and vptaking of thair Depositiones; the said James Irwing, be his grit aithe, affirmeing him selff to be namet Johnne Poole, quhairat he still abaid quhill the contrair was verifeit vpon him, and he maid to confess the treuth thair of; quhilk was also sworne and affermet be the said Alex<sup>r</sup> Irwing, that the said James was namet Johnne Pole. ITEM, thay and ather of thame war indytit and accuset for Cowmone thift, Cowmone resset of thift, fra the South to the Northe, and fra the Northe to the Southe, in outputing<sup>3</sup> of the samyn.

My lord Aduocat, for verifeing the first point of Dittayis, producet ane Precept of the Commiffioneris, be the quhilk the pannell ar denuncet fugitiues, for certane poyntis of thift gevin vp aganis thame; and repeatit the fueiring of the Dittay be the tua persewaris, anent the steilling of thair tua naigis: And in respect thair of, and of the notorietie of the pannellis thiftious lyfe, protestis for Errour, gif thay acquit.

VERDICT. The Affyse, be the mouth of Johnne Abercrombie, in Leith, chancellor, ffind, pronuncet, and declairit the saidis Alexander and James Irwingis to be ffylit, culpable, and convict of the haill crymes *respectiue*, aboue expremitt.—

SENTENCE. To be tane to the Castell-hill of Ed<sup>r</sup>, and thair to be hangit vpon ane gibbet, quhill thay be deid: And all thair guidis and geir to be efcheit, &c.

### Slaughter.

Nov. 5.—JOHNNE HAY, servitour to James Henderfone, chirurgane.

Dilaitit, accuset, and persewit be Cristiane Adamesfone, the relict of vmq<sup>le</sup> Niniane Paterfone, ftaibler in Ed<sup>r</sup>, and Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord, of the crymes following, viz.

FORSAMEKILL as the said Johnne Hay haifing, in the moneth of Maij bypast, hyret and conducet the said vmq<sup>le</sup> Niniane Paterfones horse to Roifling-mylne, for hame-bringing of pe said James Henderfones bairne; and pe said Niniane haifing past with him, of purpois, at his lichting,<sup>4</sup> to haif attendit vpon his said hors, the said Johnne Hay, be the way, directit the said vmq<sup>le</sup> Niniane to ryn befor, and to attend<sup>5</sup> his cuming, becaus he was him selff to repair to Lefuaid, thair to speik with his faper and vtheris his freindis; lyk as, about ten houris at evin, the said Johnne, haifing cum to the said mylne, altogidder ouerfet with drink, and sa, nawayis being able at that tyme of the nycht, and in sa beiftlie estait, to governe him self, let be to haif horfet and cayreit befor him his said maisteris bairne, without danger of bothe pair lyves; becaus pe said vmq<sup>le</sup> Niniane maid sum oppositioun and resistance to that his intentioun, in ryding at pat tyme of the nycht; he pairfoir, in his beiftlie rage and furie, ran vpon

<sup>1</sup> Now held on Wednesdays.  
Fr. *attendre*.

<sup>2</sup> Mansweiring.

<sup>3</sup> Selling; disposing of.

<sup>4</sup> Alighting.

<sup>5</sup> Await.



him, and with his kneis and feit possit<sup>1</sup> him vnder his feit, best and dang<sup>2</sup> him in pe heid, bellie, breiftis, and fydis, and brak and birfet<sup>3</sup> his haill intrallis within him : And nocht being fatisfeit with that his crewall and outrageous abuse, the said vmq<sup>le</sup> Niniane, being rissin vp on his feit, the said Johnne come to him and hurrillit him maist violentlie over the brae besyde pe mylne, of purpois to haif drowned him in the dambe, quhilk, be reffone of pe said downeward fall, he had nocht failzeit to haif done, war nocht, be pe Providence of God, he was haldin and stayit be pe stobe and rute of ane trie, his face and heid, nochtwithstanding, being maist schamefullie demanit<sup>4</sup> and hurt, be occasioun of pe said fall : Off the quhilkis straikis, hurtis, and woundis, sa gevin to the said vmq<sup>le</sup> Niniane, in maner foirsaid, he nevir pairestir convalescit ; bot being borne and cayreit hame to his duelling hous, tuik bed, quhairin he remanit bedfast, in grit dollour and payne, continuallie pairestir, to pe tyme of his daith ; and at lenth, vpone Lambes day<sup>5</sup> pairestir, quhilk was pe first day of August lastbypast, he deceissit of pe saidis hurtis and woundis ; and at pe hour of his daith, and dyuerse tymes of befoir, during his seiknes, left his deid,<sup>6</sup> and pe only cause pairof, vpone pe said Johnne : And sa was schamefullie, crewallie, and vnmercifullie slane be pe said Johnne Hay ; and he is airt and pairt of pe said crewall slauchter, committit vpone set purpois, prouisioun, and foirthocht fellonie ; in hie and manifest contempt of his hienes auctoritie and lawis.

PRELOCUTORIS in defence, Gilbert Hay, as fader to the defender ;

Mr Lawrence McGill, Adame Cuninghame, Johnne Elphingstone of Schank.

It is allegit, be the pannell, that this lybell is nocht relevant, in respect the perticuler day of the moneth of the allegit committing of the fact lybellit, is nocht condiscendit vpone.—To the quhilk it is ansuerit be the persewar, that the allegiance aucht to be repellit, in respect of the Summondis beirand the cryme lybellit to be committit, be this defender, in the moneth of May last ; and that be the straikis gevin to the defunct, at that tyme, he deceissit thairof in August thairestir.

THE JUSTICE, nochtwithstanding of the allegiance, in respect of the persewaris ansuer, remittis this matter to ane Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Inglis, burges of Ed<sup>r</sup>, chancellor, ffand, pronuncet, and declarit the said Johnne Hay to be clene, innocent, and acquit of the Slauchter of the said vmq<sup>le</sup> Niniane, and of airt and pairt thairof.—Quhairupoun the said Johnne Hay askit instrumentis.

### Thett.

Nov. 24.—THOMAS MOWAT, sumtyme servand to Williame Lord Keith.

Dilaitit of airt and pairt of the thiftious steilling and abstracting fra Williame Lord Keyth, his maister, of ane purse, togidder with sax scoir Angellis of gold, being thairintill, vnder nycht, furth of ane foir chalmer in Ed<sup>r</sup>, quhair his said maister was ludget for the tyme ; committit vpone the xij day of Marche last.

This case was continued to Dec. 23, Jan. 29, Feb. 5 and 12 ; and at length

<sup>1</sup> Pushed. Fr. *pousser*.      <sup>2</sup> Beat and struck.      <sup>3</sup> Bruised. It is sometimes in the Record expressed by '*brast*,' burst.      <sup>4</sup> Used ; treated.      <sup>5</sup> Lammas-day, 1st August, or the Feast of St Peter ad Vincula (in bonds) ; supposed to be so named, because lambs were offered at this Mass, in commemoration of the command of our Saviour to the Apostle, 'Feed my lambs.' This metaphorical expression was, as usual, seized upon by the Romish Church, and converted into a source of substantial profit.      <sup>6</sup> Death.

was prorogated to the Justice-air of 'Sterling, tertio Itineris, vel super premonitione xv dierum.' No procedure is recorded, saving these continuations, owing to the absence of Lord Keith, &c.

**'Englisch Pirattis'—Piracy—Theft.**

Feb. 2, 1613.—JOHNNE DAUIDSOUN, borne at Ratleiff, besyde Lundoun,  
Johnne Lowis, borne in Cairleill, baith Inglish Pirattis.

Dilaitit of Piracie and Thift, committit vpone dyuerse his Maiesteis subiectis, bothe in Ingland and Scotland, viz.

FOR the thiftious steilling of ane schip-boit furth of Ratleif; committit vpone the fourtene day of Januar last, and passing thairwith to the fie: AND for airt and pairt of the buirding of ane catche or oister-bott, and thiftious away-taking of the samyn, vnder silence of nycht; and passing thairwith, furth of the river of Thames to Liefswall, quhair thai buirdit ane Harwadge Hoy, and be way of maisterful thift and stouthe-reif, rest and away-tuik furth thair of ane piece of stuff worth threttie schillingis sterling, togidder with breid, beir, and vther victuallis: AND thairfra, foranent Harwadge,<sup>1</sup> persewit and buirdit ane Yarmouth bark, and tuik furth thair of thre caidis of reid heiring, and ane half barrell of quhyte heiring, with the barkis topsaill, the skipperis cloik, and ane stand of apparell, laid over with siluer laise: AND thaireftir, come to Yarmouth-Raid, quhair thai persewit and buirdit ane Scottis bark, pertening to Alexander Law in Kirkcaldie, invaidit the skipper with his companie, being thairin, hurt and woundit the said Alexander Law, skipper, in the heid: AND for dyuerse vtheris crymes of Pirracie, at lenth specifeit in the Dittay.

Quhilkis ('feuerall crymes') war confessit judicillie be thame to be of verritie.

VERDICT. The Assyse, be the mouth of Walter Lukkie, skipper in Leyth, chancellor, ffand, pronuncet, and declairit the saidis Johnne Dauidson and Johnne Lowis to be ffylet, culpable, and convict of the perticuler crymes of Thift and Pirracie aboue specifeit.—SENTENCE. To be tane to the Sandis of Leithe, within the fluid-mark thair of, and thair, vpone ane gibbet to be hangit quhill thay be deid; and all thair moveable guidis to be escheit, &c.

**Fire-raising—Burning—Murder—Theft—Piracy.**

Mar. 30.—NEILL M<sup>c</sup>CLAUD, sone-naturall to vmq<sup>le</sup> Rorie M<sup>c</sup>claud, sumtyme of LEWIS.

Dilaitit of airt and pairt of the crewall Burning of dyuerse houffis, erectit and biggit be the Lairdis of Balcomie, Airdrie, Wormestoun, &c. vpone THE ISLE OF THE LEWIS, and for dyuerse vther crymes, set down in his DITTAY following.

<sup>1</sup> Opposite to Harwich.



NEILL MACCLAUD, sone naturall to vmq<sup>le</sup> Rorie McClaud, samtyme of Lewis. 3E ar indytit and accuset, fforfamekill as, from 3our verrie 3outhie, 3e being tranet vp in all maner of barbarous crewaltie and wicketnes, and following pe pernicious example of 3our godles parentis, kynsfolk, and cuntrie people, haifing committit innumerable oppreffiones, heirschipis, and violent factis aganis sic perfones as 3e mislyket, duelland within the cuntrie of THE LEWIS, and vtheris HIELAND YLES pairabout, to the heich offence of Almychtie God, displefour of the King's Maiestie, contempt of his royall authoritie, and violatioun of his hienes lawis; ffor forder manifestatioun of 3our extreame and vnnaturall mischancie,<sup>1</sup> vnderstanding that THE KINGIS most excellent Maiestie, for repreffing of the abhominable villaneis, crewalteis, and oppreffiones committit be 3ow and 3our associattis duelland within pe Yleand of the Lewis, out of his princelie wifdome, had directit ane grit number of his hienes peceable and guid subiectis furth of pe Lawlandis, bodin<sup>2</sup> with all maner of furnitour, and necessar prouisioun for pair intertenement, towardis pe said Ile of pe Lewis, thair to haif plantit and sett down Tounes and Villages, and to haif establischet all guid ordour and ciuilitie; of purpois, pairby, to haif extirpat and ruteit out pe name of barbaritie furth of thais pairtis: 3E, accompaneit with *Tormond McClaud*, 3our broper, and with tua hundreth barbarus, bludie, and wicket Hielandmen, foirneris and avowed malie-factouris, ancient inhabitantis and lawles perfones within the Lewis, quhome 3e conuenit to 3our selff, to resist and withstand the purpois and godlie intentioun resoluet vpon be his Maiestie, anent pe quyeting of pat cuntrie—come, all bodin in feir of weir,<sup>3</sup> with bowis, darloches, tua-handit-fuoirdis, hagbuttis, pistolettis, and vperis wappones *invasiue*, in oppin and hosteill maner, about a fourtene 3eir syne, or pairby, to the said Ileand of the Lewis, quhair vmq<sup>le</sup> WILLIAME LORD PITTINWEME, the *Laird of Wormestoun*, the *Laird of Fingask*, the *Laird of Balcomy*, the *Laird of Airdrie*, accompaneit with dyuerse Inlandis Gentilmen, his Maiesteis peceable and obedient subiectis war landit, and in planting of dyuerse houffes, pairtlie of tymmer, and pairtlie of stane and fail,<sup>4</sup> for pe tyme, lipning for nothing les nor to haif bene inuidit and withstuid in thais pair vertious<sup>5</sup> proceedingis; and pair, maist fearcelie inuidit and persewit the saidis Lawland Gentilmen and pair companeis, maist crewallie murdreist and slew vmq<sup>le</sup> Robert Traquair, vmq<sup>le</sup> James 3oung, vmq<sup>le</sup> . . . . . Wedderburne, and dyuerse vtheris, to the number of tuentie tua perfones, maist treffonabillie put handis in the perfone of the said *Laird of Balcomie*, be taking him as captiue and prissoner: As ALSO, maist treffonabillie raisit ffyre, brunt and distroyit to the grund the hail houffis erectit vp be thame, with pe victuall and furnitour of meill, malt, and vther prouisioun, to the avall<sup>6</sup> of tuentie thoufeand merkis: AND pair-estir, be way of maisterfull Thift and Stouth-reiff, thiftioullie stall and away-tuik the hail horsis, ky, oxin, scheip, and vther bestiall, pertening to pe said Lawland gentilmen, to the avall of ten thoufeand pundis. And 3e, the said *Neill*, ar airt and pairt of the saidis treffonable and barbarus crymes, and was pe speciall ringleider and Chiftane, with the said *Tormond*, 3our broper, in putting of the samyn to sic mercieles executioun: quhilk 3e can nocht deny. ITEM, 3e ar Indytit and accuset, fforfamekill as *Johnne Pullet* and *Robert Blair*, burgesses of Perth, haifing past, with ane Schip pertening to thame, to *Loche-Brume*, to the fischeing, 3e, vnderstanding pairof, come with ane number of thevis and lymmeris, 3our associatis, to pe number of fourtie men, or pairby, all bodin in feir of weir; and haifing devydit 3our companie in tua severall companeis, and enterit in tua boittis, 3e pairestir rowit af pe land towardis the said schip; and pair, as Pirattis, Thevis, and Sea-robberis, estir discharginge of dyuerse muscattis, hagbuttis, and vperis ingynges of fyre-work at the said schip and companie pairof, 3e buirdit the samyn, intromettit with the hail furnitour, mercheandice, wynges, claithe, and vper prouisioun being pairintill, disarmet the merchandis, skipper, and marineris, and tuik af pame pair hail clething, and abulzementis,<sup>7</sup> pat tua (of) pe companie of the said schip a land, and in maist pitiefull<sup>8</sup> maner murdreist and slew pe rest of the companie, to the number of sevin or aucht men; and pairestir,

<sup>1</sup> O. Fr. *meschancie*, *meschanceté*, wickedness. particular quality. <sup>5</sup> Virtuous; honourable.

<sup>2</sup> Provided.

<sup>3</sup> In warlike array.

<sup>6</sup> Valuc. <sup>7</sup> Dress; apparel.

<sup>4</sup> Thickly cut turf, of a Piteous.



disponit vpon the said Schip, mercheandice and guidis being pairin, at pair plesour: And the said *Neill* was and is airt and pairt of the Thiftis and crewall Murthouris aboue writtin. ITEM, 3e ar indytit and accuset, sforsamekill as 3e, perseveiring in 3our former devillische and abhominable tred of lyfe, 3e, accompaneit with dyuerse thevis, soirneris, and brokin men, 3our complices, to the number of thre hundreth perfonas, or pairby, all bodin in seir of weir, with suordis, durkis, bowis, darloches, hagbutis, muscattis, and pistolettis, resolveing with 3our selff to putt the haill Lawland Gentilmen being than within the said Ileand of pe Lewis to pe suord, quhairby thay nor na vperis sould haif any power or commandiment in that Ileand to withstand 3our wicket attemptis, in the moneth of Apryle, the 3eir of God I<sup>m</sup>. Vj<sup>c</sup>. and sevin 3eiris, 3e of new agane come to that pairt of the said Ileand, quhair pe said Lawland Gentilmen had biggit dyuerse Townes and Villageis, and erectit dyuerse houffis: And the bettir to bring 3our wicket resolutioun to pas, 3e, in freindlie maner, humbilit and offerrit 3our selffis to becum peceable and obedient people, and desyrit thame to accept 3ow in seruice, to quhome 3e wald be willing to do all maner of guid and steidable<sup>1</sup> offices, as 3e sould be employit, in regaird 3e sand (as 3e declairit) pair cuming to pat land to be for na evill intent, bot for guid: And pe saidis Gentilmen, beleveing 3our fair promiseis, and lipning nathing les pan that ony Treasone sould haif bene practiszet be 3ow, haifing grantit 3ow sum ouersight,<sup>2</sup> 3e, with 3our associattis, maist treffonabillie, vnder trust and freindschip, and in pe dark and maist quyet tyme of the nycht, enterit within the Campment belonging to the said Lawland Gentilmen, raist fyre, and brunt and distroyit with fyre ane hous erectit and pertening to *Sir George Hay of Nether Liff*, ane vper hous pertening to the *Laird of Airdrie*, ane vper hous pertening to the *Laird of Wormestoun*, ane vper hous pertening to *Johnne Dalgleische*, with dyuerse vperis houffis, newlie buildit within the said Ileand, and alangis pe Sea coist pairrof, brunt and distroyit the haill victuallis, furnitour, insicht and pleniffing being within the saidis houffis, to the avaiill and estimatioun of ten thowseand pundis: And at pe samyn tyme, maist crewallie Murdreist and Slew vmq<sup>le</sup> *Patrik Giffert*, servand to the *Laird of Airdrie*, with dyuerse vtheris servandis and office men within the said Campment, in pair cuming out of pe saidis houffis, to save thame selffis from the rage and violence of the fyre, being all his Maiesteis faithfull and guid subiectis: And 3e, the said *Neill*, ar and war airt and pairt of the saidis treffonable and crewall factis. AND finallie, 3e, the said *Neill*, in regaird of 3our former abhominable lyfe, feiring 3our awin apprehensioun, and haifing, for 3our gritter suretie and releiff, fled af pe Mayne and Continent-land to ane Craig callit *Birsay*, ane myle within ane Loche, quhilk 3e mannit and fortifeit with men, munitioun, and all maner of prouisioun for 3our intertenement; and haifing also tua boittis provydit, for 3ow and 3our complices passage and repassage fra pe land to pe said Craig, 3e, with 3our associattis, during 3our abyding within the said Craig, and keiping pairrof, come a land, and ran dyuerse furrowes<sup>3</sup> throw the cuntrie, and in maist thiftious maner staw, rest, and away-tuik with 3ow, to pe said Craig, dyuerse guidis and bestial fra pe inhabitantis of the countrie about, namelie, fra *Gilliechallum Mcallaster Coule* and *Gilliechallum Mcconeill*, fra aper of thame, tuelff ky and oxin; quhilkis, with dyuerse heirschapis of coirne, victuall, and vther necessaris, stowin and rest be 3ow, was transpoirtit be 3ow to pe said Craig, in maist thiftious maner; quhairupoun 3e disponit and interteneit 3our selffis at 3our plesour: And 3e, the said *Neill*, was airt and pairt of the saidis crymes. To the taikin, 3e haif confessit the haill premisses to be of verritie, the tyme of 3our lait Examinatioun, in presens of the Lordis of his Maiesteis maist honourabill Previe Counsell.

The pannell, be the interpretatioun of Andro Monro, Duncane Cunninghame, and James Logie, suorne to the trew interpretatioun of all that fall be answertit be the pannell,<sup>4</sup> Confest the haill poyntis of Dittay producet aganis him. Quhair-

<sup>1</sup> Serviceable.

<sup>2</sup> Oversight; superintendence.

<sup>3</sup> Forays.

<sup>4</sup> This is one of the earliest instances on record of sworn Interpreters being allowed to Highlandmen or foreigners. The practice had no doubt been common long before this period, though the circumstance has not been entered in the Books of Adjournal.



upoune the Aduocat tuik instrumentis. In respect of the quhilk Judiciall Confessioun, the Justice referrit the samyn to the Tryell and knowlege of ane Assyse. And for forder verificatioun of the said Neillis giltines, producet his Depositiones tane in presens of the saidis Lordis of Secreit Counfall, confessing the haille premisses to be of verritie. And in respect thair of, Protestis for Wilfull Errour aganis the Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouth of David Weymes, skipper in Leyth, chancellor, fand, pronuncet, and declairit the said *Neill*, be reasone of his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the haille treffonable crymes of ffyre-raiseing, Burning, Murthour, and seuerall Thiftis at lenth sett down in his Depositiones, and Dittay foundit thairupoune.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid; and thaireftir, his heid to be strukin frome his body, and affixt and set vpone ane priket, aboue the Neper-boll Poirt<sup>1</sup> of the said burgh: And his haille landis, heritages, takis, steidingis, rowmes, possessiones, guidis, and geir, pertening to him, to be forfalt and escheit to his Maigestis vse, &c.

### Slaughter.

May 19.—JOHNNE WEIR, callit of the Quhytecleuch; Mungo Weir, his brother.

Dilaitit of airt and pairt of the slauchter of vmq<sup>le</sup> Johnne Hammiltoun, mercheand burges of Edinburgh; committit be thame in the moneth of September, the yeir of God I<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris: AND siclyk, the said Mungo Weir, for airt and pairt of the slauchter of vmq<sup>le</sup> Walter Couthird, in Crawford-Johnne; committit at Lambes last, be schuiting him throw the body with ane pistolett.

PERSEWARIS, Jonet Small, the relict of vmq<sup>le</sup> Johnne Hammiltoun; Williame Hammiltoun, as brother; Johnne and Mungo Couthirdis, as sones to vmq<sup>le</sup> Walter Couthird.

### ASSISA.

Johnne Gordoune of Earlstoun, Johnne Mcmathe of Corbank, Eduard Creichtoun of Peiltoun, Johnne Creichtoun of Craufurdstoun, Harie Gordoun of Kilsture, Johnne Masone, burges of Ed.<sup>2</sup>

Quhilkis crymes war judicillie confest be thame to be of verritie, in presens of the said Justice and Assyse.

VERDICT. Fand the saidis Johnne and Mungo, accoirding to thair awin Judiciall Confessioun, to be ffylet and convict of airt and pairt of the said Slaughter.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis and geir to be escheit, &c.

<sup>1</sup> The Nether-Bow-Port.

<sup>2</sup> The rest of the Assise were burgesses.

**Slaughter.**

Jun. 2.—DAVID ERLE OF CRAWFURD; Harie Lyndsay, callit of Blarie-fadden; Harie Stewart, sone to vmq<sup>te</sup> James, Lord Stewart of Newtoun; and Johnne Bellenden, servandis to the said Erle.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>te</sup> Sir Walter Lyndsay of Balgaweis; committit betuix the Citie of Brechin and the Place of Edzell, vpon the xxv day of October, 1605 yeiris.<sup>1</sup>

PERSEWARIS, Margaret Lyndsay, as dochter; Duncane Hunter of Ballagane, hir spous; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTORIS in defence, Mr Alexander King, Mr Robert Lermouthe.

Continewit, of consent, to the ix day of Junij instant. My Lord of Tulliebairne<sup>2</sup> caution for the entrie of the pannell, this day aucht dayis, the ix *instantis*.

Jun. 9.—Margaret Lynd with consent of the said Duncane Hunter of Ballagan, hir spous, for his entreis, being baith personallie present, passis *simpliciter* fra the perfute of the said David Erle of Crawford, &c., and renunes all actioun, instance, and perfute quhatsumeuir, &c. And forder, producet to my Lord Justice, his Maiesteis Remmissioun grantit to the said Erle and remanent his complices, enterit vpon pannell for the said slauchter, daitit at Newmercat, the xxiiij of Nouember, 1<sup>m</sup>.Vj<sup>c</sup>. and aucht yeiris, togidder with tua seuerrall Letteris of Slanes, the ane grantit be David Lyndsay of Balgaweis, sone to the said Sir Walter, daitit the xx of Nouember, 1607, the vther gevin and grantit be the said Margaret, with consent of hir said spous, daitit the sevint day of Junij instant, beiring satisfacioun and Assythement to be maid be the said Erle to thame for the foirsaid Slauchter, &c.

THE JUSTICE Admittit the protestatioun, and Ordanit the said dyet appointit to this day to desert; as also, that Johnne, Lord Lindsay of Byres, Harie Lyndsay of Kinfawnes, and . . . . Maister of Tilliebairne, cautioneris for the said Erle, sould be fred and exonerit, &c.

**Incest — Adultery.**

Jun. 16.—JAMES STEWART, sone to Allane Stewart, Capitane of Dalkeith.

Dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, knycht, for his hienes intreis, of the cryme vnder written, viz. FORSAMEKILL as the abhominable, vyld, and filthie vyce of Incest, being sa odious and detestable in the presence of Almychtie God, and be the same eternall God his expres woird, sa cleirlye condempned: Thairfoir our souerane lord, out of his godlie dispositioun and zeale, be dyuerse his hienes Actis of Parliament, hes expreslie statute and ordanit, that quhatsoeuir persone or persones committis the said abhominable

<sup>1</sup> See this Collection, Jul. 8, 1607, and Sep. 19, 1609.

<sup>2</sup> William, second Earl of Tullibardine.



cryme of Incest, fall be pwneifched to the deith; as the saidis Actis of Parliament in thame selffis proportis: Nochtwithstanding quhairof, it is of verritie, that the said James Stewart, being mareit with Aleifoun Clogie, his lauchfull spous, dochter to Johnne Clogie, cordiner, burges of Edinburgh, maist schamefullie, but<sup>1</sup> feir of God, or respect to our souerane lordis lawis, hes gevin the vse of his body to Katharene Clogie, his wyfes sifter, in the monethis of Marche, Apryle, and Maij, I<sup>m</sup>.Vj<sup>c</sup>. and tuelff yeiris, in his and hir journeying togidder betuix the burgh of Edinburgh and the toun of Elgyn, and within the said toun of Elgyn: In the quhilk filthie and incestuous copulation, scho hes procreat to him ane bairne; committing thairthrow the detestable crymes of Incest and Adulterie, to the heiche displefoure and offence of Almychtie God, violatioun of the Kingis Maiesteis lawis, and evill exampill of vtheris to ryn in the lyk filthie and abhominable vyce, gif the samyn be sufferit to remane vnpwneift.

VERDICT. Fylet, culpable, and convict of the said cryme.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir his body to be brunt in asches: And all his moveabill guidis to be escheit, &c.

### **Theft—Slaughter—Fire-raising—Oppression, &c.**

Jun. 22.—DUNCANE M<sup>c</sup>PATRICK M<sup>c</sup>GREGOUR, Allaster Cafe (Cafs)<sup>2</sup> M<sup>c</sup>gregour, Johnne Dow M<sup>c</sup>condochie Vayne M<sup>c</sup>Robert, Patrik Roy M<sup>c</sup>coulecheir, Ewin Crowbache<sup>3</sup> M<sup>c</sup>gregour, Johnne M<sup>c</sup>neill Corroche.<sup>4</sup>

Dilaitit of airt and pairt of dyuerse pointis of Thift, Slauchter, Burning, and Oppressioun following, viz. THE said *Duncane M<sup>c</sup>patrick M<sup>c</sup>gregour*, ffor being in cumpanie with Gregour M<sup>c</sup>condochie Glen, at the burning of the Castell of Achallader and landis of Glenlocha: And ffor being at the ffeild of Benvek,<sup>5</sup> quhair vmq<sup>le</sup> Patrik Dow M<sup>c</sup>nab, Donald Campbell Oig, sone to Johnne Campbell, and dyuerse vtheris, to the number of sevintene perfones, war flane: And ffor airt and pairt of the slauchter of vmq<sup>le</sup> Allane M<sup>c</sup>dougall, servand to the Laird of M<sup>c</sup>coule. THE said *Allaster Cafe M<sup>c</sup>gregour*, ffor the crewall slauchter of vmq<sup>le</sup> Neill M<sup>c</sup>weyane, chopman, be streking him in the bellie with his awin knyfe, quhairof he deit: ITEM, ffor cowmone soirning, thift, and oppressioun. THE said *Johnne Dow M<sup>c</sup>condochie Vayne*, ffor being at the ffeild of Glenfynles, and of airt and pairt of the heirschip,<sup>6</sup> reft and tane away af the Landis, pertening to the Laird of Lufe and his tennentis: ITEM, ffor airt and pairt of the steilling of certane ky and horfis, pertening to Walter Sterling of Ballagan, furth of the parochin of Campsie: ITEM, ffor being in companie with the rest of the

<sup>1</sup> Without.    <sup>2</sup> Short-tempered; passionate.    <sup>3</sup> Deformed.    <sup>4</sup> Hasty; precipitate.    <sup>5</sup> Bintoik?    <sup>6</sup> Spoil; booty; plunder.

CLAN-GREGOUR at the Burning of Abervrchle, and heirfchip brocht furth thair-  
of: As also, ffor airt and pairt of the Slauchter of vmq<sup>1e</sup> Johnne M<sup>c</sup>gillip, ane  
fidler, vnder my Lord of Tulliebairne: And for cowmoun Thift and soirning.<sup>1</sup>  
THE faid *Patrik Roy M<sup>c</sup>coule-cheir*, ffor being in companie with *Duncane M<sup>c</sup>-  
ewin M<sup>c</sup>gregour*, callit THE TUTOUR,<sup>2</sup> at the Burning of Abervrchle, quhair  
fevin men war flane, thre bairnes war brunt, tuentie ky and oxin war stowin,  
rest, and away-tane: And for Cowmone-thift, Soirning, and Oppressioun. THE  
faid *Ewin Crowbach M<sup>c</sup>gregour*, ffor airt and pairt of the steilling of ane meir  
fra Robert M<sup>c</sup>laren: And ffor airt and pairt of the steilling of tua horsis fra M<sup>c</sup>-  
Innerich, in Cregan: And for breking of ane puir mannis hous in Kynnaldie,  
taking of the faid puir man and binding vp his eyne, and steilling and away-  
taking of the haill inficht pleniffing of the faid hous: And for steilling of ane  
kow fra Donald M<sup>c</sup>coneill Vayne, furth of Johnne Stewart Neilfones landis.  
THE faid *Neill Corroche*, ffor being in companie with the faid Duncane M<sup>c</sup>ewin  
M<sup>c</sup>gregour, callit *the Tutour*, at the Burning of Abervrchle, and slauchter and  
heirfchip aboue writtin, committit be thame: And ffor assisting and taking pairt  
with the rebellis and fugitiues, that tuik in the Ile callit Ileand-Vernache; and  
in taking in to the faid Ile of aucht scoir ky and oxin, aughtene scoir scheip and  
gait, stowin, rest, and away-tane fra the Inhabitantis of the cuntrie about: And  
siclyk, ffor airt and pairt of the steilling of ffyve ky fra James Chisholme, Don-  
drwne: And for cowmone Thift, Soirning, and Oppressioun.

War all fax put to the knowlege of ane Assyse of the persones vnderwritten.

#### ASSISA.

Mr James Kirk, servand to my	Johnne Buntene of Ardoche,	Allaster M <sup>c</sup> Rannald of Gargow-
Lord of Argyle,	Patrick Colquhoun of Trafeill,	oche, <sup>3</sup>
Johnne Stewart Neilfoun of Gra-	Allaster Colquhoun V <sup>c</sup> James,	George Stewart of Downe-Mach-
niche,	in Calvin,	reif,
Johnne Makfarlane of that Ilk,	Robert Alexander, notter in	Johnne Stewart of Pitfowrie,
Dauid Drummond, callit the Chal-	Drymmene,	Patrik Stewart of Balliachan,
merlane,	Johnne Buchannane, servand to	Dauid Chirnefyde of Possfo.
Alex <sup>r</sup> Schaw of Cambusmoir,	my Lord of Madertie,	

VERDICT. The Assyse, be the mouth of the faid Johnne M<sup>c</sup>farlen of that Ilk,  
chancellor, stand, pronuncet, and declairit the saidis fax persones vpone pannel,

<sup>1</sup> Taking free quarters by force and violence.

<sup>2</sup> The TUTOR OF GLENSTRAE, styled, in the Record of Secret Council, 21st December, 1613, 'Duncan M<sup>c</sup>Ewin of Moirinsche, Tutour of Glenstrae.' In the same Record, 31st January, 1611, he is spoken of, to the prejudice of his Ward, as 'now callit THE LAIRD;' and, in the Justiciary Record, 8th May, 1612, as 'THE LAIRD OF M<sup>c</sup>-GREGOUR!' In a Letter from the King, from his Court at Roystoun, 23d October, 1611, to the Scottish Council, (who took it into consideration 17th November following,) he is described as 'Duncan M<sup>c</sup>Ewne, alias Duncane THE TUTOUR.' He was cousin-german of Allaster M<sup>c</sup>Gregor of Glenstray, executed at Edinburgh in 1604; and was Tutor to Gregor M<sup>c</sup>Gregor, otherwise John Murray, nephew and heir of Allaster, and who, on the King's recommendation, was restored to the Lands of Glenstray, in 1624. Duncan the Tutor assumed the protective surname of DOUGLAS, in compliment, probably, to the *Dowager Countess of Argyle*.<sup>3</sup> Lineal ancestor of Macdonald of Keppoch. In the Record, he is sometimes styled 'the Laird of M<sup>c</sup>Rannald.'



be reffone of thair awin Confessiones, maid in prefens of the maift pairt of the faid Affyfe, to be ffylet and convict of the haill crymes aboue reherfit.

SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be hangit vpon the cowmoun gibbit, quhill thay be deid: And all thair moveabill guidis to be efcheit and inbrocht to oure fouerane lordis vfe, as culpable and convict of the faidis crymes.

**Fire-raising — Slaughter — Intercommuning with MacGregors  
— Slaughter and Houghing of Oxen, &c.**

Aug. 3.—DONALD DARG<sup>1</sup> M<sup>c</sup>ALLANE, fervand to Johnne Calder; Donald M<sup>c</sup>eane V<sup>c</sup>Allaster Bayne; Johnne M<sup>c</sup>fyndlay M<sup>c</sup>quiben.

Dilaitit of the crymes *respectiue* following, viz. THE faidis *Donald Darg M<sup>c</sup>allane*, and *Donald M<sup>c</sup>eane V<sup>c</sup>allaſter Bayne*, ffor being in companie with Johnne and Donald Calderis, ſones to Thomas Calder in Delneis, vpon the xxj day of Maij laſt, at the treſſonabill Raiſeing of ffyre, burning, and diſtroying of the Hall, kitching, and remanent office-houffis within the precink of the clois of Clwnes, pertening to Colene Campbell of Clwnes: And ffor airt and pairt of the faid ffyre-raiſeing and burning. As alſo, ffor airt and pairt of the Slauchter of four horſis and meiris, being vpon the landis of Clwnes at that tyme, pertening to the tennentis thair of: As alſo ffor cuming, vpoun the xxiiij day of the faid moneth, bak agane to the faidis landis of Clwnes, and thair, for airt and pairt of the Burneing of the haill houffis and biggingis within the Myd-toun of Clwnes, callit the Thornyſurd, and Burning of tua barnes and ane ſtable, in the Nether-toun, quhilkis war left vnbrunt ofbefoir: AND ſiclyk, ffor airt and pairt of the crewall Slauchter and Hocheing<sup>2</sup> of threttie heid of ky, oxin, and vther beſtiall, pertening to Mr Williame Campbell of Breachlie his tennentis; committit vpon the xxv day of the faid moneth of Maij laſt: AND ffor airt and pairt of the crewall and vnnatural Slauchter of fourtie heid of guidis, within the Forreſt of Leonache; committit vpon the Mononday befor St Colmes-meſs laſt. AS ALSO, the faid *Johnne M<sup>c</sup>fyndla M<sup>c</sup>quiben*, off airt and pairt of the Slauchter of vmq<sup>le</sup> Patrik M<sup>c</sup>greſſie Roy in Budzet, with ane durk; committit be him a tua yeir ſyne, or thairby: AND for being in cumpanie with Robert Abroche M<sup>c</sup>gregour, his kyn (and) freindis, Thevis and Soirneris, be the ſpace of ane moneth, in dyuerſe thair wicket and thiftious deidis.

Quhilk Dittay was verifeit be the faidis perſones Depoſitiones, producet in proces.

The Aduocat repeittis the Depoſitiones alreddie producet, and in the Clerkis keping; takis instrumentis of the ſweiring of the Affyfe; and proteſtis for Wilfull Errour, gif thai acquit.

<sup>1</sup> Red-skinned; ruddy-complexioned. *Roy* ſignifies red-haired.

<sup>2</sup> Ham-stringing.

## ASSISA.

George Monro of Tarrell,	Johnne Mcgillievorich, servand	James Borthuik of Lochehill,
Alexander Bayne of Logie,	to Colene of Bothe,	Johnne Stewart of Apyn,
Hew Campbell of Ballangowne,	James Dumbar of Bothe,	Mr James Kirk, servand to my
		Lord Argyle. <sup>1</sup>

VERDICT. The Assyse, all in ane voce, be the mouth of Alexander Bayne of Logie, chancellor, stand, pronuncet, and declairit the saidis thre persones on pannell, according to thair awin confessione, to be ffylet, culpable, and convict of the crymes *respectiue* aboue specifeit.—SENTENCE. To be tane to the Burrowmure of Edinburgh, and vpone the cownone gibbet thair of to be hangit, quhill thay be deid; and all thair moveabill guidis to be escheit, &c.

**Stouthreif—Theft—Bearing and Shooting of Hagbutts and Pistolets, &c.**

Sep. 3.—GILBERT CRANSTOUN, father-brother to vmq<sup>le</sup> Patrik Cranstoun of Corfbie.

Dilaitit of the crymes following, viz. FOR the thiftious steilling, conceilling, and away-taking, be way of Maisterfull thift and stouth reif, furth of the stable of Corfbie, of ane gray stanet horse,<sup>2</sup> pertening to Patrik Cranstoun of Corfbie, his brother sone; committit be him vpone the tent day of July last. ITEM, for air and pairt of the thiftious steilling, conceilling, ressetting, and away-taking of tua schein, pertening to Andro Vaiche in Hammiltoun, vpone Lyne watter; and of four schein pertening to James Tuedie, his servand; and of tua schein pertening to Johnne Stewart, in Stobo; tua vther schein pertening to James Fouldane, thair, &c.;<sup>3</sup> flowin be the said Gibert and his complices, furth of the boundis of Hammiltoun, vpone Lyne Commoune, in the moneth of ffebruar, 1<sup>m</sup>.Vj<sup>e</sup>. and tuelff yeiris. ITEM, for contravening of the Actis of Parliament, in beiring and weiring of hagbutis and pistolettis, and schuitting of George Home of Bassinden thairwith, in his left thie;<sup>4</sup> committit in the moneth of September, 1609 yeiris. ITEM, for Cowmoun Thift, and cowmoun resset of thift, outputing and inputing of thift, fra land to land, fra cuntrie to cuntrie, baith of auld and new.

VERDICT. Fylet, culpable, and convict of the haill crymes aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid; and all his moveable guidis to be escheit, &c.

**Hearing, Saying, and Celebration of the Mass, &c.**

Sep. 14.—MR ROBERT PHILLOPE, Preist; James Stewart, callet *James of Jerusalem*.

<sup>1</sup> The rest of the Assise were tradesmen. other petty thefts narrated in the Dittay.

<sup>2</sup> Stallion.

<sup>4</sup> Thigh.

<sup>3</sup> It is unnecessary to detail the various



Dilaitit of faying and heiring of Messis, contrair the tennour of the Actis of Parliament, &c.

FORSAMEKILL as, be dyuerse Actis of Parliament, speciallie be the fyft Act of our souerane lordis first Parliament, and be the first Act of his hienes fourtene Parliament, it is speciallie provydit, statute, and ordanit, that na maner of persone or persones, of quhatfumeur degre or condition thay be of, preswme nor tak vpone hand to say Mefs within this kingdome, or zit heir Mefs, nor be present pair-at; vnder the pane of deid, with confiscatioun of thair haill moveabill guidis; as the saidis Actis of Parliament in thame selfis proportis: Nochtwithstanding quhairof, it is of verritie, that the said *Mr Robert Phillope*, Preist, quha ressauid the ordour of Preistheid in Rome, haifing remanit furth of this kingome sen the zeir of God Im.Vc. fourfcoir nyntene zeiris, studeing the Catholique Romane Religiou; in the moneth of Maij lastbypast, he returnet hame to this cuntrie, off purpois and intentioun (as he hes declairit) to convert saules to the Romane Religiou; sen the quibilk tyme of his hame cuming, viz. in the monethis of Maij, Junij, and Julij lastbypast, ffor performeing of his former Idolatrous intentioun, expres contrair the tennour of pe saidis Actis of Parliament, as ane Seminarie Priest, and perverter of his Maiesteis guid subiectis frome the trew Religiou, professit presentlie within pis realme, he hes seducet and conferrit with dyuerse of his hienes subiectis, doing quhat in him lay, be his fals and hereticall doctrine, to pervert pair saules from the treuth, and to convert thame to his erroneus opinioun: AND for that effect, hes, within the said space, said and celebrat, to pe number of sax or sewin Messis, in dyuerse pairtis and places of pis realme, secreitlie, in dyuerse houffis within the samyn, namelie: ANE of the saidis Messis was said be him in grit solemnitie, with his Mefs-claithes, consecrat alter, Mefs-buik, and with his vther superstitious rites and ceremoneis belonging pairto, within foure or fyve myles to the burgh of Dumfreis, Mr George Aslowane, sone to the Laird of Garroche, being Clerk pairto, and bringer in of the fyre to lycht pe candillis; quhairin the said Mr Robert hes contravenit pe tennour of the saidis Actis of Parliament, and incurrit the panes and pwnesment mentionat pairintill, quibilk aucht and sould be execute vpone him, with all rigour: LYKAS also, it is of verritie, that *James Stewart*, callit of *Jerusalem*, indueller within the burgh of Edr, being ane oppin and professit Papist, keiping and beiring companie with Jesuitis, Seminarie Preistis, and excommunicat traffiqueing Papistis, and ane cownone ressoner in all companeis for pe said Romane Religiou, aganis pe trew Religiou, professit be his Maiestie and his hienes loyall subiectis within this his kingdom, expres contrair the tennour of pe saidis Actis of Parliament, in the monethis of Januare, Februare, Marche, Apryle, Maij, Junij, Julij, August, September, October, November, December, in the zeiris of God Im. sex hundreth and nyne, sex hundreth ten, sex hundreth elleuin, and sex hundreth tuelff zeiris,<sup>1</sup> at the leist, in ane or vther of the saidis monethis and zeiris of God, he hes hard and gevin his bodielie prefence to dyuerse Messis, said be dyuerse Preistis within this realme, in dyuerse places of pe same; and namelie, the said *James Stewart*, avowing himself to be ane Catholik Romane, in pe zeir of God Im.Vjc. and nyne zeiris, or pairby, was present at ane Mefs said be *Mr Patrick Anderson*, Jesuite, within his duelling hous of *Patrik Abercrombie* in Edr, in the *Laird of Leyis land*, belyde the buriall zaird of the said burgh: Lyk as, the said *James Stewart*, accompaneit with the said *Johnne Logane*, portioner of Restalrig,<sup>2</sup> about ane quarter of ane zeir pairestir, was present at the heiring of ane vther Mefs, quibilk was said in the said *James* awin duelling hous in Edr, a littill aboue the Nether-boll-Poirt, quhair he duelt for pe tyme, be *Johnne Burd*, Preist, quha was brocht to pe said hous be pe said *Johnne Logane* to the effect foirfaid, nane being present at that Mefs bot pe Preist, the said *James Stewart* and his wyfe, with the said *Johnne Logane*, and ane vther blak man. ITEM, schoirtlie pairestir, the thrid Mefs was said within the said *James Stewartis* duelling hous in the Cowgait of Edr, quhair he duelt for pe tyme, the said *James* being present him selff at the heiring and faying pairof be the Preist. BE the quibilk wilfull heiring and present-being at pe saidis

<sup>1</sup> ' There was a Messe the same moneth (May 1613) in Edinburgh, in *James Stewart's* house, who wes called *James of Jerusalem*. The Preist and the said *James* fled. Sundry of the company were taken and wairdit.'—*Calderwood's MS. Church Hist.* Adv. Lib.

<sup>2</sup> See his Trial, immediately following the present.



feuerall Messis *respectiue* foirfaidis, the said James Stewart hes contravenit pe tennour of the saidis Actis of Parliament, and hes incurrit the panes and pwneischment mentionet pairintill, quhilk shuld be execute vpon him with all rigour, to the terrour of vperis.

Quhilk Dittay being red, in prefens of the saidis Mr Robert Phillipe and James Stewart, and thay accuset, be vertew thair of, of the feuerall crymes aboue specifeit; thay and aither of thame confessit, in face of judgement, that thai had contravenit his Maiesteis lawis and Actis of Parliament, in heiring, saying, and being present at dyuerse Messis, in maner specifeit in thair Dittay, ffor the quhilk thay offerit thame selffis, and become in his Maiesteis will: Quhairupoun instrumentis was tane be my Lord Aduocat.

Nochtwithstanding quhair of, the Justice ordanit thame to be put to the knowlege of ane Assyse.<sup>1</sup>—The Aduocat, for verificatioun thair of, repeittit to the saidis perfonis of Assyse thair former Judiciall Confessioun maid of thair crymes, aboue specifeit; and thairwith producet thair Depositiones and Confessiones, maid in prefens of dyuerse Lordis of his Maiesteis Previe Counfall, and of the Ministeris,<sup>2</sup> subscryuit with thair awin handis; and tuik instrumentis vpon the production thair of.

VERDICT. Fylet, culpable, and convict of the contravening of his Maiesteis Actis of Parliament, viz. the said *Mr Robert Phillipe*, for saying of the feuerall Messis set down in his Dittay; and the said *James Stewart*, for heiring and being present at the feuerall Messis, also set down in his Dittay: conforme to their awin Depositiones, and ratificatioun thair of in judgement.

THE JUSTICE Ordanit the perfonis convict to be returnet to waierd,<sup>3</sup> thairin to remane, in strait firmance, vnto the tyme DOME be pronuncet aganis thame.

(Nov. 19.)—COMPEIRIT Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord, and producet ane Warrant, direct fra the Lordis of his hienes Counfall to the Justice; quhair of the tennour followis.

JUSTICE, Justice clerk, and your deputis: 3ow fall, vpon the sight heirof, appoint ane Justice Court to be haldin within the Tolbuthe of Ed<sup>r</sup>, at suche convenient and lauchfull day as 3ow fall think meit; and pair call befor 3ow JAMES STEWART, callit of *Jerusalem*, and MR ROBERT PHILLOPE, Preist, and pronunce DOME aganis thame, vpon the Sentence of convictioun alreddie gevin aganis pame, as followis, to wit: Decerne the saidis James Stewart and Mr Robert Phillope to be BANISCHET his Maiesteis dominiones; and to depairt furth pair of, within the space of ane moneth; and nevir to returne agane within the samyn, without his Maiesteis Licence had to that effect, vnder the pane of deid. Quhairanent jir presentis fall be 3our Warrant. AT ED<sup>r</sup>, the xvj day of November, 1613.

AL. CANCELL<sup>r</sup>. SANCTANDROIS. ARGYLE.

‘DOME’ pronounced, according to the terms of the above Warrant.

### Hearing of the Mass.

Sep. 16.—JOHNE LOGANE, portioner of Restalrig.

Dilaitit for the wilfull heiring of ane Mess, and being present thairat, in com-

<sup>1</sup> All tradesmen.

<sup>2</sup> Of the gospel; clergy.

<sup>3</sup> Prison.



panie of James Stewart, callit of *Jerusalem*; quhilk Mefs was said in James Stewartis hous, a littill aboue the Nether-boll-Poirt of Ed<sup>r</sup>, quhair he duelt for the tyme, in the yeir of God I<sup>m</sup>. sex hundreth and nyne yeiris, or thairby, be Johnne Burd, Preift.<sup>1</sup>

Andro Logane of Coitfield protestis, in respect of the entrie of the pannell this day, that the vnlaw quhairin he was adiudget the last dyet,<sup>2</sup> be nocht buikit nor gevin out aganis him: And producet the Counfallis Warrant, subscryuit be my Lord Chancellor, daitit the xv of this instant, Ordaning the said vnlaw nocht to be buiket; bot the said Johnne Logane, for quhome he became cautioun, and now enterit vpone pannell, to be put to ane Tryell for the cryme specifeit in his Dittay.

My lord Aduocat producet the Dittay; and efter reiding thairof, desyret the pannell to be put to the Assyse for the crymes specifeit thairintill.

It is allegit be the pannell, that, as to the first Act of the first Parliament halden be our fouerane lord and Estaitis, he can nocht, be vertew thairof, incur the pane and pwneischment of daith mentionat in the Dittay, becaus the maist that the said Act extendis to, is only daith to be inflictit for sic as the thrid tyme fall be fund culpable and convict of heiring of Mefs, or beis wilfullie present at the heiring thairof: And trew it is, that in the said Dittay, producet aganis him, thair is only mentioun maid of ane Mefs hard be him: *Igitur*, &c.—To the quhilk it is ansuerit be my lord Aduocat, that he insiftis only in persute of the pannell for contravening the first Act of his Maiesteis fourtene Parliament, maid aganis wilfull heiraris of Mefs, sen the moneth of Junij 1594, quhilk is the dait of the said Act, quhairvpone the Dittay is speciallie foundit: In respect quhairof, the pannell sould be put to ane Assyse, for heiring, and wilfullie being present at ane Mefs, in maner, and at the tyme contenit in the Dittay.

It is forder allegit be the pannell, that he can nocht be put to ane Assyse for contravening the Act of the xiiij Parliament, becaus he nevir was present at ane Mefs within this realme, bot anes, sen his cuming out of Flanderis, quhilk is four or fyue yeir fyne; and the Act aucht only to be extendit aganis sic as hes hard mony Messis: Lykas, the pannell was drawin to the said Mefs be senistrous informatioun, and at the instigatioun of James Stewart, quha inveitit him to his hous to the heiring thairof; and sa, in effect, come thairto contrair his will; ffor the quhilk cryme he is maist penitent, and craves first God, and nixt his Maiestie and Counfall, and the Kirk, pardoun for the samyn: Lyk as, in respect of his penitence and greif for the said offence, he was ressauit in fauour with the Kirk

<sup>1</sup> The Dittay is conceived in terms precisely similar to the preceding case. <sup>2</sup> On Sep. 14. This marking is inserted—'MP. The Guidman of Coitfeild being vnlawit pis day, for nocht entrie of Johnne Logane, portioner of Restalrig, to haif bene tryit for pe said crymes; the Act of buiking pairof, be pe Counfallis Warrant, was (in respect of Johnne Loganis entrie in waird) discharget.'

and Seffioun of the parochin quhair he duellis ; and hes senfyne borne office in the Seffioun thair of, resoirtit continuallie to the heiring of the woird, and at all tymes was present at the celebratioun of the Communioun and ministratioun of the Sacramentis : Protesting, be God's grace, to continew ane trew and constant Professour of the trew Religioun, presentlie professit within this realme, to his lyves end ; and for the offence aboue writtin maist humlie becumis in his Maiesteis will.—It is answert be my lord Aduocat, that the allegiance maid be the pannell is na relevant cause, of the Law, to stay the puting of him to the tryell of ane Assyse, vpon the Dittay lybellit ; becaus all persones man be comptit wilfull heiraris of Mefs that cumis voluntarlie thairto, and patientlie abydis and heiris the samyn ; and it is nocht allegit be the pannell that he was compellit to cum and heir that Mefs ; nather can the samyn be sustenit, except he purge the samyn be ane violent deid compelling him to resoirt thairto : And albeit the pannell hes communicat senfyne, and borne office in the Kirk, he anis haifing wilfullie hard Mes, quhilk is ane cryme capitall, be the said Act of Parliament, na deid done be him, without his Maiesteis pardoun and Remissioun past, can purge that cryme : And forder, to mak it knawin that he was ane wilfull heirar of the Mefs lybellit, it is affirmet that he come to James Stewartis hous at the Nether-boll, and brocht with him Johnne Burd, Preist, quha cravet seruice, James Stewart then being sleiping in his bed ; and being walknit, he answert, that for releif of his conscience he was content to heir him : And than the Mefs was said in the said James Stewartis hous, quhair thairefter thay dynet altogidder. This is verifeit be James Stewartis awin Depositioun, subscriuit with his hand, and heirwith producet, for verifeing the premisses.

THE JUSTICE Repellis the allegiances aboue writtin, and findis the Dittay relevant ; and Ordanis the pannell to pas to the tryell of ane Assyse, for the cryme lybellit.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Fischer, mercheand, chancellor, ffand, pronuncet, and declairit the said Johnne Logane, conforme to his awin Depositioun, subscriuit with his hand, and ratificationis thair of maid in judgement, in thair presens and audience, to be ffylet, culpable, and convict of the heiring of ane Mefs said be the said Johnne Burd, Preist, within the duelling hous of the said James Stewart ; in forme and maner, and at the perticuler tyme specifit in the said Dittay.

THE JUSTICE Ordanit him to be tane bak agane to waird within the Tolbuth of Ed<sup>r</sup>, thair to remane quhill DOME war pronuncet vpon his former convictione, &c.

(Nov. 26.)—The Lord Advocate produced a Warrant of the Privy Council, dated ' at Ed<sup>r</sup>, the xvj day of November, 1613,' ordaining the Justice to ' pro-



nunce DOME aganis him, vpon þe Sentence of Convictioun alreddie geven aganis him, as followis, viz.'

SENTENCE. That he mak payment to his Maiesteis Thesaurer depute and Resseuer, in his Maiesteis name, of the sowne of ane Thowseand pundis money, as a fyne imposit vpone him.

### Incest and Murder.

Sep. 24.—JOHNE RAMSAY of Pryour-Lethame.

Dilaitit for the filthie and abhominable cryme of Incest, committit be him with Margaret Ramsay, his awin dochter: As also, for airt and pairt of the crewall Murthour and slauchter of vmq<sup>le</sup> Williame Ofett, his awin fervand; and remanent crymes contenit in the Letteris.

Mr Vmphra Blinshell, Aduocat, as bailzie and procuratour for George, Archebischepe of St Androis, Lord of Regalitie thairof, quha exponit and declairit that the said Johnne is duelland within the boundis of the regalitie of St Androis, and thairby is subiect to the said Lord of Regalitie, his judgement and jurisdiction, for the crymes aboue specifeit: And thairfoir Protestit, that quhatsoever war done be the Justice this day, sould nawayis preiudge the said Lord of St Androis, nor his privilege of Regalitie thairof.

Michell Ramsay of the Forther vnlawit and americiat in the pane of fyve hundredth merkis, for nocht entrie of the said Johnne. And siclyk, that the said Johnne, for his nocht compeirance, be denuncet rebell and put to his hienes horne; and all his moveabill guidis to be escheit, &c.<sup>1</sup>

### Fire-raising—Houghing of Cattle—Oppression, &c.

Nov. 5.—THOMAS CALDER, in Delneis; Robert Caddell (Calder), sone to Johnne Caddell in Flines.

Dilaitit for airt and pairt of the coming to the landis of Clunes, pertening to Colene Campbell of Clwnes heretable, and maist treffonable and awfullie Rasing of ffyre in the hall, chalmeris, barnis, byris, and scheip-coit thairof, and burning and distroying of the samyn, and be Maisterfull Oppressioun, houching<sup>2</sup> and slaying of thre meiris (*mares*) and ane horse, pertening to the said Colene; committit vpoun the xxij day of Maij lastbypast, vnder sylence and cloud of nycht. AND siclyk, for cuming to the said landis of Clunes, on the xxiiij day of the moneth of Maij lastbypast, att tuell houris in the day licht, and willfullie, awfullie, and treffonabillie Rasing of ffyre, in ane toun,<sup>3</sup> callit in Ersch<sup>4</sup> *Andraane*, and in

<sup>1</sup> No farther notice is taken of this case, which had likely been quashed by Archbishop Gladstones, (translated from the See of *Caithness*, A.D. 1606,) or privately compromised within his Regality.

<sup>2</sup> Hamstringing.

<sup>3</sup> Farm-steading.

<sup>4</sup> Gaelic.

Scottis *Thorne-furd*; and to the Cot-toun of Clune, and Burning and distroying of the samin, togidder with the haill infycht and pleneiffing, pertening to the said Colene Campbellis tennentis thair: And swa, for committing of oppin and manifest Treasoun.

PERSEWARIS, Colene Campbell of Clunes; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat, &c.

THE Justice, of consent of the persewaris, Continewis this matte to the fyftene day of December nixt.

(Dec. 15.)—James Cuming of Alter, cautioner for the said James, vnlawit and amerciati in the pane of tua hundreth merkis, for his non-entrie; and Colene Campbell of Both, cautioner for the said Robert Calder, in the pane of ane hundreth merkis: And the pannels Decernit to be denuncet our souerane lordis rebellis, &c., and all thair movable guidis to be escheit, &c.

### **Murder—Theft—Fire-raising.**

Nov. 24.—ALLANE CAMRONE *alias* M<sup>c</sup>Eandowie of Lochzell; Eugen Camrone in Caldort; and Allane Dow in Clinischphairne, &c.

Dilaitit for airt and pairt of the crewall Murthour and Slauchter of Johnne Camrone, *alias* Bodache, Allaister Camrone of Glennevas, and vmq<sup>le</sup> Ewin M<sup>c</sup>co-neill V<sup>c</sup>ewin, and remanent crymes of Murthour, Slauchter, Thift, and ffyre-raiseing, at lenth specifeit and sett down in the Letteris.<sup>1</sup>

James Gordoun of Knokaspek, as cautioner, for repoirting the Letteris, deulie execute and indorfate, purchest at the instance of Marie Neane Jeane Oig, the relict of the said Johnne; Meriorie Ewin, the relict of the said Allaister; Marie Neane Lauchlane V<sup>c</sup>allane, relict of vmq<sup>le</sup> Ewin; with the remanent kyn and freindis, producet the saidis Letteris, deulie execute, &c., be the quhilkis thai ar all denuncet rebellis, and put to the horne.

### **Usurpation of King's authority—Destroying green Corn, &c.**

Nov. 26.—WILLIAME FORBES, elder of Monymusk; Robert, Johnne, and Mr James Forbis, his thre fones; Johnne Forbes, callit of Burnegranes; James Geillis and Johnne Farquhar, domestik seruitouris to Monymusk; and George Raitt, in Coiff.

Dilaitit for vsurpation of his Maiesteis authoritie, in taking of Williame Dougat, (Duguid ?) seruitour to George Gairdin; committit the 24 of Julij last: And for contravening the Actis of Parliament, in cutting of certane grene growand coirnes, pertening to Gilbert Menzeis of Pitfoddellis, growand vpone his landis of . . . . .

PERSEWARIS, Gilbert Menzeis of Pitfoddellis; Williame Dougat, seruitour to George Gairdin; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat.

<sup>1</sup> The Dittays are not inserted in the Record.



THE Justice, with advyse of my lord Aduocat, Continewis this dyet to the thrid day of the Air (of Aberdeen), or soner, vpon xv dayis wairning; and Ordanis caution to be fund be the pannell. Plegio, Joanne Kynnaird de eodem.

### Cutting and Destroying Corn.

Nov. 26.—MARGARET IRWING, Lady Pitfoddellis; Gilbert Menzeis of Pitfoddellis, hir spous, for his entreis; David Knowis, his domestik fervand; Johnne Ramsay, his greif; Johnne Philp, Williame Daveny, Williame Dougatt, and Johnne Ramsay.

Dilaitit of airt and pairt of the contravening of our souerane lordis Actis of Parliament, in cutting and distroying of coirnes; committit in the moneth of July lastbypast.

PERSEWARIS.

Williame Forbes, elder of Monymusk; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat.

This case<sup>1</sup> also continued to the same Air. Plegio, Pitfoddellis.

### Slaughter.

Dec. 1.—HEW SOMERVELL of Drum.

Dilaitit for airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Bryfone, in Gilmertoun, be gevin to him of dyuerse straikis, hurtis, and woundis, with ane lang battone or girth-sling,<sup>2</sup> in his sydis, schoulderis, breist, and bellie, and dyueris vtheris pairtis of his body, at the dur of his duelling hous in Gilmertoun, vpon the xxiiij of September last; off the quhilkis straikis, he haifing tane bed, and remaning bedfast the space of aucht dayis, in grit dollour and pane, deceifit thair of vpon the first day of October thaireftir.

PERSEWARIS, Agnes Mcindo, the relict; Patrik and Margaret Bryfone, as bairnes.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Laurence McGill.

It is allegit be the pannell, that the Dittay is nocht relevant, in sa far as it is nocht qualifeit thairin, that the cryme was committit vpon foirthocht fellonie; without the quhilk war condiscendit vpon, na cryme can be inferrit: And thairfoir, as the Dittay is qualifeit, it can nocht pas to ane Assyse. And forder, it is affermit be the pannell, that the said Johnne Bryfonis death nawayis proceedit vpon ony straik or hurt gevin to him the tyme lybellit; bot be the contraire, the said Johnne, that same day of the allegit reffaueing of the straikis, past to the Coilpot-hill, and thairfra with his coillis<sup>3</sup> come to Ed<sup>r</sup>, quhair he fauld the

<sup>1</sup> It is obvious that the preceding cases arose out of the deadly feuds which then raged between the families of Monymusk and Pitfoddells. No information is afforded by the Record, how these Cases terminated—but from their withdrawal to 'the Air,' it is likely they were compromised by the intervention of mutual friends.

<sup>2</sup> Dr Jamieson interprets this word to signify a pole from which a girth, gird, or barrel hoop is made.

<sup>3</sup> Coals. GILMERTON, at that period, as well as now, was famous for its collieries and stone quarries, and appears to have been, even in these early times, peopled by a most barbarous and regardless race. The recent atrocious case of Rape and Murder is too fresh in the public mind to require any farther notice of the proverbially savage nature of the colliers and carters inhabiting that village. A bare allusion to the evidence adduced in that shocking Trial is more than enough to justify the preceding observation.

famyn ; and passing hame, that same nycht, to his awin hous, lay down haill and feir ;<sup>1</sup> and his haill famelie being visseit with the hett-fever,<sup>2</sup> be the space of ane moneth ofbefoir, the said Johne being also visseit thairwith, in aucht dayis thair-estir, sa reaget thairin, that in end, at the tyme lybellit, he deceissit of the said ffever, notourlie knawin to the haill cuntrie about. And sa, can nocht pas to ane Assyse, for ony cryme set down in the summondis.

THE Justice findis the Summondis relevant, nochtwithstanding of the former allegiances : and Ordanis the famyn to pas to ane Assyse.

ASSISA.

Mr Pat. Edmestoun of Wowmet,	Nicoll Crawford, in Nether Lib-	Mr Jo <sup>n</sup> Wardlaw, in Libbertoun,
George Ramsay, Nether-houffis,	bertoun,	Symone Henderfoun, thair,
Robert Eddislaw, in Lefuaid,	Henrie Arnote, in Lefwaid,	Dauid Ramsay, in Pethheid,
Nicoll Ramsay, thair,	Michael Craufurd, at Libber-	Geo. Pacok, in Nether Libbertoun,
Gilbert Hay, thair,	toun-Kirk,	Thomas Andro, in Lefuaid.

It is allegit be the pannell (that) George Ramsay, Robert Eddislaw, Nicoll Ramsay, can nocht be ressaute vpon his Assyse, becaus thai ar tennentis, haifing na frie landis of thair awin ; and the pannell being ane landit Gentilman, within the degrie of ane Barroune, halding his landis of Drum, and vtheris pertening to him, immediatlie of the Kingis Maiestie, fould thairfoir be tryit be his peiris, viz. be Barrones ; at the leift, the maist pairt of thame fould be in that rank ; *igitur*, &c. Repeitis the former alleageance aganis the remanent Assyfouris of the lyk qualitie.

THE Justice, vpon tryell of the said George Ramsay and remanent Assyfouris rank and estait, finding thame to be honest, substantial men, Admittis thame vpon the said Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Andro, in Lefuaid, chancellor, fand, pronuncet, and declairit the said Hew Somervell of Drum to be Cleane, innocent, and acquit of the said slauchter.

### Witchcraft—Poisoning—Treasonable Murder.

[THE Case of ROBERT ERSKINE, which follows, and the subsequent Trial of his three sisters, HELEN, ISOBEL, and ANNAS,<sup>3</sup> afford very lamentable proofs of the baneful effects of an all-engrossing spirit of covetousness. There cannot be a doubt that the sordid avarice of these individuals, habitually indulged, and permitted to acquire the entire ascendancy over their minds, rapidly terminated in the perpetration of the highly revolting crimes for which their lives were justly forfeited to the offended laws of their country.

It is melancholy to reflect that these atrocious criminals, whose cold-blooded and calculating crimes form the subject of these Trials, were immediate descendants of the eminently good and pious John Erskine, Baron of Dun, and Superintendent of Angus and Mearns, one of the most active promoters of the Reformation of Religion in Scotland, whose character and public services are well known. This excellent man died Mar. 12, 1591, in the 82d year of his age, having, throughout his long and useful life, bestowed much of his time in attending to the religious and moral education of his children and

<sup>1</sup> Whole and sound.

<sup>2</sup> Probably the Scarlet fever.

<sup>3</sup> See their Trial in this Collection, Jun. 22, 1614.



their numerous descendants. The Superintendent was the eldest son of John Erskine of Dun, by Margaret Ruthven, daughter of Sir William de Ruthven, first Lord Ruthven, and relict of Alexander, *second* Earl of Buchan. He married Lady Elizabeth, third daughter of David, *seventh* Earl of Crawford. John Erskine, the next Baron of Dun, married Margaret, eldest daughter of James, *fifth* Lord Ogilvy of Airlie. His son, John Erskine of Dun, married Margaret Keith, second daughter of Robert Lord Altrie, last mentioned. This Baron was succeeded by John Erskine of Dun, who married the Honourable Margaret Lindsay, daughter of Sir Alexander Lindsay, first Lord Spynie, (slain 1607,) and was probably the father of Robert and his sisters, Helen, Isobel, and Annas. David Erskine of Dun, the brother of these criminals, and father of their victims, John and Alexander Erskine, married Jean, eldest daughter of Patrick Maule of Panmure, by Margaret daughter of John Erskine of Dun.

It must therefore be obvious, owing to the high respectability of the ancient Family of Dun, and the rank and power of the numerous connexions of the pannels, that every influence must have been used for averting the stain of a public Trial and an ignominious execution ; but their crimes were of too deep a dye to admit of the public prosecutor waiving this imperative duty.

One very striking feature of this remarkable Case is, that the brother was urged forward to the perpetration of this crime by the repeated suggestions and solicitations of his sisters ; who, with desperate wickedness, goaded him forward to consent to the act. These wretched females were both the prime movers and the actors in this shocking tragedy. Their brother appears to have been a passive instrument in their hands.

It only remains for the Editor to state, that, after much research, he has only been able to procure the following notices, from an authentic source.<sup>1</sup>

(Nov. 30, 1613.) ‘ ROBERT ERSKINE, vncle to THE LAIRD OF DYNNE, being examinat be foure of the Counsell, depute to that effect, vpon the practize of poifone aganes his tua nephewes, the brether of the Houfe of Dynne; after dyuerse denyallis and confrontationes with some who avowed that mater vpone him, he is come to a cleere Confession of the haill treuthe of that mater ; to wit, that he wes a deallar, confultor, and consentar to the Murthour of his tua nephewes by poyfone ; and that his three fisteris wer the first movearis of him to that wicked deide, that therby he might atteane to the right of the leving of Dynne. Direction is gevin to the Justice to putte him to the tryall of the lawes, and Commiſſion is gevin to the Erle of Mar to apprehend the three fisteris, and some otheris gevin vp be the said Robert, as guyltie, and to present thame heare to there tryell.’—(Dec. 1, 1613.) ‘ Robert Erskyne wes this day execute for the practize of poifone, wherin he wes a counsellour and consentar againes the tua bretherine of the Houfe of Dynne.’]

Dec. 1.—ROBERT ERSKYN, fone to Johnne Erskyn, appeirand of Dwn,  
callit *Johnne of Logy*.

Dilaitit, accuset, and perfewit, be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>,  
Aduocat to our fouerane lord, for his hienes intereis, of the crymes following, viz.

*DITTAY against Robert Erskyn.*

FORSAMEKILL as, be the Law of the Almychtie God, loveable Constitutiones  
of all Chrifstiane kingdomes, and Municipall Lawis of this realme, all Witchcraft,  
Sorcerie, Consultatioun with Witches, feiking of help or responſes of thame, and  
vfearis of Poyfone or Poyfoneable herbis, quhairthrow ony Crifstiane man, wo-  
man, or bairne may take hearme, is prohibeit and discharged, vnder the pane of  
deid, confiscatioun of all the offendouris moveabillis, and dyuerse vtheris grevous

<sup>1</sup> Minutes of Privy Council Proceedings, Denmylne MSS. Adv. Library. *Balf. Annales*, II. 44.

panes and pwneischmentis, at moir lenth expreſſit in the ſaidis Lawis, Actis, and Ordinances : Nochtwithſtanding quhairof, it is of veritie, that þe ſaid Robert Erſkyn, being blinded with the godles and inſatiable deſyre of þe landis and leving of Dwn, and knowing perſytlie that he could nevir attene to be full Laird pairof, ſo long as Johnne and [Alexander] Erſkynis, the tuo lauchfull ſones of vmq<sup>le</sup> Daud Erſkin, his elder lauchfull brother, was on lyfe : ffor removeing of the quhilk impediment, vpone a pretendit miſcontentement conſaует be him and his thre ſiſteris, Iſſobell, Helene, and Annas Erſkinis, becaus vmq<sup>le</sup> . . . . . Erſkyn of Dwn, quho was ſone-in-law to the Laird of Pitcur, vpone his deid-bed had nominat Johnne Erſkin, Miniſter at St Ceres Kirk, to be Tutour Teſtamentor to the ſaidis tuo ʒoung boyis, his brother-ſones, and that be þe ſaid nominationoun of Tutorie, the ſaid Robert, as nerreſt agnat of bluid to thame, was defraudit of the charge of þais bairnes and þair Eſtait ; albeit þe ſaid Robert his cheif diſcontentment was, becaus, be þe ſuruiuing of the ſaidis tuo bairnes, ʒour (*his*) rycht of ſuccceſſioun to the ſaid leving was impeidit. The ſaid Robert, þairfoir, ffor removeing of the ſaid impediment, in his devillifch diſpoſitioun, conuenit to him ſelff his ſaidis thre ſiſteris, Iſſobell, Annas, and Helene, within the Place<sup>1</sup> of Logy, about Mydſomer, in the ʒeir of God I<sup>m</sup>. ſex hundreth and ten ʒeiris, and þair treited, conſulted, deliberat, and reſolued vpone the deſtruction and Murthour of þe ſaidis tuo ʒoung childrene, his broþer-ſones,<sup>2</sup> be Witchcraft and Poxſoun : AND for this effect, tuo of his ſiſteris, haifing proponit to ane Daud Blewhous, that gif<sup>3</sup> he wald vndertak to get ane Witche, that, be ſum ſiniſterous meanis, wald tak away the lyves of þe ſaidis tuo boyis that war betuix þe ſaid Robert and the leving of Dwn, that þe ſaid Daud ſould reſſaue for his rewaird ane poſſeſſioun, for his lyſtyme, out of the landis of Dwn, and fyve hundreth merkis of ſiluer ; and promeiſt to caus þe ſaid Robert, vpone the morne þaireſtir, ratifie to þe ſaid Daud the former conditioun : Lykas, ſchortlie þaireſtir, þe ſaid Robert, cuming to the ſaid Daud Blewhous duelling hous, and haifing forgadderit<sup>4</sup> with him þair, he þan demandit of þe ſaid Daud, quhat he had done concerning the purpois impairtit be his ſiſteris to him, anent þe diſtruction of þe ſaidis tuo bairnes ? And becaus, be þe anſuer maid be him to þe ſaid Robert and his ſiſteris, the ſaid Robert could nocht get his wicket purpois effectuat be þe ſaid Daud Blewhous, thairvpone the ſaidis Annas and Helene, his tua ſiſteris, of the ſpeciall cauſeing, ſending, hounding out, airt, þairt-taking, counſell, and devyſe, paſt, in ane evening, fra þe ſaid Place of Logy, over þe Cairnemouth, towardis þe Mure-ailhous, and þair forgadderit with ane woman, quha namet hir ſelf Jonet Irwing, ane notorious Witche and abuſer of þe people ; and eſtir conference with hir in the ſaid purpois, thay, for accompliſchment pairof, reſſaut of hir ane grit

<sup>1</sup> Mansion-house.<sup>2</sup> Nephews.<sup>3</sup> If.<sup>4</sup> Met.



quantitie of herbis, quhilkis war brocht with thame (with iniunctioun how to vse the saidis herbis) hame to Logy. Quhilk being sene be þe said Robert, in þair handis, and he altogidder distrusting that thais herbis war hable<sup>1</sup> to do that wicket turne for the quhilk þai war brocht, ffor clering of his dout, he, togidder with Johnne Kirk, past over þe Month towardis the Mure-ailhous, quhair he consultit and conferrit with the said Jonet Irwing, Witche, off quhome at þat tyme he resauet ane full resolutioun that þe herbis delyuerit be hir to his sifteris was forceable aneuche to effectuat þe former wicket turne: LYK AS, schortlie paireftir, þe said Robert, returning hame agane, he concurrit and consultit with his sifteris in all þair wicket resolutiones, to þe tyme that þe said poyfoneable drink was gevin be þame to the saidis tuo boyis; quha paireftir, be þe said Robert his counsall and advyse, tuik þe saidis herbis, and steipit þame amangis aill ane lang space; and paireftir, it being in deliberatioun betuix þe said Robert and his sifteris, quhidder it sould be cassin out or vsed, in end, it was vniformelie aggreit and concludit amangis thame, that þe drink quhairin the saidis herbis war steipit sould be gevin to the saidis tuo boyis: ffor accomplisment quhair of, tuo of the saidis sifteris, accompaneit with Gilbert Campbell, his horse-boy for þe tyme, haifing also in companie with thame the said *Johnne Erskine*, the eldest of the saidis tuo boyis, past altogidder furth of Logy to þe burgh of Montrois, quhair þe vther boy with his mother remanit and duelt for þe tyme; and þair, of þe said Robert Erskine his knowlege, counsell, and devyse, the said poyfoneable drink was gevin to the saidis tuo boyis, his brother-sones: Quhilk drink, eftir þair ressaueing pairof, wrocht so violentlie vpone þame, that immediatlie paireftir thay tuik sic ane extraordinier preise<sup>2</sup> of vomeiting, that na persone expected for þair lyfe: Be occasioun of the quhilk poyfoneable drink, sa ministrat and gevin to thame, the said *Johnne Erskine*, the eldest of the tuo, contracted sic a deidlie diseas and seiknes, that his skyn turning all blak, and his haill nobill pairtis inwardlie consumeing, he daylie and continuallie paireftir dwynet<sup>3</sup> in grit dollour and pane, to the tyme of his death, viz. to the terme of Witsunday last; at quhilk tyme, he in maist lamentable maner deceissit, of the said vennemous and poyfoneable drink, vttering befor his death thir or the lyk woirdis, to all sic as war present, "Wo is me, that I evir had richt of succeffoun to ony landis or leving! ffor gif I had bene borne sum pure coitteris sone, I had nocht bene sa demanet,<sup>4</sup> nor sic wicket practizes had bene plottit aganis me for my Landis!" AND sa, was crewallie and tressonabillie Murthoret; and be þe foirsaid vnlawfull and poyfoneable drink, cuttit aff be þe said Robert Erskine, his uncle: And he was airt and pairt of the said treasonabill Murthour, and of þe damnable consulting and devyseing with the said Jonet Irwing, ane notorious Witche, ffor

<sup>1</sup> Lat. *habilis*.<sup>2</sup> Literally, *press*.<sup>3</sup> Pined away.<sup>4</sup> Treated.

making and ministrating of þe said poyfoneable and vennemous drink, for the saidis tuo bairnes Murthour and destructioun. LYKAS, the vther of the saidis tuo boyis remanis as ȝit fair viſſeit with intollerable payne, and ſeiknes vniuerſall throw his haill body, be occaſioun of the ſaid drink gevin to him at þe time foirſaid; off quhais lyfe pair is na hoip. TO THE TAIKIN of the quhilkis premiſſes, þe ſaid Robert being examinat be the Lordis of his Maieſteis Previe Counſall; quhairupone, eftir lang deilling with him pairintill, in end, come to his Confeſſioun, in maner ſpecifeit in his Depoſitiones: Lyk as, he being charget, be vertew of Criminall Letteris, to haif compeirit and fund cautioun that he ſould vnderly the Law for þe ſaidis crymes, was, for his nocht finding cautioun, denuncet to the horne, and declairit fugitiue fra his Maieſteis Lawis, for the crymes aboue ſpecifeit; at the quhilk Hoirning he hes ever ſen ſyne remanit vnrelaxt pairfra. As þe ſaidis Letteris of Hoirning, producet aganis him, in the ſelf proportis.

Eftir reiding of the quhilk Dittay, and accuſatioun of the ſaid Robert Erſkine, be vertew thair of, of the crymes aboue expremit, quhilkis war Confeſſit be him to be of verritie, the Juſtice, of his awin conſent, referrit the ſamyn to the Tryell of ane Aſſyſe of the perſones following.

## ASSISA.

Mr Ja <sup>s</sup> Durehame of Duntervie,	Sir George Ramſay of Dalhouffie,	Johnne Beatone of Falay,
Mr Francis Bothuell, brother ger-	Mr Alexander Seatoun of Gormok,	Patrick Maxwell of Newark,
mane to vmq <sup>le</sup> Johnne, Lord	Cuthbert Cunninghame, Proveiſt	Aulay Mc <sup>e</sup> caulay of Ardincapill,
Halyrudhous,	of Dumbarten,	Duncane Menzeis of Comerie,
Robert Falconer of Ballandro,	. . . . . Menzeis of Weyme,	Mathow Bailzie of Littillgill.
Sir Johnne Preſtoun of Vallafeild,	Patrik Auchterlonie,	. . . . . Dunlope of that Ilk.

Quhilkis crymes the ſaid Robert Erſkine of new, in the ſaid Aſſyſe preſens and audience, confeſſit and acknowlegit to be of verritie. Quhairupoun inſtrumentis was tane be our ſaid ſouerane lordis Aduocat; and quha, for the ſaid Aſſyſe forder reſolution, producet to thame the ſaid Robert Erſkines Depoſitiones, ſubſcryuit with his hand, and dyuerſe of the Lordis of his Maieſteis Previe Counſall; togidder with the ſaidis Letteris of Hoirning, beiring him to haif bene fugitiue fra his Maieſteis lawis, continuallie ſen the committing of the ſaid fact.

VERDICT. The Aſſyſe, all in ane voce, be the mouth of Mr James Durhame of Duntarvie, chancellor, be reſſone of his former Depoſitiones, and ratificatioun thair of, maid in judgement, ſſand, pronuncet, and declairit the ſaid Robert Erſkin to be Giltie, culpable, and convict of airt and pairt of the Murthour and diſtrunctioun of the ſaid Johnne Erſkine, his brother-ſone, be miniſtrating to him and his ſaid brother of the poyfoneable drink, in maner ſpecifeit in the ſaid Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be ſtrukin from his body: And all his moveabill guidis to be eſcheit, &c.<sup>1</sup>

<sup>1</sup> See the Trial of Helen, Iſſobel, and Annas Erſkine, Jun. 22, 1614.



**Horse and Sheep Stealing.**

Jan. 28, 1614.—PETER DAVIDSOUN in Heddene; James Wallace, sumtyme duelland in Dundie; and Donald Smyth in Dumbarten.

Dilaitit as follows, viz. The said *Peter Davidsoun* ffor the thiftious steilling, conceilling, refsetting, and away-taking of ane cut-luggit stanet naig, moushewit and stug-taillit;<sup>1</sup> togidder with ane foird baffoned meir,<sup>2</sup> haifing thre quhyte feit, also stug-taillit, a saxtene myles bezond Beruik in Ingland; committit about Mydsomer laft. ITEM, for the thiftious steilling and away-taking of ane gray ambland meir, with ane littill foired meir, a fevin or aucht myles abone Annik,<sup>3</sup> in Ingland; committit at Lambes laft, &c. AND the saidis *James Wallace* and *Donald Smyth*, ffor airt and pairt of the thiftious steilling, conceilling, refsetting, and away-taking of tua horse, furth of the landis of Kerfe, &c. &c.

VERDICT. Fylet, culpable, and convict, conforme to thair awin Judiciall Confessiones.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill thai be deid; and all thair moveabill guidis to be escheit, &c.

**Theft of Title-deeds, &c.**

May 20.—PATRIK EVIOT, sone to Finlay Eviot in Mwretoun, and sumtyme fervand to Patrik Eviote of Mwretoun.

Dilaitit, accusit, and persewit be Sir Williame Oliphant, &c. and Johnne Mathow of Balhouffy, of the crymes following.

**DITTAY against the Pannell.**

FORSAMEKILL as Johnne Mathow of Balhouffe, in the moneth of Apryle, the 3eir of God I<sup>m</sup>. sex hundreth threttene 3eiris, haifing repairit towardis the Citie of St Androis, to haif procurer Confirmation of certane his landis, haldin be him of pe Proveist of pe Auld College pairof; and haifing tane his evidentis<sup>4</sup> with him to that effect, lyke as, vpon the 26 day of the said moneth of Apryle, being the Senzie-fair-day<sup>5</sup> of St Androis, the said Johnne Mathow, being within pe said burgh, in his cuming alangis the Hie streit pairof, accompaneit only with Alexander Blair, than his fervand, quba than had cayreing vnder his airme the said Johnne Mathow his wallet, quhairin thair was ane grit number of his evidentis and writtis, with tua pair of silk schankis,<sup>6</sup> ane pair of worfet schankis, ane pair of fyne silk ga'rtanes, with ane certane quantitie of gray veluet, and vther small necessaris pertening to him, all bund vp togidder within the said wallet; and at pair cuming foiranent Robert Russell his stable, quhair pe said Johnne Mathowis horse was stablet for pe tyme, the said Alexander Blair, his fervand, haifing than past in to the said staibleris house, to geve the saidis Johnne Mathowis horse sum corne; and in this meane tyme, haifing laid doun pe said wallet, with the saidis evidentis and vtheris foirfaidis being pairin, vpon pe buird;<sup>7</sup> it is of verritie, that pe said Patrik Eviote, fervand to the said Patrik Eviote of Myretoun, of the speciall causeing, directioun, hounding out, and command, ressett, assistance, and ratihabitoun of his said master, being for the space of tua or thre dayis of befoir, ever attending and following adreich<sup>8</sup> vpon the said Johnne Mathow and his boy, in all pairtis of pe said Citie of St An-

<sup>1</sup> A crop-eared stoned horse, mouse-coloured and dock-tailed.

on her face.

<sup>3</sup> Alnwick.

<sup>4</sup> Title-deeds.

<sup>5</sup> Synod-fair.

<sup>6</sup> Stockings.

<sup>7</sup> Table.

<sup>8</sup> Dodying,

and following at a little distance.

drois quhairvnto thay maid ony repair: And haifing persauet the said Alexander Blair pafs fra his maisteris bak, and to enter within pe said Robert Ruffellis duelling-hous, and pair to haif laid down pe said wallet vpon the burd-heid pairof, in maner foirsaid; in maist thiftious maner, he conveyed him self within pe said Robert Ruffellis hous, as the said Alexander Blair was in geving corne to his maisteris horse, and thiftioullie past vp, staw, conceillit, reffet, and away-tuik furth pairof, the said wallet, with the evidentis, silk schankis, worset schankis, silk gairtenis, gray veluet, and vperis his neces-saris pertening to him; being all bund vp togidder pairintill, had and transpointit the samyn away with him to sic pairtis and places as he pleisit, nevir making ony restitution nor redelyuerance pairof to the said Johnne Mathow, just awner of the samyn, to his grit hurt and perrell of pe securitie of his landis, be abstracting and withholding of pe saidis evidentis pairof. AND siclyk, ffor the thiftious steilling and away-taking of ane pair of blankettis, pertening to the Lady Balhouffie; and of ane pair of fyne mar-rillit<sup>1</sup> plaidis, pertening to . . . . Roife of Cragie. And for cowmone Thift, and Reffet of thift, &c.

VERDICT. Fylet, culpable, and convict of the haill thiftious crymes aboue specifreit.

THE JUSTICE Continewis the pronunceatioun of Dome to the morne: And Ordanit the pannell to be committit to waird, in the meane tyme.

May 21.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid: And all his moveabill guidis to be escheit, &c.

### Taking Captive — Slaughter.

Jun. 1.—WILLIAME M<sup>c</sup>INTOSCHE of Effie; Martene M<sup>c</sup>ewin V<sup>c</sup>ewir; and Lauchlane M<sup>c</sup>oneill V<sup>c</sup>lauchlane in Bancher, (and others).

Dilaitit for the taking of Colene Campbell of Clwnes captiue and prissoner; And for the slauchter of vmq<sup>le</sup> Donald M<sup>c</sup>intailzeour, and vtheris crymes.

Colene Campbell of Clwnes producet the Letteris, be the quhilkis thay ar denuncet rebellis, and put to the horne, for nocht finding cautioun to haif compeirit, &c. And producet lykwayis ane Warrant, subscryuit be my Lord Chancellor, Secreter, and Thesaurer, for deserting the saidis Letteris aganis *Duncane M<sup>c</sup>intoshche of Aberairdour*, Williame M<sup>c</sup>lauchlane V<sup>c</sup>williame M<sup>c</sup>intoshche, Angus Rofs, servand to Williame M<sup>c</sup>intoshche in Boirlum, and Williame Bayne M<sup>c</sup>conneill V<sup>c</sup>allaster Vayne, in Delnavert.

### Consulting with Witches — Poisoning — Treasonable Murder.

[THE Editor begs to refer the reader to a short introductory Notice prefixed to the Trial of ROBERT ERSKINE,<sup>2</sup> the brother of the pannels, whose crimes form the subject of the following Trial. It only seems necessary in addition to state, that he has been so fortunate as to obtain the following authentic memorials<sup>3</sup> of the proceedings against these unhappy victims of ungoverned passions, and of base and unbridled avarice. Their fate is written in letters so legible, that he who runs may read.

(Dec. 16, 1613.)—"THE tua sifteris of the deceased ROBERT ERSKYNE, who iustlye suffered

<sup>1</sup> Variegated; mottled; marbled; or chequered.  
Adv. Library, "Minutes of Privy Council Proceedings."

<sup>2</sup> See Dec. 1, 1613.

<sup>3</sup> From *Denmylne MSS.*  
See also *Balfour's Annales*, II., 53.



deathe, for the practyse of Witchcraft and Poyson vsed be him against his twa nephewes, the breetherine of THE HOUSE OF DYNNE, are brought to this Toun; and being examined, are obdured in a constant denyall of all that mater, nochtwithstanding that there late brother past constantlye to deathe, with avowing that detestable cryme vpone thame, as being the first devysares therof, the motionaris therof to him, and the executoures therof in there own perfonen. Thay are to be confronted with on who affistid thame in confell and executioun of that deede; and thairefter, in caise of there perseverance in there denyall, thay are to be pute to the Torture."<sup>1</sup>—(Jun. 22, 1614.) "THE xxij day of Junij nixt is appoyntit for the Tryell of HELENE and ISSOBELL ERSKENIS, for the Poysoning of the twa brether of the Hous of Dynne; and directioun is gevin to the Justice and his Maiesteis Aduocat to proceid in the perfute, tryall, and punischment of that mater accordinglie."—(Jun. 23.) "THE thrie sifteris of the Housse of Dinne wes this day pannelled, accoofed, and convicted of the Poyfoning of there two coofinges, the brether of Dinne; and Sentence is geven aganes thame to lose there heades; whilk wilbe execute vpone the xxiiij of this instant."]

Jun. 22.—HELENE ERSKINE, Issobell Erskine, and Annas Erskyne, Sifteris to vmq<sup>le</sup> Robert Erskyne, brother to the Laird of Dwn, and dochteris lauchfull to vmq<sup>le</sup> Johnne Erskine, appeirand of Dwn, callit Johnne of Logie.

Dilaitit of airt and pairt of the Poyfoneing of vmq<sup>le</sup> Johnne Erskine, thair brother-sone,<sup>2</sup> be miniftrating to him and to Alexander Erskine, his brother, of ane poyfoneable drink; of the quhilk the said vmq<sup>le</sup> Johnne Erskine depairtit this lyfe; committit about Witsonday, in anno 1610 yeiris.<sup>3</sup>

PERSEWAR, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord. PRELOCUTOURIS in defence, Mr Thomas Wilfone, and Mr Laurence M<sup>c</sup>gill, (Advocates,) Mr Johnne Erskine, Minister,<sup>4</sup> Mr Williame Keithe, Patrik Bruce.

Mr Thomas Wilfoun and Laurence M<sup>c</sup>gill, Aduocatis, produces ane WARRANT of the Lordis of Secreit Counfall, be the quhilk thai war charget to compeir for the thre sifteris on pannell, in thair defence; and in respect of the schortenes of tyme quhairupoun thay ar charget, and of the wechtines of the caus quhairupoun the pannell is dilaitit, desyres my lord Justice to grant ane continuatioun to ffry-day nixt, that in the meyne tyme thay may haif lasure to advyse with the pairtie in the caus.—The Aduocat anfueris, that na continuatioun can be grantit, in respect the perfonen on pannell was charget vpone fyftene dayis wairning; and ane autentik coppie of thair Dittay was delyuerit to thame, at the geving of the said charge.

THE JUSTICE Ordanis proces; and the Summondis to be red.

It is allegit be the pannell and thair prelocutouris, that the Dittay is nawayis relevant, in thre feuerall poyntis, viz. *ffirst*, in the allegit consulting with Jonet Irwing, Witche, nocht condiscending vpone the woirdis of consultatioun, or quhat

<sup>1</sup> The Editor has found no satisfactory evidence to establish that the Torture was actually put in force, in this Case.

<sup>2</sup> Their Nephew, who was the heir-apparent of David Erskine, their eldest brother.

<sup>3</sup> The 'Dittay' is a mere echo of their brother Robert's, and is therefore unnecessary to be inserted here. See Dec. 1, 1613.

<sup>4</sup> At St Ceres Kirk.

responſe was gevin to the pannell be the Witche. *Secundo*, anent the allegit reſſauing of the vennemous or poyfoneable herbis, for the vſe contenit in the Dittay, *non relevat*, except the perſewar war ſpeciall vpon the names of the herbis, and qualitie thair of. *Tertio*, as to the allegit iniunctiones gevin for vſeing of the ſaidis herbis, *non relevat*, except the perticuler woirdis of iniunctionoun war ſpeciallie ſet doun in the Dittay.—To the quhilk it is anſuerit, that the allegiance aucht to be repellit, in reſpect of the lybell, quhilk he vſes *coniunctim* in the haill pointis, as is qualifeit, viz. that the pannell paſt and conſultit with ane Witche, fra quhome thay reſſaut the poyfoneable herbis, with iniunctiones how to vſe the ſamyn, for the away-taking and diſtruction of thair brother-ſones,<sup>1</sup> in maner ſpecifeit in the Dittay; in reſpect quhair of, the Dittay ſould pas to the knowlege of ane Aſſyſe.

THE JUSTICE findis the Dittay relevant, *coniunctim*; and nochtwithſtanding of the allegiance, Remittis the ſamyn to ane Aſſyſe. Quhairvpon the Aduocat aſkit inſtrumentis.

## ASSISA.

James Douglas of Todhoillis,	Adame Cunninghame of Chapell,	Mr Robert Stratoun, in Strathe,
Mr Joſeph Hadden,	Williame Somervell of Pole,	Mr Robert Purves, in Ballache,
Thomas Craigingelt of that Ilk,	Johnne Norie, in Brechin,	Johnne Moncur, in Blacok-mure,
Thomas Inglis of Eiſtſcheill,	Mr Thomas Ramſay, thair,	Johnne Barclay, in Balmakellie,
James Somervell of Spittell,	Robert Barclay, at Marie Kirk,	Johnne Barclay of Johnnſtoun.

The Aduocat, for verification of the Dittay, produces ane Letter writtin be Mr Airthour Erſkine, the pannellis father-brother,<sup>2</sup> thair Confeſſioun of the cryme lybellit, and thair penitence for the ſame; with a deſyre of his lordſchipis ſupplie and help, to tranſport thame furth of the cuntrie.

The ſaid Letter being preſentit to Johnne Erſkin, Miniſter, now Tutour of Dwn, and being inquyret gif the ſamyn was the ſaid Mr Airthouris hand-writ or nocht, Declairit that the ſamyn was everie woird the hand-writ of the ſaid Mr Airthour. Quhairupoun the Aduocat aſkit inſtrumentis.

Thaireftir my lord Aduocat producet the Depoſitiones maid be vmq<sup>le</sup> Robert Erſkine, thair brother, quha paſt to the deid<sup>3</sup> at the Mercat-croce of Ed<sup>r</sup>, that the pannell war the only firſt proponeris of that wicket fact to him; and that the ſamyn was committit and done be the perſones on pannell, in maner ſpecifeit in the Dittay.—Repeittis the affirmatioun maid judiciallie be *David Blewhous* of his former Depoſitiones; quhilk my lord Aduocat cauſet reid ouer to Blewhous. Producet lykwayis the Depoſitiones maid be *Gilbert Campbell*, and *Johnne Kirk*, in the ſaid matter; and deſyret the Aſſyſe to cognoſce thairupoun; And proteſtit for Wilfull Errour, in caice thai acquit the pannell of the ſaidis crymes.

VERDICT. The Aſſyſe, be pluralitie of voittis, ſtand, pronuncet, and declairit

<sup>1</sup> Nephews.<sup>2</sup> Paternal uncle.<sup>3</sup> Death.



the saidis Iffobell, Helene, and Annas Erskynis to be ffylet, culpable, and convict of the haille crymes specifeit in the said Dittay; and that be the repoint and Declaratioun of the said Thomas Craingingelt of that Ilk, chancellor.

SENTENCE. To be tane to the Mercat-croce of Ed<sup>r</sup>, and thair thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis to be escheit, &c.

DOME OF BANISCHEMENT *vpone Helene Erskine.*

(Mar. 22, 1615.)—Helene Erskine, ane of the thre lauchfull dochteris of vmq<sup>rs</sup> Johnne Erskine, appeirand of Dwne, callit *Johnne of Logie*, being brocht furth of waird, out of the Tolbuith of Ed<sup>r</sup>, quhairin scho had remanit sen her last convictioun, and presentit vpone pannell, to heir DOME of new agane pronuncet aganis hir, as scho that was convict and the dome of daith pronuncet aganis hir, &c. Ane ACT of *Secret Counsell* was presentit, and delyuerit to the Justice; quhair of the tennour followis.

APUD ED<sup>m</sup>, *decimo sexto die mensis Marcij, anno Domini millesimo sexcentesimo decimo quinto.* FORSAMEKILL AS, by the executioun to the daith of *Robert Erskine* and his tuo sifteris, the impoysoning of the tuo bretherene of Dwne is sufficientlie pwneischid: And whearas, thair remaneth 3 it, in sure custodie, for the same offence, HELENE ERSKINE, who being moir penitent, thogh les giltie, than the rest, doith mereit the moir commiseratioun: HIS MAIESTIE is thairfoir gracioullie pleast to spair hir lyfe, zit so as scho sall nocht eschape the pwneischment of hir pairt of the said offence; bot pat scho be BANISHED out of this kingdome, during hir lyftyme. THAIRFOIR, the Lordis of Secret Counsell, accoirding to the Kingis Maiesteis will, plesour, and directioun, send vnto thame in this matter, Ordanis and commandis his Maiesteis Justice, Justice clerk, and pair deputis, to appoint and set ane new Justice Court, to be haldin be thame in the Tolbuthe of Ed<sup>r</sup>, at such tyme as thay pleis (to) affix; and pair to call the said *Helene* besoir thame, and to pronounce new sentence and dome aganis hir; ordanapng hir to be BANISHED this kingdome, and nevir to returne agane within the same during hir lyftyme, without his Maiesteis Licence had and obtenit to pat effect; and to depairt furth of this realme, within the space of fourtie dayis estir be pronouncing of the said new dome, vnder the pane of deid: With certificatioun to hir, and<sup>1</sup> scho sailgie, and depairt nocht furth of this realme, within the terme soirsaid prescryuit vnto hir; and being depairtit furth of pis realme, yf scho returne agane within the same, without his Maiesteis Licence had and obtenit to that effect, that the pane of deid salbe execute aganist hir, without fauour or mercie.

EXTRACTUM de Libris Actorum Secreti Consilij f. d. n. regis, per me, Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

THE JUSTICE, for obedience of the will and ordinance thairin contenit, be the mouth of Johnne Dow, dempster of Court, Ordanit, nochtwithstanding of the former dome of daith first pronuncet, the said Helene Erskine to be BANISCHET, &c.<sup>2</sup>

### Child-Murder.

Jun. 25.—JONET BROWN, dochter to Johnne Brown in Bigger. Dilaitit, fforamekill as Johnne Stewinsone in Bigger, haifing this last yeir

<sup>1</sup> An; if; in case.

<sup>2</sup> The terms of the Warrant are repeated, *verbatim*, in the Record.

gottin ane bairne with hir, in the filthie cryme of ffornicatioun, fcho, for avoid-  
ing the fclander and pwneifchment, conceillit the faid bairne, fua that nane of  
the parochin knew hir to haif bene thairwith ; and about the moneth of Marche,  
or thairby, laft, being cum to the tyme of hir delyuerie, fcho paff furth of hir  
fatheris duelling-hous to the feildis, neir to the faid toun of Bigger ; and without  
feiking of ane meidwyfe, or vther ordiner help, fcho travellit, and was delyuerit of  
ane quik madin-bairne ; quhilk chyld fcho ftrangillit immediatlie, and tuik the  
fame to ane dyk-fyde outwith the faid toun of Bigger, and coverit the famyn  
with ane number of turves : And fa, be neglecting the ordiner meanis in hir  
birth, fcho crewallie murtherit and flew the faid bairne.

The pannell denyis the Murthour of the bairne ; and fays that the bairne  
deit fchortlie efter the beiring, being ane lafs-bairne ; and being deid, fcho eiridit<sup>1</sup>  
the famyn in the grund of ane truff flak,<sup>2</sup> in maner fpecifeit in the Dittay.

VERDICT. The Affyfe, be the mouth of Williame Flemyng of Perfilandis,  
chancellor, ffand, pronuncet, and declairit the faid Jonet to be ffylet, culpable,  
and convict of the Murthour and diftrucioun of hir faid infant bairne, conforme  
to hir Dittay.—SENTENCE. To be tane to the Caftell-hill of Ed<sup>r</sup>, and thair to  
be hangit quhill fcho be deid : And hir moveable guidis to be efcheit, &c.

### Thett.

Jun. 25.—ANDRO GULE, borne in Clermond, vnder the Laird of Dairfie.

Dilaitit and accuset for the fteilling and away-taking of tua pair of fcheittis,  
ane pair of blankettis, ane littill panne, and ane fuord, pertening to Williame  
Perfone, in the Hill of Bathe.—Grantit the famyn to be of verritie, and cravet  
God mercie thairfoir ; a d offerit him felf in our fouerane lordis will, and his  
hienes Justice will, for the faidis crymes : Quhome the Justice reffaut.

SENTENCE. To be SCURGET throw the burgh of Ed<sup>r</sup>, and to be BANISCHET  
furth thairof for euir : And gif euer he war apprehendit for Thift heireftir, fould  
be hangit to the deid, but fauour.

### Cattle-stealing—Slaughter.

Jul. 15.—GILBERT JOHNNESTOUN, brother to Gawin Johnnestoun in  
Annand-holme.

Dilaitit, accuset, and perfewit, be Hew Douglais of Dalwein, as fone, Sir  
Robert Dowglais of Carschogill, as neir kinfman, of vmq<sup>le</sup> Hew Dowglais of Dal-  
wein, ffor airt and pairt of the thifteous Steilling, conceilling, and away-taking,  
vnder filence and clud of nycht, furth of the landis and Maines of Dalwein, of  
threttie fax heid of ky and oxin, pertening to the faid vmq<sup>le</sup> Hew and his ten-

<sup>1</sup> Earthed ; buried.

<sup>2</sup> Peat or turf stack.



nentis ; committit be him, and vtheris his complices, cowmone and notorious thevis, rebellis, and fugitiues, vpone the xxviij day of August, I<sup>m</sup>.V<sup>c</sup>. fourfcoir fevintene yeiris : AND siclyk, ffor airt and pairt of the crewall Murthour and slauchter of the said vmq<sup>le</sup> Hew Douglas of Dalvene, in the following and redding of the said guidis, at the tyme foirfaid ; vpoun set purpois, prowisoun, and foir-thocht fellonie.

## ASSISA.

Johnne Lyndfay of Auchinskeoch,

Robert Johnnestoun of Vamphra,

James Greir of Pitfillan,

Capitane James Hunter, burges of Ed<sup>r</sup>,

Mr Samuel Kirkpatrik of Auchinlek,

Williame Johnnestoun of Lokerbie,

James McMath of Schaw,

Johnne Bell, burges of Edinburghe.<sup>1</sup>

VERDICT. Fylit, culpable, and convict.—Sentence continewit quhill the Justice war advyset with the Lordis of his Maiesteis Previe Counfall thairanent.

Jul. 16.—SENTENCE. The Justice, ffor obedience of ane WARRANT, direct to him be the Lordis of Secreit Counfall, subscryuit be my Lord President, my Lord of Roxburgh, my Lord of Bynning, Secretar, my Lord of Blantyre, and be my Lord of Kildrummye, be the mouth of Johnne Dow, dempster, decernit and ordanit the said Gilbert to be tane to the Castell-hill of Ed<sup>r</sup>, and thair to be hangit vpoun ane gibbet, quhill he be deid ; and all his moveabill guidis to be escheit, &c.

**Slaughter.**

Dec. 9.—SIR PATRIK HEPBURNE of Vachtoune, kny<sup>t</sup> ; James Ker, Patrik Dikfoun, David Allan (Ellem), Patrik Mortoun steward, Andro Gyller cuik, George Quhyt horskeipar, Diones Smart huntifman, Williame Carfrae scheiphird, Williame Drummond, all seruitouris to the said Sir Patrik.

Dilaitit for airt and pairt of the slauchter of vmq<sup>le</sup> Robert Broun, seruitour to Mr Richart Dowglais of Brokhollis.

Patrik Dowglais, baxter, burges of Ed<sup>r</sup>, producit the Letteris, dewlie execute and indorfat, purchest be Johnne and George Brounes, as brether, and the said Mr Richart, as maister and neir kynsman of the said vmq<sup>le</sup> Robert, and our souerane lordis Aduocat, and protestit for releif of his cautionerie ; the quhilk the Justice admittit.—Mr John Hepburne of Gilmertoun, as cautioner for the saidis Sir Patrik, for his releif of the said cautionerie, producet the Counfallis Warrant, ordaning this dyet to be desert, &c.

JUSTICE, Justice clerk, and 3our deputtis : fforfamekill as the nynt day of December instant is appointit to Sir Patrik Hepburne of Vachtoun, kny<sup>t</sup>, James Ker, Patrik Dickfone, David Ellem, and vtheris, his seruitouris, for thair compeirance befor 3ow in the Tolbuith of Ed<sup>r</sup>, to vnderly our lawis for the slauchter of vmq<sup>le</sup> Ro<sup>t</sup> Broun, seruitour to Mr Richart Dowglais : And feing pe pairteis ar now

<sup>1</sup> The rest were burgesses of Edinburgh.

agreit, and hes chopin<sup>1</sup> handis, in presence of diueris of our Nobilitie and of his Maiesteis Counfall : Theis ar thairfoir, in his Maiesteis name, to command zow to desert the said dyet, and forbeir all forder proceeding pairintill : Quhairnent pir presentis salbe zour Warrant. At Ed<sup>2</sup>, the fewint day of December, I<sup>m</sup>.Vj<sup>c</sup>. and fourtein zeiris.

AL. CANCELL<sup>3</sup>. AL. MAR. R. CAITHNES. LYNLY<sup>4</sup>GOW. KINGORNE. LOTHEANE.

### High Treason—Resisting the King's Lieutenant and his Forces —Rebellion in Orkney, &c.

[THE proceedings which were adopted against PATRICK EARL OF ORKNEY, in the years 1610 and 1611, have already been noticed in a former part of this Collection ;<sup>2</sup> and as THE REBELLION IN ORKNEY, as a matter of history, has been recorded in almost every History of Scotland, it is unnecessary here to enter into any minute detail or recapitulation. Owing to the relationship which existed between the Earl of Orkney and the King, and the high favour in which that Nobleman had long stood with his Majesty, every device appears to have been resorted to, on the part of the Privy Council and the Lord Advocate, for the purpose of enabling the Earl to prove his innocence of the former accusations of cruel Oppression and Tyranny, which had been brought against him by the wretched inhabitants of Orkney and Shetland, after they had submitted, as long as was consistent with human nature, to endure such barbarous treatment. The Earl was accordingly confined in Edinburgh Castle; and in the meantime, the Privy Council deputed the Bishop of Orkney to enquire into the truth of these serious charges, and to report to them within a reasonable time.

Owing to his attempts to escape from ward in Edinburgh Castle, the Earl of Orkney was conveyed, as a state prisoner, to the Castle of Dumbarton; where it was considered he would be in more sure custody, and would, besides, be farther removed from the intrigues in which it had long been conjectured he was busily engaged. Notwithstanding of the vigilance of his keepers, he contrived to instruct his 'bafe son,' ROBERT STEWART, one of the subjects of the following Trial, to proceed to Orkney, under the pretence of uplifting the rents which were due by his tenants, but, in reality, his design was to seize upon the Castle of Kirkwall and other strengths in Orkney, which had been confided to the custody of the Bishop, the Sheriff, &c., to raise the standard of Rebellion, and, finally, to throw off his allegiance to the Crown of Scotland. The Earl had anticipated that, by means of the money to be thus raised, he would easily overcome the fidelity of his keepers, or otherwise provide the means of his own escape. Having ordered ammunition and other supplies to be procured from Norway, he calculated, that in those remote regions, which were rendered almost inaccessible during many months in the year, at that period, when the art of navigation was at so low an ebb, he might assume the despotic rule of these Islands, as an independent Prince.

The successful termination of the Earl of Caithness's Commission of Lieutenancy, the capture of the Castle of Kirkwall, and all his remaining strongholds, the capitulation and unconditional surrender of Robert Stewart and the other rebels, together with the subsequent execution of the ringleaders in this Rebellion, for ever dispelled the absurd reveries and the wicked plots of this guilty man, who was doomed, in February 1615, to forfeit his life upon the scaffold. Reference is here generally made to his two Trials, for the sake of brevity.

It only remains to state, that *Calderwood*, in his MS. Church History,<sup>3</sup> preserves the following notice of the Execution of these unhappy and deluded criminals.—(Jan. 6, 1615.) 'ROBERT STEWART, sone naturall to the Erle of Orkney, with other five of his complices, convicted of treasonable taking, keeping, and defending of the Castle of Kirkwall and the strengths in Orkney, were hanged at the market crosse of Edinburgh, and died penitent. The said Robert confessed his father, the Earle, who

<sup>1</sup> Struck; shaken hands.

<sup>2</sup> Vol. III., p. 81, &c.

<sup>3</sup> *Calderwood's Church Hist.*, MS. Adv. Library.



then was wardit in the Castle of Edinburgh, commandit him to doe that which he did ; but granted he gave him a contrare-mand, before he entered in executione. The Gentleman, not exceeding 22 years of age, was pitied of the people, for his tall stature and comely countenance.'

As the details of this Rebellion are entirely unknown to the public, the Editor has the pleasure of laying before his readers a mass of Original State Papers, Dispatches, Examinations, Confessions, and other interesting Documents, which he has appended to this Trial, and to that of the Earl of Orkney, Feb. 1, 1615. As usual, the sources from which these Illustrations have been procured are noted ; and it is hoped, that the whole will be considered as an acceptable addition to the history of that period.]

Jan. 5, 1615.—ROBERT STEWART, bafe sone to Patrik, lait Erle of Orknay ;<sup>1</sup> Thomas Blak, alias Dowglas, fumtyme Chalmerlane and Bailzie to the said Erle ; Archibald Murray, wricht in Birsay ; Andro Mairtene, fumtyme fervand and secretar to the said lait Erle ; Alexander Layng, also his fervand ; and Thomas Layng, indueller in Kirkwall.

Dilaitit of the Treffonable taking and furprifing of his Maieftis CASTELL OF KIRKWALL, KIRK, and STEIPLE OF KIRKWALL ; treffonable refifting of THE ERLE OF CAITHNES, his Maieftis Lieutennent ; and vtheris treffonabill crymes, contenit in thair Dittayis following.

*DITTAY against Robert Stewart and others.*

FORSAMEKILL AS, albeit it was mair nor nottour and manifest to zow, that our fouerane lord the Kingis Maieftie, and Lordis of his hienes Previe Counfall of his Kingdome, had depute and authorizet *Sir James Stewart of Killeith*, kny<sup>t</sup>, to be Chalmerlane of the Erledome of Orknay and Lordschip of Zeitland ; quha, be reffone of pe said office, nocht only became in possesseioun, in vplifting to his Maieftis vse of pe haill rentis, casualities, and deuties of the said Erledome, lordschip, and leving pairof, bot lykwayis, be him self, his fervandis, and substitutis, obtenit the charge, custodie, and keiping of pe haill Palices, Houffis, Castellis, and strenthis within the samyn ; speciallie, pe Castell of Kirkwall, the Hous and Palice of Birsay, and remanent houffis fumtyme pertening to pe said *Patrik, lait Erle of Orknay*. As also, ze, pe said *Robert Stewart*, being bundin, vpone zour grit aithe, nocht to haif repairit to pe boundis of pe said cuntrie of Orknay and Zeitland, without his Maieftis Licence, grantit to zow for that effect ; nochtwithstanding quhairof, it is of verritie, that ze, the said Robert Stewart, being oft tymes thraitnet and minasset be the said lait Erle zour father, vpone a miscontentment consauet be him aganis zow, ffor zour supposet overgëving of pe said Castell of Kirkwall and vtheris Houffis tane and keipit be zow, maist treffonabillie schaiking af zour allegiance and obedience to our fouerane lord, and preferring the vnhappie plott and counfall of zour said ffather to the dew reuerence and regaird of his Maieftis autoritie and lawis, and thairwith making schip-

<sup>1</sup> See Trials of Patrick, Earl of Orkney, Aug. 2, 1610 ; and Feb. 1, 1615.

wrak of 3our faith, honour, and credeit, quhairin 3e stuid bund vpone 3our grit and solemne aith, as said is : Off the speciall causeing, sending, hounding out, command, counsell, devyse, and directioun of the said lait Patrik, lait Erle of Orknay, 3our ffather, in the moneth of Maij lastbypast, or pairby, expresse aganis 3our former faith and former promeis, adressit 3our selff furth of thir pairtis to the said cuntrie of Orknay ; quhair 3e, togidder with *Patrik Halcro*, quha also was imployit and directit be 3our said ffather to assist 3ow in 3our intendit Rebellioun, convenit to 3our selffis the saidis *Archibald Murray, Thomas Blak, Andro Mairtene, Alexander Leggat*, and *Thomas Layng*, with dyuerse vtheris inwtinous and evill disposet persones, 3our associatis, plotteris, and practizeris with 3ow, in 3our haille rebellious and tressonabill courses following : AND *ffirst*, be 3our craftie and subteill meanis, convoyit and posseffit 3our selff and 3our associattis within pe Palice of Birsay, and violentlie expellit furth pairof Barnard Stewart, Keiper of the samyn ; drew in to 3our selff, within the said hous, to the number of threttie persones, bodin with hagbutis, muscatis, poulder, leid, and vther maner of weirlyk preparatioun : Lykas, the taking of the said Hous and manning pairof, in maner soirsaid, be 3ow and 3our rebellious associattis being maid knawin to *Mr Johnne Fynlayfone*, Schereff depute ; and he, in regaird of his office, and for preventing of 3our intendit Rebellioun, haifing assemblit ane grit number of the best affectionat gentilmen and cowmonis of pe cuntrie, in the said moneth of Maij, or pairby, lastbypast, cuming fordwardis to the said Hous of Birsay, tane and keipit be 3ow and 3our rebellious associattis, as said is ; and haifing, at his cuming pairto, be found of trumpet, in our souerane lordis name and autoritie, causit charge 3ow to cum furth of his Maiesteis Hous, and to rander pe samyn to him, as Judge and Magistrat of pe cuntrie, vnder his Maieistie, without forder trouble to follow pairupoun, under pe pane of Tressone ; 3e, with 3our associattis, nocht only maist tressonabillie and contemptuoufflie disobeyit pe said charge (and) refuisset altogidder to rander the said Hous, but schote furth pairof dyuerse schotis of hagbutis and muscatis at pe said Schereff and his companie, than cled<sup>1</sup> with our souerane lordis autoritie, in pe executioun of his office, and geving of pe former charge : At quhilk tyme, the said Schereff and his cumpany being vnwilling to encounter with 3ow, be way of deid, than left 3ow with 3our rebellious company, within the said Hous, and returnet to Kirkwall, of intentioun to haif stayit 3our Rebellioun fra haifing ony forder course. Bot 3e, altogidder myndet to pas fordwardis pairintill, eftir pe Schereffis depairting fra the said Hous, convocat 3our rebellious company togidder, and be the space of ane moneth togidder, keiping 3our daylie consultations and meitingis with vther,<sup>2</sup> 3e pair plottit, devyset, and concludit the tressonabill intaking and man-

<sup>1</sup> Clothed.<sup>2</sup> One another ; each other.



ning of the Kirk and Steiple of Kirkwall, the Castell pairof, and Place of the Zairdis, the slauchter and ruiting out of þe Schereff, þe Commiffar, and fic as wald tak pairt with thame aganis 3ow; and for this effect, convocat to 3ow þe haill parochineris and cuntrie people about, pat 3our felff with thame in airmes, and at tua feuerall tymes maid 3our mufteris and wappone-fchawingis, and mufterit togidder the number of nynescoir perfones, furneift and airmet, for þe maift pairt, with corflettis, hagbuttis, poulder, leid, lances, and vther weirlyk preparatioune: Quhilkis perfones, fa convocat be 3ow, 3e brocht altogidder within the faid Hous of Birsay and vperis houffis pairabout, quhair thay war feiftit and bankettit be 3ow: 3our Captanes and Commanderis war than chofin, and mony promeiffes and vowis maid, that na bak-ftarting fould be, fra 3our intendit Rebellioun, be ony of 3ow, at ony tyme thaireftir, bot to tak eafald<sup>1</sup> pairt with vther to<sup>2</sup> þe tyme þe lait ERLE OF ORKNAY war repoffeffit to his ancient and former government in that cuntrie. At quhilk tyme, ffor 3our gritter affureance of þe faidis vowis and promeiffis, ane BAND was plottit, maid, and devyfet be 3ow and 3our rebellious affociattis, all writtin be þe faid Andro Martenis hand; quhilk being presentit and producet to 3our haill rebellious company be 3ow, the faid Band (eftir grit aithes maid vpoun 3our fuoirdis<sup>3</sup>) was fubfcriyvit be fa mony of 3ow and 3our company as could wryte; and fa mony as could nocht wryte put to pair markis, and gaif pair folemne aithes to abyde pairat to pair lyves end; quhair-in thay war bund to die and leue with 3ow, and to tak eafald pairt with 3ow, in all 3our treffonabill courfes, aganis all perfones quhatfumeuir, his Maieftie, our gracious fouerane, nocht being exceptit, nor his royall authoritie fet apairt; committing thairthrow oppin and manifest Treffone. LYK AS 3e, ffor bringing to pas of 3our former Rebellioun and devillifch conclufioun, about ane moneth or pairby paireftir, vnderftanding that þe Schereff and Commiffar war in securitie within the Toun of Kirkwall, nocht expecting ony fuddane perfute, refolveing with 3our felffis to haif þe Schereff in 3our power, either deid or quik, 3e, the faid Robert Stewart, accompaneit with the faid Archibald Murray, Thomas Blak, Andro Mairtene, Alexander Leggat, Thomas Layng, and vperis, 3our rebellious affociattis, to the number of threttie perfones, all bodin with hagbutis, mufcatis, poulder, leid, and all vther weirlyk prouifioun, vpone the xvij day of Julij laft-bypaft, come frome the faid Place of Birsay towardis þe faid Toun of Kirkwall, of intentione to haif affailzeit þe faid Schereff within his ludgeing, and haifing rankit 3our companie at þe Bowa-croce, 3e pair refflaut adverteifment of þe Schereffis being within the Castell; and pairthrow, finding 3our felffis difapointit of 3our expectatioun, 3e pair difcharget 3our volie of mufcattis, and enterit within

<sup>1</sup> Literally, *one-fold*; steadfast; true, &c.    <sup>2</sup> Until.    <sup>3</sup> An ordinary form of military oath, on such occasions; which was borrowed from times of the remotest antiquity.

the Toun, quhair 3e abaid all that nycht, quhill<sup>1</sup> the morne paireftir ; att quhilk tyme 3e, with Patrik Traill, Williame Paterfone, and vtheris 3our affociattis, come to the duelling hous of Bernard Stewart, within the Toun of Kirkwall, about the brek of day, in the moirning, pryfet vp his bak 3et,<sup>2</sup> enterit within his clofe, dang at his hall dur with ane garroun ;<sup>3</sup> and nocht getting entrie, went about pe faid hous to the hall window, quhair efter vp-dinging of pe faid window, the faid Archibald Murray, in gripping of Bernardis hagbute, was hurt be him with ane rapper<sup>4</sup> in the hand. Eftir the quhilk tyme, 3e, haifing reteirit 3our selffis bak agane to Birsay, and finding with 3our selffis that 3our rebellious courfes had tane bot littil or na effect ; 3e, to haif the famyn brocht to ane finall poynt, convenit 3our haill forces togidder, and eftir deliberatioun tane be 3ow, the faid Patrik Halcro, with pe saidis Thomas Blak, Archibald Murray, togidder with tuentie perfones of 3our rebellious number, of pe speciall directioun of 3ow, pe faid Robert, past all, bodin in feir of weir, with muscattis, hagbuttis, poulder, leid, and vther weirlyk furnitour, to the faid Toun of Kirkwall, and pair, vnder nycht, furpryfet and tuik in pe Kirk and Steiple pairof, quhilk 3e furneift with men, munitioun, poulder, bullet, and vper neceffer prouifioun for halding and keiping of the faid Steiple : And vpone pe morne paireftir, 3e, pe faid Robert, vnderftanding of pe guid succes had be Halcro and his companie, in pe wyning and taking in of pe faid Kirk and Steiple, 3e, accompaneit with the faid Thomas Layng, Andro Mairtene, Alex<sup>r</sup> Leggat, and vperis 3our rebellious affociattis, to the number of threfcoir fouldiouris and men of weir, come forwardis to pe faid Toun of Kirkwall, in oppin and arrayit battell, with founding of trumpettis, ftreking of drumis, schuiting of muscatis, in figne of triumph and victorie, and all vper weirlyk advancement ; the faid Patrik Halcro and his affociattis of 3our rebellious troupe being than within the Steiple, schuteing out pairof at all perfones that durft kithe in 3our contrair,<sup>5</sup> and founding vp pair horne to 3ow, for 3our forder incurragement to proceid in 3our treffonabill attemptis. AND being enterit within the faid Toun, maift treffonabillie affaget the faid Castell, and compellit pe Keiperis pairof to rander the famyn, thay being bot of a few number, and nocht able to withftand 3our violent affault ; quhilk being tane in be 3ow, 3e immediatlíe paireftir cuttit the brig<sup>6</sup> pairof for 3our gritter suretie : At quhilk tyme, 3e lykwayis treffonabillie tuik, be force, pe Houfe and Place of pe 3airdis, with the Victuall-hous, and feafit vpone pe haill furnitour of meill, malt, and vther prouifioun for keiping pairof : At quhilk tyme, 3e treffonabillie pat handis in the perfone of pe faid Mr Johnne Fynlafoun, Scheref, being than within pe faid Castell ; as also, come to the duelling hous of the faid Barnard Stewart,

<sup>1</sup> Until.<sup>2</sup> Forced up his back-gate by means of a lever.<sup>3</sup> Beat at his hall or front door with a beam, used as a battering ram, to shatter the door to pieces, or to start it from its hinges.<sup>4</sup> Rapier, ors mall sword.<sup>5</sup> Come forward to take part against you.<sup>6</sup> Drawbridge.



vnder filence and clud of nycht, brak vp his durris, and tuik him violentlie and aganis his will furth of his bed, led him captiue and prissoner to þe said Castell of Kirkwall, quhair he and the said Schereff war keipit in strait firmance and captiuitie be the space of fyve dayis togidder; and þaireftir war cayreit and tranfpoirtit, as captiues and prissoneris, to certane crawis or schipis, to be brocht south to sic places as 3e had appointit; thay being his Maiesteis loyall and faithfull subiectis, doing quhat in þame lay to haif stayit the course of 3our former Rebellioun. THE VERRITIE and trew repoit of the quhilkis 3our tressonabill and detestabill villaneis cuming to the eiris of HIS MAIESTIE and Lordis of his hienes PREVIE COUNSALL of this kingdome, and thay, for the mair spedie staying and repreffing of the saidis enormities, haifing burdenit and imployit GEORGE ERLE OF CAITHNES, as Leutenent and Commiffioner for his Maieftie to pas over with forces to the said cuntrie of Orknay; and for that effect, ane grit number of fouldiouris and men of weir being wadget and listit, vpoun his Maiesteis charges; as also, certane peces of ordinance, poulder, bullet, and vper furnitour for battering of þe saidis strenthis and holdis surpryset and keipit be 3ow; togidder with tua schipis and ane pynnadge, being also frauchtit, alsweill for transpoirting of þe said Leutenant and his companie, with pair furnitour and vther victuallis be sea, as convoying and overtaking of þe said Ordinance, poulder, and bullet towardis the said cuntrie of Orknay, for paciefeing of 3our former Rebellioun, and trubillis raisit be 3ow pairintill: 3e, making littill or na accompt pairof, nor of þe pernicious example gevin be 3ow to vtheris his Maiesteis guid and peceable subiectis, in vtheris pairtis of his dominionis, in plane contempt of his Maieftie and of his royall authoritie, vpone knowlege gevin to 3ow of the said Leutenentis over-cuming, in maner foirsaid; 3e maist tressonabillie convenit and mustherit 3our haille forces and cumpaneis togidder; and for augmenting of 3our number, drew in dyueris of þe cuntrie people, quhilkis war prest and forcet, be 3our tyrannie and oppreffioun, to tak pairt with 3ow in 3our former Rebellioun, making vp in number ane airmie of ffyve hundreth men, airmet for 3our guaird and defence, in so dampnable ane caus. With the quhilk number of airmet fouldiouris, 3e marchet furth in battel array, out of þe said Toun of Kirkwall, towardis the Carnes, dyuerse dayis of þe moneth of August last, of purpois pair to haif withstod and resistit þe said Leutenent and his schipis landing: LYK AS, eftir þe said Leutenent and his cumpanie war landit, 3e, accompaneit with the number aboue writtin, being all bodin in feir of weir, with hagbuttis, muscattis, poulder, leid, ensignes displayit, and founding of drummis, rankit 3our selffis in battell array, at the Baw-feild, ane littil fra the said Toun of Kirkwall, quhair 3e, be schuiting of 3our muscattis, maist tressonabillie maid resistance to the said Leutenent and

his companie, in pair fordward-cuming to the said Toun, thay being cled with his Maiesteis autoritie and Commiffioun to repres your Rebellioun: And vpone the tuentie foure day of þe said moneth of August, *Robert Wynrahame*, ane of his Maiesteis Herauldis,<sup>1</sup> cled with his hienes displayit coit of airmes, accompaneit with Johnne Johnnestoun, trumpetour, Mr Williame Moffet, Gilbert Dundas, and Johnne Moffet, as witnesses, accoirding to the directioun of his Maieftie and Counfall, and of þe said Erle of Caithnes, his Maiesteis Leutenent, being repairing to the Mercat-croce of Kirkwall, thair to haif charget you, in his Maiesteis name and autoritie, be sound of trumpet, to haif randerit the said Castell, Place of the Zairdis, Kirk, and Steiple, and vtheris houffis and strenthes keipit and haldin be you and your rebellious associattis, ze, and your airmet souldiouris and men of weir, nocht only tressonabillie stayit and maid resistance to the said Robert Wynrahame, his Maiesteis Herauld, in nocht suffering him to repair to þe said Croce, for discharge of his Message, bot maist presumptiouflie pat violent handis on his persone, tuik him, with the said trumpetour and witnesses, as captiues and prissoneris, and cayreit him to the said Place of þe Zairdis, quhair thay war keipit and detenit be you as prissoneris be þe space of nyne houris, or pairby, ane pairt of þe said Herauldis coit was revin; and efter delyuerie of the said charge be him to you, þe said Robert Stewart, for randerin of the saidis Houffis, his Maiesteis letteris and charges was tane be you frome him, quhilkis ar keipit be you as zit: And nochtwithstanding pairof, þe saidis Houffis and Castell was maist tressonabillie keipit and haldin be you. VPOUN the fordward-cuming of the quhilk Leutenent, with his forces, towardis the said Toun, ze finding your selfis vnhabill<sup>2</sup> to keip the feildis, or to hald him out of the Toun, ze maid your flicht and retreit to þe saidis Kirk and steiple, and to the said Castell and Place of the Zairdis: And dyuerse schotes of ordinance being schote at þe said Castell, Steiple, and vperis Houffis fortfeit and keipit be you, with dyuerse messages send to you for þe peceable overgeving pairof, ze neurpeles maist rebelliouffie dissobeyit the saidis messages and charges, and tressonabillie schote furthe agane at the said Leutenent and his companie, and slew with the saidis schottis, Williame Irwing, lauchfull sone to vmq<sup>1e</sup> Williame Irwing of Saba,<sup>3</sup> James Richesoun, Andro Adamesoun, William Robertfoun; and hurt and woundit James Kneiland, Andro Purves, Williame Flemyng, and Alexander Sudderland, thay being his Maiesteis servandis and faithfull subiectis, than in seruice with the said Leutenent; tressonabillie keipit and held the said Steiple the space of fourtie aucht houris paireftir, or pairby; and held and keipit the said Castell be the space of ffyve oulkis, or pairby; nochtwithstanding of sevin scoir schote of ordinance schote pairat, and that ane grit pairt pairof was

<sup>1</sup> He was 'Yla' or Islay Herald.<sup>2</sup> Lat. *inhabilis*.<sup>3</sup> Elsewhere called of Cava.



batterit and dung down with the force of the said cannoun. OFF THE QUHILKIS Treffonabill crymes aboue writtin, viz. the Treffonable dissobeying of the chairge gevin be þe said Schereff, in his Maiesteis name and authoritie, ffor randeriing of the said House and Palice of Birsay, eftir þe intaking pairof; the Treffonable convocatioun and raiseing of men of weir, and mustering of thame in airmes, to be number foirsaid, and cuming fordwardis with a pairt of thame in battell-array to be said Bowa-croce, for the slauchter of the said Schereff; the Treffonabill forgeing, making, and subscryveing of the foirsaid Band, for taking pairt with the said Robert, in his former treffonabill courses; and causeing the subscryveris, and vperis pair aideris and affisteris, be solemne aithes, to fueir to die and leve with him, aganis all maner of persones, his Maiestie our sacred fuerane nocht being exceptit; the Treffonabill taking and surprising of þe said Castell of Kirk-wall, Kirk, and Steiple pairof, Place of the 3airdis, and vtheris houffis, mannit and keipit as said is; the Treffonabill taking of þe said Mr Johnne Fynlasoun, Schereff, and Barnard Stewart, captiues and prissoneris, being his Maiesteis frie and faithfull subiectis; the Treffonable resisting of the said Erle of Caithnes, his Maiesteis Leutennent and Commiissioner, in vseing of his said Commiissionne, with his cumpanie and men of weir, and slauchter of his Maiesteis faithfull subiectis, being in his Maiesteis seruice; and beiring out of the said assault maid be the said Leutennent, to the saidis Castell, Kirk, and Steiple; the Treffonabill taking of þe said Robert Winrahame, his Maiesteis Herauld, being directit be his Maiesteie and Counfall, with his Maiesteis displayit coit of airmes, to charge the said Robert and his companie, to rander the saidis Houffis and strenthis, be vertew of his Maiesteis Letteris direct for þat effect; and Treffonabill dissobeying of the said charge, and taking of the letteris and charges fra þe said Herauld, and keiping pairof, in maner foirsaid; 3e, the said Robert Stewart, Andro Mairtene, Thomas Blak, Archibald Murray, Alexander Legget, and Thomas Layng, and ilk ane of 3ow, ar airt, pairt, red (*advice*), and counsell; att the leift, of ane or vther of the saidis Treffonabill crymes, committit be 3ow and 3our rebellious affociattis aboue writtin; off the special causeing, sending, hounding out, airt, pairt, counsell and devyse of the said PATRIK, lait ERLE OF ORKNAY; quhilk is notourlie knawin. LYK AS, 3e haif Confessit the samyn, be 3our Depositiones.—FOR the quhilkis 3e aucht and fould be pwneist and denuncet as Tratouris; to þe terrour and exampill of vperis to attempt the lyk Rebellioun heireftir.

MY LORD ADUOCAT producet ane WARRANT of the Counsell, direct to his Lordschip, anent the formeing of the Dittay aganes the persones on pannell, and thair perfute for the crymes contenit in the Depositiones; quhilk Warrant is daitit the 28 December, 1614. My Lord Justice and Justice Clerk producet, also, ane Warrant, direct be the Counfall to thair Lordschipis, for halding of Court,

and miniftrating of Juftice vpon the perfones on pannell. My lord Aduocat producet the Dittay ; and conforme to the Counfallis Warrant, and for obedience thairrof, declairit, he was reddie to infift in the pannellis perfute, for the crymes thairin contenit ; and thairupon askit instrumentis.

The pannell being askit, Gif thai had ony prelocutouris for thame to defend ; or gif thay had ony thing to allege, quhy the Dittay producet be my lord Aduocat fould nocht pas to the knowlege of ane Affyfe ? For anfuer thairto, Robert Stewart declairit, that thai wald vfe na prelocutouris, bot God, in this matter.

ASSISA.

Mr Robert Henderfoun of North Rannaldfay,	Andro Anderfoun, alfo his fervand,	William Sinclair of Tullope,
Eduard Scola, fumtyme Scheref of Orknay,	Henri Sinclair, alfo his fervand,	Andro Purves, indueller in Edr,
George Mowat of Sewnane,	James Hammiltoun, wrycht,	William Robiefoun, thair,
James Irwing, fervand to my lord (Erle of Cathnes),	James Workman, paynter, burges of Edinburgh,	Clement Kincaid, thair,
	Johnne Quhyte, wricht, burges of the Cannogait,	George Redik of . . . . .,
		Robert Keith, mercheand burges of Edinburgh.

It is allegit be Thomas Layng, ane of the perfones on pannell, that George Mowat, James Irwing, (and) Andro Anderfoun ar fervandis to my lord of Caithnes ; and thairfoir, hai nor nane of his lordfchipis fervandis can pas vpon the pannellis Affyfe ; in respect, that the faid Erle and his fervandis war perfewaris of the pannell within the Toun of Kirkwall, Kirk, Steiple, and Castell thairrof ; and thay war tane and apprehendit be him (the Erle), and (thay) behavet thame felfis as pairtie, in thair perfute of thair lyves.—It is anfuerit be my lord Aduocat, that the allegiance aucht to be repellit ; in respect my lord of Caithnes and his fervandis had na particular<sup>1</sup> of his awin aganis the pannell ; bot only was imployit as Commiffioner and Leutenent for his Maieftie to pas to Orknay, and thair, in his Maiefteis name and authoritie, to apprehend the perfones on pannell, for thair Rebellioun, and halding and furpryfeing of his Maiefteis Castellis and Houffis thair : ffor how fall the pannellis giltines of the crymes contenit in thair Dittay be tryit,<sup>2</sup> bot be fic as beft knawis the verritie of the factis mentionat thairintill ? And thairfoir, nochtwithftanding of the faid allegiance maid aganis the Erle of Caithnes fervandis, they aucht to be admittit vpon this Affyfe.<sup>3</sup>

THE JUSTICE Admittis THE ERLE OF CAITHNES *fervandis* vponne the Affyfe, nochtwithftanding of the allegiance ; and that, in respect of my lord Aduocatis anfuer maid thairto.

<sup>1</sup> Quarrel ; feud.

<sup>2</sup> Proved ; established.

This forcibly illustrates the remarks which have frequently been made, in various parts of this work, regarding the anomalous character of a Jurymen ; who was generally selected, as personally knowing the facts of the case ; and was therefore considered as best qualified to return a true verdict, being in fact a witness in the Trial ; and accordingly, deciding on his previous knowledge, whereby he was liable to be biassed by his prejudices.



[PRIVILEGE of his Majesty's Servants in THE CASTLE OF EDINBURGH, as being exempted from passing upon Assyses.]

James Hammiltoune, wricht, and James Workman, ffor thame selffis, and in name of the remanent ordiner servandis of his Maiesteis CASTELL OF EDINBURGH, summond to pas vpone this Assyse, declairit, in respect thai war ordiner servandis to his Maiestie within the said Castell, and thairfoir war, be the Law and daylie practik, exemit<sup>1</sup> fra all maner of Assyses, desyret, according to thair privilege, thay fould nocht pas vpone this Assyse.—My Lord Aduocat declairit, that thair passing vpone this Assyse fould nawayis preiudge thame of thair Privilege: And thairfoir, seing this persute is a matter that concernis his Maiestie him selff, for Rebellioun committit aganis his royall authoritie, he thairfoir desyret my Lord Justice, that thai fould be admittit vpone the said Assyse, vnder protestatioun, that thair Privilege be nawayis hurt or preiudget heireftir.

QUHILK Protestatioun maid be my Lord Aduocat, in fauouris of the ordiner servandis of the Castell, the Justice Admittis; and Ordanis thame to be Assyfouris at this tyme, but<sup>2</sup> preiudice of thair Privilege.

My Lord Aduocat takis instrumentis of the fweiring of the Assyse; and eftir reiding of the Dittay, and the pannellis accusatioun, be vertew thairof, of the tressonabill crymes mentionet thairintill; ffor verificatioun thairof, producet my lord of Caithnes Commiffioun of Leutenendrie, grantit to him, to the effect thairin contenit, of the dait the saxt day of August, 1614 last; the pannellis haill Depositiones, maid be thame in presens of the lordis of his hienes Previe Counsell; and thair Confessiones, mentionet thairintill; togidder with Robert Wyne-rahame, Herauld, his Executioun<sup>3</sup> and deforcement, with the forme and maner thairof, at lenth insert in the said Executioun, subseryuit and stampit be him; all ratifeit and approvin (be his grit aith Judicialle tane be the Justice) to be of verritie, in presens of the pannell: Quhilk Declaratioun his lordschip repeitis to the Assyse, with the Judicial Confessioun maid in thair presens be the said *Robert (Stewart)*, of his giltines of the haill Dittay; and be *Andro Martene*, of the wryting of the Band, and being within the Castell with Robert the tyme of the Assault maid thairto be my Lord of Caithnes; the Judicial Confessioun maid be *Thomas Blak*, of his taking and halding of the Steiple; the Judicial Confessioun maid be *Archibald Murray*, of his being in the said Steiple, and cuming with Robert to the Castell, at the intaking thairof, and cutting of the brig; the Judicial Confessioun maid be *Thomas Layng*, of his being with Thomas Blak

<sup>1</sup> *Exeemed*, exempted.

<sup>2</sup> Without.

<sup>3</sup> An official attestation by Heralds and Messengers-at-arms, that they had *executed* the duty entrusted to them. After the rough usage of Islay Herald, already related, and his subsequent '*Execution*,' it is startling enough to the mere English reader, to be informed of his appearance before the Justice, and his making oath, and so forth.

and Patrik Halcro, at the taking of the Steiple; and the Judicial Confessioun maid be *Alexander Legget*, of his keeping of the Houfe of the Zairdis vnder the said Robert and his companeis aganis the Leutenent: And in respect of the premisses, protestis for Wilfull Errour aganis the Assyse, gif thai Acquit.

ROBERT STEWART offeris him selff in his Maiesteis will, ffor the haill crymes contenit in his Dittay.—ARCHIBALD MURRAY offeris him self in his Maiesteis will, ffor being in cumpany with Robert, at the cutting of the brig of the Castell, eftir surpryfyng thairof.

#### SPECIAL VERDICT of the Assyse.

THE ASSYSE, all in ane voce, be pe mouth of pe said Mr Robert Henderfoun, chancellor, ffand, pronuncet, and declairit the foirnamet perfonen on pannell to be GILTIE and convict of the perticuler crymes following, to wit: THE said *Robert Stewart*, bafe sone to pe said Patrick, lait Erle of Orknay, to be Giltie, culpable, and convict of the tressonabill disobeying of the charge gevin be pe said Mr Johnne Fynlafone, Schereff Depute, in his Maiesteis name and autoritie, for randeriing of pe Hous of Birsay, eftir his craftie taking and surpryfyng thairof: OFF the tressonabill convocating and raseiing of men of weir, and mustering of thame in airmes, to the number of nyne scoir perfonen, and cumiing fordwardis with a pairt of thame, in battell aray, to the Bowa-croce, of intencion to haif slane the Schereff: OFF the tressonabill fforgeiing, making, and subscryueing of ane Band, for taking pairt with the said Robert in all his tressonabill courfes, and in causeiing the subscryueris and vtheris pair aideris and assisteris, be pair solemne aithes to fucir to die and leve with him aganis all maner of perfonen, his Maiestie our sacred souerane nocht being exceptit: OFF the tressonabill taking and surpryfyng of pe said Castell of Kirkwall, Kirk and Steiple of pe said Toun, with the Place of the Zairdis, and vtheris Houffis pertening to his Maiestie within the said Toun: OFF airt and pairt of pe tressonable taking of pe said Mr Johnne Fynlafoun, Shereff depute, and of Barnard Stewart, captiues and prissoneris, thay being his Maiesteis frie and faithfull subiectis: OFF the tressonable resistiing of pe Erle of Caithnes, his Maiesteis Leutenent and Commiissioner, with his companie of men of weir, in executioun of his Commiission; and of the slauchter of dyuerse of his Maiesteis faithfull subiectis, being in his Maiesteis seruice with the said Leutenent. AND in the tressonabill beiriing out of pe said Assault maid be the Leutenent aganis pe Steiple, Castell, and vtheris strenthis keipit be him within the said Toun of Kirkwall: OFF airt, pairt, red, and counsell of the tressonable taking of Robert Wynrahame his Maiesteis Herauld, cled with his Maiesteis coit of airmes, being directit be his Maiestie and Counsell to charge pe said Robert Stewart and his rebellious associatis to rander pe saidis Houffis and strenthis, be vertew of his Maiesteis Letteris to that effect: AND of the tressonabill disobeying of the charges, and taking fra the said Herauld of his Maiesteis Letteris and charges, and keepiing pairof, in maner specifeit in his Dittay: AND that, conforme to pe said Robert and his complices Depositiones; and of his Judiciall acknowledgment of his giltines of pe saidis crymes, and of his Judiciall offer of becomiing in his Maiesteis Will, as giltie and culpable pairof. THE said *Thomas Blak, alias Douglas*, to be ffylet, culpable, and convict of the tressonable surpryfyng and taking in of the said Kirk and Steiple of Kirkwall, and haldiing the samyn aganis pe Erle of Caithnes, his Maiesteis Leutenent: AND for cumiing fordwardis with pe said Robert Stewart, in oppin and arrayit battell, aganis pe Leutenent at pe Baw-ley; and withstanding of him and his companie, a littill after his landing, and repairiing towardis the Toun of Kirkwall for discharge of his Commiission: AND for the tressonabill assistiing of pe said Robert Stewart, in all his tressonabill interpryfes aganis pe said Leutenent and his companie, fra his intakiing of pe said Kirk and Steiple, to pe tyme of pe randeriing pairof to pe said Leutenent. THE said *Archibald Murray*, to be Giltie and convict of the tressonabill plotting, and being vpon the counsell with the said Robert Stewart, within the Palice of Birsay, of pe taking and surpryfyng of pe



Kirk and Steiple, and of pe said Castell; and paireftir, accoirding pairto, ffor pe tressonabill cuming with Patrik Halcro, Thomas Blak, and vtheris, and taking and furpryfeing of the said Steiple: AND in the tressonabill affisting of pe said Robert in taking and furpryfeing of the said Castell, and cuting of pe brig pairof, eftir pai war maisteris of pe same: AND of the tressonabill keiping of pe Houfe and Palice of Birfay vnder Robert, as Maister pairof, to the tyme he was charget be the Leutenent to rander the samyn. THE said *Andro Martene*, to be Giltie and convict of the tressonabill making of pe Band specifeit in the Dittay, and devyfeing pairof: AND of his tressonabill being within the said Castell with Robert, and halding pairof aganis the Leutenent: AND of airt, pairt, red, and counfall with pe said Robert Stewart, in his haill Rebellioun in Orknay, in maner contenit in his Dittay. THE said *Thomas Layng*, to be Giltie, culpable, and convict of his tressonabill being in companie with Robert at his cuming with displayit benner, in battell aray, to the Bowa-croce, of intentioun to haif slane pe Schereff: AND of the tressonabill taking and suppryfeing of pe Kirk and Steiple of Kirkwall: AND of his tressonabill being in company with Robert, at his cuming with ffyve hundreth men in airmes to the Baw-Ley, aganis the Leutenent: AND for his cuming bak to the Place of the Zairdis, and remaning pair with Robert till a littill befoir pe randering of the Hous pairof; conforme to his Depositiones. AND the said *Alexander Legget*, to be Giltie, culpable, and convict of the tressonabill affisting and being in companie with the said Robert, with displayit benner, at pe Bowa-croce: AND for being in companie with Robert, and affisting him aganis the Leutenent, in keiping of pe Houfe and Place of pe Zairdis: AND for the tressonable affisting and taking pairt with the said Robert, and being in companie with him at the Carnes, in resisting pe Leutenent pair; conforme to his Deposition.

Vpone the quhilk determinatioun of the said Affyse, my lord Aduocat askit instrumentis.

SENTENCE. In regaird of the quhilk convictioun, my Lord JUSTICE, be the mouth of Johnne Dow, dempster of Court, Ordanit the saidis persones on pannell to be tane to the Mercat-croce of Edinburgh, and thair to be Hangit vpon ane gibbet, quhill thay be deid: And all thair landis, heritages, takis, fteidingis, rowmes, possessiones, guidis and geir to be fforfalt and escheit to his hienes vse, as Giltie and Convict of the saidis tressonabill crymes.

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## APPENDIX OF ORIGINAL DOCUMENTS,

### ILLUSTRATIVE OF THE TRIAL OF ROBERT STEWART AND OTHERS.

#### I. MINUTES OF THE PROCEEDINGS OF THE PRIVY COUNCIL OF SCOTLAND.

(1.) Jan. 14, 1614.—ROBERT STEWART, bafe sone to THE ERLE OF ORKNAY, being brocht befoir THE COUNSELL, for giveing of furtie not to repair to these boundis, without HIS MATIES Licence; THE BISCHOP OF ORKNAY hes gevin his word and promise for him; and the Counsell hes tane his awin aithe and promise, that he fall not repair to the saidis boundis. And this courfe is tane be the Bifchopis advyse and speciall procurement.

(2.) Jun. 28, 1614.—THE ERLE OF ORKNAYIS bafe sone having latlie gone to Orkney, aganis his faith and promise maid to the Counfall in the contrair; and he having tane with him some souldiouris, and surpryft the *Place of Birfwall* (Birfay) in Orkney, THE COUNSALL, vpoun the first informatioun maid to thame thair of, directed charges aganis him for randering of the Houfe; and with that, thair wes ane Proclamatioun direct, prohibiting all his Maties subiectis to supplie him with onie neces-

fairis, or to mak payment to him of ony of the dewtyis of *Orkney* or *Zelland*. The chairges for rander of the Houfe being execute aganis him, he immediatlie caufes found his trumpet vpoun the heid of the Houfe, and difchairges xxx or xl fchote of mufcat at the Officer and witneffes, as wes this day affirmit in prefens of the Counfall be *Sir James Stewart of Killith*.<sup>1</sup> Whairvpoun THE COUNSALL has exped ane Commiffione to him, in ample forme, for perfute and affadging of the Houfe, with all kynd of force and wearlyk ingyne.

(3.) Jul. 28, 1614.—THE ERLE OF ORKNAY his bafe fone, accompanyed with three or four fcore of perfones, doeth yett contine there foolifche courfes in Orknay, and still keeps *the Houfe of Birfay*. There hes beene fome conference in THE COUNSALL anent the fuppreffing of his infolenceis; and it is thocht be the moft parte of the Counfale, that *Sir James Stewart*, in refpect he is Schiref, Judge, and Chalmerlane of the countrey, fhould be employed in that bufynes. The queftion ftandes anent the forme, how *Sir James* fhall go there, and how he fhallbe accompanied? Some ar of oppinion that the forces of the countrey ar fufficient to fuppres this REBELLION, althoght the authoures wer ten tymes mo in number. Otheres ar of oppinion, that it is hard for *Sir James Stewarte* to hazard him felf with the countrey people; and that it is expedient that he have three fcore men, vnder wages, to attend vpon him. THE COUNSALE, at there nixt meeting, ar to tak fome courfe in this bufynes.

(4.) Jul. 29, 1614.—SENCE the wrytting of the Notes aboue written, there is fure aduerteifment come from ORKNAY, that the faide Erle his bafe fone hes fuppryfed *the Churche and Steple of Kirkwall*, and the *Girnell-houfe*, (whiche ar places of gryte ftrength,) and that *the Scheref-depute* hes reteered him felf to *the Caftle*, where he is inclofed be *the Bafarde*; and that there is a publick and oppen REBELLION profefled and avowed in that countrey. THE COUNSALE, beeing enformed heerof, this morning airtie (the 29 of this instant) thay conveened in the Over Counfale-hous; and *Sir James Stewart* beeing at lengthe hard anent his refolution and purpofe in this bufynes, he hes vnder-tane to go there in perfone, and to adventur and hazard his owne lyff in the fuppreffing of this REBELLION. He hes gotten a Commiffioun to tak vp fyve hundrethe men, vnder wages, and he is verie bufye to amaffe this companyee togidder, at the leaft fa mony as vpon the fuddane he may gett; and both be found of trumpett and ftryking of drwm, warning is geven to all fuche as will ferue to adreaffe thame felves to him, to inroll there names and refaue there pay. He is of oppinion that within three or four dayes he fhall have iij<sup>c</sup> fhouldiours in reddynes, whome he entendes to fend away be fea with the firft occafion. He is to go him felue, be land, accompanyed with fuch voluntares of his kin, frendfhip, and acquaintance, as he may enduce to go with him; of whome he is of opinion to mak vp a companyee of three or four hundrethe men. *The Lord Lovat* hes promefed him the affiftance of two or three hundreth hable footemen, well furnifhed in all thinges neceffar. There is a ample Commiffion of Lieutennandrie and Iufticiarie exped vnto him, for the perfute of the lymmaris, with fyre and fworde. PROCLAMATIONES ar exped againes all betweene sextie and faxteine yeeres, within the boundes off *Caithnes*, *Sutherland*, and *Orknay*, to go fordward with *Sir James*, and to affift him in this fervice; and a other Proclamatione, prohibiteing the refatt, fupplee, or furnifheing of thir Rebelles with ony thing comfortable or neceffar vnto thame; with a promefe of pardoun to fuche of thir Rebelles (who ar not cheef), that will leave *the Bafard*, addrefse thame felues to *Sir James*, and do fervice worthie of favour.

All fchippes and vefhelles bowne to *Orknay* ar ftayed, till *Sir James* and his company be imbarcked and away.

*Sir James* will, God willing, have his whole forces togidder to fett fordwart, him felf be land, and his footemen be fea, within fyve or fax dayes; and aduerteifment fhallbe fra tyme to tyme fend vpe, of the progres of his proceedinges, and of his fucceffe in his fervice.

<sup>1</sup> Afterwards Lord Ochiltree.



(5.) Jul. 7, 1614.—INFORMATION being maid to sume of THE COUNSALL, that ane poist-boy was cum frome *Orkney* with Lettres to the lait ERLE OF ORKNEY, and that he was to returne agane with ane answere to theis Lettres, directioun was gevin for the seircheing of him: Lyikas, he was apprehendit vpoun the fyft of this instant within this Burgh, and producet befor *the Counsall*, with ane number of Letteris, the most pairt of thame direct to *Caitnes* men. Becaus the poist-boy was to go towardis *Orkney*, that way, he was verie straitlie examinat vpoun many particularis; whois DEPOSITION, with the copie of that Letter send be *the Erle* to his sone *Robert*,<sup>1</sup> is heir incloist, imediatlie vpoun his examinatioun. Thrie of *the Gaird* was directed to *Dumbartane* to mak seirche for *the Erle* his wryttis; and to bring frome thence one *Scharp*, *the Erle* his servand, by whome his Letteris is writtin. They departed frome this Burgh upoun Twysday the fyft of this instant, about ten of the klok at night, and come to *the Castell of Dumbartane* the morne thairefter, about fyve of the klok in the efternone, bot could not have entrie; being answereit be sum servandis from the wall-heid, that *the Constabill* was in *Edinburgh*, and that one *Robert Knok*, wha had the chairge of the Hous vnder *the Constabill*, was in *the Toun of Dumbartane*; and whill his return the zettis could not be opined. *The Gaird*, vpoun this refusall, going to *the Toun*, they forgadered,<sup>2</sup> in the mid-way betuix *the Castell* and *the Toun*, with the said *Robert Knok*; vnto whome they haveing impaired thair Commissioun and warrand, he tauld thame plainlie, that thair was no entrie to be had, that night, within *the Castell*; and appoynted thame the morne, at awght of the klok. They haveing preceissie keipit that tyme, and come to *the Castell-zett*, thair was many idill ceremonies vsed, befor they could haue entrie; and at last, being ressaueid within the Castell, *Sharp* was amissing, and had eskaiped; and seirche being maid for the Letteris and wryttes, thair was ane number of comptis and wryttes gottin, bot serving nothing to the purpois.

Thair is an ampill COMMISSION past and exped to *Sir James Stewart, Shereff of Orkney*, and his deputtis, for the persute and assaideing of *the House of Birsay*, with fyre and sword, and for apprehending *Robert Stewart*, and exhibitioun of him befor THE COUNSALL.

(6.) Aug. 3, 1614.—COMMISSIONIS being past and expeid to *Sir James Stewart of Killeith*, for suppressing of THE REBELLIONE IN ORKNEY; and he being in the preparatioune of his forces to haue gone thair for that eirand; and promise being maid to him, be *the Lord Lovatt*, of sum thrie or four hundrethe *Hiland-menne*, to haue assisted him in that seruice; sum Gentlemen of the Cuntrey of *Orkney*, being heir, and feiring that suche a number of peple as wald accompany *Sir James* wald be a greit burdyn to the pure cuntrey, and that they wald appease the cuntrey people at thair pleasure, they thairfore delt with *Robert Monteith of Egleschaw* to mak ane ouerture to THE COUNSALL, for doing of this seruice, with les chairges to HIS MA<sup>TIE</sup> and greittare ease to the cuntrey nor possiblie could be done be *Sir James*. ROBERT MONTEITH being admittit to audience, he hes offerit and vndertane, in respect of the freindschipe and assurance whilk he will find in the cuntrey, to do this seruice, with the supplie of threescore souldiouris allanerlie,<sup>3</sup> and ane *Herald* and *Trumpett*, at HIS MA<sup>TIES</sup> charges, with ane ship to transport, he hes vndertane to recover the haill Houses and strenthes tane and hauldin in that cuntrey aganis HIS MA<sup>TIE</sup>; and outhere to apprehend the Rebellis, or then to put theme of the cuntrey: He hes vndertane, yf ony Houses or strenthes be assadged, to raise the seage within forty-aucht houris astir his cumming in the cuntrey. And for the performance of thir his OFFERIS, he hes offered *the Erle of Caithnes* and *James Sincler of Murchill* cautionouris.

*Sir James Stewart* being hard vpoun the Offeris maid be *Robert Monteith*, he hes willinglie aggreet that the chairge of the seruice be committit vnto him. Whilk accordinglie is done; and he is to imbarke with his forces betuix and the tent of this instant; and he hes presentlie send away sum of the Gentlemen of the cuntrey, to haue the haill cuntrey in reddines to attend<sup>4</sup> his landing.

<sup>1</sup> See this Appendix, No. (20.)

<sup>2</sup> Rencountered; met with.

<sup>3</sup> Only.

<sup>4</sup> Await.

(7.) Aug. 24, 1614.—THE EARLE OF CAITHNES,<sup>1</sup> with two shippes well provyded with all warrelyk prouision, made faile towardes ORKNAY, vpon the xx of this instant, haveing the wynd verie fauorable; and it is looked that he wes in *Orknay* vpon the 22 of this instant, in the morning. How fone ony aduerteisment shall come from him, or ony otheres in that countrey, HIS MAIESTIE shall gett notice thereof, with all convenient diligence.

(8.) Oct. 5, 1614.—DIRECTION is geven to the Captane of the Guardes, to fend tuelf of his company to Dumbartane, and to bring frome thence, to this burgh, THE EARLE OF ORKNAY. And direction is gevin to the Shiref of Dumbartane to assit the convoy of the Earle from Dunbartane to the Falkirk, where the Shireff of Linlithgow is to receane him, and to mak his convoy frome thence to this burgh.

(9.) Nov. 17, 1614.—THE ERLE OF CAITHNES, having left THE LAIRD OF RATTER, his brother, as depute for him, in the Officeis of JUSTICIARIE and SHEREFSHIP of ORKNAY; and having gevin directionn to him to demolishe the *Castell of Kirkwall*, conforme to the Warrant of the *Counfall* send to him for that effect, the said *Laird of Ratter*, by his Petitioun, gevin in this day to THE COUNSALL, meanit him self,<sup>2</sup> that he wes a Gentleman of small moyene,<sup>3</sup> having nouthur landis nor rentis in *Orknay*; and that his remaining thair vnder the burdeyne and charge of the saidis Officeis, wald draw him, in shorte tyme, to spend all his rentes, to his greit hurt and inconvenient; besydes the neglect of his awin affaires and busynes, at home. And thairfoir, his desyre was, that he might vnderstand, vpoun what conditione he sould remaue in that cuntray, and vpoun whose chargeis and expensfis the Houfe sould be dimolished? His Petitioun being hard and deulie confiderit, THE LORDES hes allowit vnto him ane hundreth markes monethlie, dureing his aboade in that countrey, for his charges and expensfis. And tutching the dimoleifching of the Houfe, thay haue ordanit him to do the turne, and the expensfis that he fall bestow thairvpone, according as the same salbe verified and testified be the *Bishop of Orknay*, vnder his hand, salbe repayit vnto him be the *Thefourare Depute*.<sup>4</sup> And whereas, the remaining of the *Laird of Ratter* in that countrey, wilbe chargeable to HIS MAIESTIE, the countrey being now reasonable weele satled, without appeirance of ony new commotioun or trouble; thairfoir, his Maieftie wold be pleasit to resolue vpone some course, anent the Gouvernament of that cuntray, and whom his Maieftie will putt in the trust of that charge; to the effect that, vpoun the significatioun of his Maiefties pleasour thairanent, the *Counfall* may tak ordour, and gif directioun thairin accordinglie.

## II. DISPATCHES FROM THE EARL OF CAITHNESS, &c. TO THE KING AND SECRETARY OF STATE,<sup>5</sup> &c.

(10.) LETTER, the *Earl of Caithness* to Lord Binning. (Aug. 25, 1614.)<sup>6</sup>

RIGHT HONORABIL MY VERIE GOODE LORD,

PLEIS your lo. We arryved at Castell Sincleir vpoun the 22 of this instant; whair I stayit that night, and aduerteifed the Caithnes men to be reddie to follow me to Orknay, when I suld command theme. I imbarcked with me about threttie of theme, and cam to Selwik, within tuo myles to Kirkwall, vpoun the 23, about sex eftir none.

The 24 I sent the Herald with Notairis, Messingeris, and Witnesfes to mak proclamatioun at Kirk-

<sup>1</sup> The procrastinating conduct and vacillation of THE PRIVY COUNCIL, in a matter which bore such a formidable aspect at its commencement, says very little for their ability or zeal, in the discharge of their important trust. The only apology which can be framed for them, is the circumstance of their subserviency to THE KING, who was resident at so great a distance, and without whose fiat they dared not take any important step.

<sup>2</sup> Made supplication and complaint; humbly remonstrated. <sup>3</sup> Means; fortune. From Fr. *moyen*. <sup>4</sup> In the Books of the Accounts of the Lord High Treasurer of Scotland, Gen. Register House, the following entry occurs, under date April, 1615. 'IREM, to ane Poist passand to Edr. to my Lord Chancellor, at Dunfermling, to subscriyve ane Commissioun for Walter Richie, for demolishing of THE CASTELL OF KIRK WALL, xxliij s.'

<sup>5</sup> Thomas Lord Binning, afterwards Earl of Melrose, &c.; which last title he afterwards exchanged for the Earldom of Haddington. <sup>6</sup> From the Original in the *Dennymyne Coll.* of MSS. Adv. Library.



wall; who wes presentlie taikin, as he entered the Towne, most iniuriouſlie and diſpytfullie abuſed, bothe in word and deid; the Letters taikin frome him be Robert; and him ſelf, with ane Miniſter, and all otheris that accompanied him, keipit in diuerſe houſes, all that day, till the evening; to whiche they, the ſame day, did ad this alſo, that to the number of thrie hundreth menne, with diſplayed enſigne, did fort<sup>1</sup> out of the Towne, and maid prouocatione to me, whair I lay vpoun the ſhip-board. For that the Proclamations (were) thus impedit, I wes forced vpoun the 25 to wreitt diuerſe Letteres, and ſend throuche the cuntrey, to aduerteis and command the Gentlemen and vtheris to reſort to me; in whome, for the moſt pairt, I did not find that reddie willingnes whiche I expected; ſo that I wes forcit to ſend to Caithnes, for ſupplie of my owne menne; who, cuming to me vpoun the 26, and having then aſſembled about two hundreth of the cuntrey menne, we tuik land; and at the ſame tyme, about ten houris, we landit the battering peice with hir careage, whiche, by great force of men, and ſome difficulties throuche the deipnes of the ſoyll, wes presentlie, and with all poſſibill diligence, drawin neir tuo myles, towardis the Towne; and the ſame day, about thrie aſtirnone, planted at Weyland, within ane half quarter of myle to the Caſtell. We merched in good ordour, with colouris diſplayed; and as we approached, the Rebellis ſorted out,<sup>1</sup> boasting that they wold fight with ws, thought we had bein tuentie to one; and having their Ordinance in reddines to haue played vpoun ws from the Caſtell, Stepill, and Tour of the Zeardis, and diſchairgeing one or tuo of the ſame againſt ws, ſo ſoone as we cam vnder their fight, I commandit the Cannoners<sup>2</sup> to ſhute at the Caſtell; who did their pairt ſo weill, that be the ſecund ſchott one of the turrettis vpone the heade of the Houſe wes pearſed and almoſt beaten down, to the great terrour of the Traitoris; and other thrie being ſhott, one aſtir another, did all hit, bot not hurt ſo muche.

In the meantyme the Rebellis being provoking and braking ws vpoun the Ball-ley, to the number of ſex ſcoir men, our Captanes and ſouldiouris went directlie, and with goode courage, toward theme—and without ony reſiſtance or hurt did compel theme to retreat ſchamefullie. In whiche flight, about fyve of preſſed poore menne of the cuntrey did abandon theme.

The Captanes, ſouldiouris, and Gentlemen of the cuntrey, with thair menne, did presentlie follow theme at their heillis, entered the towne the ſame night about ſex houris, incloſed theme in their holdis, and now poſſeſſes the Towne. That night I ludged about the Ordinance, and guairdit it and our ſelfis with the reſt of our menne.

This day we ar buſie about the landing of the great Peice of Ordinance, that we may batter bothe the Caſtell and the other Houſes, which annoyes ws and our men in the Towne; and mak our ſeruice the ſchorter.

The Rebellis ar moſt obſtinate, and maliciouſlie reſolued to hold out to the deathe, thought I have ſent Miniſteris and their owne freindis to inſtruct, admoniſh, and threattin theme.

Their is heir no bread, nor drink, nor vther victuallis to be had for pryce, prayer, or command; ſo that I muſt ather ſeik preſent releif of ſome victuall from Caithnes, or ſuffer the ſouldiouris to ſtarue for want. And if they ſall endure and continew in thair obſtinacie, as they haue wowed to do, thair will not be powder, leid, billettis, nor matche to ſerue for this ſeruice; in the which I ſie great dangeris, and manie more difficulties then I culd ſoiriſe.

In reſpect whair of, I will intreat your goode lo. to acquent my Lord Theſaurer and remanent Counſallouris; and with all cair and diligence prouyde, betyme, that money, powder, pillettis, and chieflie ſum reaſonabill quantitie of victuall, whiche can not be had heir, may be ſent to be diſpenſed and ſold to the ſouldiouris and vtheris that haue neid, vpoun reaſonabill pryce; whairby our great neceſſities may be ſupplied, with litle or no hurt to his Ma<sup>ties</sup> money.

As thingis fallis out, ſo ſall your lo. be aduerteiſed from tyme to tyme. And now, after the trew

<sup>1</sup> Fr. made a *sortie*.

<sup>2</sup> Artillery-men.

narratione of our proceedingis and present estaitt, I refer the consideratione and cair of all to your lo.  
wisdome, and fall euer rest,

Your lo. euer to be commanded,

CAITHNES.

To the right honorabill my verie goode lord, MY LORD OF BINNING, his  
Maiesteis SECRETARE OF SCOTLAND.

(11.) *The Erll of Caithnes LETTER to my Lord Thesaurar Depute.*<sup>1</sup>

MY VERREY GUD LORD AND COUSING,

I HAUE ressaunt findrie of your ll. most kynd Letteris, and your ll. greit cair in sending all thingis necessar for ending of this seruice. I can not gif your l. dew thankis; bot I will account it ever to procede of pe lufe pat ze beir to HIS MA<sup>TIE</sup> and lufe ze caryit to me as your kynnifman, quhome your l. fall ever haue pouer to command me, so long as I braith. It hes pleast God, of his mercie, the penult of pis instant, to mak ane finale end of pis seruice in my handis. The forme, maner, and all pat hes hapnit, I haue writtin at greit lenth to my gud *Lord Secretar*. I haue directit pe Pinage home and pe Bark<sup>2</sup> pat come last; and hes dischargit the Captane, Officeris, and fouldaris, pe last of pis instant. I grant pis seruice hes bene expensue to his Ma<sup>TIE</sup>; bot quhat hes bene wairit,<sup>3</sup> I hoip at my cuming to put it all vp agane, be mvnitioun, to pe *Castell of Edr*. I hop to bring with me more then tuentie thousand merks worth of brasin ordinance.<sup>4</sup> As for my panis, hazard, and travellis, I will remit that to his most sacred MA<sup>TIE</sup>. This,<sup>5</sup> leving to fache<sup>6</sup> your ll. with mony woirdis, I end, willing your ll. ever to esteme of me as ane kynnifman pat your ll. fall have ever pour to command, according to my pithe. This taking my leif, I commit your ll. to God, and I fall ever rest

Your ll. coufing, ever reddie to be commandit,

CAITHNES.

AT KIRK WALL CASTELL, pe last of September, 1614.

(12.) *The Erle of Cathnes LETTER to the Secretar,*<sup>1</sup> *ressaunt 10 Oct. 1614.*

MY VERRIE SPECIALL GOOD LORD,

IN respect your Letter, daitit from Edr the fyfte of September, and come in my hands the fourteint of this instante, declaring your lo. diligence for expeding of all necessaris for this seruice, quich I haif more nor neid for daylie, I and all that is heir with me hes hote seruice with thir most bluidie and barbarous Rebeles and Traitouris. Thay haue killed four, and the last is ane Willeam Iruine, ane Orkney Gentleman,<sup>2</sup> one quho, since his deathe, I have hard was ane inoyenour, and ane greit freind to the Traitour. God is iust in his judgementis, for amongs ws all standing by him he is schote dead, vpoune the nyntente of this month, at twa houres in the efter none; ane cuntrie man of myne schote throughe the arme; and ane fouldiert schott behind beneth the bak; and one flaine in the Castell. All this is done this last dayis skirmische. Thair is not one day that I am idle, except the Sabothe. My lord, I will assure your lo. thay ar most desperat and cruell Tratours, and (this) is ane verrie strong hould, and nothing can do to thame except the cannone.

Qubair your lo. hes fett doune in your Letter of his Ma<sup>TIES</sup> advyse, that I sould be spairing to grant pardone to notorious Rebellis and malefactoures, my lord, God forbid pat I sould tak vpone me to grante ony pardone to ony quho hes so heighlie offendit his sacred Ma<sup>TIE</sup>. Befoir his Ma<sup>TIE</sup> were not repairit, to his honour, be all the lyffes of thir bluidie Tratoures that is within this diuilisch Castle, I (wald) rather be buried. Heirfoir, my lord, I will be plane with your lo. as to ane faithefull counsellour

<sup>1</sup> From the Original, *Denmylne MSS.*    <sup>2</sup> Two vessels which had been sent with supplies and dispatches to this Expedition, which were known by the name of the Pinnace and the Barque.    <sup>3</sup> Expended.    <sup>4</sup> See Notice to the Trial of the Earl of Orkney.    <sup>5</sup> Thus.    <sup>6</sup> Fr.; trouble.    <sup>7</sup> From a copy preserved in the *Denmylne Collection* of MSS. Adv. Library.

<sup>8</sup> In this siege the Lieutenant lost four men only; namely, *William Irwyn*, son to *William Irwyn* of Saba, *James Richardson*, *Andrew Adamson*, and *William Robinson*; who were killed all by shots from the Castle. Many were wounded and hurt, but thereof recovered. — *Spotswood's Hist.* p. 520.



to his Maiestie. I find none bot the name of *Sinclar* in all this land bot hes bene in counsell of this Rebellionne, or eles airt and pairt; for thair is ANE BAND, subscryuit be SEVIN HUNDRED of this cuntrie people, to *Robert Stewarte* and *Patrik Halcro*, to die and leue with thame. This REBELLIONNE was devysit in Edr Castell in Winter last; and giue God grant me that gud fortune to get on lyue *Robert Stewart* or *Patrik Halcro*, his Maiestie will hear of good sporte. I haue *Andro Martine*, quhome I mynd, quhen I find occasioun be Sea, to fend him to be examined be your lo. of his Maties most honourable PRIUE COUNSELL. I haue causit him subscryue his awin Depositionne, vpoun the quhilk your lo. will get mater eneuche to gar him speak Scottis, giue he lyk to blot his maister to be the hounder out of his sone to do all that he hes done.

I cannot nor may not stop the Inhabitantes of this Toune from speiking with the Traitoures, geving of thame meit and drink, making thame advertiffit quhat I am doing, and making daylie and nightlie advertiffmentes of all that thay can aither heir or sie. I will intreat your lo. to mak me advertiffit, with diligence, of THE COUNSELS mynd quhat I fall do to thame, both men and wemen? I have takin nyne or ten men of Birsay, quho was with *Robert*, and was platters with him in this REBELLIONNE, and speciall keiparis of the Hous of Birsay, quhom I mynd to put to ane Assyse; and giue thay be conuict, to hang thame, for ane exemple to vthers.

My lord, this seruice is not lyk to have so haistie ane end as I would. Your lo. knowis my Commissioun grantit to me is no longer than two moneth; of the quhilkis thair is fyue weikis and more outgone: And, giue it will pleas your lo. of his Maiesties Priue Counsell hould me heir, till it pleas God that I putt ane finall end to this mischante REBELLIONNE, I would haue ane new Commissioun, with all priuilege neidfull, to<sup>1</sup> the seruice be endit; for I protest to God I neuir, nor nevir fall, cum to ane cuntrie that may be compairitt in falsett to this cuntrie people! I vse thame both with lenitie and fair formes, as *the Bischope* will informe your lo.; and for all pat I can do, thay haue thair secret moyen and traffeche with the Traitoures. And as for *Mr Johne Finlaspoune*,<sup>2</sup> thair is no remaneing heir to him, giue<sup>3</sup> I wer once oute of this cuntrie; for man, wyffe, and bairne haits him to the deathe. Thay haue myntit<sup>4</sup> twyfe to kill him, since his comeing heir with me, war not I;<sup>5</sup> bot now, seing thay sie me to tak plaine pairte with him, thay ar begune to behauld him.

Since the beginning of this Letter, I haue stayit to wryte to your lo., hoping evir vpoun better news. The Bark and poist came heir the twentie twa or tuentie thrie,<sup>6</sup> with all permissioun necessar for the seruice: And efter thair arryvall, I sent to thame in the Castell, if thay wold cum out and put thamefelffis in HIS MAIESTEIS will, *simpliciter*, I wald lett thame cum out.

The penult of this instante, it hes pleasit God, of his mercie, to end this seruice in my hands. The Houfe is myne, *Robert* in my hands, and all cumed to me except *Patrik Halcro*, quhom as yit I haue not seine. All is cumd to his Maties honour, praisit be God. I haue sex slaine to me; many hurte. The souldier I wraite was hurte is dead. I will assure your lo. it is one of the strongest Houffes in Breitan; for I will bring with me to your lo. cannone billets, both brokkin lyk goulse balls vpoun the Castelle, and clovin in twa halfis. I could not till now enter withe extremitie with the followars of *Robert*, till I was maister of the Houfe, for fear of making more adoë, seing the Houfe was so strong; bot now I fall not be slaw to puneisch seuirliche, to mak exemple to vthers to play the lyk. Presentlie, I am going to drink his Maties good healthe vpoun the Castell heid. *Mr Johne Finlaspoune* would haue the Castle in keiping, bot I will not till I heir from HIS MA<sup>TIE</sup> and your lo., seing it hes coste his Matie so deare, and I and myne the dangeour of our lyffes. I will not geiue it him quho so beistlie gaiue it ouer for four schote of muscate. Always,<sup>7</sup> quhat your lo<sup>s</sup> of his Maties Priue Counsell will command me, vpone your advertiffment, I will follow, and geiue the Houfe to quhome your lo<sup>s</sup> pleasis.

<sup>1</sup> Until.    <sup>2</sup> The Sheriff Depute, whose oppressive cruelties made him to be detested by the inhabitants of Orkney.    <sup>3</sup> If.    <sup>4</sup> Attempted; aimed.    <sup>5</sup> Had it not been for me.    <sup>6</sup> The 22d or 23d of September.

<sup>7</sup> Nevertheless.

I am to expede the Bark and Pinnage to your lo. with all diligence, and this day to discharge the Capitane, Officers, and foldiers, the last of this moneth.

My lord, by your lo. good caire of me, it hes pleast his Maiestie to graunte me ane Remissionne, and, to honour me of that I am vnworthie, to prefer me to be one of his Maties most honourable Priue Counsell. I cannot say more bot this much, I fall preise to my deathe to stryue, withe invye, for loyaltie and obedience; and hopes in my Saviour to do his Matie more better seruice nor this, or then to die; for I protest to God, I craue no grittar honour in this earthe then, by my death in his Maties seruice, my treuth and loyaltie may be knawin at my end.

As to your lo. manifold good will, and pruiifes I haue euir had of your lo. fauour, vnmeritit be me, your lo. fall haue this assurance of me, I fall euir be your lo<sup>s</sup>, and<sup>1</sup> ye fall neuir speak or do any thing to me bot as ane trew and faithfull seruand to his Matie, and one pat fall euir please, so far as lyis in me, to be answerable to his Maties lawis. Thus, crauing your lo. pardone that I am so longsum,<sup>2</sup> I most humblie tak my leiuie, committing your lo. to the tuitiounne of the Almychtie; and I fall euir rest and remaine

Your lo. euir bund to serue yo<sup>r</sup> lo.

[CAITHNES.]

AT KIRKWALL CASTELL, the laste of September, 1614.

QUHAT cair and quhat panes and haifard I haue beine in since my comeing heir, I will remitt to vthers to declair; bot befor it had not procedit as it hath done, I rather I had bene buried heir. I assure your lo. the Cannonar hes don his dewtie in this seruice.

### (13.) LETTER, *the Earl of Caithness* to THE KING.<sup>3</sup>

PLEIS 3OUR MOST SACARED MAIESTIE,

I HAIFE taikine this boldnes to wryt thir lynes, sins it pleisit 3our most gratus Maiestie to honour me so far as to mak schofe of me before many thoufandis of 3our subiectis of grytter vourthe, and of more vailloure and visdome then I, to vndergo this seruice of THE ORCADS, quiche, praist be to God, is endit now. This last of September, the Castell is in my handis. The REBELLIS for the most pairt taikin, to dispone vpone at 3our Maieftis plesoure; and all the countray maid peffabille. And now, I haif no more ado heire, bot to do vther directionis, gifine me be directionis and command, be 3our Maieftis most honorabille Counsell. And quhan I haife maide ane accunt to thame, conforme to my employment, I mynd, if it wille pleis 3our Maiestie that I cum to 3ow, to haife that honour as ane kife of 3our Maieftis most gratus hand; houping in God to do 3our Maiestie more exseptabille seruice then this, and<sup>4</sup> euer 3our Maiestie haif ado, or thene to lose my lyfe; for I protest to God, I craife no grytter honour in this eird nor to die in 3our Maieftis seruice, that be my end 3our Maiestie may knaw my effectiounne and trouthe. Thus, most humblie taiking my liue, my seruice euer remembered, I end, committing 3our Maiestie to the tuitiounne of the Almightye. I fall euer remane

Your Maieftis most humbille and obedient deuoted seruand, to the deithe,

KIRKUALLE CASTLE, the 1 October, 1614.

CAITHNES.

### (14.) LETTER, *the Bishop of Orkney* to Lord Binning, Secretary of State.

(“Reffaued 15 Oct. 1614.”)<sup>5</sup>

RIGHT HONOURABLE MY VERY GOOD LORD,

IT wes nather of cairelesnes, negligence, nor oblauiounne, that my lord and I did not wryte so freuentlie; bot our instante cair and diligence to bring the seruice to sum happie end, did hauld ws from wryting, till we did sie the expectit fruit of laubours, which we knewe wauld not be vnpleasing to HIS MA<sup>TYE</sup> and 3our honouris. I hoip my Letters with the last poist, *James Gairdner*, and *Robert Winrame*, relatue to the former, fall prevent thir and geiue satisfactiounne to your lo. in all anent the end-

<sup>1</sup> If.

<sup>2</sup> Prolix; tedious.

<sup>3</sup> From the Original, *Denmylne MS. Collections*, Adv. Lib.

<sup>4</sup> If.

<sup>5</sup> From Copy, preserved in *Denmylne Coll. of MSS.* Adv. Library.



ing of this actionne, quhairin thair is nothing promesit nor done, quhilk is not agreable to his Maties pleasour and your lo. desyre. *Robert (Stewart)* and *Patrick Halcro*, ar transportit this day to be exhibite to your lo. The rest ar keipit prissonars in the Castle; and my lord and I (efter that *Roberte* and *Patrik Halcro* be dispatchit with *Yung May*,<sup>1</sup> and ane sufficient number of hable men to guaird thame) ar presentlie going to examine euirie one; and the nixt day, God willing, thay fall suffer judgement and condigne puneishment. The winds, hailes, snaws, raines, ar so extraordinarie in thir places, that all had bene done and accomplisshed befor this day, giue<sup>2</sup> it had bene possible. *Andro Martine*, quho was sent with *Robert Winrahame*, would be weill examined be your lo. I hoipe to cum by THE BAND itself, quhairof I sent the coppie with his Depositionnes. Thair is one *Margaret Bicchane*,<sup>3</sup> spous to *Simeone Stewart*, and now Adulteres to *Patrik Halcro*, quho hes revealit and confessit to me more then any other. If your lo. think that hir Depositionnes or prefence falbe necessar, direct me, and it fall be obeyit; for I purpose to put hir oute of this cuntrie, for hir Adulterie. Anent the Articles sent in my last Letters to your lo., I besek you to advyse, and adverteis. And since your lo. hes geuin me assurance of the passing of my rightes, (for the quhilkes I fall euir be cairfull to expres my thankfulnes, in all dewtie and seruice,) I fall be disposed at your lo. pleasour, aither to come South with the *Earle*, or stay heir a litle efter, for my awin buffines, or ony seruice fall be committit or commandit to me. As for other things, your lo. will knaw thame be my Letters writtin to my *Lord Theasfurar*. So praying God euir to fauour, prosper, and preferue your lo., I rest

Your lo. awin assured and obliged in all dewtie,

KIRK WALL, 6 Oct., 1614.

[JA. B. OF ORCADS.]

(15.) LETTER, the *Earl of Caithness* to *Lord Binning*.<sup>4</sup>

("Reffaued 15 Oct. 1614.")

MY MOST SPECIALL GOOD LORD,

I RESSAUIT your Letter, datit at Edinburgh the twentie, &c. and cam in my handis the fourte of October. Befoir the ressett of your lo. Letter, I wrait greit lenth of the hail proceedingis heir, and of the ending of this seruice that God of his mercy hes maid to come, vtherways nor any man expectit. My lord, war not I vsed the mater so cannelie,<sup>5</sup> and maid *Patrik Halcro* to fall thame that was thair in the Castell, it wald haue bene ane longsum saidge; for I protest to God the Hous hes neuir bene biggit by<sup>6</sup> the consente of the Diuil; for it is one of the strongest houlds in Britane, without fellow. I sie be HIS MATIES Letter direct vnto your lo. of his intentione to *Robert Stewart*, quhilk I thank God I haue nather send to him, bot this, and vpoune that condition he cam out: Quhilk conditionne was in this forme, gif he wald come furth and put himself *simpliciter* in his Maties will, to dispoone vpoune him at his Maties pleasour, I sould keip and preferue him from euerie danger of my folkis, till his Maties pleasour and will wer knawin. He desyrit that I wald promise vpoune my honour to preserve him, till I brocht him to his Matie. That I plainlie refust; for I said I could not promise that my selfe might haue acces to his Matie, without the speciall licence of the Lordis of his Maties most honourable PRIUIE COUNSELL. To conclud, he plainlie submittit him self to his Maties will. Bot befor he did this, *Patrick Halcro* had left him, and said plainlie to him, in the Castle, 'he wald geive it ouer.' Quhich maid him come out, vpoune the foirlaidis conditiones, and no vtherways. As I fall ansuer to God, *Robert Stewart* hes no farder of me; for I spak with him, and smellit that he wald neuir geiv over that Hous to be Torterit, and to be compellit to reveill vpoune his father, to be his wrak. I finding this, I desyrit, gif he wald let *Patrik Halcro* cum oute and speik with me, vpoune that sam plaidge that was in for him. He plainlie refust. I seing it so, I maid me to be weill contentit with his answeir, and said, 'I wald go fordwart with the siedege.' He past to the Castell; and in his companie I put in secret woord to *Patrik Halcro*, to sie giue the morne he wald

<sup>1</sup> Sinclair of May. <sup>2</sup> If.  
Denmylne MSS. Adv. Library.

<sup>3</sup> Buchanan. See her Deposition, Nov. 1, 1614.  
<sup>5</sup> Had not I handled (or managed) the matter so cautiously.

<sup>4</sup> From a copy in  
<sup>6</sup> Without.

cum out and speik with me, in the Kirk, vponne plaidges; quho grantit, and cam furth to me. And efter four houres conferens, he and I hand to hand, I maid him to zeild, that he wald giue it ouer and mak the Hous to be in my handis, vponne conditioune I sould promise him his lyffe—quhilk I did. Then he willit me to caus ane *Minister* come in and preiche to thame, quhilk he sould (vse) meanis that the rest sould be contentit to heir; and so, he sould mak the mater so that he sould be out of suspitione, to<sup>1</sup> the grittest pairte of thame war out of the Castell; and as they cam out, to geiue thame fair countenance. And so, be thir meanis, *Patrik Halcro* maid the Hous and all these that war thair to be in my handis.

The Proceedingis and Ceremoneis tuik mekle of aucht dayes, quhilk was the occasioun that your lo. was so long of getting word; quhairfor I crane your guid lo. to haue me appardonit; for praisit be God, albeit the word hes bene long of comeing, it is good quhen it comes!

I luik pat my word and promise gevin to *Patrik Halcro* fall not be fulfillit. Befoir it wer, I rather be in my grave.<sup>2</sup> As to the rest I haue in my handis, except *Robert Stewart*, (they) falbe hinged within twa dayis at the Castell yett,<sup>3</sup> with fundrie vtheris of the cuntrie men that war ring-leaders to *Robert*, to the exemple of vtheris. The number that fall hang, that was in the Castell, is twelue. I haue sent *Robert Stewart* and *Patrick Halcro* to CASTELL SINCLAIR, to be fuirly keipit thair, till I haue done all that your lo. hes gevin me Commissioun: For now, since the seruice is done, I haue no pleasour to byd heir, for the wedder is both euill and varient, and so is the people; for he that wald rewle heir hes both neid of wit and manneheid, and manie earis and eis. Quhair your lo. willes me to conforme all my actiones to HIS MAIESTIES mynd, I hoipe in my Sauour neur to do, say, nor think that fall be offensue to his Ma<sup>tie</sup>. Befoir, willingelie, I did any thing that war offensue to his Ma<sup>tie</sup>, I rather be buried quik. As to this peece of small seruice, I think it bot ane beginning; bot give his Ma<sup>tie</sup> haue ony seruice of grittar importance, I houpe ather to die, or giue his Ma<sup>tie</sup> ane grittar pruiße of my affectione and luife. Thanking your guid lo. for the grit cair your lo. hes had that I sould wante nothing that sould further this seruice, in my panes, I can render your lo. no farther than the assurance and continewance of my seruice, as I fall euir remane,

Your awin

KIRKWALL, 7 Oct., 1614.

[CAITHNES.]

(16.) *The ARTICLES sent be THE ERLE OF CAITHNES to THE SECRETAR, to be resolved be THE COUNSALL.*

(“Reffaued 10 Oct. 1614.”)

I. PLEAS your Honorable lo. to resolue and direct, quhat fall be done with the CASTELL, which is now in my custodie? Whither it falbe repaired or demolished? Thocht it be ane ornament for *the towne of Kirkwall*, and may be estemed ane place of refuge and securitie for the holl cuntrie, in tyme of forrane Invasions, if any sould happin to be, zit since it is nather necessare for any ordinarie seruice of his Ma<sup>tie</sup>, nor ane Hous fitt for the habitation of his Ma<sup>ties</sup> Officiaris, and may be mor easilie takin be forrane foes, in cais they sould inueid, then recovered agane from them; I remit it to your lo. wifdome, to consider what falbe done with it.

II. Pleas your lo. to giue some directioun for gouernment of thir people. The present Officer, *the Shereff-deput*,<sup>4</sup> is hated, to the death, be all fortis of men; is of no sufficient qualities for such a place and office; and by his former evill demanor, is so contemned of the basest, that he fall neur, by all apparence, recouer credit, authoritie, and regaird heir; zie,<sup>5</sup> iff he remane heir after me, he is in danger of his lyff, and some new broyl may arryse.

<sup>1</sup> Until.

<sup>2</sup> Such cold-blooded and perfidious treachery has seldom been equalled. A King's Lieutenant binding himself by the most solemn engagements to a Rebel on giving up a stronghold, without loss of blood, that a free pardon shall be granted to him—and yet, in his Dispatches, strenuously recommending that his pledge shall be recalled, and that the repentant Rebel shall be put to death, without mercy!

<sup>3</sup> Gate.

<sup>4</sup> Mr John

Finlaysone.

<sup>5</sup> Yea.



III. Thocht ther be great spoyll and losse of horse, cattell, scheip, boatis, and now of armour which belonged to HIS MA<sup>TIE</sup>, your lo. wald be plesed to give direction quhat falbe done with that which remanis, and may be recouered from vniust detainers, that his MA<sup>TIE</sup> be not defrauded and hurt.

IV. For BIRSAY, which was the place whence the trubles did spring, your lo. may be pleased to consider, whither it falbe demolished or keiped, with some allowance; and be whome?

V. The Ordinance, which is in the Castell and Zeardis, in number 8 of brafte and fax of irone, falbe, God willing, transported vpon the schippis, with all the armour whiche can be had.

VI. *Robert Stewart* and *Patrik Halcro* falbe keiped and brocht with my self.

CAITHNES.

(17.) LETTER, *Lord Binning to his brother Mr Patrick Hamilton.*<sup>1</sup>

BROTHER,

THIS morning, *John Stewart* is arryued from *Orkney*; and hes broght in his ship, be direction of the *Erle of Caithnes*, foure of his Prisoneris, with thair Depositions; whom I have re-examined this forenone, and have send to yow the copies of thair Depositions sent from *Orknay*, and of my examination of thame this day; together with the copie of the Letter which the *Bisshop of Orknay* sent with thame. Thay ar now in the Towbuth, in the Irne-houfe,<sup>2</sup> becaus the Chancelar and Counfall will be in this Towne this night. I will advyse with thame, whether it be more fit to execute thame to-morrow, or to delay thair Execution for sum dayis, least thair suddane death might mak the detainers of the Castell of Kirkwall more desperat and obstinat.

The ERLE OF CAITHNES, with great dexteritie, hes maid himself maister of the Steple and Howfe of the Yairdis. He has no losse, prayfed be God, bot of two of his men slayne and ane hurt. We ar perswaded, that all the prouisions which thay requyre, be thair Letter, wer in *Orknay* before thair Letter came to my handis. I have this day sent to *Leith* two hundreth bullets for the canon and batard,<sup>3</sup> and am providing all vther necessaris, which fall be reddie this night and imbarcked to-morrow, God willing, to the effect the ship make faile the morne, if God grant thame prosperous wind.

This I have thocht fit to wryte to yow, to be signified to HIS MA<sup>TIE</sup> and my Lord Chamberlane; thinking that the copie of the *Bisshop's* Letter, and the prisoner's Depositions, ar the best information I can giue yow.

I pray yow recommend to his Ma<sup>tie</sup> and my Lord Chamberlane the fauorable and spiedie expedition of the Erle of Caithnes and Bisshop of *Orknay's* buffnes; and vse all possible haist in the return of HIS MA<sup>TIES</sup> commandments. So, in haist, I commit yow to God. ED<sup>B</sup>, this 13. Sep. (1614.)

Your loving brother,

BINNING.

I HAVE send for the *Justice-depute* and *Justice-Clerk*, and aduerteised my Lord Chancelar, who came yesternight to *Pinkie*, and will be heir this efternone.

To my beloued brother, *Maister Patrik Hamilton*, at COURT.

III. (18.) BAND OF ASSOCIATION SUBSCRIVIT BY THE REBELLIS IN

ORKNAY.<sup>4</sup>

BE IT KEND till all men by thir presentis, Vs, the GENTLEMEN OF ORKNAY, after subscrivand: Forfameikle as, by the frequent intransis of extraniers in this countrie, the estate of the commonwealth is in danger, and like to perishe, throw the corruption of the Lawes, partialitie of Judges, the greid of Officeris, and Oppression of Magistratis; quhilk dwanger<sup>5</sup> the poor ones vnder the yock of servi-

<sup>1</sup> Mr Patrick Hamilton was the fourth son of Thomas Hamilton of Priestfield; and was appointed Under-Secretary of State to his brother. He usually resided at Court, for dispatch of Scottish affairs; and tended, in no small measure, towards elevating his brother's fortunes to the almost unprecedented station and offices which he successively held.

<sup>2</sup> The *Iron-house*, or *Cage* as it was termed, was constructed for the safer custody of desperate offenders, in the Tolbooth of Edinburgh, whence they were easily conducted to the Court-room, and to execution, without the danger of rescue.

<sup>3</sup> Petard; battering piece.

<sup>4</sup> From a collation of two Copies, preserved amongst the *Denmyne Coll. of MSS.* Adv. Library.

<sup>5</sup> Dings, drives.

tude and flaverie; consuming his Maties rentis in their own adoes, but<sup>1</sup> vtilitie or good service to his Matie. QUILK to prevent, by assistance of God, and favour of his most excellent Matie our souerane Lord, WE, be the faith and truth of our bodies, now touching the Evangel of oure Saviour Jesus Christ, Bindis and Obleissis vs, coniunctlie and feuerallie, as neid requires, to be in readines by our persons, with oure servendis, kin, freindis, and dependares, in armour, to repreffe all oppressions and iniquities quhilke fall happin to be intendit aganis the commonwealth of this countrie, at any tyme hereafter; swa that better order may be establisched, whereby God eternalle may be pleased, and our Souerane lord obeyed and served, according to oure dewty, in all respectis. And that this may be the better effectuat, WEE Bind and Obleisse vs and our afoirsaidis, to concur, attend, and depend vpon ROBERT STEWART, sone naturall to oure native Lord and Maister PATRIK ERLE OF ORKNAY, as our Heade and Commander, during the absence of his father, and to mentyne and defend him be our bodies, goodis, and geir, in execution of the premisses, and all other lawfull actions and affaires quhilke he shall have to do at any tyme hereafter, vnder the payne of Periurie and everlasting defame: BECAUSE the said Robert Stewart is reciproquallie bundin and obleist to vs, that he shall take no weightie matter in hand, without consent and assent of vs, at least any two of vs, under the same payne, BE this present, subscryved with oure handis, as followis, At . . . . the . . . . day . . . . , the yeare of God Im. Vj<sup>c</sup>. fourtene yeares.<sup>2</sup>

R. STEWARD.

PAT. GORDON, with my hand.

THOMAS LOWAT, to pe dei<sup>e</sup>.

ROBERT MOWAT, with pe hart and handis.

JOHNE REID,<sup>3</sup>

R. SALETER, to pe dethe; Belie of Birfay.

WILLAME KERKTOUNE, to the dethe.

R. I., in Gerfettar, to the dethe.

R. S., in Nissohous, in Marwick, to pe dethe.

PA. HALCRO, to the deth.

THOMAS DOUGLAS, to death.

GILBERT GRAY, to pe deithe, with my hand.

WILLAME SINCLARE, to the dethe.

O. S., in Swrne, in Marwick, to the dethe.

O. Q., in Marwick, to pe dethe.

ROBERT GRAY, to the dethe.

T. ST., in Marwick, to the dethe.

#### IV. EXAMINATIONS AND DEPOSITIONS OF THE REBELS, &c.

##### (19.) DEPOSITION of *Duncan Mitchel*, 'Poist-boy in Edinburgh.'<sup>4</sup>

*At Edinburghe, the fyft day of July, 1614. In presence of the Lordes of Binning, Secretary, the President, Thefaurair-depute, Clerk of Register, Aduocat, Sir Alexander Drummond, and Sir Andro Ker.*

DUNCANE MITCHELL, Poist in Edinburghe, sworne and examinat, deponis, that quhen the *Erll of Orknay* was caryed from this Towne towardis *Dunbartane*, the *Erll* directit the Depouner with a Letter to his sone *Robert*, who wes in ORKNAY for the tyme; and the depouner past with the Letter to *Orknay*, and delyverit the same to the said *Robert*, fra whome he ressauit ane ansuer, in wryte, to the *Erll*; and broght the same heir with him to this burgh of *Edinburghe*: And after he had stayit heir twa dayis, he past with the Letter to *Dunbartane*, and delyuerit it to the *Erll*.

Deponis, quhen he delyverit the Letter to *Robert*, the said *Robert* wes in *Birfay*; and sayis, that he had a verball directioun and message from the *Erll* to *Robert*, that yf he had the *Houfe of Birfay* in his keeping, that he sould keepe the same to the *Erll*'s vse; for the *Erll* saw litle apeirance of releif.<sup>5</sup> And yf the *Houfe* were not in his keeping, that he sould vse the best meanes he could to come be it; and that he sould lift frome the Tennentis so much of thair mailles and dewyteis as he could gett; and that he sould keepe the *Houfe*, in maner foirsaid.

Deponis, when the depouner come to *Birfay*, *Barnard Steuartis* wyffe had the keeping of the

<sup>1</sup> Without.

<sup>2</sup> The various dates are not preserved in the copy of this Bond. It is asserted that no less than SEVEN HUNDRED persons signed it. See p. 289.

subscription.

<sup>4</sup> From a transcript preserved among the State Papers in *The Denmylne Coll. of MSS.* Adv. Library.

<sup>5</sup> From imprisonment.



Houfe, and that *Robert Stewart* had onlie fyve perfones with him in the Houfe: And the yett was kept, as the depouner thought, be one of *Robertis* seruandis. And the depouner stayed in *Birfay* fouretene nightis: And in the mean tyme of his being thair, *Robert* fend to *Kirkwall*, for some ma company, and for muscattis, poulder, and leade; and sayis that xvij perfonis, or thairby, armed with muscattis, come to *Birfay*; and at thair comeing, thay then avowit the keeping of the Houfe; tooke and broght in some of *Barnard Stewartis* goodis to victuall the Houfe, and payit not for thame.

Deponis, that afoir the depouner come away, *the Sheref-depute*, accompanyit with thre or fourescoir perfonis, come and lay aboute the Houfe, and fend in Message to *Robert Stewart*, desyring him to come oute, and he wald gif him libertie for xiiij dayis to remayne in the cuntrey, to vplift the Tak-maillis<sup>1</sup> whilk he alledgeit wes dew to his fader, for auld byrunis:<sup>2</sup> And that *Robert* refuist to come furthe. Quhairupoun, *the Sheref* caufit charge the Houfe to be randerit; quhilk wes refuist be *Robert*, with found of trumpett, and discharge of some muscattis out of the Houfe. Lyke as, *the Sheref-depute* schoit in at the Houfe, with the schoit quhairof one Downye Lyell wes hurte. And the depouner stayed bot ane night, after the Houfe was chargeit. And sayis, that *Robert* caufit prepar ane boit to transporte the depouner, be water, to *Caithnes*; and he fend with him a Letter to *the Erll*, and by tung bad him inquire, quhat *the Counsell* wes doing in his busynes—and quhat wes *the Erllis* will that the said *Robert* fould do in Orknay? Denyis, that he broght ony message from *Robert*, to ony perfonis within this burgh.

Deponis, that vpoun Thurisday, the last of Junij, aboute tua of the cloke in the efter noone, the depouner come to *Dunbartane*, and fand *the Erll* walking in the cloise; and he delyuerit *Robertis* Letter to *the Erll*. And when the depouner tauld *the Erll* that the Houfe of *Birfay* wes tane, *the Erll* ansuerit, ‘The Devill stick him! He might haif tane ane better Houfe!’ And forder, deponis, that *the Erll* said, ‘The Devill stick his foollis head!’ (meaneing be *Robert*,) ‘He might haif mellit with *the Scheref-depute*—and yf he had maid him quyte of him, he wald haif had lesse ado!’ And forder, deponis, that *the Erll* said to him, Yf his sone had assailzeit *the Castell of Kirkwall*, the Keeperis thair of wald haif delyuerit the same to him, becaus they wer *the Erllis* auld seruandis! And deponis, that *the Erll* desyrit the depouner to commend him to those who assistit *Robert* in the Houfe. And sayis, that vpoun the morne *the Erll* caufit his man, *Shairp*, write ane Letter to his sone; whilk wes vnsubscryuit be *the Erll*, and had no directionne on the bak. And the depouner ressaunt lykewayes ane Letter from *Shairp* to *Robert Stewart*, without subscruption or direction on the bak, faul onlie ane corse,<sup>3</sup> that it might be knowne frome the other Letter. And quhen the depouner come away, *the Erll* desirit him to will *Robert* ‘to keepe the Houfe; and in no caise to rander the same: And, or<sup>4</sup> he war tane, it wer better for him to dee with honnour—for he wald be putt in perpetuall warde, yf he wer tane!’ Deponis, that *the Erll* inquit, ‘quhat fauour *Robert* had of the Commonis, and yf thay resortit vnto him?’ And desyrit *Robert* ‘to fend him money, of that quhilk he fould gett frome the Tak-men, for auld reftis.’ And sayis, that nane wer present, quhen *the Erllis* Letter wes writtin, bot *the Erll*, his man *Shairp*, and the depouner.

DUNCANE MITCHELL.

(20.) COPIE of the Erle his Letter to his Sone.

(Appended to Duncan Mitchell's Deposition.)

ROBERT,

I HAVE red and confidderit your Letter. Yow haue done verie weill in wrytting of your Letter in pe forme ze do; bot I feir it fall do littill goode. Alwayis,<sup>5</sup> ze fall do the best with it, gif we haue ado with it; bot it may be we haue no thing ado with it; for thair is vper materis heir to think vpoun nor fuche thingis, as that I beleive HIS MAIESTIE thinkis littill of theis materis. Tak tent that your Holy ffaper betray zow not, as he did befoir. The berar sayis, ze gaif him bot sax pundis. Trewlie

<sup>1</sup> Rents of possessions let upon Lease.

<sup>2</sup> Arrears.

<sup>3</sup> Cross or mark.

<sup>4</sup> Ere; rather than.

<sup>5</sup> Nevertheless.

it is littill aneugh to cum and go. Gif yow cum in this cuntrie vponie onie condition, *the Tolbuith* will be your best; ffor quhat condition beis promiseit zow be onie in ORKNAY, thay bot skorne zow; ffor *the Counfall* will not kenne<sup>1</sup> quhat condition thay mak to zow. Seing ze haue proceidit so far as zow have done, thair is no being heir for zow. War not<sup>2</sup> *Kinclevin* and *pe Bischop*, my Lord had not seine *Dumbartane*, at this tyme. This berar sayis, he will venture to fetche fuche money heir as yow will gif him; bot yow send Jo<sup>n</sup> Prence with it; for heir he is ane honest man to zow. Tak his Band, and send it with *pe* beirar, for that that zow delyuer vnto him; for my lord hes more than mistare<sup>3</sup> of it. Restis, the last of Junij, 1614.

POSTSCRIPT. Caus gif the berar ane coitt,<sup>4</sup> for he is wirthe<sup>5</sup> it; and latt him haif his haill waidges; for I will haue nane to gif him, when he cums heir. His wadges is fyftene pundis. Haist *pe* berar heir agane, for we will get no more silwer frome the Thesaurer. Lat him not stay xxiiij houris.

(21.) DEPOSITION of *Barnard Stuart*.<sup>6</sup>

AT EDINBURGHE, the xj of August, 1614. In presence of my Lordis Binning, President, Thesaurer-depute, and Aduocat.

BARNARD STEUART, sworne and examinat, deponis, that *Robert Halcro of Cava* tauld to the depouner, that he saw a Letter directit be *the Erll of Orknay* to his sone *Robert*; quhairby, *the Erll*, to willit *Robert* to tak the depounaris lyffe. Demandit, yf he wes persuadit or delt with, be *the Erll*, to joyne with his sone *Robert*, in the present REBELLIOUN IN ORKNAY? Deponis, that he being informit that *the Erll* had gevin ane Commissioun to his sone *Robert*, to intromett with certane dewyteis of *Orknay*; the depouner past to *the Erll*, and demandit of him, yf he had gevin ony fuche Commissioun to *Robert*, becaus he feirit that *Robert*, vnder cullour of that Commissioun, wald mell with the depounaris geir? And that *the Erll* ansuerit, 'Yf *Robert* be gone to *Orknay*, THE KING nor yow will be able to mend it—and it is your best to beholde him!'

The said *Barnard Stuart*, for explaining his former depositioun, deponis, that he haueing said to *the Erll*, that seeing *the Duke of Lennox* and *the Erll of Marr* had intreated HIS MAIESTIE in his fauour, that thairfoir, he had done verie happellie, in directing *Robert* to *Orknay*. And *the Erll*, seameing to be in a choler and anger at thir speeccheis, thraving<sup>7</sup> his bearde with his hand, said to the depouner, 'Yf *Robert* be gone to *Orknay*, THE KING and yow will not mend it—and your best wilbe to beholde him!'

The said *Barnard* being demandit, at quhat tyme he gatt knowlege of the Letter directit be *the Erll* to his sone *Robert*, to take the depounaris lyffe? Deponis, that after *Robert* had bene in *Birsay* fyftene dayis, and behavit him selfe somequhat civille; and thairefter, had maid him self, publiclie and be force, maister of *Birsay*, and expellit the depouner furthe thairof, and detenit his wyffe aganis hir will, the said *Barnard* directit *Robert Halcro of Cava* to persuade *Robert* to putt his wyffe to libertie; and after conference had be *Robert Halcro* with *Robert Stewart*, for that purpois, at *Robert Halcrois* bak-comeing from *Birsay*, he declairit to the depouner, that *Robert Stewart* had showne him a Letter of *the Erll of Orknayis* to his sone, commanding him to tak the said Barnardis lyffe.

BARNARD STEUART.

(22.) DEPOSITIONS of *Thomas Black*, *Thomas Layng*, *Archibald Murray*, and *Alexander Leggatt*.

AT EDINBURGHE, the xiiij day of September, 1614. In presence of the Lord Binning, Secretar.

THOMAS BLAK, borne in the Mernis, and one of the Baillies and Chalmerlaine to *Patrik*, laite *Erll of Orknay*, examinat, deponis, that quhen *Robert Stewart* tooke the Castell of *Kirkwall*, this depouner

<sup>1</sup> Recognise.

<sup>2</sup> Had it not been for the interference of *Kinclevin* and the Bishop, &c.

<sup>3</sup> Necessity; need.

<sup>4</sup> Coat.

<sup>5</sup> Worthy; deserving.

<sup>6</sup> From transcript in *Denmylne Coll. of MSS.* Adv. Library.

<sup>7</sup> Twisting.



wes in the Steple of Kirkwall, and xii perones with him. The said Thomas, being desirit to declair the simple treuthe of all his pairt in THE REBELLIOUN OF ORKNAY, deponis, that, when Robert Steuart had tane the Houfe of Birfay, the Schereff past, and causit the hause to be randerit, quhilk wes refusit, and this depouner past with the Shereff to assist him, and broght with him twa hundreth men, and stayed ane night with the Shereff, and vpoun the morne the depouner come bak with the Shereff; and sayis, that aboute tuentie dayis thairefter *Robert Steuart* send *Patrik Halcro* and *William Paterfoun* to the depouner, to will him to come to Robert, to mak and perfyte his comptis of the restis, whilkis he was awand to his fader;<sup>1</sup> and the depouner, according to thair desyre, past voluntarlie to *Robert*, to the *Place of Birfay*, and stayed thair with him ane night, and come bak agane to his awne hause, and provydit xvij lb. to pay *Robert*, quhilk he caryed bak to him the next day. Quhilk all wes done after that the depouner had bene present with the Shereff and forceis of the cuntrey, at the chargeing of the said Robert and his compliceis, to delyver to him, as his Maties Commiffioner, the *Hause of Birfay*, vnder the pane of Treffoun: And that the said *Robert* had not onlie disobeyit the charge, but schoit some muscat shoitis at the Shereff and his company.

Thairefter the depouner come to the Steple of Kirkwall, the day befor the Castell was assedgait be *Robert*, and enterit thairin with *Patrik Halcro*, *Archibald Murray*, *Thomas Layng*, and some otheris, to the number of ten peronis. And how sone *Robert* and his company come in sight of the Toun of Kirkwall, he causit found his trumpettis, and the depounaris company, within the Steple, blew thair horne. And sa sone as *Robert* come and tooke the Castell, *Patrik Halcro*, *Archibald Murray*, and *Thome Laing* past oute of the Steple to *Robert*; and thair stayed onlie three or foure in the Steple with the depouner ane night or twa. And howsone the Castell wes assured in Robertis possessioun, he send in some otheris to the depouner, and maid his number to be tuelff peronis, with whome the depouner kept the Steple till the *Erll of Caithnes* his comeing to Orkney. The depouner grantis that *Archibald Murray* and *Alexander Leggatt* wer at the taking of the *Castell*.

Deponis, that he aggreit with the *Erll of Caithnes*, for him selff, and in name of the rest of his companie, anent the randering of the steple; and he procurit leve of the Erll to carye out of the steple his victuallis, armour, and quhat els he had in the steple pertening to him self or his company; and grantis that he wes Captane of the companie, being within the Stepill, and maid appointment with the Erll, in maner foirfaid. And declairis, that *Patrik Halcro*, *Archibald Murray*, *Gilbert Gray*, *Johnne Guild*, and *Andro Martine*, wer farrest vpoun *Robertis* counseill of ony in the hail company. Grantis, that euery man within the Steple had a muscat, and thay had onlie fax pund of poulder amang thame. Grantis, that he boght some trunscheour plaittis,<sup>2</sup> and ane pott, with some linning cloathe for thair furnishing in the Steple. And sayis, that *Robert* send him in ane fedder bed. And the depouner had ane boy of his awne with him all this tyme.

THE said THOMAS BLAK, being deiplie sworne, and demandit, yf he askit of *Robert*, quhat wes his purpois or drift in this REBELLIOUN; or by what meanes he wald beare it oute? Deponis, he nevir askit any fuche questioun of him. Grantis, that the *Erll of Caithnes* had the Steple maid suir vnto him or<sup>3</sup> it wes renderit; and that *Johnne Guild* had delt with the Erll in that mater. And this depouner, how soone the *Erll* send vnto him, randerit and come furthe to him; and maid appointment, for him self and his fouldiouris, to rander the steple to the said *Erll*; who, be his moyen, formarie maid with *Johnne Guild*, had the Steple in his pouer, befor the depouner returnit vnto it.

Deponis, that thair was no bloode spilt be thame within the Steple, except that one of thame schoit *Robert Chalmers* throughe the hand, the tyme that the *Commiffair of Orknay* wes incloft within the Place of the Yairdis: And the said *Robert Chalmers* wes assisting the Commiffair in defence thairof.

THOMAS LAYNG, sworne and examinat, deponis, that, at his laite being in *England*, quhen he wes comeing home, *Thomas Davettie* gaif to the depouner tua Letteris, in *Skairsburgh*,<sup>4</sup> to bring home to

<sup>1</sup> The arrears of rent, &c., which he was owing to his father.

<sup>2</sup> Trenchers.

<sup>3</sup> Ere; before.

<sup>4</sup> Scarborough.

*the Erll of Orknay*, quhich he delynerit to *the Erll*. And deponis, that he being one of the Keeparis of *the Castell of Kirkwall*, vnder *Sir James Steuart*, thair fell oute some difference and variance betuix the Shereff and the depounar, anent his pairt of the contentatioun<sup>1</sup> quhilk he sould haif had for taking of the *Pirott Schip*; wherupoun the deponar fled from *the Town of Kirkwall* to *Robert Steuart*, and stayit with him thair ten or tuelf days, befor his coming to *Kirkwall*. And the depouner wes with *Robert* quhen he come with displayit banner and trumpett to the *Bow-Croce*, accompanied with ane hundreth men in armes, or yairby.

Grantis, that he wes one of these who surprisit the Kirk and Steple of Kirkwall, and that he stayed in the Steple with *Patrik Halcro* and *Thomas Blak* tua dayis.

Grantis, that he wes with the Shereff quhen he chargeit *Robert* to rander *the House of Birsay*, quhilk *Robert* dissobeyit, and shoit some shoitis oute of the House at the Shereff. And grantis, that ane moneth efter this, the depouner past to *Robert Steuart*, and joyned with him.

Deponis, quhen *the Castell* wes tane, the depouner wes in the Steple, and after *the Castell* wes randerit to *Robert*, the depouner left the Steple and went to *Robert*, and remanit with him in the Place of the Yairdis, quhill the *Erll of Caithnes* come in the cuntrey. Deponis, that he accompanyit *Robert*, quhen *Robert*, with fyve hundreth men, went to the ffeildis aganis *the Erll of Caithnes*, his Maties Lieutenant; and that *Robert* mustertit aganis *the Erll*, at the *Bal-ffeild*, and vtheris pairtis about *Kirkwall*.

ARCHIBALD MURRAY, in *Birsay*, solemnelie sworne, and demandit, quhen he spak first with *Robert Steuart* after his coming to Orknay? Deponis, he spak first with him in *Kirkwall*, bot denyis that *Robert* impairt vnto him ony mater of this REBELLIOUN at that tyme.

Deponis, that the interprise of the taking of the Castle and Steple of Kirkwall wes maid first in *Birsay*, and that *Patrik Halcro*, *Andro Martyne*, *Thomas Blak*, *Gilbert Gray*, *Alexander Leggatt*, *Thomas Layng*, and the depouner him self, wer all vpoun the conference, counsaill, and plott of the taking of the Castell and Steple of Kirkwall, and the mater wes plotted tuentie dayis afor it wes putt in executioun. And sayis, that *Robert Steuart* maid the depouner and the rest to vnderstand that his fader wes in missing, and oute of *the Castell of Dunbartane*; and that he wes to come to *Orknay*, and sitt down *Erll* agane. The beleif quhairof maid thame to follow *Robert* in his interpryissis.

Deponis, that *Alexander Leggatt* was with *Robert Steuart* the first time quhen the depouner mett with *Robert*; and that thair wes no speecheis betuix the depouner and *Robert*, bot chopping of handis at that tyme.

Demandit, yf thair wes ony purpois amangis thame in *Birsay* aganis the Shereff? Grantis, that *Robert Steuart*, *Patrik Halcro*, and *Thomas Blak*, had speecheis and conferance in *Birsay* anent the taking of the Shereffis lyffe; and when thay come to the Steple, the mater wes communicat to the depouner: And then *Thomas Blak* past frome it. And deponis, thay had shoit the Shereff in the Kirk at that tyme, yf he had not beene gangand with *the Commissair*.

Deponis, that quhen the Steple wes tane, the Keeparis held thame quiet quhill *Robert* come to *the Bow-Croce*; and then *Robert* soundit his trumpett, and they within the Steple blew ane horne; and the depouner stayed bot ane nicht in the steple. And sayis, that *Patrik Halcro* was commandair of the Steple quhen *Robert Chalmers* wes hurte: And efter that, *Thomas Blak* commandit within the Steple; and that *Thomas* assistit *Robert* in all fuche thingis as he commandit. And deponis, that the Steple wes fauld<sup>2</sup> be *Johnne Guild*, twa dayis befor it wes randerit be *Thomas Blak*.

Deponis, that after he left the Steple, he addrest him self to *Robert Steuart*, and stayed with him all the tyme, till within aucht dayis afor *the Erll of Caithnes* coming thair.

Deponis, that he wes with *Robert* at the persute and taking of *the Castell*. And that the Shereff wes kept prisounair fyve dayes after he wes tane.

Grantis, that he was commandit be *Robert* to go to *Birsay* and to keepe *the House*, whilk he did;

<sup>1</sup> Remuneration; salvage.

<sup>2</sup> Sold; betrayed.



and kept the same till *the Erll of Caithnes* come and causit charge the Houfe; quhill charge the depouner obeyit, and come to *the Erll*.

Deponis, that *William Gueddell* come furthe of the Castell, and randerit him self to *the Erll of Caithnes* the day befor the depouner wes fend from Orknay; and that it is commounlie reportit that the said *William* affermis, that *Patrik Halcro* hes *the Erll of Orknayis* Warrant for taking *the Castell* of Kirkwall.

ALEXANDER LEGGATT, seruand to *Patrik* sometyme *Erll of Orknay*, sworne, and demandit, how soone he spak with *Robert Steuart* after his comeing to Orknay? Deponis, he spak not with him quhill tuentie dayis after he come to Orknay.

Grantis, that he wes in this cuntrey at Beltane last, and that he mett twyfe with *the Erll of Orknay*, and spak with him and his sone *Robert* in the Castell of Edinburgh. He denyis that *the Erll* or his sone *Robert* had ony conference with the depouner anent THE REBELLION IN ORKNEY.

Denyis, that he was in *Birsay* with *Robert* quhen the Houfe wes chargeit.

Grantis, that he wes with *Robert* tuentie dayis afor *Robert* tooke *the Castell*; and that he wes with *Robert* quhen he musterit at the *Bow-Croce*.

Deponis, how soone the Castell wes tane, the depouner stayit with *Robert Steuart* in the Place of the *Yairdis*, quhill he hard of *the Erle of Caithnes* comeing.

Grantis, that he wes with *Robert* quhen *Robert* musterit at the Caiones, afor *the Erll of Caithnes* landit; and that he wes in the *Yardis* quhen *Robert* musterit at the Bal-fleild aganis *the Erll of Caithnes*; and that the depouner had the charge of the keeping of the Place of the *Yardis* fourtene dayis.

Deponis, that he come furthe afor the cannoun shoite, being desirrit be *the Erll of Caithnes* to come furthe afor the shoiting of the cannoun. And the depouner randerit the Place of the *Yairdis* to *the Erll*.

Deponis, that *Robert Steuart*, sone to *Alexander Steuart of Flatt*, had the principall charge of the keeping of the said Houfe, and that thay wer aboute the number of fourty men, appointit be *Robert Steuart*, bafe son to *the Erll*, to keep the Houfe to his behoofe.

ALEXANDER LEGGATT re-examinat, and deeplie sworne, and demandit, vpoun quhat occasioun he went to *the Erll*, quhen he mett with him in the Castell of Edinburgh, about Beltane last? Deponis, that he being in warde, and haueing ane pensioun of victuall and siluer of *the Erll*, he past to *the Erll*, and desyrit of him ane precept and warrant to the Chalmerlanis or Takkismen to mak him payment of the biganes<sup>1</sup> of his pensioun. And that *the Erll* refuist to gif ane precept, and said, he sould 'gif directioun to his sone *Robert* to ansuer him.' And *Robert* tauld to the depouner, that he had ane directioun frome his fader in the depouneris favour.

Deponis, that *Thomas Blak*, *Archie Murray*, *Robert Sclaitter*, *Gilbert Gray*, and *Robert Mowatt of Gersettair*, were most familiar with *Robert Steuart*, and farrest vpoun his secreitis.

Deponis, that *Duncane Mitchell*, the poist, caryed Letteris from *Robert Steuart*, efter the taking of *Birsay*, to *the Erll* his fader.

Demandit, quhat Gentilmen of the cuntrey come voluntarijie in to *Robert*, after the taking of *the Castell*? Deponis, that numberis of people of all rankis come in to him, as namelie, *the Laird of Halcro*, *Frances Mudie*, *the Laird of Grymsayis* sone; and deponis, that *Frances Mudie* said to *Robert*, that xxiiij. Rebellis wald mak five hundreth men. The depouner knawis nocht yf thir men come in to *Robert* to assist him in his REBELLION; bot thay eate and drank with him. Deponis, that *George Traill* furneist sheep to *Robert*.

THOMAS BLAK, re-examinat, and deiply sworne, deponis, that efter *the Shereff* had been at *Birsay*, and gevin charge to *Robert Steuart* to delyuer the Houfe, the depouner being in companie with *the Shereff*, that the depouner reformatit findrie tymes to *Birsay* to *Robert*, and past and come at his pleasour.

Deponis, that he knawis no thing of *Thomas Layng* or *Alexander Leggatt*, concerning thair coun-

<sup>1</sup> Bygonis; arrears.

faill gevin to *Robert Stewart*; bot the depouner suspectis that *Archibald Murray* wes familiar and preuie<sup>1</sup> with him.

THOMAS LAYNG, re-examinat, and sworne, deponis, that the tyme that he wes in *the Steple*, he wes kept aganis his will be *Thomas Blak* and his companie; and deponis, that all these who joyned *Robert*, outh<sup>2</sup>er<sup>3</sup> subscryvit, or, yf thay could not subscryve, swoir to die and leive with *Robert*. And *Thomas Blak* wes one of these who subscryvit; and the depouner hard the Roll red, wherin the subscryvaris wer contenit, whose names wer *Thomas Blak*, *Gilbert Gray*, *Johnne Reid*, *Andro Martine*, and some vtheris whome he remembers not.

Deponis, that after the first taking of *the Steple*, *Patrik Halcro* wes Capitane; and when *the Castell* wes tane, *Thomas Blak* wes Capitane; and that the hail company, that come from *Birfay* to tak *the Steple*, come frelie and willinglie for that earand; and that thair wes no violence or force vfit aganis ony of thame to compell thame to go to that earand; and the depouner come all the way fra *Birfay* to *the Steple*, and saw no man forceit be the way.

Deponis, that he hard that *Pettie<sup>3</sup> Murray*, who went in the Ship with *the Shereff* and the depouner to *Orkney*, caryed ane Letter frome the Erl to his sone, *Robert*, being in *Birfay*.

Thomas Blak, re-examinat, and demandit, yf he knawis that *Robert Stewart* tooke ane Band or Oathe of these who joyned with him, that thay sould die and live with him? Deponis, that he knawis no fuche thing.

Thairefter, the said *Thomas* grantis, that he subscryuit the Band to die and live with *Robert*, and that these who could not subscryve did sweir vpoun thair swerdis; and that the effect of their Band and Oathe wes, that thay sould efauldle<sup>4</sup> tak pairt with *Robert*, and die and live in the caus. And that *Patrik Halcro*, *Gilbert Gray*, *Johnne* and *Patrik Gordoun*, *Johnne Guild*, and the depouner, with *Andro Martine*, subscryvit the Band. And rememberis not yf *Alexander Leggat* subscryuit the Band.

The depouner knawis not quhat Gentilmen of the cuntrey assistit *Robert* with poulder, bullett, victuallis, or counsaillis.

Deponis, that *Johnne Guild* and *Patrik Traill* wer the takaris of *the Kingis Herauld*, being accompanyit with a number of thair associatis; and the depouner come furthe of *the Steple* with his company to the *Place of the Yairdis*, and did freindship to *the Herauld*.

ARCHIBALD MURRAY, re-examinat, and demandit, yf he wes sworne be *Robert* to assist him? Deponis, that *Robert* vrgeit no fuche Oathe of the depouner, becaus he wes his faderis auld seruand, and knew that he neidit not to tak ony fuche Oathe of him. And grantis, that he tooke the subscriptionis and oathis of vtheris, who wer not his faderis auld seruandis.

Denyis, that thair wes ony violence or force vfit aganis *Thomas Blak*, in his going to *the Steple*; bot that *Thomas* wes als fordwart, and past als willinglie thair, as ony of the companie.

THOMAS LAYNG, re-examinat, grantis that *Robert Stewart*, being informit be some who saw *the Herauld* going to the Croce, that he wes to mak some Proclamatioun or chargeis, the depouner hard *Robert Stewart* gif directioun to some of the fouldiouris in *the Castell* and *Steple*, as namelie, *Johnne Guild*, to go and tak *the Herauld*, and not suffer him vse his Letteris and charges; and that conforme thairto, *Johnne Guild* tooke him, and brought him in to the Place of the Yairdis; and the depouner hard that *Johnne Guild* tooke him be the Coate of Armes, and preast to haif tane it af him; bot he knawis not yf the Coat wes revin.<sup>5</sup>

ALEXANDER LEGGATT, re-examinat, deponis, that *Thomas Blak* and his fouldiouris wer the takaris of *the Herauld*; and the depouner hard *Robert Stewart* gif directioun to the fouldiouris, to go and stay *the Herauld* fra vseing of his Letteris and chargeis, and to bring him in to *the Place*; whilk directioun wes performit be *Thomas Blak* and *Johnne Guild*.

<sup>1</sup> Privy; in his confidence.    <sup>2</sup> Either.    <sup>3</sup> Patie; Patrick.    <sup>4</sup> Sincerely; heartily. *Efauld*, or *aefald*, literally one-fold; upright, without duplicity. A double and deceitful character was then termed *two-fauld*.    <sup>5</sup> Torn



Denyis, that he subfcryuit or faw the Band ; bot knawis that thair wes ane Band subfcryuit, and Oathis gevin to die and live with *Robert* in the caus ; and fuche as could not subfcryve the Band, patt thair markis to it.

(23.) ANDRO MAIRTENIS *Confessioun*.

AT KIRKWALL, the xiiij day of September, 1614, I, ANDRO MAIRTINE, being examined be my *Lord Liuetennent*,<sup>1</sup> and my *Lord Bifchop of Orknay*,<sup>2</sup> anent my intelligenc of the caufis quhy *Robert Stewart*, fone naturall to *Patrik Erle of Orknay*, come to Orknay in this last fomer ?—Be quhais directioun he came heir ?—And for quhat purpofe ?—Hes anfuered as followis :

FIRST, that quhen I fpak with him in Birlfay, he fchew to me ane Commiffioun, subfcryuit be his father, to mak compt with all the Tak-men of the cuntrie, and reffäue payments of all reftis,<sup>3</sup> and debtis juftlie awand to his father be thame, of the crope fex hundreth and ten (1610), and all yeiris preceding the comeing of my Lord Bifchop to Orknay ; with powar alfo to medle and intromett with all his father's beftiall and moveables, and to difpone thairon. I fpeirit gif he had ony vther thing ado ?—and he faid, ' Yis'—bot he wald not tell me. ITEM, I faw ane Letter that came frae his father to him, be *Patrik Murray*, beirar, haueand this claufe in it—' That gif he fped not weill heir, that he fould addres himfelf to Murkle, to remane quhill tyme feruit better ;' bot I remember not of the reft of the contentes. ITEM, anent any conditione betuixt him and *Patrik Halcro*, throw his fatheris directioun, I am na way vpoune that fecret ; bot it appeiris thair be füm wrettin conditione amangs thame ; becaus I faw gritt anger, with a fear betuixt thame, for wanting of ane Letter that was a miffing among hands, and *Patrik* fend out ane boy to the Toune to mak inquisitione for it ; bot quhither thay gat it or not, I knaw not. And I faw thame ryue<sup>4</sup> my Lords fubfcriptioun from ane Letter, and thay caift the body of it in the fyre, and kept the fubfcriptione. ITEM, about the . . . day of September efter, as the Cannone was twyfe fchott in the night at the yrne yett, it patt ane greit feir in thair hartes. Then *Robert* fpeirit at me on the morne, quhat I thoct of it ? And I faid, that ' all was lyk to go wrong.'—' This is a fair matter,' faid he, (fpeikand of his father,) ' thair was neurir thing lukkit weill yit quhilk he devyfit—God gif I had neurir kend his turnis !' ITEM, quhan the commounaris wer trauelland for peax, I advyfit *Robert* to offer cautione for his perfonal comperance befor the *Lordis of Counfell*, gif the *Lieutennant* wald geife him libertie to go to Edinburgh. He anfuerit to me, and faid, that ' he wald not do fo—for the Counfell wold vfe him with Tortouris, quhill he reveillit his fatheris intereffe in this mater—and that wold he neurir doe !' Heirvpoun, I collectit, that all quhilk this yung man hes done, wes be the counfell of his father ; quhilk is a great pitie, except it pleas God and his Matie to be mercifull to him. And as for my being with him, I wold neurir haue bene a nycht in his companie, giue I could haue had meit and drink any vther way, as all the cuntrie knawis quhat neceffitie and miferie I was reductit vnto, be pouertie. ITEM, I remember that a great number of this cuntrie men hundit him till folies, and maid ANE BAND of Concurrence and Affiftance to him, quhill he caufit me to wryte ; and a gritt number subfcryuit the fame, quhen I was not with him ; bot the contents of the Band and fubfcriptiounes ar in his awin keiping, and my memorie cannot ferue me to remember on the particulars ; bot the writt will declaire.

A. MARTYNE.

(24.) DEPOSITIONS of *JOHNE BURNE*, laying feik and like to die ; taikin vp by *JAMES*, BISCHOP OF ORKNAY, in the faid *Johne* his chalmer, vpon the thrird of October, 1614.

IMPRIMIS, the faid *JOHNE* deponit and confest, that the EARLE OF ORKNAY fent him over with

<sup>1</sup> George, Earl of Caithness. <sup>2</sup> James Law, formerly Minister of Kirkliston, was promoted to the See of Orkney, in anno 1606 ; where he remained till he was translated to Glasgow, 1616. <sup>3</sup> Arrears. <sup>4</sup> Tear.

his sone *Robert*, to assist him to collect and receave some debtis resting vnpayed by diuerse Takismen of the crop 1609 and 1610 yeares; and promised to allow him ane Thousand markis therof, for his fies. SECONDIE, when he askit of the said *Earle*, 'Why he would send the said *Robert* to ORKNAY, sieing he wes ane young man who appeirandlie wald trouble the countrie?' Deponit, that *the Earle* answered, that 'it was not ane matter to him to know'—and that he wold 'heare other newes or it wes long!' THIRDLIE, being asked, yf he knew any direction given by the said *Earle* to *Robert* for taking of the Houses and intronetting with the Rentis? Deponit, that he saw ane Letter wes broght from *the Earle* be *Patrik Murray* in Kirkwall, in the quhilk the said *Earle* wrote to *Robert*, that 'yf he and *Patrik Halcro* could not at that tyme find opportunity to take the Houses, that they should go over quietlie to *Murkell*, and remayne ther vntill they fand fitt tyme and occasion, and all thingis wer made readye for taiking of the saidis Houffis. FERDLIE, being asked, why *Robert*, at his first coming to *Kirkwall*, did not take the Castle, seing, by his own confession, he might have had it deliuered vnto him be the souldiers? Answerit, that it was because he thought not the tyme fitt; and thingis wer not prepared.

JOHNE BURNE.

JA. B. OF ORCADS.

RO. COLTART, Notar publict, witness.

(25.) DEPOSITION of ANDRO MARTINE, *servitor to the Earl of Orkney.*

AT EDINBURGHE, the tent day of October, 1614. In presence of my Lordis Secretair, *Preuie Seale*, *Thefaurair depute*, and *Aduocat*.

ANDRO MARTINE, seruitour to *Patrik*, sometyme *Erll of Orkney*, demandit, who wryte that copie of ane Band, whilk wes presentit and showne vnto him? Deponis, that he acknowlegeis the Band to be his awin hand-wryte.

Demandit, quhair and quhen the Band wes subscryvit? Deponis, that he knowis no thing of the subscryveing thair of.

The said *Andro*, being examinat vpoun his grite and solemne oathe, and demandit, who wryte the principall Band? Deponis, that, in his opinioun, he thinkis that he write the principall Band, quhair of the copie wes producet.

Demandit, yf he subscryuit the Band? Denyis the subscryveing thair of, or that he wes present quhen ony manne subscryvit it.

Demandit, yf he saw ony mannis subscription at the Band? Denyis, that evir he saw the Band vnfauldit, at ony tyme, sen he wryte it; and he saw no manis subscription at it.

Grantis, that *Robert Stewart*, base sone to *the Erll*, tauld to the depouner, that *Gilbert Gray* and *Robert Mowatt* subscryuit the Band, and that *Robert Selaitter*, *Baillie of Birsay*, markit the Band.

Denyis, that he hard or saw ony man sweir that they sould keepe the conditiounis of the Band.

Demandit, quhair he saw the Letteris that *Patrik Murray* broght from *the Erll* to his sone *Robert*? Grantis, that he saw it in *Birsay*, in the hinder-end of July last.

Demandit, quhat conference he had with *Robert* anent that Letter? Deponis, he hard *Robert* say in ane anger, that he wald not go to *the Laird of Muirkill*, as he wes desirrit be the Letteris, bot that he wald remane in the countrey.

Demandit, yf he saw *Robert Stewart* and *Patrik Halcro* ryve the subscription from ane Letter of *the Erll of Orkney*? Deponis, that he saw thame ryve it in *the Castell of Kirkwall*, the day after *the Erll of Caithnes* had tane *the Place of the Yairdis*. And grantis, that thay wer in a grite anger, for ane other Letter of *the Erlis* that wes in missing; and that thay send ane boy oute of the Castell to *Margaret Buquhannanis* house to seeke the Letter; bot the depounair knawis not yf thay gatt the Letter. And the depouner knawis not quhat wes the contentis of the Letter quhairfra the subscriptione wes revin.



Deponis, that the boy, who wes fend for the Letter, wes towed<sup>1</sup> over *the Castell wall* be the deponer, and that he come back agane; bot the depouner knawis not yf he gatt the Letter.

Demandit, vpoun quhat hoipis *Robert* held *the Castell*; and by quhat meanis he thocht to worke his releiff? Deponis, that the depouner being weyreit in *the Castell*, and desyrous to be oute of it, becaus he mislykit the purpois, he write ane Letter, with<sup>2</sup> one *Paterfon*, to *William Bellenden*, craving his advyse and counsell quhat he fould do; to whome *William Bellendene* fend anfuere, desyryng the depouner to come oute, by what meanis he could best. And the depouner having imported this to *Robert Stewart*, and craving libertie of him to go oute, becaus he could serve him, for no purpois, within the Houfe; at the first, *Robert* dissuadit him to go oute, for feir of *the Erll of Caithnes* crueltie: And the depouner haiving said to *Robert*, that 'this interprise wes not lyke to frame weele;'—*Robert* anfuereit, that 'thay wald be able aneughe to halde oute, ffor mony alterationis wald occur, quhairby thay might keepe *the Castell*, as namelie, *the coming of the SPANZEIRDIS, the practises of PAPISTS*, and the truble whairin *THE COUNT PALLATYNE* wes:' Quhilkis alterationis wald procure thame releif, as *Robert* said to the depouner.

Demandit, who of the cuntrey people steirit vp *Robert* and assitit him in this *Rebellion*? Depones, that *Gilbert Gray, Robert Mowatt, Robert Schaitter, Baillie of Birsay, Williame Sinclare of Lye, Gilbert Grayis sone*, and his goode-sone *Gerfetter*,<sup>3</sup> wer the principallis who steirit him vp.

Demandit, quhat conference he had with *Alexander Leggatt* concerning ony directioun he brocht frome *the Erll* to his sone *Robert*? Deponis, that he rememberis not quhat conference wes betuix thame thairanent.

Demandit, yf he wes in *Birsay* when *Robert Stewart* fend Letteris to his fader with *Duncane Mitchell*, the poist? Grantis, that he wes in *Birsay* at that tyme; and that the depouner, be *Robertis* directioun and informatioun, write ane Letter, in his name, to *the Erll* his fader; quhilk Letter *Robert* rave;<sup>4</sup> and wryte over ane Letter him self. Deponis, that the contentis of the Letter written be the depouner wes, to tell *the Erll*, that *Robert* wes come to *Orkney* to tak vp his debtis; and that he wes troublit be *the Sheriff*, and forceit to leave the *Toun of Kirkwall*—and that he had tane him self to *Birsay*—and that *the Shereff* had convenit the cuntrey, and come to *Birsay* and persewit him; and had hurte ane man, and slayn ane doig in at the windois; bot he wes myndit to hald oute aganis *the Shereff*.

The depouner denyis that he knew the contentis of the Letter written be *Robert* him self to *the Erll*.

### (26.) ANDRO MARTINIS *Letter to the Secretar.*

MY LORD,

SINCE your lo. examined me so sickerlie vpoune my intelligence concerning the grund of *THE REBELLIOUNE* begun in *ORKNAY* be *Robert Stewart* and *Patrik Halcro*, and gart me swear to be plaine, your lo. will excuse me that forzet this: Quhen *Robert* and I was in conference, on a tyme, he said, that 'Gif his father had bene willing, and vst the counsell of vtheris, quhen he was in *Edinburghe Castle*, he might haue cumd away; for thair was men anew offerit to haue cumd or sente men with him to *Orkney*; bot he wold not cum away, becaus he durste not brek waird.' I speirit 'How many he might haue gottin to haue cumd with him?' He anfuereit, 'Four or fyue Thowsand, giue<sup>5</sup> he had pleast.' Bot he tauld me not quhat men thay war. Of this I thocht good to mak your lo. aduertisment, for saistie of my aithe; and hopes that your lo. will interceid for me, pat, be his Ma<sup>ties</sup> clemencie, I may be remittit for being with *Robert* in companie, at this vnhappie tyme of miserie; I beand aged and depauperat, able<sup>6</sup> to die of hungar, giue I had not gottin helpe be him in meit and drink. Bot I nevir buire airmes, maid mufteris, nor watched against *HIS MA<sup>ties</sup> Lieutenant*, efter I hard of his purpose. This I referre to your lo. gud discretioun; and gif ony vther thingis fall cum to my memorie,

<sup>1</sup> Let down by a tow, or rope.

<sup>2</sup> By.

<sup>3</sup> Robert Mowatt. See p. 299, &c.

<sup>4</sup> Tore.

<sup>5</sup> If.

<sup>6</sup> Lat. *habilis*.

quhilkis ar omittit at the present, I fall aquent your lo. thairwith. He said also, that quhen they spak with *Sir James Conneill*,<sup>1</sup> that *Sir James* wisfit him selffe to be at hame, and the *Erle of Orknay* to haue bein in Orknay, to do for thame felues; the ane in the West, and the vther in the North. So, confesding in HIS MA<sup>TIES</sup> clemencie, and your lo. affectioun toward me, I rest, &c.

EDINBURGHE, in waird, the tent of October, 1614.

(27.) THE DEPOSITIONS of MARGARITE BUCHANAN, taken vp the first day of November, 1614, before *Johne Sincler of Ratter, James, Bishop of Orknay, and Johne Buchanan*.

FIRST, the said *Margarite* depones and confessis, that *Patrik Halcro* had ane coffer standing in his motheris chalmer, in Kirkwall. SECOUNDLIE, deponis and confessis, that, vpon the Sunday efter that the *Erle of Cathenes* come to the Yairdis in Kirkwall, the said *Patrik* sent downe to hir the key of the said coffer, and desired hir to bring vnto him the writtis and Letters whilk wer lockit vp in the same, of whilk writtis shee had ane Warrant of the *Erle of Orknay*, whereof none did knaw but him self. THIRDLIE, shee deponit and confest, that when shee had receaved the key of the said coffer, shee went and oppened the same, and fand two writtis only in the same, whilk shee red presentlie, and baith of them were subscribed by the Earle of Orknay. FOUTRLIE, deponit and confest, that the ane of them wes ane BAND and WARRAND for the said *Patrik*, for to take and keipe THE CASTLE OF KIRK WALL, wherfoever he might most convenientlie; allowing vnto him therefore, the double of the allowance quhilke the Constables and Keipar of the Castle had ordinarlie of before. FIFTLIE, deponit and confest, that the other writt contened the names of sic as should be affociatis and assisteris vnto him in the said interprise; as namelie, *Thomas Laing, Alexander Legatt, Helias Kneland*, and vthers whose names shee can not remember. SEXTLIE, deponit, and confest, that presentlie after shee had red and considered these two Writtis, shee broght them, hir self, to the Castell, and delivered them to *Patrik Halcro* out of hir owne hand. SEVINTLIE, deponit, that when *Patrik* had red the said BAND, he gave it in like manner to *Robert Stewart* to reid; who, after that he had red itt, rave<sup>2</sup> it with his handis in small peices, and trampitt it vnder his feitt. AUGHTLIE, deponit, that *Patrik Halcro* wes not content with the rying<sup>3</sup> of it, as she perceaved by his countenance and gestur; and when shee sayed vnto Robert, 'Fye vpon yow, Sir! Why hawe yee done that? It had bene better to have keipte it!' Deponit, that baith *Robert* and *Patrik* said, 'that that BAND should not do hurte in tyme coming'—and that 'The Earle of Orknay should not want his head for it!' NYNTLIE, Deponet, that *Patrik Halcro* was reiding the other writt, wherein the names wer contened, when *Robert* rave the Band—and that shee knawes not certanlie what became of that writt; but that, in hir iudgement, it wes riven<sup>4</sup> also.

JA. B. of Orcads, J. SINCLER of Ratter, JOHNE BUCANANE.

THEIR former Depositions were writtin be me, *Robert Stewart*, Minister at Hoy, at direction of *James B. of Orknay*.

ROBERT STEWART, Minister, with my hand.

(28.) DEPOSITION of JOHN SHARPE, servant to the Earle of Orknay.

AT EDINBURGH, the first of November, 1614, in presence of my Lordes Chancellor, Secretar, Prefident, *Prewie Seall, Theasaurar depute, Clerk of Register, and Aduocat*.

JOHNE SHARPE, servand to the Earle of Orknay, fworne, and demanded when he entered in seruice with the said Earle? Depones, that he entered in seruice with him in the moneth of Junij, or Julij, 1613.

Demanded, what he knowes concerning THE REBELLIOUN in ORKNAY? Depones, that he remembers that within sex weeks after he come to the Earle, the Earle caused the deponer write a Me-

<sup>1</sup> *Sir James Makoneill*. See his Trial, III. 1, &c.

<sup>2</sup> Tore.

<sup>3</sup> Tearing.

<sup>4</sup> Torn.



moriall in thir tearmes; 'Yow shall go to Orkney; yow shall sett Takkes, and reule the countrey, as yow did before. Yow shall send shippes to Norroway, for such thinges as yow misfer,<sup>1</sup> especiallie, for poulder.' And this Memorall wes wrotten in *the Casle of Dunbartane*. Depones, that *Robert Stewart*, the Earles bafe sone, wes not in Dunbartane when this Memorall wes wrotten, but came there within xiiij<sup>th</sup> dayes thereafter. Depones, that *the Earle* patt this Memorall in his pocquett; and the deponer neuer saw it thereafter. And knows not what come of it. And sayes, that this Memorall wes wrotten by my Lordes own dyteing.<sup>2</sup>

Depones, that thereafter, when my lord wes in *the Casle of Edinburgh*, the deponer, by my lordes dyteing, wrote a new Memorandum, agreeable in substance to the former; with this addition, 'Yow shall put furth of the countrey of Orknay, such as hes no thing to do in it.'

Demanded, yf he hard ony conference betuix *the Earle* and *Robert* anent THE REBELLION IN ORKNAY? Depones, that he hes hard *the Earle* findrye tymes invey againes *Roberte*, for geveing over the House of Kirkwall to *the Bischope of Orknay*, calling him 'a feeble beast!' And he hard *Robert* say, 'Yf he had the House againe, he wald keep it better!' And *the Earle* answered, that 'he trowed he wald do no better.' And he hes findrye tymes hard *the Earle* defyre *Robert* to 'prove a prettie<sup>3</sup> manne yf the House come againe in his handis; ffor it wald stand him to his lyff!'

Depones, that after *Robert* went to Orknay, the deponer wrotte a new Memorandum, by *the Earles* dytment, to *Robert*, bidding him choose new Takmen,<sup>4</sup> and tak vp his restes.<sup>5</sup> And the remanent of this Memorandum, in substance, wes agreeable to the former Memorandums. And this Memorandum wes wrotten in *the Casle of Edinburgh*.

Thereafter, when *Robert* wes gone to Orknay, the deponer, by *the Earles* dyteing, wrote a Missive from *the Earle* to his sone *Robert*, oute of *the Casle of Edinburgh*, willing him to follow his Memorall, in all thinges. And depones, that *the Earle* wold not subscriue this Letter, for fear of interception by the way; and the direction, on the bak of the Letter, wes in thir wordes—'For *Robert*.'

Depones, there wes a vther Letter written by the deponer for *the Earle*, in the tyme of his beeing in *Edinburgh Casle*, bearing, 'Yow shall speak the countrey menne, and try yf thay will tak your pairte; and yf the countrey men will tak your pairte, yow shall reteir your self to Caithnes, and stay there, and proceede no thing whill I send yow worde.' And depones, that *Duncane Mitchell*, the Poast, caryed the one of thir Letteres, and *Patrik Murray* caryed the other Letter: And that this last Letter wes not subscriued, wanted date, and had direction one the bak, 'For *Robert*.' And all thir Letters and Memorandums were dyted by my Lord him selue.

Denyes that euer he hade conference or speatche with *Robert* anent the REBELLION. Depones, that *the Earle* had copies of all the Memorandums and Letters wrotten be him, and keepd thame in his pocquett.

Depones, that *Duncane Mitchell*, the Poast, broght a Letter from *Robert* oute of Orknay to *the Earle*, beareing, 'It will please your lo. to tell *the Counsell* in my name, that I am come to Orknay, and am going thorroughe the countrey to tak vp your lo. debtes; and that I wes perswaded by *the Shiref*, and wes constrained, for faulsetye of my lyff, to tak *the Place of Birsay* for my refudge.' The deponer is of oppinion, that this Letter wes wrotten for an excuse of *Robertes* proceedings.

Depones, that *the Earle* caused wrote a Letter to *Robert*, in the deponeres owne name, showeing *Robert*, that 'yf he come in this countrey, he wold be hanged.'

Denyes that he hard ony speatche betuix *the Earle* and *Mitchell*, the Poast, when he broght *Robertis* Letteres to him.

Demanded, who wer present, at the wroteing of *the Earles* last Letteres send with *Mitchell*, the

<sup>1</sup> Want; stand in need of. <sup>2</sup> Enditing; dictation. <sup>3</sup> Gallant; brave. <sup>4</sup> That is, to recall the whole of the Leases granted by the Bishop or other administrators under the new regime; and to give the Lands to new tenants, who would be subservient to the Earl. <sup>5</sup> Arrears of rent.

Poast? Depones, that none were present but *the Earle* and the deponer. And that *Mitchell*, the Poast, stode by but hard nothing.

Depones, that *Mitchell*, the Poast, tauld the deponar, that *Robert* had taken BIRSAÿ; and that one *Mudye* come from Kirkwall to Birsay with *Robert*; and that one *Gray* assisted *Robert* in keeping of the House; and that *the Shiref* come and persewed the Howse; and that there was shooteing in and shooteing oute; and that one *Downy Lyell* wes hurt, and one *Doig* slayne.

Depones fordar, that after *the Guard* come to seek the deponer, *the Earle* derected the deponer to Orknay; and bad him awaite vpon his sone, and do as he wold command him. And the deponer, asking of *the Earle*, yf he wold wrote a Letter with him, *the Earle* answered, that 'he wold not wrotte, ffor he feared the deponer wold be taken by the way;' and he saide forder to the deponer, that *Robert* wold not let him want.

JOHN SHARPE,

(29.) DEPOSITION of ROBERT STEWART, 'base sone' to the Earl of Orkney.

AT EDINBURGH, the xiiij day of Nouember, 1614. In presençe of my Lord Chancellour, the Erl of Caithnes, the Lordis Secretair, Preue Seale, Thesaurair depute, and Aduocat.

ROBERT STEUART, base sone to Patrik Erl of Orknay, humblit on his knees, and deiplic sworne; and demandit, vpoun quhat occasioun, and by whose instigatioun he maid THE REBELLION IN ORKNAY? Deponis, that he being in grite neede and necessitie, and vnable to keepe this Toun for dett, he past to Orknay to tak vp some of his faderis auld restis, quhairwith he thocht to mak his furnishing oute of this cuntrey. Depones, that his fader haueing consauet ane grite offence aganis him, becaus that he, at the first taking of *the Castell of Kirkwall*, randerit the same bak agane to *the Bischop*; his fader, for that caus, wald skairlie kenne<sup>1</sup> him, or gif him ony maintenance. And deponis, that his fader directit him to Orknay, with Commissioun to mell<sup>2</sup> with his restis, and to intromett with his goodis in the cuntrey; and that his fader aduist and counfallit him to repair the oursight and wrang he had committit by deliuering of the Castell to *the Bischop*; and if by ony meanes he could come be this Castell, to tak it agane. And deponis, that his fader gaif him some Memoriallis, in wryte, quhilkis wer writtin be the depouner him self, to his faderis directioun; and the Memoriallis boore, that yf *the Castell* come in his handis, he sould send a Schip to *Norroway*, for poulder, bullett, and suche other necessar prouisioun as wer fitte for keeping of the House.

Grantis, that in this tyme of his being in Orknay, he ressauit tua or three Letteris from his fader; whair of one wes delyuerit to the depouner be *Patrik Murray*, the contentis whair of wes, that he wes informit *the House of Birsay* wes tane; and he aduist the depouner, yf he wes not able to keepe the House, that he sould reteir him self with *Patrik Halcro* to Caithnes.

Grantis, that he ressauit ane other Letter from his fader, send with *Duncane Mitchell*, the Poist, and that the substance of that Letter wes, for taking and keeping of the Houses, yf the depouner could come be thame.

Grantis, that his fader, findrie tymes, said to him, that he wald eschape oute of warde, and come to Orknay.

Deponis, that he acquaintit not *Patrik Halcro* with his intentioun to tak *the Castell*, quhill *the Shereff* persewit the depouner at *Birsay*. And grantis, that at that tyme he commvnicat to *Patrik Halcro* the contentis of his faderis Letter send to him with *Duncane Mitchell*, the Poist; and that *Patrik* willinglie yeildit to joyne with him in this REBELLION.

Denyis, that *Patrik Halcro* ressauit any Letteris fra the depounaris fader.

Deponis, that his fader vsed all the meenis he could to haif gottin money, to haif send with the depouner to Orknay, to haif furneist him in thingis necessar for this interprise; bot he could gett nane.

Grantis, that he write to his fader with *Duncane Mitchell*, the Poist, schaweing how the Schereff

<sup>1</sup> Recognise; countenance.

<sup>2</sup> Literally, meddle; uplift the arrears of rent, &c.



had procedit aganis him in perfute of him at *Birfay*, and quhat had fallen oute amang thame in that actioun.

Demandit, what hoipis he had of affistance frome ony cuntreie people heir? Deponis, he had no hoipis of affistance from this cuntreie people.

Deponis, that his fader verie oft, in publict audience, wald invey aganis the depouner, and quarrell him for randeriing of *the Castell to the Bifchop*.  
R. STEWART.

(30.) DEPOSITION of PATRICK HALCRO.

PATRIK HALCRO solemnelie fborne and demandit, quhat he knawis concerning the beginning of THE REBELLIOUN IN ORKNAY? Deponis, that in Somer, bigane a year, the depouner past to *Dunbartane* to visite *the Erle of Orknay*; and that *the Erle*, in a priuat conference betuix thame twa, askit of the depouner, 'Yff, be ony meanes, he could come be his Houffis agane in Orknay?' To whome the depouner anfuerit, 'Your lo. hes been over lang in starting. Your lo. had done weelee, yf yow had caufit keepe thame better, quhen your lo. had thame!' And the Erll replyit, 'That can not now be mendit. Is it not yitt possibill to gett the Houffis agane?' And the depouner anfuerit, 'It wilbe hard for your lo. to gett that done, vnles your lo. haif affiurance of the cuntreie people to stand be yow and assist yow.' And then the Erll said, 'Thay ar a companie of fals people, I can not lippin<sup>1</sup> in one of thame; bot I mynd to send my sone thair, quha wilbe your pairt. Will yow assist and tak pairt with my sone?' And the depouner at the first planelie refuist to follow his sone in that earand, saying, 'he wes over feble a Capitane to follow, in suche a purpos!' Bot the Erle haveing delt forder with him, to follow his sone at his comeing to Orknay, the depouner, in end, promiseit to follow him, and to tak parte with him at his comeing to Orknay.

Deponis, that after *Robert* come to Orknay, he shew to the depouner, in *Birfay*, the Letter writtin be *the Erll* his fader to him; willing him, yf he wes not able to keepe the Houfe of *Birfay*, to retein him with the depouner to *Caithnes*. And grantis, that at that same tyme he promiseit his affistance to *Robert*, and to tak pairt with him.

Grantis, that according to ane other Memoriall, directit be *the Erll* to *Robert*, for sending to *Noroway* for poulder, they send ane ship to *Noroway* for poulder, bot the *Castell* was randerit or the poulder come home: And the depounair heiris that threescoir barrellis of this poulder come in *the Erll of Cathnis* handis.

Deponis, that at the first playing of the cannoun, *Robert* being in his bed, the depouner come to him, and askit of him 'quhy he wes lyand in his bed, seing the cannoun had dischargit sax schoit?' And he demandit of *Robert*, 'How he thocht this mater wald lest?' And tauld him, 'he wald not be able to hald oute. It wer gude for him to tak him to the Sea!' To whome *Robert* anfuerit, 'I will not tak me to the Sea; my fader will then say, I haif feblie gevin ouer his Houfe! I will rather hald oute quhill the Houfe be dung downe abone my heade, or<sup>2</sup> I rander my self to *the Erll of Caithnes*, or yitt to *the Counsell*, to be tortourit, quhill<sup>3</sup> I confes aganis my fader, the thing that may be his wrack and myne!'

Deponis, that *Robert* said to the depouner, that 'his fader wald come to the cuntreie, and thay wer n expectatioun that *the Erll* wald brek warde.'  
P. HALCRO.

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

Resetting of Egyptians—'Johnnie Faw.'

Jan. 25.—WILLIAME AUCHTERLONY of Cairny.

Dilaitit for contraveniing the Actis of Parliament in ressetting of Egiptianis;

<sup>1</sup> Rely; trust.

<sup>2</sup> Before; ere.

<sup>3</sup> Until.

speciallie of Johnne Fall,<sup>1</sup> ane notorious Egiptian and Chiftane of that vnhappie foirt<sup>2</sup> of people.

Mr James Oliphant, Aduocat, substitute to Sir Williame Oliphant, his father, Aduocat to our fouerane lord, producet the Letteris deulie execute, &c.—Compeirit Daud Lyndsay of Balgaweis, *excusatorio nomine* for the said Williame, and declairit that the said Williame was lyand bedfast and deidlie feik, nocht habill to travell to keip this dyet, and offerit him selff caution for the said Williame his compeirance, befor my Lord Justice, the thrid day of the nixt Justice-air of the Sheref dome quhairin he duellis, or soner, vpon fyftene dayis wairning.—Quhilk excuse the Justice, with consent of the perfewar, admittit, &c.

### Rebellion in Orkney—Tyranny and Oppression—High Treason, &c.

[PATRICK EARL OF ORKNEY, the infatuated and ambitious individual, whose guilty life at length terminated ignominiously upon the scaffold, was nearly related to King James VI., and at one period stood high in favour with his prince. As the particulars of the crimes for which his life was forfeited to the offended Laws of his country are rehearsed in his former Trial,<sup>3</sup> and in that of his natural son, ROBERT STEWART,<sup>4</sup> reference is made to these Cases, and to the illustrative Papers appended to them. The various Histories of Scotland may also be consulted, in which the fact of THE REBELLION IN ORKNEY is very briefly noticed, owing to the want of proper materials.

Although his crimes were of a very remarkable description, and indicative of a cruel and blood-thirsty disposition, it must not be supposed that this Nobleman was a rude and unpolished barbarian, wholly unskilled in the modes of civilized life. On the contrary, much of his earlier life had been spent at Court; and his daring crimes and overweening ambition alone prevented him from rising to the highest eminence, as a Courtier. Like many other unlucky Courtiers of that age, he seems to have been obscured by the prevailing star of that corrupt and worthless favourite, Kerr or Carr, Earl of Somerset, who secretly undermined him, and embraced every opportunity of blasting his character and fame, in the King's estimation. Having thus fallen into disgrace at Court, the Earl of Orkney appears to have commenced a reckless warfare against all civilized society, and to have formed the mad project of establishing himself as an independent and despotic Prince, in his Island Kingdoms of Orkney and Shetland; and in due time he had also resolved upon entirely shaking off the yoke of allegiance to the Crown of Scotland.

Having retired to Orkney, he committed such excesses, that, within a very few years after the accession of King James VI. to the English throne, the oppressed people of Orkney presented numerous supplications for redress, and loudly complained of their intolerable grievances. These complaints were directed to the Privy Council, (who appear to have been unable to afford any formidable check to his despotic cruelty,) as well as to the King himself. Sharp remonstrances were at first used, but with little effect; and at length the Earl's oppressions became so formidable in their character and degree, that the Lord Advocate found it necessary, in order to quiet the clamours of the people, to bring him to public Trial. Still, however, it appears to have been thought possible that he might be reclaimed; and the King used every means to delay matters coming to fatal extremities. Contrary to general expectation, the effects of long imprisonment seemed only to aggravate the rancour of his cruel disposition. He employed all his time in meditating projects for his escape from confinement, so that he might wrest

<sup>1</sup> The celebrated Johnnie 'Faw.' <sup>2</sup> Class; society. <sup>3</sup> Aug. 2, 1610, II. 81. <sup>4</sup> Jan. 5, 1615, III. 273.



his Castles out of the hands of the constituted authorities; and then boldly to defy the King and the Privy Council of Scotland, after having declared his independence of the kingdom of Great Britain.

The most effectual check which was given to these mad projects, was the sequestration of his revenues, and the withholding from the Earl all supplies, excepting such as were necessary for his bare maintenance, as a state prisoner. This rigorous step, however, appears to have been carried too far, and to have suggested to the Earl the idea of sending his 'base son,' Robert Stewart, to Orkney; where, after he had uplifted his 'bygone rents,' &c., he might secretly convey a considerable portion of them to him, to enable him to bribe his guards. When thus provided, he directed his son to use every endeavour to obtain possession of the Castle of Kirkwall, and of the other strengths formerly belonging to the Earl; leaving it to himself to effect his escape from Dumbarton Castle, to which he had been conveyed for greater security. So jealous were the Privy Council of the machinations of this restless and ambitious Nobleman, that after long petitioning, and causing him to endure great privations, it was not until Jan. 28, 1614, that they allowed him, out of his large revenues, the paltry aliment of '4 lib. Scotts per diem!'

Robert Stewart did, no doubt, succeed in his rash attempt; but in that he was mainly favoured by the accidental circumstance of the high unpopularity of the Sheriff; who, on account of his oppressive conduct and cruel exactions, was detested by the inhabitants so deeply, that, in order to get rid of his thralldom, they even consented to join 'the Bastard' in his treasonable schemes, judging, perhaps, that so long an imprisonment, and such severe discipline in the school of adversity, must necessarily have changed the temper and habits of their natural and rightful lord, whose return they were led by Robert confidently to expect. This feeling was very strongly marked in the 'Band of Association, subscribed by the Rebellis in Orkney,' which is given in the Appendix. In that interesting document, 'the frequent entrantis of extraniers,'<sup>2</sup> 'the corruption of the Lawes, partialitie of Judges, the greid of officeris, and oppreffion of Magiftratis,' are dwelt upon as intolerable grievances.

The expedition of GEORGE, *fifth* EARL OF CAITHNESS, the King's Lieutenant, eventually succeeded; and the ringleaders in the Rebellion, as has already been seen, were executed by that person, who, it will be remembered, had formerly rendered himself infamous by his treacherously delivering up his kinsman, *John Lord Maxwell*, to government, after having lured him to Castle-Sinclair, under the mask of friendship and protection.<sup>3</sup> The reader will find, from Documents preserved in the Appendix, that the Earl of Caithness intruded himself into this Commission, by eagerly volunteering his services to the Privy Council, so as, if possible, to ingratiate himself with his Sovereign, by quelling a Rebellion which had excited the observation and alarm even of the Court of England.<sup>4</sup> It is not a little interesting, among all his specious pretexts, to detect and expose the secret springs which appear to have actuated that selfish and cold-blooded Nobleman in undertaking so repulsive an expedition as that against the Rebels in Orkney. Under the mask of patriotism, zeal for his Majesty's honour, and his pretended desire for restoring the peace of the country, it is not difficult to discover the basest motives of hereditary and personal revenge and deadly feud against the fallen Earl of Orkney; as well as a secret design to procure the whole, or at least, a considerable portion, of his extensive territories, as a reward for his patriotic services. But a little research enables us to perceive, that a rooted hatred had long existed between the Earls of Caithness and Orkney, which had frequently broken out into open strife. As an extraordinary instance of the spirit of wanton cruelty and mischief in which these hostilities were

<sup>1</sup> *Balfour's Annals*, II. 50.

<sup>2</sup> The natives of Orkney, having long been accustomed to be judged by the laws of Denmark, were peculiarly offended at the introduction of *foreign* laws, judges, and settlers in their country, which was the policy too suddenly adopted by the Sheriff and other officers to *civilize* the people. So strongly did they resent these and the other aggressions of the *foreigners*, that they gladly forwarded the Bastard's views for the expulsion of their hated taskmasters.

<sup>3</sup> See this Collection, Vol. III., 33, &c. *Gordon's Hist. of Sutherland*, p. 301.

<sup>4</sup> THE EARL OF CAITHNESS got a pension of a thousand crowns for his services, and was, shortly after his return, made one of the Lords of the Privy Council of Scotland, and was in a fair way to realize all the objects of his ambition, had not his overreaching spirit led him into a train of iniquities which terminated in the ruin of himself and his family, which for many generations did not recover this shock.

carried on by the former, a quaint, but striking passage may be cited, from the graphic pen of Sir Robert Gordon;<sup>1</sup> who states, that in the year 1608, some of the Earl of Orkney's servants had been forced to land in the country of Caithness, 'by a contrarie wind and vehement storme of weather. First, the *Earl of Catteynes* maid them drunk; then, in a mocking iest, he caused sheave the one syd of their beards and one syd of their heads; last of all, he constrayned them to tak their wesshell, and to goe to sea in that stormie tempest! The poor men, feareing his farther crueltie, did choyse rather to committ themselves to the mercie of the senseles elements and raging waves of the sea, then abyd his furie. So they entered the stormie Seas of *Pentlay-Firth* (a fearfull and dangerous arme of Sea between *Cat-teynes* and *Orknay*), whence they escaped the furie thereof, by the providence and assistance of God, who had compassion on them, in this lamentable and desperat case, and directed ther course; so that they landed saiflie in *Orknay*. This affront and indignitie wes highlie taken (not without iust reason) by the *Earle of Orknay*, who complained therof to THE KING and his *Counsell*. His MAJESTIE did write to the *Councell of Scotland* to punish the *Earle of Catteynes* seveirlye, after dew tryall, as having committed a fact against his authoritie. But when both the *Earles of Catteynes* and *Orknay* came to Edinburghe, readie to informe one against another, they aggred all their privatt quarrells, by the mediation of freinds, *lest they should reveile too much of either's doings!* So this controversie was past over with silence; and some acknowledgement was maid by the *Earl of Catteynes* to the *Earle of Orknay*, as a satisfaction for abusing his servants,' &c.

The intriguing Earl of Caithness at length brought ruin upon himself and his family, by endeavouring 'to mak the Lord Forbes wearie of his landis in Catteynes.' This benevolent purpose he tried to effect by constant oppression of his tenants and servants, in virtue of his office of Sheriffship, which he had obtained from the Earl of Huntlie, on his marriage with Lady Jean Gordon, his sister. He secretly caused incendiaries burn all the corns standing in the corn yards of Sansett, in November 1615; and, to remove suspicion from himself, industriously rumoured abroad, that the Fire-raising had been done by Mackay's tenants, with whom the Forbeses were then at feud. The matter, however, having soon been disclosed by the actual perpetrators, the Earl was closely prosecuted; and he only obtained his Remission<sup>2</sup> after a long interval, 1st, By engaging to satisfy his numerous creditors; 2dly, by resigning into the King's hands the Sheriffship and Justiciary of Caithness; 3dly, by engaging to present to justice the malefactors whom he had employed to burn the corns; and, lastly, to resign to the Bishop of Caithness the House of Strabister, with certain Feu-lands of that Bishopric, amounting to the yearly value of 2000 merkis Scots, in augmentation of the Bishop's scanty revenues. His son, *Lord Berriedale*, was imprisoned for these debts for above five years; but the Earl himself obtained a '*superse-dere*,' or protection from legal 'diligence,' from the Privy Council. The creditors, however, 'apprized,' or sequestrated, all his lands. He was denounced Rebel in 1621, and his own son, Lord Berriedale, applied for and obtained a Commission to pursue his father! After five years' imprisonment, he was released for that purpose, on finding due caution to return to ward after having executed his Commission. In September 1623, Lord Berriedale and Sir Robert Gordon, the King's Commissioners, having taken the field against the Earl of Caithness, he precipitately fled to Orkney, intending to go thence to Norway and Denmark. Castle Sinclair, and his other Castles of Aerigell and Keasse, were immediately taken possession of in the King's name; and the Commissioners succeeded in pacifying the country of Caithness.

George, *fifth* Earl of Caithness, after having passed a miserable life, died, a victim of disappointed ambition, and in comparative obscurity, in Caithness, in the month of February, 1643, at the advanced age of 78.

<sup>1</sup> *Hist. of the Family of Sutherland*, p. 258.    <sup>2</sup> The author of the *History of King James the Sixth*, p. 391, says he became in the King's will, who decerned thus: to pay to the party offended 2000 merks; to renounce his pension of 1000 crowns; to renounce his Sheriffship; and that he 'sould caus the Bishop be answert of his spirituall dewtles ther; and sould redres all quarrells and faultis to peax.'



But to return from this digression, the only person among the Rebels, whose life was saved, was PATRICK HALCRO. He had been instrumental in bringing about a surrender of the Castle of Kirkwall, and had proved the means of preventing much bloodshed, which otherwise must have been occasioned, had the Rebels persisted in their Treason.<sup>1</sup> The advisers of the Crown, therefore, recommended him as a fit object of mercy; and more especially on account of the terms which he had proposed to the King's Lieutenant, at the time of the surrender.

It has formerly been observed, in reference to THE EARL OF ORKNEY, that he had originally been in high favour with the King; and that, in point of exterior, he was a person of courtly manners and polished address. So anxious was the King for his release, that certain Lords of the Secret Council were empowered to offer him the keepership and profits of either of the Royal Palaces of Holyroodhouse, Linlithgow, Stirling, or Falkland, with Ten Thousand pounds of rent, on condition that he should renounce all right to the Earldom of Orkney, and resign the same in the King's hands. But so infatuated and blindly perverse was the Earl, and so intent was he on accomplishing the objects of his visionary ambition, that he absolutely refused these conditions; having, previously to that time, instructed his son to hazard the mad attempt for which they both forfeited their lives. An anonymous author,<sup>2</sup> already quoted, has given a most faithful and remarkable portrait of the princely habits and lavish expenditure of *Patrick Earl of Orkney*, when he resided in his own territories, surrounded by his vassals and dependents. His sketch cannot fail to be generally interesting. "He had a princelie and royall reueneu; and indeid behavit himself ther with fik foueraintie, and geve<sup>3</sup> I durst say the playne veritie, rather tyranicallie, be the fhaddow of Dence Lawis,<sup>4</sup> different and more rigorous nor<sup>5</sup> the Muncipall or Criminall Lawis of the rest of Scotland; wherby, no man of rent or purfe mycht enjoy his propertie in Orknay, without his speciall favour; and the fame deir boght. Wherby it followit, that fitchit and forgeit faultis was fo devysit aganis manie of them, that they wer compellit, be emprefonment and small rewaird, to resigne ther heritable tytllis unto him; and geve he had a steve<sup>6</sup> purfe and no rent, then was sum cryme devysit aganis him, wherby he was compellit to lose ather half or haill therof, geve not lyff and all befyd I. And his pomp was fo great ther, as he went never from his Castell to the Kirk, nor abroad utherwayis, without the convoy of fiftie muscaters and uthir gentlemen of convoy and gaird. And siclyk, before denner and supper, ther wer thrie trumpetters that foundit still till the meat of the furst service was fet at table; and siclyk, at the second service; and consequentlie, efter the grace. He had also his ships directit to the Sea, to intercep Pirats, and collect tribut of uncouth fishers,<sup>7</sup> that came yearlie to these Seyis. Wherby he maid fik collection of gret gunnis and uthir weapons for weare, as no Hous, Palice, or Castell, yea all in Scotland wer not furneist with the lyk; and yit all this provisioun was spulzeit, in his awen tyme, be the violent hand of the Erle of Caithnes."

It only remains to the Editor to state, that this haughty Earl, according to *Archbishop Spotswood*,<sup>8</sup> 'took his Sentence impatiently;' on which account, 'some Preachers were desired to confer with him, and to dispose his minde towards death. But they, finding him irresolute, intreated for a delay of the Execution; which was granted to the sixth day of February. At which time, he was brought unto the Scaffold, guarded by the Magistrates of the City, and in the sight of many people beheaded.' *Calderwood*<sup>9</sup> gives a fuller account of his death, in these terms. (Feb. 1, 1615.) 'PATRIK EARLE OF ORKNEY was arraigned in the Tolbooth of Edinburgh; and be ane Inqueist of the Nobles and Barrones, was convict of Treafone, for the late REBELLION IN ORKNAY. It was thought, that if he had not,

<sup>1</sup> Sir Robert Gordon says, 'This Patrik Hacro was afterward in great favour with Earle George (Caithness), and weill interteyned by him for this service.'—*Hist. of Sutherland*, p. 301. <sup>2</sup> 'THE HISTORIE AND LIFE OF KING JAMES THE SIXT,' printed for the Bannatyne Club, 1825, Quarto, p. 386.

<sup>3</sup> If. <sup>4</sup> Orkney was then governed by Danish Law, which was most iniquitously applied by the Earl and his deputies. <sup>5</sup> Than.

<sup>6</sup> Stiff; well fed. <sup>7</sup> Fishers who came from Holland and other foreign countries. <sup>8</sup> Spotswood's *Hist.* Fol. Lond. 1668, p. 520. <sup>9</sup> *Cald. MS. Church Hist.* Advocate's Library.

20 dayes before, confessed, that he was the author of the said Rebellion, and come in the King's Will for the same, that hardly he could have been convicted, be any Law. The wiser and elder sort of the Nobilitie with-drew themselves from his Affise. He had sent to the Court to obtaine favour; but no appearance of returning ane answer. The Ministers, finding him soe ignorant, that he could skarse rehearse the Lord's prayer, intreated the Counsell to delay his Executione some few dayes, till he were better informed, and received the Lord's Supper. Their Petitione was assisted with the request of some Noblemen, and granted. Soe he communicate upon the Lord's day, the 5th of February; and was beheaded, at the Market-crosse of Edinburgh, upon Monday the 6 of Februar; when Sir Robert Ker, Earle of Rochester, was decourted. The King laid the blame of his death on him; but late, as his custome was, when matters was past remedie! It was observed that this moneth is fatal to the King's blood.'

The reader is once more referred, for details, to the Appendix of ILLUSTRATIVE DOCUMENTS annexed to the Trial of ROBERT STEWART and others, Jan. 5, 1615; and to the Papers annexed to the present Trial.]

[*Dominus Willielmus Heart de Prestoun, miles Justiciarius.*]

ASSESSOURIS TO THE JUSTICE.

ALEX <sup>a</sup> ERLE OF DUNFERMELING, Chancellor,	SIR JOHNNE COKBURNE of Ormestoun,
THOMAS LORD OF BYNNING, Secretar,	SIR ALEXANDER HAY of Quhitburgh,
MR JOHNNE PRESTOUN of Pennycuik, President,	SIR WILLIAME LEVINGSTOUN of Kilsithe,
SIR GEDIONE MURRAY of Elibank, Thesaurer-depute,	SIR ALEXANDER DRUMMOND of Meidhope;
SIR RICHARD COKBURNE of Clerkingtoun,	all SENATOURIS OF THE COLLEGE OF JUSTICE.

Feb. 1.—PATRIK ERLE of Orknay, &c.

Dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord for his hienes intereis, of the seuerall crymes of Treasone and Lese-Maiestie, at lenth specifeit and set down in the Dittay following.

*DITTAY against the Earl of Orkney.*

PATRIK ERLE OF ORKNAY, &c. 3e ar Indytit and accuset, fforfamekill as, certane and sure informatioun being gevin to our souerane lord, the Kingis most excellent Maiestie, and to pe Lordis of his hienes Previe Counfall of this Kingdome, of the manyfold Iniureis, Tyranneis, and haynous Oppressiones, practizet be 3ow vpon dyuerse his Maiesteis peceable and guid subiectis, duelland within the boundis of Orknay and Zeitland: Lyk as, for the better stay of the quhilkis, 3our former Tirranie and Oppressioun fra haifing forder course, and for the mair exact and substantious tryell of 3our giltines pairof, 3e, be his Maiesteis speciall directioun, being committit to waird, within the Castell of Dumbarten, to haif remanit pairin, quhill ordour had bene tane with 3ow, as appertenit: It is of verritie, that 3e, vpon occasioun of the restrante of 3our former libertie, freitting in 3our awin mynd pairat, nocht only during the tyme of 3our wairding, devyset all indirect and vnlawful meanis and moyane for 3our brek and escaipe furth of pe said waird, albeit skarrit and hindreit, throw the fidelitie of 3our keiperis fra doing pairof; bot lykwayis, maist treffoneabillie and vndewtfullie schaikand af 3our allegiance and dew obedience to our said souerane lord,



to quhais bountiefull clemencie ze war fa gritlie bund, ze maist treffonabillie plottit, devyset, and concludit the lait treffonabill Rebellioun, Vproir, and Infurrection, prosecute and followit furth be zour devyse and directioun within the said cuntrie of Orknay; in suafar as vmq<sup>le</sup> Robert Stewart, zour base sone, eftir mony thraitningis and minatorie speiches vtterit be zow aganis him, for his simplicitie in randerig and overgeving of his Maiesteis Castell of Kirkwall to James Bischope of Orknay, quha than had Commissioun of his Maiestie to command all Castellis, Houffis, and strenthis within the boundis of Orknay and Zeitland, and quha, be vertew of the same Commissioun, acqyret possessioun of the said Castell of Kirkwall and remanent Houffis and Palices within the bounds aboue writtin: AS ALSO, eftir pe said Robert his reconfiliatioun with zow agane, vpone conditioun that he sould vndertak quhatsoeuer desperat course ze sould command him to follow, off zour speciall causeing, sending, hounding out, command, counsell, devyse, and only directioun, quhome ze also furneist with perticuler iniunctiones, set down be zow in writ, how he sould carie and behave him selff in that zour treffonabill intendit interpryse, he, in the moneth of Maij, or pairby, last-bypast, past furth of þir pairtis to pe cuntrie of Orknay, and pair, haifing forgaderit with Patrik Halero, quha also was speciallie imployit and directit be zow, to aid and assist him in that vnhappie buffines, and to quhome ze gaif ane securitie, in writ, of certane landis, rowmes, and steidingis, vpone conditioun that he sould tak pairt with the said Robert, zour sone, pairintill: FIRST, accoirding to zour directioun with the assistance of vmq<sup>le</sup> Thomas Blak, Archibald Murray, Andro Mairtene, Thomas Layng, Alexander Legget, and dyuerse vtheris pair rebellious associatis, the Houfe and Place of Birsay was treffonabillie surpryset and tane in be thame, &c.<sup>1</sup> THE making of the quhilk treffonabill Vproir and Rebellioun within the said cuntrie of Orknay; the Treffonabill Surpryseing and taking in of the said Place of Birsay, Place of the Zairdis, Castell of Kirkwall, Kirk and Steiple pairof, and remanent his Maiesteis Houffis within pe said cuntrie of Orknay, keiping and halding of the samyn, in maner foirlaid, and haill treffonable practizes following pairupoune, war haillilie plottit, devyset, forget, and concludit be zow, and the samyn war maist treffonabillie put in executioun be the said vmq<sup>le</sup> Robert, zour base sone, and his rebellious companie; off zour speciall causeing, sending, hounding out, airt, pairt-taking, counfall, devyse, and only directioun: LYK AS, dyuerse Letteris and messages past betuix zow and pe said Robert, zour sone, eftir zour treffonabill taking of pe said Place of Birsay, incurrageing him pairby to keip the saidis Houffis, and to follow furth pe rest of your iniunctiones gevin to him in that zour treffonable interpryse: LYK AS, pe said vmq<sup>le</sup> Robert,

<sup>1</sup> Here the whole particulars of the treasonable transactions detailed in Robert Stewart's Trial are rehearsed, which it is unnecessary to repeat in this place. *Vid.* Jan. 5, 1615.

your sone, and dyuerse vtheris his associatis, being examinat vpoun þe verritie of þe premisses, in presens of the Lordis of his Maiesteis Previe Counfall, be pair Depositiones, hes grantit and confessit, that þe said Rebellioun was first intendit<sup>1</sup> be 3ow, and prosecute and followit furth be 3our speciall directioun and command, gevin to the said Robert, your sone, and Patrik Halcro, to aid and assist him pairintill: AND siclyk, be the Depositiones of James Lyoun, Johnne Scherp, Duncane Mitchell, the said Patrik Halcro, and dyuerse vtheris persones examinat in that matter, 3our giltines of the said Rebellioun is cleirly verifeit and provin: LYK AS, the said vmq<sup>le</sup> Robert, your sone, the day that he was accuset and persewit for the tressonabill crymes aboue writtin, befor he was presentit vpone pannell, being re-examinat, of new, in presens of dyuerse Lordis of his Maiesteis Previe Counfall, nocht only maist constantlie abaid at all his former Depositiones maid be him, concerning that Rebellioun, bot also eikit<sup>2</sup> pairto, that 3e gaif to him selff ane perticuler Warrant, in writt, to pas to the said interpryse, and to recover the said Castell agane vnder his power; as also, that 3e delyucrit to the said Patrik Halcro ane securitie, in writt, of certane landis and rowmes, vpone conditioun that he sould interpryse the recoverie of the said Castell, and assist Robert pairintill: Quhilkis Confessiones and Declarationes was also ratifeit and renewit be the said Robert, vpone pannell, in presens of the Justice and Assysouris afoir his Convictioun, and vpone the scaffold, in presens of the haill people, immediatlie befor his executioun. LYK AS, the said Robert, your sone, and his associattis, was convict and execute to the daith, for the haill tressonable crymes aboue specifeit, as done and committit of 3our speciall causeing, counsell, and directioun; as the proces of pair convictioun, heirwith producet, beiris. AND FINALLIE, 3our lordschipis selff being presentit, vpone the tuelff day of Januar last, in presens of dyuerse Lordis of his Maiesteis maist honourabill Previe Counfall of this kingdome, 3e pair, be 3our Deposition, subscryuit with 3our hand, acknowlegit and confessit the geving of the directioun be 3ow to 3our vmq<sup>le</sup> sone Robert, and vtheris his associattis, for þe surpryseing, taking, and detening of the said Castell of Kirkwall, craveing God and his Maiesties pardoun for that 3our offence, and in all humilitie and submissioun offerit 3our selff in his Maiesteis Will for þe samyn: As 3our Deposition, heirwith producet, mair cleirly testifeis: QUHAIRIN, 3e, as the principall devyser, fortifiear, and steirar vp of þe said vmq<sup>le</sup> Robert, your sone, to the practizeing of the former Rebellioun, hes committit oppin and manifest Tressone aganis our souerane lord, the Kingis most sacred Maiestie, and his royall authoritie: AND 3e ar airt, pairt, red, and counsalour of the haill tressonabill practizes aboue writtin: ffor the quhilk, 3e aucht

<sup>1</sup> Contrived; purposed; set on foot.

<sup>2</sup> Added.



and fould be demanit<sup>1</sup> and puneist as ane Tratour; to the terrour and example of vtheris to abstene fra the lyk heireftir.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord, for his hienes intereis.

PRELOCUTOURIS in defence,

Mr Alexander King, Mr Thomas Nicolfoun, Mr Alexander Peiblis, James King, Aduocattis.

Mr Alexander King, Aduocat, producet ane WARRANT of the Lordis of Se- creit Counsell, for himself and the remanent prelocutouris, to compeir this day, in defence of the Erle of Orknay, for the crymes contenit in his Dittay.—The foirlaidis ASSESSOURIS, nominat to concur with the Justice in this proces, war fuorne: Aganis quhome na oppositioun was maid be the pannell: Quhairupoun my Lord Aduocat askit instrumentis.

My Lord Aduocat producet the DITTAY, and desyret proces aganis the pannell for the tressonable crymes thairin contenit.

The Dittay, be command of my Lord Justice and his Assessoris, being red, and the pannell accuset, be vertew thair of, of the feuerall poyntis of Tressone and Lese-Maiestie thairintill, it is allegit, be my Lord of Orknay and his prelocutouris, that seing thair ar mony grit and haynous poyntis contenit in the Dittay, and that the samyn war nocht knawin quhill<sup>2</sup> now to the pannell, and na coppie thair of was gevin to him, quhairvpoun the pannell and his prelocutouris mycht haif consultit, quhilk aucht to haif bene done; desyret, thairfoir, ane tyme to be grantit to the laidis Prelocutouris, that thay mycht advyse with my Lord of Orknay thairupoun.—It is ansuerit, be my Lord Aduocat, that the pannell is brocht fra the Kingis Waird to the bar, and accuset of crymes committit aganis his Maiesteis autoritie, quhair of he is nawayis ignorant: Na coppie of his Dittay fould haif bene gevin to him, nor na delay fould be grantit, in Tryell thair of; bot, conforme to the daylie practik of this Judgement, quhair ane persone challenget and committit to waird for Tressone, and brocht to his Tryell, the Dittay quhairupoun he is accuset is summerlie discuffit, without delay or continuatioun.—It is allegit be the pannell, that he was nocht wairdit for this cryme, specifeit in his Dittay, bot for vther crymes; and this Tressone, quhairupoun he is now dilait and accuset, is committit during the tyme of his imprissonement: And seing, the only caus quhy his prelocutouris craves this delay to be grantit, is allanerlie<sup>3</sup> to confer with his lordschip, anent the verritie of the factis lybellit; quhidder he may plead giltie or innocent thair of: Desyres, as of befoir, ane convenient tyme to be grantit to thame to confer with the Erle thairupoun.

My Lord Aduocat takis instrumentis of the pannellis declaratioun, that he was wairdit for vther crymes; and that the crymes lybellit was committit sen his wairding: And as to the continuatioun cravet be his prelocutouris for ane

<sup>1</sup> Treated.

<sup>2</sup> Until.

<sup>3</sup> Alone; only.

convenient space, na delay fould be grantit, in respect his lordschip can pretend na ignorance of the crymes contenit in his Dittay, seing he hes bene dyuerse tymes examinat thairupoun be the Lordis of Secreit Counfall, vpon the verritie thair of.

THE JUSTICE, with advyse of the Assessouris, Repellis the pannellis allegiance bot, *ex gratia*, Grantis ane half hour to the pannel and his prelocutouris to be advyfit thairupoun.—Quhairupoun my Lord Aduocat askit instrumentis.

The pannel, with his prelocutouris, haifing ressaute vp the Dittay, and remouet thame selfis apairt to the Counfall-hous to be advyfet thairupoun, returnet within the space grantit to thame for that effect; and Declairit, that thai wald nawayis impunge or dispute aganis the relevancie of the Dittay: And as to the verritie of the crymes contenit thairintill, speciallie the directiones allegit gevin to hes vmq<sup>le</sup> sone, Robert, to practize the Rebellioun lybellit, denyis any sic directioun: And gif any command may be inferrit gevin to his sone, it was nawayis to commit any fact or deid to the offence of his Maiestie, or his heines autoritie; bot to pas over to Orknay, and to tak intromissioun with his Houffis, guidis, and geir being thairintill, vpon mere ignorance and simplicitie; nawayes thinking that ony sic command fould infer Treffone, or ony vther cryme or offence aganis his gracious Souerane. And, thairfoir, fleing fra all forder defence of his awin innocencie, hes his refudge to his Maiesteis grace and mercie: And, as of befoir, craves God and his Maiestie pardoun for his oversight and negligence on this poynt; and in all humilitie and submissioun cumis in (his) hienes Will for the samyn: And ratifeis his former Deposition, in everie point.

THE JUSTICE referrit the said Dittay to the tryell of the honourabill perones of Assyse vnder writtin, quha war lauchfullie summond to that effect.

ASSISA.

JAMES, ERLE OF GLENCAIRNE,  
GEORGE, ERLE OF WENTOUN,  
JOHNE, ERLE OF PERTHE,  
ROBERT, ERLE OF LOUTHANE,  
WILLIAME, ERLE OF TILLIEBARDIN,

DAVID, LORD SCONE,  
WILLIAME, LORD SINCLAIR,  
JOHNE, LORD HEREIS,  
JAMES, LORD TORPHICHENE,  
HEW, LORD SENPILL,

WILLIAME, LORD KILMAWERIS,  
JOHNE GRANT of Freuchie,  
SIR PATRIK HEPBURNE of Wrauchtounne,  
ROBERT ARNOTE of Fairny,  
SIR HARIE LYNDSEY, elder of Kynsawnes.

My Lord Aduocat takis instrumentis of the sueiring of the Assyse: And for verificatioun of the Dittay, vses the haill Depositiones of the Witneses producet; pairtlie subferyuit be the pairteis, and pairtlie be the Lordis Examinatouris; speciallie, the Depositiones of the Witneses mentionat in the Dittay: Produces the Letter of Tak<sup>1</sup> grantit be his Maiestie to Sir James Stewart, contening the Commissioun of Schereffschip: Repeitis the notorietie of Mr Johnne Fynlafones office of Schereff deputrie: Repeitis the Commissioun producet, grantit to my Lord Bischope of Orknay; and lykwayis, my Lord of Caithnes Commissioun;

<sup>1</sup> Lease.



with the thre feuerall Letteris direct to Robert Wynrahame, Yla Herauld, and executiones thair of: Repeitis the Criminall proces led and deducet aganis vmq<sup>le</sup> Robert Stewart, and remanent perſones his complices; with the Sentence and dome pronouncet aganis thame, beirand that the haill crymes thairin contenit war done and committit be thame and thair complices, of my Lord Orknayis ſpeciall directioun and command: Repeittis the tua Miſſiues, writtin be Johnne Scherp, at my lordis command, as he affirmes, quhilkes war gottin vpone Duncane Mitchell: Repeittis the Warrant direct be my lord, to eſtabliſche the keiping of the Caſtell of Kirkwall in the perſone of Patrik Halcro: Repeitis the Depoſitioun of Patrik Halcro and the ſaid vmq<sup>le</sup> Robert thairanent: Produces the Band ſubſcryuit be the cuntrie people, for taking eafald pairt with Robert, in the former Rebellioun practizet be him in Orknay: Produces ane Charter, grantit be my lord (Earl of Orknay) in fauoures of Patrik Halcro, ſubſcryuit at the Caſtell of Dumbarten, of certane landis in Orknay, for taking pairt with the ſaid Robert Stewart in the ſaid Rebellioun, albeit that cauſe be nocht expreſſit in the ſaid Charter: Repeitis the Judiciall Confeſſioun maid be my lord, vpone the tuelf day of Januar laſt, quhairin he hes Confeſſit, that the Caſtell was ſurpryſit be Robert, his ſone, be his directioun: And the ſaid Erles cuming in (his Maieſty's) will for the ſamyn: Repeittis the haill Depoſitiones maid be Robert, befor he was pannellit; his Depoſitioun maid the ſamyn day that he was pannellit; his Judiciall Declaratioun vpone pannell; and his Declaratioun vpone the Scaffold: With the Depoſitiones of Patrik Halcro, James Lyoun, Johnne Scherp, Duncane Mitchell, Duncane M'claren, Barnard Stewart, Mr Michell Mair: And in ſpeciall, thair Depoſitiones maid to the Lordis of Secreit Counſell, being confrontit with the Erle: Repeitis his lordſchipis cuming in Will, this day; and ſpeciallie, his ratificatioun of his former cuming in Will, vpone the tuelf of Januar. And thairupoun aſkit instrumentis: And Proteſtis for Wilfull Errour aganis the perſones of Affyſe; and that thai ſall incur the lyk cryme and puneiſchment of Treafone quhairvpoun the pannell is accuſet, gif thai acquit him thair of.

**VERDICT.** The Affyſe, all in ane voce, be the mouth of James, Erle of Glencairne, chancellor, ffand, pronouncet, and declairit the ſaid PATRIK, ERLE OF ORKNAY to be GILTIE, culpable, and convict of the treſſonable Rebellioun committit be vmq<sup>le</sup> Robert Stewart, his baſe ſone, and his rebellious aſſociattis, with in the cuntrie of Orknay: Quhilk was done and committit be the ſaid Robert and his complices, of the ſpeciall cauſing, command, devyſe, and directioun of the ſaid Patrik, Erle of Orknay, his ffather; in forme and maner ſpecificeit in the Dittay and Depoſitiones producet be our ſaid ſouerane lordis Aduocat, for verification thair of; ſpeciallie, conforme to the ſaid Erle of Orknay his awin Depo-

fitioun producet and subſcryuit with his awin hand, and this day ratifeit and renewit be him in judgement; ffor the quhilk he is cum in his Maieſteis will.

SENTENCE. The Juſtice, be the mouth of Johnne Dow, dempſter of Court, Ordanit the ſaid Patrik, Erle of Orknay, to be tane to the Mercat-croce of the burgh of Ed', and thair, vpone Fryday nixt, the thrid of this inſtant, betuix tua and thre houris eftir none, his heid to be ſtrukkin from his body: And all his landis, lordſchipis, leving, heritages, takis, ſteidingis, rowmes, poſſeſſiones, offices, digniteis, rentis, guidis, and geir, to be fforfalt and eſcheit to our ſouerane lordis vſe, as culpable and convict of the ſaidis treſſonabill crymes.

[It has been thought proper to preserve the following entries. The absence of ſo many ASSISORS, on ſuch an important occaſion, muſt doubtleſs have been occaſioned by the “grit ſtorme and ſeaſone of the zeir.” It is proper, however, to remind the reader, that Calderwood aſſerts that they ‘*withdrew themſelves from his Aſſiſe.*’]<sup>1</sup>

COMPEIRIT Hew Dunbar, wryter, *excusatorio nomine* for HEW LORD LOWDOWN, and declairit to pe Juſtice, that pe ſaid Lord of Lowdown was paſt pe age of thre ſcoir zeiris, viſſeit with dyuerſe bodiellie infirmiteis, ſpeciallie ane grit dollour,<sup>2</sup> and ſairnes in his richt leg; quhairthrow, in pis grit ſtorme and ſeaſone of the zeir, he is nocht hable to travell to the keeping of this Juſtice Court, to haif paſt vpone pe Erle of Orknayis Aſſyſe, conforme to charge gevin to him for pat effect, without the grit haizaird of his lyfe: And producet ane Teſtimoniall pairupoun, ſubſcryuet be James Greg, Miniſter at Lowdown, Mr George Walker, Miniſter at the Kirk of Auchinlek, and Mr Alexander Wallace, Miniſter at Gaſtoun. Quhilk Teſtimoniall, and excuſe mentionat pairintill, the Juſtice admittit. Qubairupoun the ſaid Hew Dunbar aſkit instrumentis; and proteſtit that pe ſaid Lord of Lowdown ſould be ſſed and relevit of his vnlaw.

Compeirit lykwayis Mr James Oliphant, Aduocat, *excusatorio nomine* for THOMAS ABERCROMBY OF THAT ILK, and declairit, that he was hevelie diſeaſit of ane fall; and pairthrow vnable to travell to this dyet, to pas vpone the Erle of Orknayis Aſſyſe, without grit hazard; and producet, for cleiring pe veritie pairof, ane Teſtimoniall ſubſcryuit be Mr Williame Glas, Miniſter at Dunkeld, and be dyuerſe of the Elderis of that parochin. Quhilk Teſtimoniall and excuſe pe Juſtice admittit, &c.

Compeirit pe ſaid day, Thomas Fallaſdaill, Proveiſt of Dumbarten, *excusatorio nomine* for ALEXANDER COLQUHOUN OF LUSE, and declairit that he was viſſeit with ane grit ſeiknes, and nocht hable to travell to the keeping of this dyet, being ſummond to pas vpone the ſaid Erle of Orknayis Aſſyſe; and pairuponne producet ane Teſtimoniall, ſubſcryvit be Mr Walter Stewart, Miniſter at Kilpatrik. Quhilk the Juſtice admittit, &c.

The quhilk day JAMES MARQUEIS OF HAMMILTOUN, WILLIAME ERLE OF ANGUS, JOHNNE ERLE OF MONTROIS, JAMES ERLE OF MURRAY, PATRIK ERLE OF KINGHORNE, ALEXANDER ERLE OF HOME, ALEXANDER GORDOUN of *Clunie*, SIR ALEXANDER FALCONER of *Halkertoun*, SIR ROBERT BRUCE of *Clackmannane*, JAMES HADDENE of *Glennageis*, SIR WILLIAME STEWART of *Gairnetullie*, JOHNNE BUCHANNANE of *that Ilk*, SIR ROBERT GORDOUN of *Lochinvar*, and WILLIAME DOUGLAS *appeirand of Drumlanrig*, being oft tymes callit, &c. and nocht compeirand, thay, and ilk ane of thame, for pair non-compeirance, war unlawit, and americiat in the panes contenit in the Actis of Parliament.

<sup>1</sup> See this Coll. III. 312, &c.

<sup>2</sup> Pain; trouble; diſeaſe.



## APPENDIX OF ORIGINAL DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF PATRICK, EARL OF ORKNAY.<sup>1</sup>(1.) LETTER, THE KING to the Privy Council of Scotland, 'anent the oppressed People of Orknay.'<sup>2</sup>

RIGHT trustie and weilbeloveitt cosines and counfallouris, We greitt 3ow weell. HAVEING red that 3our Lettre, sent with pe COMMISSIOUNE desyreit by those opprestit peopill, complenantis vpone THE ERLL OF ORKNAY; housoevir, the same is groundit only vpone civil Horningis, and that the Commissiounne conteanes leveying of menne, befeiging of housfis, reassing of ffyre, and dispensatiounne for Slaughter in the vseing of it, togidder with a WARRANT of concurrence for the country peopill of CAITHNES, which is thocht man<sup>3</sup> breid a farther wnquyetnes; and that the lyk Commissiounnes hes not bene grantit, except quhair the REBELLIOUN wes for a criminall caus: 3IT, haveing dewlie considerit the miserie of the poore distrestit peopill, whose hard fameishing estait is worse than death; the numberis of thame, whiche is a great presumptiounne that fume of thame hes over iust caus; thair continowall outcryis and exclamatiounnes heir, to the gritt scandell of our kingdome and COUNSELL thair, as if Oppressioun wer tollerated thairin, and that the Counfall wer cairles to remedy it: And then, THE ERLL OF ORKNAY is awin contempteous Rebelliounne, nevir preassing aither to satisfie the partie, or relax him self fra the horne: The contenowance of whiche disobediance, albeit for a civeill caus, can have na better constructione of ws, than that it is becum of the natur of a criminall. WE, vpone the respectis foirfaidis, being loath that the distrestit shuld not have the benefeit of our releiff, and the proud and rebellious not feill the weight of our iust wreath and indignatioun, have concludit to grant the said Commissioun, in forme as it is desyrit, and hes signed and sent heirwith wnto 3ow: Bot, as We have evir bene wnwilling to condem ony partie wnhard, and pairwith loth to cut aff a member quhair pair is any hope of recoverie pairof, We heve thocht meit to will 3ow, by oppin Proclamatioun, chaarge THE ERLL OF ORKNAY to compeir befoir 3ow the secund day of Marche nixtocum, for to give all dew and ressonable satisfacioun that may be iustlie demandit of him be ony who presently ar complenantis one him, so as We be no farder troubleid and importuned with thair Petitiones;<sup>4</sup> with certificatioun to him and<sup>5</sup> he fail of his appeirance that day, that not only the foirfaid Commissiounne salbe grantit to those quho presentlie desyres the same, in suche forme as it is socht, bot thay, in the executiounne pairof, salbe assistit with our power and authoritie, boith be sea and land, for the punishing of his Rebelliounne. AND if he do cum pair, at the day foirfaid, 3ow fall tak sum good ordour that he may be furthcummand,<sup>6</sup> wntil such tyme that he have aither cleirit or satisfeit all compleanares aganes him. AND in cais of his not compeirance, 3ow fall thane expeid this present Commissiounne, and delyver it to the pairteis futtareis;<sup>7</sup> and 3ow fall give wntill thame suche Warrands for concurrence of the cuntry, or quhatevir ellis may furder the prosecuting of the Commissiounne. For doeing quhairof, thir presentis salbe 3our sufficient Warrant. And willing 3ow to be cairfull in the spedie directiounne of this Proclamatiounne, as 3ow wald eschew our reprooff, ffor ony neglect of tyme pairin, WE bid 3ow fairwell. FROME OUR COURT AT CHETFOORDE, the 6 of December, 1608.

[JAMES R.]

To our rycht trustie and weilbeloveit cosines and counfallouris, the Erll of Dumfermling, our Chancellor, and remanent lordis and wtheris of our PRIVIE COUNSALL OF SCOTLAND.

<sup>1</sup> Reference is particularly made to the large COLLECTION OF PAPERS appended to the Trial of Robert Steuart and others, for their Rebellion in Orkney, which all relate to this present Case. See this Collection, Vol. III. p. 283, &c.

<sup>2</sup> From a Copy preserved by Lord Haddington in his MS. Collection of State Papers.

<sup>3</sup> Must.

<sup>4</sup> The

number of Supplications and complaints from THE PEOPLE OF ORKNEY to THE KING himself was very great; but he delayed taking any step until importuned to grant this Commission; which, though at length he subscribed, was clogged with the additional delay of ordering the Privy Council to charge the Earl of Orkney, of new, to appear before them; so as, if possible, to divert the Earl from his criminal courses. But he had long condemned the Proclamations and charges of the Council; and this new charge would merely appear to him as a fresh proof of their imbecility; and as he could 'call the King his cousin,' so he hoped that the Council would not dare to molest him in his Island Kingdom.

<sup>5</sup> If.

<sup>6</sup> Forthcoming.

<sup>7</sup> Suitors; petitioners.

(2.) NOTE OF THE CONFERENCE *had be the Secretare and Aduocat<sup>1</sup> with the Erle of Orknay.*<sup>2</sup>

My Lord Aduocat and I repaired to the Castell of Ed<sup>r</sup> to THE ERLE OF ORKNAY, and declaired to him that We had commandement from HIS MA<sup>TIE</sup> to examine him, vpon the causes of THE REBELLION OF ORKNAY. He declaired, that he wes innocent and ignorant thair of. That *Sir James Stewart*<sup>3</sup> came to the Castell of Ed<sup>r</sup> to him, and schew that his sone *Robert* wes gone to Orknay, whoes actiones thair might breid offence to HIS MA<sup>TIE</sup> and danger to *the Erle*; who answered, that want of meanes had forced *Robert* to gang thair, to vplift sum restis<sup>4</sup> of the Tennantis dewties auchtand to *the Erle*, to help to supplie *the Erles* wantis and his owne. That since it wes evill tane, he wald wryte to *Robert*, that he might retire furth of Orknay, desyring that *Sir James* wald cause convoy his Letter to his sone, and command his doaris to giue ouersight to *Robert* to transport him self to *Caithnes*. That he neuer wait any vther Letter to *Robert* since he went to Orknay.

It being replied be ws, that efter *Robert* had tane *BIRSA*, and disobeyed the chaarge vsed be *the Sheref-depute* to rander that Houfe, vnder the payne of Treason, he had writtin to *the Erle*, who, having reffaued his Letter from *Duncane Mitchell*, Poist, he had writtin bak to him with the said Poist. He denyed the wryting of any such Letter to his sone; and when he saw his seruand, *John Schairp*, of mynd to wryte to *Robert* with that Poist, he had dischaarged him to wryte; and that *Schairp* had desyred him not to find fault, that he might fend his owne privat Letter, ansuering to that which he had reffaued from *Robert*; bot that nather *Schairp* nor *Mitchell*, being broght to his presence, wald say any thing to the contrarie of this his declaration: Which is the substance of all that he wald say to ws in that poynt; adding, that no thing proceeding from him had occasioned THE REBELLION; bot that the extreame rigour vsed be *Mr John Finlason* to the cuntrie people, and the wrong intended be *Mr John* to the cuntriemen, who, with great haifard of thair lyves, had forced THE PIRATES,<sup>5</sup> and tane thame and thair schip, had disposed thame to REBELLION. And that thay had perswaded *Robert* to assift thame aganis *Mr John Finlason*, and to be head to thame in thair interpryses.

Being demanded, what condicion he had made to *Patrik Halcro*, for his joyning in this Rebellion? Denyed that he knew him familiarlie, or even had to do with him; and that no thing had moved *Halcro* to mell in these turnes bot his great affection borne to *Robert*, his sone. Farder, we could not induce him to grant, in any circumstance, of the proceedingis of his sone in his Rebellioun. We declaired to him, that what he concealed of the cairiage of this interpryse wald be detected be his sone *Robert*, *John Schairp*, and *Mitchell*, who wer all in handis. He answered, that he wes confident that thay could say no farder nor he had declaired to ws.

(3.) EXAMINATION of *Patrick Earl of Orkney*, and Re-Examination of *John Schairp* and *Duncan Mitchell*.

AT EDINBURGH, the secund day of Nouember, 1614. In presence of my Lord Chancellour, ecre-tair, Prefident, Preuie Seale, Thesaurair-depute, Clerk of Register, Aduocat, and Medope.

PATRIK, ERLE OF ORKNAY, sworne and demandit, yf he knawis *Thomas Layng*? Deponis that he knawis him, and that he wes some tyme his seruand; and rememberis not yf *Thomas Layng* broght ony Letteris to him oute of England.

Demandit, yf euer he had ony purpois or intentioun to haif brokin warde? Deponis that he had nevir ony suche purpoise or intentioun to haif brokin warde.

Demandit, yf he gaif ony direction or warrand to his bafe sone *Robert*, anent this REBELLION IN

<sup>1</sup> Sir William Oliphant of Newton.

<sup>2</sup> From the Original, in the *Dennyline Coll. of MSS.* Adv. Library, holograph of Lord Binning, afterwards Earl of Haddington, &c.

<sup>3</sup> Of Killeith, afterwards Lord Ochiltree.

<sup>4</sup> Arrear of rent and duties, &c.

<sup>5</sup> See this Collection, Vol. III. &c.



ORKNAY, and for taking of *the Houffis of Birsay and Kirkwall*? Deponis, he never gaif any fuche directioun to his fone.

Demandit, yf he write ane Letter to his fone with *Patrik Murray*? Grantis, that he write fuche ane Letter, and that the contentis thair of wes onlie to defire his fone to leave the cuntrey of Orkney, and to reiteir him self to Caithnes to *the Laird of Murkill*.

Demandit, yf he write ane Letter to his fone *Robert*, with *Duncane Mitchell*, poist, and what wes the contentis of the Letter? Deponis, that he rememberis that he caufit wryte ane Letter to *Robert* with the said *Duncane Mitchell*, when the Depounner wes caryed fra *the Castell of Edinburgh* to *Dunbartane*, bot he rememberis not of the contentis of the Letter; nather knawis he yf he subscriuit the Letter, or how it wes directit on the bak.

Demandit, quhat verball directioun he gaif to *Duncane Mitchell*, the poist, to cary to his fone *Robert* at that tyme? Denyis that he gaif him ony verball directioun, bot onlie to defyre his fone to gett him money.

Grantis, that *Duncane Mitchell* brocht him ane anfuer fra *Robert*, bearing, that he had tane *the Houfe of Birsay*, becaus *the Schereff* perfewit him. And that he had no other place of refudge to keepe him in; and that his man *Downy Lyell* wes hurt.

Denyis, that he fend ony directioun to his fone with *Duncane Mitchell* anent the taking of *Birsay*, or that he had ony conference with *Mitchell* at his bak-comeing fra Orkney, anent *Robertis* taking of *Birsay*, or anent the perfute of *the Schereff*.

Demandit, yf he wryte to *Patrik Halcro* to tak *Barnard Steuartis*<sup>1</sup> lyffe? Denyis the fame.

Grantis, that *Patrik Halcro* come to *Dunbartane*, and the Depounair mett with him thair. And denyis, that thair wes ony speeche or conference with thame, bot generall woirdis; and sayis, that he nevir spak fax wordis to *Patrik Halcro*.

Demandit, yf he had ony conference with *Barnard Steuarte*, anent his fone *Robertis* going to Orkney? Deponis, he neuir conferrit with him vpoun that subiect.

Demandit, yf he caufit his man *Johnne Schairp* wryte ony Memoriallis to his fone *Robert*? or yf the Memoriallis contenit a directioun to his fone to fend to *Norroway* for poulder? Denyis, that ony fuch Memoriallis wer writtin be him, or at his directioun; and the depounner rememberis not of ony Memoriallis writtin be him to *Robert*.

Demandit, yf he had ony conference with his fone *Robert*, at ony tyme, for geving ouer of *the Castell of Kirkwall* to *the Bifchope*? Deponis, that he fand fault with his fone that he had gevin ouer the Houfe, without taking Inventair, vnder *the Bifchopis* hand, of the goodis within the Houfe. And he had no other caus of offence aganis his fone, for that earand.

Denyis, that euir he had ony conference with his fone, after the geving ouer of this Houfe to *the Bifchope*, anent the taking of the Houfe agane; or that he bad his fone prove any prettye man, yf the Houfe come in his handis agane.

Demandit, yf he gaif ony directioun to *Johnne Schairp* to wryte ane Letter to his fone *Robert*, willing him to follow his Memoriallis? The depounner rememberis not of ony fuche Letter.

Demandit, yf he wryte ane Letter to his fone *Robert*, willing him to trye the cuntrey people, yf thay wald tak his parte? Denyis the writting of ony fuche Letter.

Demandit, quhat directioun he gaif to *Johnne Schairp* to carye to Orkney? Deponis, that he directit him not to Orkney, bot fend and directit him heir to *his Maigesteis Counsell*, with Letteris to the *Erll of Glencairne*, to do<sup>2</sup> for him at *the Counfallis* handis. And sayis, planelie, that the said *Johnne Schairp* had no directioun from the depounair to go to Orkney; and that the said *Johnne* being comeing to this burgh, and getting informatioun at *the Cowde-bridge* that *Duncane Mitchell* wes

<sup>1</sup> Keeper of the Castle of Birsay, who had been appointed by Sir James Stewart of Killeith, the new Chamberlain and Sheriff-principal of Orkney, under the King.

<sup>2</sup> To act or procure for him.

tane, and that the said *Johnne* wald be tortourit yf he come to the *Counsell*, the said *Johnne* thairvpoun tooke occasioun to eschew.<sup>1</sup>

Demandit, yf he causit mak ane bed for his sone *Robert*, in his awne chalmer, within the *Castell of Edinburgh*, tua nightis afore his going to Orkney? Deponis, that he causit to mak his bed in his chalmer, becaus the wyfe of the House quhair he lay, in the Castell, wes grite with childe and at the poynte of hir delyuerye.

Denyis, that he gaif directioun to *Johnne Schairp* to write ane Letter in his awin name to *Robert Stewart*, to shaw him, yf he come heir that he wald be hangit.

Demandit, quhat he meant be that pairt of his Letter writin to his sone *Robert*, quhill Letter wes gottin vpoun *Duncane Mitchell*, quhairby he allowit of the forme and tennour of *Robertis* Letter writin to him? Deponis, that he meant no thing, bot allowit that *Robert* had writin the simple treuthe.

Demandit, quhat wes his meaneing in the other poynte of the Letter, bearing, 'thair is other materis heir to think vpoun nor fuche thinges as thay. I beleve HIS MAIESTIE thinkis litle of these materis?' Deponis, that the deathe of the Prince,<sup>2</sup> and the trouble quhairin the Counte Palatyne<sup>3</sup> wes lyke to be, through the invasioun of the Spaniard, maid the depouner to beleve that his Maiestie had other thingis to think vpoun nor<sup>4</sup> Orkney. And tuicheing that poynte of the Letter, beareing, that 'yf his sone come heir, the Tolbuthe wald be his best,' the depouner meant no thing, bot that he wald be wardit, bothe for his debt and taking of the House. And grantis, that the Letter bearing thir headis wes all writtin be the depounaris directioun.

Denyis, that euer he had conference with *Patrik Halcro*, or send ony worde or message to him counteneyng a promeis of rewarde, yf he wald assist *Robert*, his bafe sone, in his REBELLION.

JOHNE SCHAIRP, re-examinat, deponis, that afore he come oute of *Dunbartane*, he knew that the *Gaird* wes feikand him; and the *Erll of Orkney* tauld to the depouner, that the *Gaird* wes feikand him. And deponis, that the *Erll*, in plane termes, directit him to go to *Orkney*; and sayis, that the *Erll* gaif to the depouner ane Letter, directit to the *Erll of Glencairne*, purpoillie to haif showne the fame to the souldiouris of the *Castell of Dunbartane*, yf he had bene stayit be thame, and to mak thame to vnderstand that the *Erll of Orkney* had directit him heir to the *Counsell*. And sayis, that the *Erll of Orkney* forbad the depouner, in ony cause, to gang to *Edinburghe*; bot to gang to *Dundee*, and swa to *Orkney*.

THE ERLL OF ORKNAY, being confrontit with *Johnne Schairp*, vpoun that poynte of his Deposition, tuitching the directioun gevin to *Schairp* to go to *Orkney*, and tuitching the occasioun of the Letter writin to the *Erll of Glencairne*, the *Erll* is direct contrair to *Schairp*, in that poynte; and *Schairp* abydis constantlie be his Deposition.

The said JOHNNE SCHAIRP his formair Deposition, maid in prefence of the *Counsell* yisterday, the first of this instant, being red in the audience of the said *Erll of Orkney*, the said *Johnne Schairp* abydis constantlie be it, as a trew Deposition; and the said *Erll* denyis the same, except in so far as he hes confest be his awne Deposition.

DUNCANE MITCHELL, poist, his Deposition, maid in prefence of the *Counsell* vpoun the fyft day of Julij 1614, being red, in the audience of the *Erll of Orkney*, the said *Duncane Mitchell* stooode to it, as ane trew Deposition; and the said *Erll* denyit the same.

#### (4.) EXAMINATION of the *Earl of Orkney*, *Patrik Halcro*, and *Robert Stewart*.

AT EDINBURGHE, the xv day of November, 1614. In prefence of my Lord Chancellour, the *Erllis of Cassillis and Caithnes*, the *Lordis Secretair, President, Previe Seale, Thesaaurair-depute, Justice Clerk, Clerk of Register, Advocat, Sir Andro Ker, and Sir Alexander Drummond*.

PATRIK ERLE OF ORKNAY examinat and demandit, yf he gaif ony directioun to his sone *Robert*

<sup>1</sup> Escape. <sup>2</sup> Henry, Prince of Wales, who died in November, 1612, at Saint James's. <sup>3</sup> The Palsgrave, or Count Palatine, whose marriage with Princess Elizabeth had been delayed, on account of Prince Henry's death, till the month of February following, 1613. <sup>4</sup> Than.



anent THE REBELLIOUS IN ORKNAY, or for taking of the *Houffis of Kirkwall and Birfay*? Deponis, that he nevir gaif ony fuch directioun to his fone.

Demandit, yf he had ony conference with *Patrik Halcro*, at his being in *Dunbartane*, anent the taking of the *Houffis of Kirkwall and Birfay*? Deponis, he had no fuche conference with *Patrik*; and that he nevir delt with *Patrik* to affist his fone, yf he come to Orknay. Denyis alsua, that he fend ony directioun to his fone *Robert* or to *Patrik Halcro* for fending to *Noroway* for poulder.

(5.) PATRIK HALCRO, re-examinat, humblit on his knees, and deiplic sworne; and his Depofitioun, maid yifternight, being red vnto him, and he demandit vpoun the veritie thair of, he, vpoun his grite and folemne oathe declairit, that his Depofitioun wes trew; and he ratifeit the fame, and wald ftand to it.

(6.) PATRIK ERLL OF ORKNAY, deiplic sworne, and confrontit with *Patrik Halcro*, vpoun the contentis of his Depofitioun, maid yifternight, in prefence of the *Counfall*; the faid *Erll* denyit the haill contentis of that Depofitioun. And the faid *Patrik Halcro* constantlie affermed and avowit, in the *Erllis* prefence, that the *Erll* directit him to tak the *Caftell of Kirkwall*, and to affist his fone *Robert* in that earand; and that his haill Depofitioun wes trew. Quhilk being red, in the *Erllis* audience, wes denyit be him, faying, he rememberit not that evir he had ony fuche conference with *Patrik Halcro*, vpoun that fubiect.

(7.) ROBERT STEUART being of new presentit befor the *Counfaill*, and his Depofitioun, made yifternight, being red vnto him, and he demandit of new vpoun the treuthe and veritie thair of, he deponit and declairit, vpoun his grite oathe, that the fame wes of veritie.

(8.) PATRIK ERLL OF ORKNAY, confrontit with his fone *Robert*, vpoun the contentis of *Robertis* Depofitioun, maid yifternight, as faid is, the faid *Erll* denyit the fame: And the faid *Robert*, in the *Erllis* audience and prefence, affermed and avowit the fame to be of treuthe and veritie, as it wes writtin and red in the *Erllis* audience.

(9.) DEPOSITIONS of *James Lyoun*, bafe fone to the *Mafter of Glammis*, *Mr Michael Mair*, and *Duncan M<sup>c</sup>Clellane*.

AT EDINBURGH, the nyntene day of November, 1614. In prefence of my Lordis Chancellour, Secretair, Clerk of Register, and Aduocat.

JAMES LYOUN, bafe fone to the late Mr of Glammis,<sup>1</sup> folemnlic sworne and demandit, Yf at ony tyme he paft to *Dunbartane* to vifite the *Erll of Orknay*? Deponis, that in fommer bigane two yeir, the *Erll of Orknay* fend *Mr Michael Mair*, then his Secretarie, to the depouner, he being in the heade of the Cannogait for the tyme, with a commiffioun, defyryng the depouner to come to him to *Dunbartane*. Wherupoun the depouner raid with him to *Dunbartane*. And at his comeing thair, the *Erll* layed to his charge, yf he wald affist him to brek warde oute of the *Caftell of Dunbartane*? And at the firft, the depouner refufit to haif ony dealing in that mater. Bot being earniftlic delt with be the *Erll*, and mony fair promiffes maid by the *Erll* to him, in end the depouner yeildit to do his beft endevoiris to help the *Erll* to efchape, and to convoy him to *Orknay*. And deponis, that the faid *Mr Michael Mair* wes vpoun the *Erllis* counfaill, in this mater; and proponit the fame to the depouner, in the way, as they wer ryding to *Dunbartane*. And after the depouner had imbraceit this conditioun, he and the faid *Mr Michael* had diuers conferences and fpeeches, anent the meanes and poffibillitis to effectuat thair interprife. And deponis, that the faid *Mr Michael* was imployit be the *Erll* to deale with the *Laird of Cluny*, to imbarke him in this interprife. And the faid *Mr Michael*, with the depouner, had fpeeches with *Cluny* vpoun that fubiect, at the *Toun of Leithe*, on the Linkis; and the

<sup>1</sup> This person was probably son of the Hon. Sir Thomas Lyon of Auldbar, second son of John, seventh Lord Glammis. He was styled the *Master of Glammis*, and enjoyed the important office of Lord High Treasurer about the period of ten years, from 1586 to 1595.

Laird promeift to gif his affiftance and furtherance in that mater. And for this effect, they appointit a tryift and meeting to be at Striuling, vpoun the Satterday thairefter, and the depouner and *Mr Michael* mett vpoun Satterday, at night, at *Striuling*; and *Cluny* came not quhill Sondag, in the moirning, bot fend his man *David Gairdin* thair, vpoun the Satterday, to excufe his abfence. And when thay mett altogidder vpoun the Sondag, thay reafouned vpoun the meanes how to gett the *Earll* out of the Caftell; and refolued to tak him ouer the wall by a cord, and ane instrument of irne,<sup>1</sup> whiche the depouner caufit mak. And *Mr Michael* promeift to prepair the tow.<sup>2</sup> And it wes aggreit that when all thingis wer in reddynes for the *Erll*is efchaip, he fould proceid as yf he had fome earand ado in the Houfe, and fend his three Keeperis, one efter another, for difpatche of his earandis; and then he fould come away. And thay aggreit to bring fome horffis to *Dunbuk-Hill*, to haif convoyit the *Erll* and his companie away; and ane horfe fould haif bene broght to the Caftell-wall, for the *Erll* him felf; and *Cluny* fould haif broght thir horffis to *Glasgow*, bot *Cluny* broght not the horffes with him. And the depouner raid to *Dunbartane*, and the faid *Mr Michael* tauld the *Erll* that the depouner was come, and all thingis wer prepairit and in reddynes for his efchaiping. And then the *Erll* began to fant; and maid choife, rather to fuborne the *Portair* nor<sup>3</sup> to haifard to come over the wall; and fo delt with the *Portair* vpoun that fubiect; who reveillit the fame to the *Laird of Buchannane*, who had the charge of the Houfe for the tyme.

Deponis, that at Martymes, in the yeir foirfaid, the faid *Mr Michael Mair* come of new to the depouner, he being in the heade of the *Cannogait* for the tyme, with a commiffioun frome the *Erll* to come Weft to him agane to *Dunbartane*. And the depouner refuift to go Weft, faying, that ‘ he wald mell no forder with the *Erll*, nor in nane of his courfes.’ To whome *Maifter Michael* anfuerit, ‘ I fee this man (meaneing he the *Earle*) hes not the grace of God in him; I will lykewayis haif no forder dealling with him!’

Deponis, that after *Robert Steuart*, bafe fone to the *Erll of Orknay*, wes come out of *Orknay*, and fred of warde for keeping of the *Caftell of Kirkwall* aganis the *Bifhop of Orknay*, the depouner, in deling with *Robert* in this Toun, delt with him that he wald mak his addrefse to Courte; and thair vfe his credite to gett his Maiefteis fauour: And fays, that *Robert* wes willing to haif gone to Courte, bot maid his excufe vpoun the want of money, and his faderis offence againis him for geving ouer of the Houfe of *Kirkwall*; and *Robert* intreated the depouner to ryde with him to *Dunbartane*, and to interceid for him with his fader, bothe for his fauour and fome money: And the depouner yeildit to ryde with him, and thay raid togidder to *Dunbartane*, and ftayed thair bot ane night. And the depouner knawis not yf the *Erll* fpak with *Robert* that night. And vpoun the morne, the *Erll* directit the depouner with a Letter to the *Erll of Caffillis*,<sup>4</sup> being in *Carrik* for the tyme, for fome money. And *Robert Steuart* raid with the depouner to *Carrik*. And when thay come bak agane to *Dunbartane*, the *Erll*<sup>5</sup> wald not looke vpoun *Robert*, calling him ‘ Feble vnworthie beaft!’ vfeing mony impreca-tionis and curffes aganis him for geving over of the Houfe, faying, he ‘ wes the wraick of him and his eftate!’ And the depouner being reddy to come away frome *Dunbartane*, the faid *Robert* come to him to the *Toun of Dunbartane*, defiring him to go againe and fpeeke his fader in his fauouris, and to tell him that he wald tak fome disperat courfe, and go oute of the cuntrey, yf he could not procure his fauour. Wherupoun, the depouner went bak agane to the *Caftell*, and eirnistlie delt with the *Erll* in *Robert*is fauour; bot the *Erll* could not with patience heir of him, bot gaif oute mony invectiue and difpytefull fpeecheis aganis him, calling him ‘ Fals, feble beaft,’ for geving ouer of his Houfe. And in

<sup>1</sup> Probably a pulley, having a strong iron to fasten or hook upon the battlements of the Castle, so as to save the necessity of driving in a staple, which would necessarily occasion noise.

<sup>2</sup> Rope.

<sup>3</sup> Than.

<sup>4</sup> John,

<sup>5</sup> fifth Earl of Cassillis, who married Jean, only daughter of James, fourth Lord Fleming, and relict of John Lord Maitland of Thirlestane, Chancellor of Scotland. Through her intrigues, he procured the office of Lord High Treasurer, in 1599, for which he was utterly incapable; and retired from it in disgrace, with the loss of 40,000 merks, &c. See *History of the Kennedys*, Quarto, Edin. 1830.

<sup>6</sup> Of Orkney.



end, the depouner haueing promiseit in Robertis name, that Robert wald do ony thing the Erll wald command him, the Erll thairvpoun become to be more calme, and to gif eare to the depounaris speeches in Robertis fauour. Wherupoun, the depouner broghte Robert to the Erle, and tauld to the Erll, that Robert wald do ony thing that the Erll wald bid him; to whome the Erll answert, that Robert had not a spirite nor courage to follow ony interprise; and Robert haueing craved of the Erll his fader, that he might haif a ryght of the landis of Westraue or Steanehouse, the Earll wald yeild to gif him no thing, quhill first he had repairit the wrang he had done, in giving ouer of his Houfe; and by recouering of the same agane, to play the pairt of a man. And the Erll haueing desirrit the depouner that he wold gif him his worde and promiseis, in Robertis name, that Robert sould go to Orknay and recouer the Houffis agane, the depouner refusit to gif his promiseis or word, saying, 'Robert wald speke and promiseis for him self!' Whairupoun Robert, in the depounaris audience, promiseit to the Erll to go to Orknay, and to tak in the Houffis agane. And then the Erll acceptit of him, saying, he 'sould want no thing, and that he wald aduance him so far as he might. And so, the depouner haueing aggreit *the Erll with Robert*, the depouner left thame. And as he wes comeing away, *Duncane M<sup>c</sup>Clellane*, the Erllis poist, followit the Depouner to the Toun of Dunbartane, willing him to go bak agane to my Lord; and the depouner refusit to go bak, because he vnderstoode that the purposis of his bak-calling wes to haif delt with him to haif gone with Robert to Orknay. And the depouner meeting at that tyme with *James Annand*, sometyme the Erllis seruand, in Dunbartane Towne, the said James askit of the depouner, 'yf he had aggreit the fader and the sone?' And the depouner answert, 'thay wer aggreit,' and that '*Robert* must neidis go to Orknay, or thair wilbe no lyffe for him!' To whom *James* replyt, '*The Erll* is ane vnhappie man! He knawis *Robert* can do no goode in Orknay. His purposis is to bring him to the scaffolde, and to bring the sclander of his bloode vpoun the King!' And vpoun the morne, the depounair raid fra Dunbartane towards Edinburghe; and *M<sup>c</sup>Clellane*, the poist, come to Edinburghe with him. And within tuentie dayis thairefter, *Robert Steuart* come to Edinburghe, and lichtit at *Henry Raes* house, and askit of him whair the depouner wes? And *Henry Rae* broght *Robert* to the depouner in *George Lasonis* house in the heade of *Peblis-wynd*, quhair the depouner ludgeit; and *Robert* tauld to the depouner that he had vndirtane the interprise of Orknay, and wes resolut to go thair. And the depouner asking of him, how he wald be prouydit and furneist with money? *Robert* tauld him, that he had a Letter frome his fader to one *Johnne Smithe*, his fader's mercheant in St Androis, to aduance him iij<sup>e</sup> merkis of siluer. Whairupoun *Robert* and the depouner past to St Androis to haif gevin the money, and haueing stayed thair aucht dayis, *Johnne Smith* refusit to gif the money, vnles he had a Band vnder *the Erllis* hand, for the baill moneyis he was awand him afor, including thairin the siluer now to be gevin, with the annuell<sup>1</sup> of the haill. And deponis, that thay onlie ressaunt at that tyme fra *Johnne Smithe* xx lib. to defray thair chargeis. Deponis forder, that at thair comeing oute of St Androis, *M<sup>c</sup>clellane*, the poist, come to *Robert* with Letteris fra *the Erll* his fader; and the depouner saw and red ane of the Letteris, whilk wes a lang Memorandum, full of iniunctionnes how *Robert* sould carye him self in Orknay, bothe anent the taking of the Houffis, the intromissioun with the Erllis rentis, and what men he sould putt oute of the cuntrey. And the depouner rememberis weele of ane speciall poynte of the Memorandum, to witt, that *Robert* sould send the Erllis creare,<sup>2</sup> laidnit with beare and salt goodis, to Brein, in *Narroway*, and thair sell the same, and by poulder<sup>3</sup> and bullett with the money that sould be gottin thairfoir. And that, aboue all thingis, *Robert* sould see that the Houffis wer weele furneist. And *M<sup>c</sup>clellane* come bak with thame to Leithe. And deponis, that then thay raid to Dunbartane, and *Robert* stayed at the smithis house outwith the Toun, and the depouner raid fordwart towardis *the Castell*. And *the Erll*, being aduerteist that thay wer come to the smithis house, he send *Johnne Burne*, his seruand, to haif stayit thame at the smithis house. And the depouner forgaddering with *Johnne Burne*, in the way betuix the smithis house and *the Castell*,

<sup>1</sup> Annualrent; interest.<sup>2</sup> A sort of vessel.<sup>3</sup> Purchase gunpowder.

*Johnne Burne* delt with the depouner to go bak, saying thay had done evill to come, for *the Counfall* wald be in fuspicioun that thay had some purpois for thair going to Orknay. And he tauld the depouner, that they wald not gett accesse to the Erll, yitt the depouner wald not be stayed, bot come fordwart to *the Castell-yett*, and craveing entrie, he wes anfuert ower the wall be one *Robert Knox*, who had the charge of the Houfe, that he wald not gett entree. Whairupoun, the depouner come bak, and being in ane grite anger, becaufe he could not gett entrie, he said to *Johnne Burne*, that he sould reveill all thair practizeis to *the Counsell*, seeing he could not get payment of the moneyis addebtit be *the Erll* to him. Deponis, that *Johnne Burne* askit of the depouner, yf he had prouidit ony men, in Angus, to tak with him to Orknay? And the depouner maid him to beleve, that he had prouydit some men in Angus, who wer goode fellowis, to haif gone thair. And the depouner named some of their names: And he did this purpoillie, to haif gottin payment of his moneyis.

Deponit, that *Johnne Burne* haveing showne to *the Erll* the depounaris discontentment for the want of his moneyis, and that he had avowit to reveill thair interprise, the Erll, fearing the reveilling and discouerie thairof, fend to the depouner with the said *Johnne Burne* xx s. Sterling; quhilk being refusit be the depouner, *the Erll* fend vther xx s. to him.

Deponis, that when he come bak to the smithis houfe, he said to *Robert*, 'he persavit that the Erll had no vther courfe bot to bring him to the scaffold!' And *Robert*, waging his head, with a grite fighe, anfuert, 'I feare it salbe swa!'

(10.) MAISTER MICHAELL MAIR, feruand to *Mr Johnne Scott*, Directour of the Chancellarie, sworne, and demandit, 'yf he knawis of ony purpois that *the Erll of Orknay* had to brek warde? Deponis, he knawis that thair wes some speeches betuix *the Erll*, *the Laird of Cluny*, and *James Lyoun*, vpoun that subiect.

THE DEPOSITION maid be *James Lyoun*, in that pairt thairof concerning *the Erll of Orknay* his purpois to brek warde, and the conferenceis, meetingis, and resolutionis tane thairanent, betuix *the Laird of Clunye*, *James Lyoun*, and the depouner, being red to the said *Mr Michael*; and he being demandit, yf the same wes trew? Deponis, that he acknowledgeit the Deposition to be trew, as it wes writtin, except in that parte thairof concerning the suborning of *the Portair*, whairof the depouner knawis no thing. *In ceteris conformis.*

(11.) DUNCANE McCLELLANE, poist to *the Erll of Orknay*, sworne, and demandit yf he knawis ony thing of *the Erll of Orknay* his purpoiss anent THE REBELLION IN ORKNAY? Deponis, he knawis na thing thairof, and denyis that euir he hard ony conference or speeche betuix *the Erll*, *Johnne Burne*, *James Lyoun*, and *Robert Stewart*, or ony of thame, anent *the Erll* his purpois to brek warde, or anent the sending of *Robert* to Orknay.

Grantis, that the Erll of Orknay fend the depouner with tua Letteris to *Robert Stewart* and *James Lyoun*, and the depouner come to this toun to haif gottin thame heir; and missing thame heir, he past to St Androis, and forgadderit with thame comeing oute of the Toun, and delyuerit the Letteris to thame. And sayis, that *Robert Stewart* and *James Lyoun* tauld to the depouner, 'yf thay had gottin siluer in St Androis, that thay wald haif gone to Orknay; bot seeing thay gatt not siluer, thay could not go.' And the depouner, haueing gone bak to *Dunbartane* with this anfuert, the Erll fell oute in bitter speecheis aganis *Robert*, calling him 'Fals, feble knaife!' 'Villaine!' and 'Pultrone!' And 'he sould hang him with his awne hand!'

Deponis, that he hard the conference betuix *Robert Stewart* and *James Lyoun* be the way, as thay come frome St Androis, to witt, yf thay had gottin siluer in St Androis, that thay wald haif gone to Orknay and tane the Erles Houffis. And the depouner tauld thir speecheis to the Erll, when he come bak to *Dunbartane*; wherent the Erll wes heichlie commovit, saying, '*Robert* was ane feble beast,'—and 'Or<sup>1</sup> he wer not hangit, he sould hang him with his awne hand; becaus vnworthelie he had left his Houffis, and had not grace to win thame agane!'

<sup>1</sup> Ere; rather than.



Deponis, that at this same tyme, *James Lyoun* said to the depouner, 'Yff we go to Orknay, no man fall haif the credite' of carying our Letteris to and fra, bot yow.'

(12.) DEPOSITIOUN, *Robert Steuart, the Earl of Orkney, James Lyoun, and Mr Michael Mair.*

AT EDINBURGHE, the xxij of Nouember, 1614. In presence of my lordis Chancellair, the Erll of Caithnes, the Secretair, Thefaurair-depute, Clerk of Register, and Aduocat.

ROBERT STEUART, bafe sone to the Erll of Orknay, sworne, and demandit yf he knawis *James Lyoun*, sone to the lait Mr of Glamis? Depones, he knawes him very weele.

The DEPOSITIOUN maid be *James Lyoun*, vpoun the xix day of Nouember instant, in that poynte thair of tuitcheing the said James his interceiding with the Erll of Orknay, in fauouris of his sone *Robert*, the Erllis refusaill to accept of him quhill he yeildit and promiseit to go to Orknay; and tuitcheing all the speecheis past betuix thame in that mater, being red to the said *Robert Steuart*, and being demandit, yf the same wes trew? The said Robert acknowledgeit the Depositoun to be trew, as it is writtin and sett down.

The haill Depositoun foirsaid, maid be the said JAMES LYOUN, being red to the said ERLL OF ORKNAY, and he being demandit, yf the same wes trew? The said Erll deponit, that the same wes most vntrew. And deponit, that the said *James Lyoun* delt with him findrie tymes to haif brokin waarde, becaus his lyffe wes in danger; and that he ever refusit to harken to *James*, in that mater. And deponis, that he wes ever in ane anger with his sone Robert, becaus he hantit *James Lyonis* company. And sayis, confidently, that he had neur conference nor speeche with *James Lyoun*, anent *Robertis* going to Orknay.

(13.) The ERLL OF ORKNAY, JAMES LYOUN, and MR MICHAELL MAIR, being confrontit, vpoun that point tuitcheing the said Erll his purpois of breking of warde, and the conferenceis, speecheis, and messagis past in that mater, conforme to the Depositounis maid thairanent, the said Erll, vpoun his oathe, denyit the same: And the saidis Maister Michael Mair and James Lyoun, vpoun thair grite oathe, avowit and affermed the same to be trew.

(14.) The said ERLL OF ORKNAY, ROBERT STEUART, and JAMES LYOUN, being confrontit, vpoun the vther poynte of the said *James Lyonis* Depositoun, tuitcheing the Speecheis and Conferenceis betuix thame anent THE REBELLION IN ORKNAY, and how *Robert* wes imployit and directit in that earand? The said Erll, vpoun his oathe, denyit the same; And the said *James Lyoun* and *Robert Steuart*, vpoun thair oathe, avowit the same to be trew.

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### Slaughter.

Feb. 14.—JOHNNE MAXWALL, callit *Achilles Johnne*, in Dumfreis.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Johnne Makculloche, mercheand burges of Kirkculdbrycht; committit be the said Johnne Maxwell and be vmq<sup>le</sup> Johnne Maxwell, sone natural to vmq<sup>le</sup> Williame Maxwell of Auchinlarie, vpone the landis of the Kirkhous, within ane quarter of a myle to the said burgh of Kirkculdbrycht, in the moneth of Nouember, the 3eir of God I<sup>m</sup>. sex hundreth and threttene 3eiris, be geving to him of tua deidlie straikis in

<sup>1</sup> Trust. We shall confide in no one but you, to carry our Letters to and fro.

the heid, togidder with fyftene bludie woundis in his breift and bellie, and vther fyftene bludie and deidlie ftraikis vpon the bak and fydis ; quhairof he immediatlie deceiffit.

PERSEWARIS, Thomas McCulloche of Barholme, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr Thomas Wilfone, Aduocat.

Eftir reiding of the DITTAY, it was allegit be my lord Aduocat, that na prelocutour can compeir for defence of the pannell, for the cryme aboue writtin, fpecifeit in the Dittay ; becaus, immediatlie eftir the committing thairof, Letteris war direct, at the instance of the kyn and freindis of the defunct, aganis the pannell, be the quhilk he was charget to find caution for his compeirance befor the Justice or his deputis, at the day thairin contenit, of lang tyme bygane, to haif vnderlyne the law for the faid cryme ; quhilk charge, nocht only he difobeyit and maift contemptiouflie paff to the horne, bot alfo hes remanit fugitiue fra his hienes lawis continuallie fenfyne, for the faid fact : And producet the Hoirning, deulie regiftrat, for verifeing thairof.—To the quhilk it is anfuerit, be the pannell and his prelocutour, that, nochtwithftanding of the faid allegiance, he aucht to haif prelocutouris to defend, becaus he is relaxt fra the faid proces of horne ; and producet his Relaxatioun for verificatioun thairof : Quhilk the Justice admittit ; and ordanit his prelocutouris to be admittit to defend : Quhairupoun the pannell askit instrumentis.

It is allegit be the pannell and his prelocutour, that the DITTAY producet aganis him come nevir to his knowlege ; and thairfoir, befor ony forder proces be grantit in that matter, he aucht to haif a fyftene dayis grantit to him, to be advyfet thairupoun.—It is anfuerit, that the allegiance aucht to be repellit, in respect he haifing committit the fact, vpon the notorietie quhairof, and for tryell of the pannellis giltines, Letteris war direct, be the quhilk he was charget, vpon a fyftene dayis wairning, to find caution for his compeirance, as faid is, befor my lord Justice, at a day contenit in the faidis Letteris ; and for his difobedience was denuncet and put to the horne : And for cleiring thairof, repeitis the faidis Letteris of Hoirning producet.

THE Justice Repellit the allegiance, and Ordanis the matter to pafs to the tryell of ane Affyse, vnles the pannell fay forder.

#### ASSISA.

Robert Vans of Campfurd,	Airthour Kennydie, fervand to	Johnne Turnour, Schereff-Clerk
Patrik Vans of Lybrek,	my Lord of Caffillis,	of Wigtoun,
Peter McDowell of Machirmoir,	Patrik Murdoch of that Ilk,	James Hair, indueller in Edr,
Patrik Edzger, burges of Wigtoun,	Hew Gordoun of Grange,	Gilbert Agnew of Mureifhaith,
Pat. Hammiltoun, burges of Edr,	Alexander Gordoun of Littill	Alexander Agnew of Trong,
Archibald Stewart of Fintillache,	Mondurk,	R <sup>t</sup> Makknab, burges, Quithorne.

My lord Aduocat takis instrumentis of the fweiring of the Affyse ; and for



cleiring to thame of the pannellis giltines of the crymes contenit in the Dittay, repeittis the Hoirning producet, beiring him to be fugitiue for the cryme : As also, desyret Mr Robert Glendonyng, Minister at Kirkculdbrycht, and Eduard Forrester, Commissar, thair, thair aithes and declaratioun to be tane, quhat thay knaw anent the pannellis giltines or innocencie, in the said matter, for the Assyse forder informatioun.

It was affirmet be the pannell and his prelocutour, that the matter now being put in thair handis, thay sould nocht respect the perfewaris informatioun and assertioun in this perfute ; bot altogidder denyit the fact lybellit to be committit be him ; in respect he, at the allegit tyme of the committing thairof, was *alibi*, viz. in the Place of Teilling in Angus, lying deidlie feik, quhilk is ane hundreth myles distant fra Kirkculdbrycht, quhair the Slauchter was committit ; quhilk he wald verifie, be sufficient and famous Witnesses, gif tyme war grantit to him to produce thame.

MR ROBERT GLENDONING, being suorne, Declairit, he could nocht remember that he knew Johnne Maxwell vpon pannell ofbefoir ; bot as to the veritie of the fact lybellit, it is of treuth, that vpon ane Fryday, at evin, in the moneth of November and zeir lybellit, thair come tua litill men to the Toun of Kirkculdbrycht, with Letteris of Captioun, of purpois, as the deponer was informit, to truble vmq<sup>le</sup> Johnne Mculloche, quhair of he was maid foirfene be ane of the honest nyctbouris of the Toun : And the deponer, vnderstanding quhair Johnne Mculloche was, adverteist him thairof, and desyret him to hald him self out of the way ; quhairvpon Mculloche eschewit that nyct : And vpon the morne thaireftir, being Setterday, the day of his studie,<sup>1</sup> he, heiring of the Slauchter of Johnne Mculloche, come to the boundis quhair it was committit, quhair he saw tua deid men, Johnne Mculloche being maist crewallie strukin with ane quhinger, baith on his breist and bellie, and vpon his bak. And forder knawis nocht.

EDUARD FORRESTER, Commissar, suorne, and demandit, quhat he knawis anent the verritie of the premisses ? Declairit, that he saw Johnne Maxwell, presentlie vpon pannell, within the toun of Kirkculdbrycht, the day of the Slauchter, immediatlie befor the committing thairof ; quha, togidder with vmq<sup>le</sup> Johnne Maxwell, his affociat, come vp to the deponeris chalmer, and offerit to agrie with him anent the Confirmatioun of ane Testament ; and within ane schorte space thaireftir, hard of the committing of the said slauchter. And forder knawis nocht.

My lord Aduocat repeittis the Minister and Commissaris Declaratioun ; and Protestis, in respect thairof, for Wilfull Errour aganis the perfonas of Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouthe of the said Peter Mdowell of Machirmoir, chancellor, ffand, pronuncet, and declairit the said Johnne Maxwell to be Giltie, culpable, and convict of airt and pairt of the said slauchter, &c.—SENTENCE. To be tane to the ordiner place of executioun, within the burgh of Ed<sup>r</sup>, and thair his heid to be strukin frome his body : And all his moveabill guidis to be escheit, &c.

<sup>1</sup> Viz. the day he studied or prepared his sermons for the following Sabbath.

**Treason—Declining the King's Authority—Alleging the Supremacy of the Pope—Hearing and Saying Mass, &c.**

Feb. 28.—TRIAL OF JOHN OGILVIE, JESUITE.

[THE proceedings adopted against the ROMAN CATHOLICS and JESUITS, at different periods, after the time of the Reformation of Religion in Scotland, form a prominent part of the Ecclesiastical and Political History of the Country. Owing to the obscure and repulsive appearance of the Criminal Records, much valuable information has necessarily escaped the observation of the historian; but although the subject is one long since forgotten, it appears to the Editor to belong to the duty he imposed upon himself when he undertook the present Collection, to rescue from oblivion all those Trials which have preserved entire the memory of such events.

Among the most remarkable of those persecutions may be reckoned the Case of JOHN OGILVIE, a *Jesuit*, of Scottish extraction, who was a son of Walter Ogilvie of Drum. After an absence of twenty-two years in foreign countries, he returned to Scotland, in the month of May 1615, for the purpose of promoting the growth of the Roman Catholic Religion. There is little doubt that he was one of those enthusiastic individuals, who, at the imminent risk of fortune, and of life itself, scrupled not to lend himself a willing instrument for the accomplishment of some daring, dangerous, and destructive plot, which at that time characterised the whole of the ever-restless and ambitious proceedings of the followers of the Church of Rome, from the date of the formidable, but presumptuous, attempt of the Spanish Armada, and of the Gunpowder Plot, downwards. During the reign of KING JAMES, both before and after his accession to the English throne, seldom did a year pass over without some rumours of fresh attempts of the Jesuits against his life, or against the Religion, as by Law established, in England. There can be no doubt, from a perusal of the State Papers and Histories of this period, that some new attempt on the part of *Spain* and her auxiliaries was about to ripen into action, when the early detection and execution of numerous emissaries of the *Society of Jesus* frustrated its execution.

Without occupying more space, the Editor has merely to mention, that a Special Commission having been granted to THE PROVOST AND BAILIES OF GLASGOW, within whose jurisdiction Ogilvie was taken, his Trial is not recorded in the Books of Adjournal, but was reported by the Commissioners and their Assessors to the Privy Council, from whom their powers directly emanated. There cannot be a doubt that the Report of this Case was drawn up for publication, with the view of being extensively circulated in England. The phraseology is carefully revised, so as to be perfectly intelligible to an English reader; and though imprinted at Edinburgh by Andro Hart, immediately after the Trial took place, it must have been revised by some person skilled in the English Law, and familiar with its technicalities and practice.

The present reprint has been taken from a copy of the valuable Original Edition, in the Library of the Faculty of Advocates, Edinburgh.

*Calderwood*, a determined enemy to Episcopacy, has preserved the following curious memorials of these events, in his *MS. History of the Church of Scotland*,<sup>1</sup> which the Editor has thought worthy of being inserted in this place:—

Oct. 1614. 'ABOUT the beginning of October, MR JOHN OGILBIE, *the Jesuit*, was apprehendit in Glasgou. He had seduced fundry young men, and of the better sort of the people; and said Masse, in fundry places, within Toun. When the (ARCH) BISCHOP (OF GLASGOW)<sup>2</sup> challenged him for his hardneffe,<sup>3</sup> he answered, that "he hoped to have more freedome, ere it were long." Whereupon, *the Bishop* buffeted him!

' About the beginning of November, THE (ARCH) BISHOP OF ST ANDREWS<sup>4</sup> sone, *Mr Alexander*

<sup>1</sup> From the Adv. Library MS.

<sup>2</sup> John Spotswood, the well-known writer of the Church History. He was translated to the See of St Andrews on the demise of *Archbishop Gladstones*. <sup>3</sup> Hardihood; effrontery. <sup>4</sup> 'MR GEORGE GLADSTAINS, BISHOP OF ST ANDREWS, departed this life, in the Castle of St Andrews, on the 2d day of



*Gledftanes*, apprehended *Moffett*, a Mefse-Prefitt, at St Andrewes; who was presented before the *Lords of Secret Counsell* upone the 10 of December, and was wairded in the *Cafile of Edinburgh*. Some things the *Bifhops* behoved to doe againft PAPISTS, for honefties fake, leaft they fhould feeme to be advanced to perfecute Minifters profefling purity of Difcipline and God's worfhip.

' Upon the 6 of December, 13 or 14 of the Inhabitants of *Glaſgow* were convicted for hearing of Mafse, and Refetting a Mafse-Prefitt, in Court holden be the *Bifhope* and thrie of the (Council), who hed gotten Commiffione, at the King's directione, to try. The brute<sup>1</sup> went, that they were to be beaded, drawin, and quartered; but they were in no danger. OGILBIE, the *Jefuit*, was brought in to *Edinburg*, and examined be the *Bifhop* and fome of the *Lords of Secret Counsell*, to move to confeffe where he had been refett, where he had faid Mefse, &c. He was not fuffered to take fleep fome nights and dayes together! His braines being lightfome, fecrets were drawn out of him, but came not to the knowledge of the people. *Moffett*, the Prefitt, was examined be the *Bifhop of St Andrewes* and his affociats.

' About the middft of Januare (1615), a Warrant was fent from THE KING to fine fome of the receipters of OGILBIE the *Jefuit*, and hearers of Mefses, in *Glaſgow*; and to banifhe fome others of them out of the King's dominiones. About the end of Januar, THE KING fent doun a courfe to be vfed in trying of JESUITS, their refettters, and hearers of Mefse. This feemed rather a hindrance to the executionn of juftice upon the perfones prefently guiltie, then to mean in earnest the repreffing of Papifts.

' Upon the laft of February, OGILBIE the *Jefuit*, one of the *Ogilbies of the Houfe of Drummure*, was arraigned and pannalled before the *Proveift and Bailliffes of Glaſgow*, the King's Judges in that part. At his Examination, before fome of the *Counsell* and the *Bifhop*, he being asked, whither THE KING, being excommunicat be THE POPE, the Pope might depofe him, and loofe his fubjects from the Oathe of allegiance? Answered, and fubfcribed his answers with his hand, that he thought THE KING and his *Counsell* no competent Judges to him, in that matter; and therfor, would not directly anfwere them tuiching it, but before THE POPE, his ordinar Judge, and his fubftitutes! For this his declinator, he was convicted, in prefence of findry Noblemen, appointed be THE KING to be prefent. He avouched, boldly, that he regarded not the Acts of Parliament nor THE KING's authority, foe farre as they were repugnant to THE POPES authority! Yett had he fmall courage when he come to the Scaffold—died heartlefse and comfortlefse—could not commend himfelfe to God, at the Minifter's defire—but did it after the defire of the hangman.

' Some interpreted this Executione to have proceeded rather of a care to blefs THE KING's Governement, then of any fincere hatred of the Popifh Religione. Some denied that it was done to be a terroure to the fincerer fort of the Miniftry, not to decline THE KING's authority, in ony caufe whatfoever.<sup>2</sup> He was the firft *Prefitt* or *Jefuit* that was executed, fince the *Baftard Bifhop of St Andrewes* was hanged.<sup>3</sup>

May. Many times before, because his face was diffigured, he had his night-bonnet drawn down to his nose, when the minifters of St Andrewes enquired, "If they ſhould pray for him publickly?" he answered, "It was not yet time!" Soe he was never prayed for publickly, but the ſame day that he departed; and that was done without his knowledge. Unwilling he was to die, or to ſuffer any honeſt man of the Miniftrie near him, either to waken his conſcience, or comfort him. At the deſire of his wife and children, he ſubſcribed ſome few lines, wherein he approved the preſent courſe, to procure the King's favour to them. His fleſh fell off him in lumps. Notwithſtanding of the great rent of his Biſhoprick, he died in the debt of twentie thouſand pounds. This man was both ambitious and covetous. Papifts and hainous offenders were winked at, for bribes given to his ſervants and dependers. In his firſt dioceſian Synod of Fife he ſat in pomp with his velvet cuſhion before him, and his Clerk, Mr John Mitchellſonne, beſide him.—Mr *George Gladſtains*, Biſhop of St ANDREWES, was buried, upon the ſeventh of June, in St Andrewes. A cannabe (canopy) of blacke velvet was caried above the coffine, be foure men, and yett the corpes was not in the coffin, but buried ſoone after his death. Mr *William Couper* (Biſhop of GALLOWAY) made his funerall-ſermone, full of vile flattery and lyes, and knowne to be ſae be the people, and therefor was he derided. It was reported that THE KING beſtowed ten thouſand merkes upon his buriell.—*Calderwood's Church Hiſt. MS. Adv. Lib.*

<sup>1</sup> Report; Fr. bruit.

<sup>2</sup> This had frequently taken place, as may be ſeen by referring to the former portions of this work.

<sup>3</sup> Referring to the celebrated ARCHBISHOP JOHN HAMILTON, natural ſon of James, firſt Earl of

The anonymous author of 'THE HISTORIE OF KING JAMES THE SEXT'<sup>1</sup> shortly, but forcibly, narrates these transactions, in the following terms:—'DURING this same time and year, in the citie of Glasgow, ther hapnit a man, callit MR JOHNNE OGILVIE, *Jesuit*, to be apprehendit ther, be the *Archebischop* and his men, becaus he was tryit<sup>2</sup> sufficientlie to have sayed Mess<sup>e</sup> ther, to sum inhabitants and citizens of that toun; and samonie as wer tryit, wer all empreafonit in the *Castell of Dumbartane*, ther to remayne upoun ther awin expensis; and thereftir relaxit, and confynit for a pecuniall soume, for contravening the Act of Parliament; and fand caution, under great sowmes of money, ather<sup>3</sup> of them, not to commit the lyk fault or cryme agayne. The *Jesuit*, in the meyne tyme, was convoyit to *Edinburgh*, and ther keapit in strait waird, and a gaird of men, be the space of eight dayis, with small sustentatioun; and compellit and withhaldin, perforce, from sleep, to the great perturbatioun of his brayne, and to compell him *ad delirium*!<sup>4</sup> And being convoyit therfra to Glasgow agane, certen temporall questions wer objected unto him, as naymlie, geve<sup>5</sup> THE KING was heid of THE KIRK, within his awin dominions, or nocht? To the whilk he answered, "No," &c., and so, consequently, to uther thrie. For the whilks, he was put to the cognitioun of a juré, and be them fund gilty of Treasoun and Leze-Majestie; and so was condemnit to be hangit to the death; whilk was also accomplisht.'

The enquiring reader is referred, for farther particulars, illustrative of this singular subject, to the various Collections of State Papers, and to the Histories of Scotland, especially *Spotswood's History*, where the matter is fully discussed by the Archbishop, who, it may be kept in mind, was one of the Assessors, and the leading examiner, in *Ogilvie's Trial*. The Editor appends to this remarkable TRACT the Examinations of all the persons suspected of having joined *Ogilvie*, in the celebration of Mass, &c., including the declinator of the *Jesuit* himself, which he has taken from an attested copy, preserved in the *Denmylne Collection of MSS.*, Advocates' Library.]

## A TRUE RELATION OF THE PROCEEDINGS AGAINST

JOHN OGILVIE, A JESUIT,

EXECUTED AT GLASGOW, THE LAST OF FEBRUARIE, ANNO 1615.

Containing fundrie SPEECHES vttered by him at his Arraignment,  
and others, that assisted the Commissioners deputed for his

Triall: with all that passed at his Execution.

2 Pet. 2. 10. "Audaces, et sibi placentes, dominatum despiciunt, et non horrent dignitates convitiis inceslere."—*Tertul. adversus Hermo.* "Hermogenes hæreticus loquacitatem, facundiam existimat, et impudentiam constantiam deputat, et maledicere singulis officium bonæ conscientie indicat."—*Cyprian de duplici martyrio.* "Non statim martyr est qui occiditur, occiduntur piratæ, et ficarii, supplicium non facit martyrem, sed causa."

EDINBURGH, printed by Andro Hart, anno 1615.

### TO THE READER.

IT hath beene thought needfull, that a true and perfect Relation of the whole proceedings against John Ogilvie, a Jesuit, lately executed at Glasgow, should bee published; as well for satisfaction of

Arran, who was hanged in Stirling, Apr. 1, 1570. See *Reliquiæ Divæ Andree*; *Keith's Catalogue of the Bishops*; the works of the Rev Dr McCrie, &c.

<sup>1</sup> Printed for THE BANNATYNE CLUB, Edinburgh, 1825. <sup>2</sup> Proved. <sup>3</sup> Either; each. <sup>4</sup> This barbarous mode of extorting Confession had been prevalent in cases of *Witchcraft*, where the criminals were supposed to be under the direct dominion of Satan. Human nature could not long stand so exquisite a torture. The suspected parties were often driven into a state of *delirium*; and in many instances, they must have been glad to confess any thing which may have been proposed by their examiners, to escape from a life held by such a miserable tenure. <sup>5</sup> If.



those, who desire to be informed of his behauiour, during the time of his imprisonment, and at his arraignment and execution, as to obviare the misreportes of the enemies of true Relegion, who wrest and draw all thinges, without respect of trueth, to their owne aduantage. It is knowne within these few yeeres, Henry Garnet and Edward Oldcorne, English Jesuites, being called in question, for that prodigious and damnable Powder-treason; although it was proved by cleare evidences and their own confessions, vnder their owne handes, that they were speciall authors and actors in it, and for the same were executed by publicke iustice, not in a corner, but in the open cities of London and Worcester; yet (such is the shamelesse impudencie of that sect) by printed apologies they haue beene iustified; and, which is more, inserted in a Catalogue of their Martyrs, set foorth at Rome, anno 1608, by the licence and permission of their superiours. By which maner of doing, what may be expected, in this particular, at their handes, any man may easilie perceiue. Euery thing they are about to doe, (bee it neuer so great a mischiefe,) they cloake with the mantle of Religion: and if the statutes of the kingdome ouer-take any of them, either for practises against the King, or sowing the seed of rebellion amongst the subiectes, it must bee supposed (forsoothe) they suffer all for religion. Now were it so, and that, according to the law, for Masse saying they were punished to the death, they could not glorie in it, nor rightly challenge the crowne of martyrdome, their Masse beeing a vile and idolatrous seruice, flatly disagreeing with the faith of Christ, and trueth of the Gospell. But it is not so; albeit wee haue such statutes, for the restraint of Masse abomination within this kingdome, they are not able to instance any one, who, for the transgressing thereof, to this houre hath suffered. His Majesties proceedings with them haue beene more gentle: where death might haue beene inflicted, milder courtes haue beene taken: imprisonment for some short time, and banishment foorth of the realme, haue bene the sharpest punishments; so vnwilling was his Highnesse to force, or once to seeme to force, the consciences of any men whatsoeuer. And to say that which trueth is, if this vnhappy miscreant, who nowe hath his reward, had not discovered his traiterous minde, openly disauowing his Majesties authoritie, and stood to the maintaining of the Popes power, for dethroning kings, and freeing subjects from their oathes of alleageance, hee had felt no harder measure then others, although the circumstances of his fault were much greater; but his peruerse speeches, and insolent cariage beyond all credite, his sowing of doctrines tending to open rebellion, the handle of Iustice could not forbear. What was it, in the hearing of multitudes of people to affirme, ‘ that he would returne or abide in the kingdome, contrary to the lawes, and his Maiesteis commandements? to value his Highnesse authoritie with his old hatte, and the Acts of our Parliament with a rotten figge? to say, it was treason to sweare with the oath of alleageance to the King, and that his Maiestie, by vsurping the Popes power, had lost the right of the kingdome?’ Yet these, and diuers other more treasonable speeches, he vttered at his arraignment, which are set down in the proceffe, so far as could be remembred; for all could not be kept in mind. I am perswaded, the honeste minded of those of his own profession will in their hearts condemne, and judge him iustly to haue suffered; for, praised be God, the Jesuits arte hath not so farre preuailed, in planting such opinions in the hearts of people, but euen amongst the aduersaries themselues, they are many that doe no wise approue their seditious and proditorie doctrines. And here, to all our Catholickes (they will be so called) in this kingdome, if nothing further may be obtained, and that still they wil lye in that superstition, wherein they haue bene nuzled, I wish at least so much wisdome, as to beware of Jesuites policies, and not to thinke their practises the cause of the Catholicke Church. It is not religion, as one hath well obserued, they strue for, but foueraignitie. It will not content them to haue the Romish faith and ceremonies embraced; the crownes of kings, their scepters and subjects, must all be at the Popes deuotion. This is their speciall worke, and the effect of their blinde obedience, that speciall vowe, I meane, which they, besides the three voves common to other orders, vow and sweare at their receptions. To this point runs all their seruice, to make the Pope the lord of all the earth; emperours, kings, and princes his dependants; to be remoued, altered, changed, depofed,

and killed, when it pleaseth his holines to giue commiffion. Mariana, a Jefuit, counteth it a whole meditation for Kings, to think they may be killed, not only lawfully, but with glory and commendation to the doers. And Cæſar Baronivs, in his *Annales*,<sup>1</sup> recites a brieue of Pope Vrban the Second, ſent to Godfrede, Biſhop of Luca, wherein hee declares, that they are not to be eſteemed murderers, who, burning with the zeale of their Catholicke mother, kills excommunicates. The words of the Reſcript are theſe: *Non illos homicidas arbitramur, qui aduerſus excommunicatos, zelo catholice matris ardentes, eorum quoſlibet trucidaffe contigerit.* Bellarmine, that great Doctor, in his controuerſie, *De Romano Pontifice*,<sup>2</sup> hath theſe expreſſe words, *Papa poteſt mutare regna, et uni auferre atq. alteri conferre, tanquam ſummus princeps ſpiritualis ſi id neceſſarium fuerit ad animarum ſolutem.* That is, the Pope, as chiefe ſpiritual prince, may change kingdomes, and take them away from one, and giue them to another, if it be neceſſarie for the ſauing of ſoules. But Franciſcus Suarius, in his late booke intituled, *Deſenſio Fidei Catholice*, goes beyond all this, ſaying, that any, to whom the Pope permits the doing, may kill or expell the King, who is by ſentence depriued, or, which is all one, if he be declared to haue committed the crime, which by law deſerues that penaltie; and if the Pope neglect to giue power, the lawfull ſucceſſour may take the execution to himſelfe; and if he faile, the community of the kingdome ſuccedes in that right; to wit, to kill and expell him. His wordes are theſe: *Poſt ſententiam condemnatoriam regis, de regni priuatione, latam per legitimam poteſtatem, vel quod perinde eſt, poſt ſententiam declaratoriam criminis habentis talem pœnam ipſo iure impoſitam, poteſt ille qui ſententiam tulit, vel cui ipſe commiſerit, regem priuare regno, etiam illum interficiendo, ſi aliter non potuerit.* In the ſame place:<sup>3</sup> *Si Papa regem deponat, ab illis tantum poterit expelli, vel interfici quibus ipſe id commiſerit. Quod ſi nulli executionem imperet, pertinebit ad legitimum in regno ſucceſſorem, et ſi nullus inventus fuerit, ad regnum ipſum ſpectabit.* And that no man ſhould thinke this his priuate opinion, amongſt the approbations prefixed to the worke, yee haue, in *cenſura Academia Complutenſis*, this ſaide: *Nihil eſt in toto hoc opere à noſtro omnium ſenſu diſcordans, quum de hac re fit omnium noſtrum eadem vox, idem animus, eadẽque ſententia.* That is, there is nothing in all this worke, which is not agreeable with our mind, ſeeing herein we haue all one voice, one opinion, and one iudgement. Nowe if this bee the minde of all, it is high time they were all met with, and that *celeri pœna*, by a preſent diſpatch. The knightes templars, erected, as is thought, by the princes of France, to preferue their conqueſt in the Holy Land, when, by keeping the rules of their institution in the firſt yeeres, they had purchaſed a great reputation of holynesse, and thereby drawne to themſelues an infinite wealth, became at laſt intolerable to kinges, and by one uniforme conſent, in the Councell of Vienna, were condemned, and the order aboliſhed. The order was of a longer ſtanding by much then our Jefuites, but to kinges nothing ſo dangerous. The writers that mention them, do not agree vpon the cauſes of their generall hatred, and leaue the reader in ſuſpenſe, whether iuſtly they merited extermination or not: But poſteritie ſhall haue an aduantage in vnderſtanding the doctrine of Jefuites by their printed bookes, and their ſeditious practiſes, by the attempts they haue made againſt the eſtates and liues of princes. *Secta hæc rebellis eſt, et nocens regibus.* A rebellious ſect they are, and hurtfull enemies to kinges, cruel affaſins, teaching diſloyaltie, and plotting the deaths of princes, which all Evrope, and thou, France, by the reſt, can teſtifie. O kinges, when ſhall ye awake, and take it in your harts to fulfil Gods decree? When ſhall yee vindicate your crownes from the vniuſt ſurpations of the prieſt of Rome? Shal the diſgrace and violence done to ſome of your ſacred perſons for euer thus lye vnauenged? We know it ſhall not: But God hath his day, who will patiently attend. In the meane time, I ſhall wiſh the Catholikes of this kingdome to conſider and looke more deeply in their profeſſion, then they yet haue done. The myſteries of the Romiſh Religion are not ſeene at the firſt. Surely, ſome of our Papiftes doe not know them, eſpecially that principle, which biades

<sup>1</sup> Tomo 11. page 802.<sup>2</sup> De Pont. lib. 5. cap. 6.<sup>3</sup> Lib. 6. cap. 4. num. 18.



them to obey the Pope against al the world. Suarius<sup>1</sup> hath taught them, that it is to be held as an article of faith, that the Pope hath power to depose kings; and that hee who denyes this power to the Pope, denyes the Catholicke faith. By this is there no meane left to bee a Catholike, and remaine the Kings loyall subiect. To beleene the Popes power is such, is vndenyable treason: To refuse it, is to renounce Catholick religion; which last, I perswade myfelfe all true and naturall Scots will choose, and of the choise shall it neuer repent them. I beseech God to open their eyes that are closed, and giue vs all to be contented with the Scriptures of God, which, by themselves, are able to perfect vs vnto every good worke. Farewell.

A TRUE RELATION *of the Proceedings against IOHN OGILVIE, a Iesuit, especially at his Arraignement and Execution, which was at Glasgou, the last of Februarie, beeing on Tuesday, 1615.*

IOHN OGILVIE, alias WATSON, (for, according to the maners of his sect, he was *multinominis*, a man of diuers names,) came into Scotland at Martimes 1613, and making his residence for the most part of that winter in the north parts of Scotland, tooke his journey to England a litle before Easter. Where, giuing out to some of his countrey-men, that he had a supplication for some wrongs to present to his Majestie, hee attended the Court some two moneths; and falling in acquaintance with a gentleman of the West countrey, after his pretended businesse was done, or the occasion disappointed, he returned into Scotland with the saide gentleman, in the beginning of Iune thereafter. Vpon this familiaritie, and other intelligences giuen him, he came to Glasgou in August following; and finding a kinder receipt by certaine persons in that citie, (who for that crime haue since bene justly condemned,) then either he expected, or became them to haue granted, he made some haunt and resort thither at sundry times, till at last he was detected, and, by the direction of the Archbishop of Glasgou, who at that time kept his residence within the citie, apprehended and committed to prison. It was the fourth of October, a litle after foure of the clocke in the afternoone, when perceaued to bee ouertaken somewhat in company, his examination was differred to the morrow after. There was found with him two or three litle bookes, containing directions for confessioun; his budget being in the house where he kept at night, was conuoyed out of the way by one of his familiars, and presented the next day after, search beeing made by the magistrates of the citie, therein was found his Masse garments, chalice, altar, and the rest of that stufte, with letters not fit at this time to bee divulgate. Amongst others, a warrant to dispenfe with those who posselt church-liuings, after this tenor, *quo ad dispensationem de bonis ecclesiasticis poteris dispensare ut retineant quæ possident, dummodo in pios usus aliquid impendant pro iudicio Confessarii dispensan-*

<sup>1</sup> *Propositio hæc, Papa potestatem habet ad deponendos reges hereticos et pertinaces, inter dogmata fidei tenenda et credenda est. Infra: Si abjuratur hæc potestas, abjuratur catholica fides. Lib. 6, cap. 8, num. 8.*

*tis.* Hee had in the famin maile diuerſe Reliques, peeces of wood, bones, and a tuſte of Ignatiſ hair, the founder of the Ieſuites order, which I thinke was his chiefeſt ieuell.

In his examination, which was the next morning, before the Archbiſhop of Glaſgow, the Biſhop of Argyle, the Lords Fleming, Boyde, and Kilſyth, the Proueſt of the citie of Glaſgow, S. Walter Stewart and S. George Elphingſton, knights, he confeſſed his true name to be Iohn Ogilvie; that he was borne in the North of Scotland, and had bene foorth of the countrey 21 yeeres; that hee liued at Grats, in a colledge of the Ieſuites, and was receiued in their order; that he returned into Scotland by the command of his ſuperiour, and was to ſtay there vntill hee were recalled, if no other impediment ſhould offer. Being required to giue his oath, that he ſhould declare nothing but trueth, in ſuch things as ſhould be demanded; he answered, 'that he would take oath, but with ſome exceptions, namely, if hee were demanded in any thing that touched his eſtate and life, or that might endanger theſe or any of them, he would not anſwere, likewiſe if the ſame tended to the preiudice of others.' And when it was replied, that, his exceptions being admitted, his oath was as good as no oath, ſeeing any queſtions that could be propoſed, would concerne ſome of theſe, he was induced at laſt to giue a ſimple oath, which he did vpon his knees; and riſing vp from the ground, ſaid, 'I will neither lie nor æquiucate, but what I ſay ſhalbe truth; and what I am asked, if I find it impertinent for me to anſwere, I will ſay nothing, or declare plainly I will not tel.'

Then being inquired of his comming in Scotland, the time and buſines he came to do, answered, 'his buſines was to ſaue ſoules.' Touching the time when he came into Scotland, answered, 'In the Iune before:' where hee was deprehended to æquiucate, notwithstanding of his proteſtation; for he meant of his laſt comming, and was asked concerning the firſt. But the time at that examination was not vnderſtood. Being inquired of the places where he had bene receiued, denied to tel; and if he had ſaid Maſſe in any place, he answered, 'hee would not ſay any thing that might worke preiudice to himſelfe or others:' and becauſe he had profeſſed that hee would not lie, the reply he commonly made to ſuch queſtions, was, 'I will not tell you.'

The Lordes, finding him thus obſtinate, returned him to a chamber in the Caſtle, which was prepared for him, nothing lacking that was requiſite for one of his qualitie; and there hee was kept to the 8 of December. Now and then conference was giuen him by diuers of the Miniſters, in all which, heate and choler was eſpyed much to ouer-rule him. The ſchole diſtinctions he had in readineſſe, and thereby, when hee could not ſhift the argument, made ſemblance to euade. But of Holy Scripture (as he ſeemed not to be well acquainted there-



with), he made little reckoning, denying it still, after the Iesuites maner, to bee the onely rule of faith.

The 12 of December, he was presented at Edinburgh, before the Lords Commissioners, appointed by his Maesties Miffiue for his examination and tryall; namely, the Lord of Binning, Secretary, the Lord of Kilfyth, Sir Gidion Murray, Thesaurer-deputie, and Sir William Oliphant, his Maiesteis Attorney-General; to whom he answered in al that was proponed, as ofbefore at Glasgou. There, the letters intercepted with him were presented, which he acknowledged to be his; yet beeing demanded, touching certain particulars contained in them, he denied to giue ther lordships any fatisfaction: And howbeit there was no perswasion omitted, that might haue induced any good nature to a better resolution, it auailed not. So as their lordships, perceiuing nothing but a pertinacious refusing in him to answere to points most reasonable, and withall apprehending his stay at Court, in the last summer, to haue bene for some worse seruice then he could speede in, determined, according to the power giuen them, to extort by torments another confession: which being intimated to him, and he replying that he was ready to suffer what they pleased, it was thought fit to proue him with the most easiest forme of tryall that could be used. And here, it being remembered, that in the tryal of some criminal persons, it was found that nothing helped more to find out the trueth of the faults wherewith they were charged, than the with-holding of their naturall rest; it was aduised, that he should be kept without sleepe for some nights, which was accordingly done: and during which time it was perceiued, that hee remitted much of his former obstinacie, and falling to discouer certaine of his receauers in Edinburgh, gaue hope, that, by gentle usage, hee would bee drawne to giue their lordships contentment.

In the meane time, Chriftmaffe approaching, at which time there is an ordinarie cessation from the affaires of Counsell and Seffioun, the Archbishop of Glasgou, beeing to repaire homewards, and vnwilling to discharge himfelfe of that prisoner, till hee might at leasure worke him to a better minde, obtained the fauour of their L. to retaine him, in his companie, for a fourth-night after, or till hee shoulde returne himfelfe to Edinburgh.

It pleased his Ma. in this time, whilest he was remaining at Glasgou, to send a Commission to the Archbishop of Glasgou, the Lord Bishop of Argyle, the Lord Fleming, S<sup>r</sup> George Elphinston, and Iames Hammilton, Prouest of the citie of Glasgou, for trying the said Iesuit his opinion, touching his Highnesse royal power, and the Popes claimed iurisdiction, maintained by Bellarmine, Suarius, and others of that sort. The questions were these:

1. Whether the Pope be iudge, and haue power, *in spiritualibus*, ouer his Ma-

iestie, and whether that power will reach ouer his Maiestie, euen *in temporalibus*, if it be *in ordine ad spiritualia*, as Bellarmine affirmeth?

2. Whether the Pope haue power to excommunicate Kings, (especially such as are not of his church,) as his Maiestie?

3. Whether the Pope haue power to depose Kings, by him excommunicated; and in particular, Whether he haue power to depose the King his Maiesty?

4. Whether it be no murther to slay his Maiesty, being so excommunicated and deposed by the Pope?

5. Whether the Pope haue power to assoyle subiects from the oath of their borne and naturall allegiance to his Maiestie?

Vpon the 18 day of Ianuarie, the foresaid questions being red distinctly vnto him, and he required to declare his opinion thereanent, answered as followeth:

To the first, 'That hee thought the Pope of Rome Iudge to his Maiestie, and to haue power ouer him, *in spiritualibus*, if the King be a Christian:' and where it is asked, if that power will reach ouer his Maiestie, *in temporalibus*? hee sayes, 'hee is not obliſhed to declare his opinion therein, except to him that is Iudge in controverſies of religion, which hee acknowledges to be the Pope, or some one hauing authoritie of him.'

To the second hee answereth, 'that the Pope hath power to excommunicate his Maiestie:' and where it is said, that the King is not of the Pope his church, hee saith, 'that all who are baptized, are vnder the Popes power.'

To the third, where it is asked, if the Pope haue power to depose his Maiestie, beeing excommunicated? Answereth, 'that hee will not declare his mind, except to him that is Iudge, in controuerſies of religion.'

To the fourth, whether it bee lawfull to slay his Maiestie, being excommunicated and deposed by the Pope? Answereth, *ut supra*.

To the fift, whether the Pope hath power to assoile subiects from their borne and naturall allegiance to his Maiestie? Answereth, *ut supra*.

In all these Articles, he was particularly refoned with by the Archbishop of Glasgou, Mr Robert Boyd, Principal of the College, a man of rare erudition, and Mr Robert Scot, one of the Ministers of the citie; where it was also signified vnto him, that it concerned him in no lesse then his life, what answere he should make; if he should stand obstinate in these he had giuen, he might know what fauour was to be expected for his other crimes. Not the lesse, ratifying all that formerly was said, hee added this further, 'that he condemned the oathes of supremacie and allegiance proponed to be sworne in England,' and would needes haue the writer to insert those wordes; to all which hee put his hand, subscribing thus,

IOHANNES OGILVEUS, *Societatis Iesu*.

These answeres beeing sent to his Majestie, vnder the testification of the fore-



saide Commiſſioners, his highneſſe gaue order to the Lordes of the Priuie Counſell, for his triall; which was appointed to be at Glaſgow, the laſt of Februarie. Immediately after, the Archbiſhop of Glaſgow directed the Proueſt and Baylies of the citie vnto him, to ſignifie that Tueſday following was appointed for his arraignment; and that hee would not bee accuſed for Maſſe ſaying, or any thing elſe that concerned his profeſſion, but for the anſwers that hee had made to the demands propoſed to him by his Maieſties Commiſſioners. They declared alſo, that if hee ſhould, vpon better reſolution, recall thoſe anſweres, and apply himſelfe to giue his Maieſtie ſatisfaction, in other points, which of deutie hee was obliſhed vnto, the ſaid Archbiſhop would vſe his credite with his highneſſe and the Lordes of the Priuie Counſell, for his ſafetie. His anſwere was, ‘ that he thanked his lordſhip, for the good will and kindneſſe offered; but he was ſo little minded to recall any thing hee had ſaid, as when hee came to the place, hee would make a commentarie vpon his anſweres.’

The Miniſters of Glaſgow, accompanied with Maſter Williame Struthers, one of the Miniſters of Edinburgh, did alſo viſite him, ſome two dayes before, aduiſing him to the ſame purpoſe, and offering him their beſt counſell and comfort. His anſwere was, ‘ That he had reſolved what to doe; and if hee ſtoode in neede of their comfort, hee ſhoulde advertiſe.’

The Earle of Lowthiane, truſting by conference to bring him to a better minde, went vnto him at diuers tymes, uſing many perſuaſions to draw him from his obſtinate courſe: but nothing could preuaile with him, as in the proceedings ye ſhall perceiue.

THE ARAIGNMENT of IOHN OGILVIE, on Tueſday the laſt of Februarie, in the town-houſe of GLASGOW, before Iames Hammilton, Proueſt of Glaſgow, Iames Bell, Coline Campbell, and Iames Bradwood, Baylies of the citie, Juſtices appointed by ſpeciall commiſſion for that buſines, by the Lordes of Priuie Counſell. The foreſaid IUDGES being aſſiſted by the honourable LORDS there preſent:—Iohn Archbiſhop of Glaſgow, James Marques of Hammilton, Robert Earle of Lowthiane, William Lord Sanquhar, Iohn Lord Fleming, Robert Lord Boyde, and Sir Walter Stewart, Baylie deputie of the regalitie of Glaſgow.

ON Tueſday, the laſt of Februarie, a litle after 11 of the clocke, in the forenoone, the Court beeing ſet, Mr William Hay of Baro, Commiſſar of Glaſgow, deputed by ſpeciall commiſſion from Sir William Oliphant of Newtoun, his Maieſties Atturney Generall, produced the Inditement following: together with the citation vſed againſt thoſe who were to paſſe vpon the iurie, and the roll of their particular names, ſubſcribed with his hand, according to the cuſtome obſerued in thoſe caſes.

THE INDITEMENT of IOHN OGILVIE, IESUIT, after the forme of the law of Scotland.—IOHN OGILVIE, by your subscription, a Priest of the late execrable order of IESUITS, you are indited and accused, That, forasmuch as God, the author of all righteous gouvernement, hauing established Kings and Magistrats his lieutenants vpon earth, for repressing of violence, oppression, and vice, and the promoting of pietie and justice, hath, in his particular grace and fauor, blessed this cuntry with a more ancient, iust, and permanent descent of lawfull Kings, than any other nation of the world; and extended our felicitie beyond the happines of our antecessors, by the justice, wisdom, and clemencie of his Maiesties prosperous reigne; and hath not onely rewarded his Maiesties zeale and righteousnes with wealth and peace, but also honoured and strengthened him with the accession of the most mightie and flourishing kingdomes of England, France, and Ireland. Which visible fauours, proceeding directly from Gods most bountifull hand, moued the whole Estates of this kingdome, assembled in the Parliament holden at Perth, the 9 of Iulie, 1606, To acknowledge his Maiesties soveraigne authoritie, princely power, royall prerogative, and priuilege of his crowne, ouer all estates, persons, and causes whatsoever, within the kingdome: And all in one voice, faithfully promise to maintaine, defend, obey, and aduance the life, safetie, honour, dignitie, soveraigne authoritie, and prerogative royall of his sacred Maiestie, and priuiledges of his crowne: And to withstand all persons, powers, and estates, who should presume, preasse, or intend any wayes to impugne, hurt, or impair, the same: As also, his Maiestie, with aduise of the whole estates of this kingdome, in the Parliament holden at Edinburgh, the 22 day of May, anno 1584, ratified, approued, and perpetually confirmed, his Maiesties royall power and authoritie ouer all estates, as well spiritual as temporall, within this realme: And statuted and ordained, that his Highnesse, his heyres and successours, by themselves and their Counselles, were, and in all times comming should bee, Iudges, competent to all persons, his Highnesse subjectes, of whatsoever estate, degree, function, or condition that euer they be of, spiritual or temporall, in all matters wherein they or any of them should be apprehended, summoned, or charged to answere vnto such things as should be inquired of them, by our said soveraign Lord and his Counsell: And that none of them, who should be apprehended, called, or summoned, to the effect foresaid, should presume or take in hand to decline the iudgement of his Highnesse, his hayres and successours, or their Counsell, in the premisses, vnder the paine of treason: And likewise, by the 48 Act of King James the First his Parliament, and diuers other Parliaments thereafter, it is ordained, that all the King his lieges liue and be gouerned vnder the Kings lawes and statutes, and vnder no lawes of other countries and realmes, vnder the paines of treason, and others; (as is) particularly expressed in the Acts before mentioned,



and other lawes of this kingdome. Notwithstanding whereof, it is of trueth and veritie, that you, hauing renounced your naturall allegiance and deutie to your natie and righteous King, and cast off all reuerence, respect, and obedience to his foueraigne authoritie and lawes, and dedicated your mind and actions to the vnlawfull obedience of forraine powers, aduerfaries to his Majestie; and resolving, so farre as in you lieth, to seduce his Majesties subjectes from the faith and allegiance due to his Majestie, repaired to his countrey, in the moneth of Iune last past, or thereabout, and by your conferences, intisements, auricular confessions, Masse-saying, and other subtle and craftie meanes, indeuoured your selfe, not onely to corrupt many of his Maiesties lieges, in religion, but also to peruert them from their duetifull obedience due to his Majestie, till you were discouered and apprehended by the Archbishop of Glasgowe; who, with diuers his Maiesties Counsellors, and others his good subjectes, used all Christian and charitable meanes to bring you to the sense of your hainous offences, and desire of amendment thereof: But they, losing all their well-intended labours, were (in respect of your peruerse obstinacie) commanded by his Majestie, to enter to your examination, and the tryall of your hainous crimes and transgressions. And especially, the saide Archbishop of Glasgowe, and many others of good ranke and qualitie adjoined to him, by his Majestie, for your examination, hauing, vpon the 18 day of Ianuarie last, called you before them, to examine you vpon some particular interrogatories, prescribed by his Majestie to be demanded of you, as directly concerning his Majesties moste sacred person, life, crowne, and estate. And chiefly, you beeing demanded by them, whether the Pope hath power to depose Kinges, beeing excommunicated? And in particular, if he haue power to depose the Kings Majestie, our foueraigne, being excommunicated by him? You answered, treasonably, that you would not declare your mind, except to him that is iudge in the controuersies of religion, whom (by your answere made to the latter part of the first interrogatorie, demanded of you that day) you declared to be the Pope, or any hauing authoritie from him: Albeit, by the Acts of Parliament, and lawes of this Realme, made in the yeeres of God 1560 and 1567, it is statuted and ordained, that the Bishop of Rome (called the Pope) shall haue no iurisdiction nor authoritie within this Realme, in any time comming: And thereby, not onely declined treasonably his Maiesties iurisdiction, allowing of the Popes iurisdiction, which is discharged by Acts of Parliament, as said is; but hath committed most damnable and high treason, in not acknowledging that the Pope hath no power to depose his Maiestie, who, holding his crowne and authoritie absolutely, fouerainly, and immediatly of God, may not be deposed by any earthly person, power, or authoritie. And thereafter, being demanded, If it be lawfull to slay his Majesty, being excommunicated and deposed by the Pope?

you answered, *ut supra*; which was, that you woulde not declare your mind till you were before the Pope, or others hauing authoritie from him: Thereby, not onely declining, treasonably, his Maiesties iurisdiction and authoritie royall; but by your not answering clearely, that it is altogether vnlawfull, damnable, and diabolicall, once to thinke that it is lawfull to slay his most sacred Majestie, you haue committed most hainous, pernicious, and vnpardonable treason. And lastly, being demanded, If the Pope had power to assoile his Majesties borne subjectes from their naturall allegiance? you answered, *ut supra*: and thereby, both declined, treasonably, his Highnes iurisdiction and authoritie royall, in refusing to answere before his Maiesties Counsellors and Commissioners foresaid, in one matter, meerely concerning his royal power ouer his people, and their subiection to his Maiestie: and also committed wilfull and detestable treason, in not acknowledging, professedly and presently, that none on earth had power to assoile his Maiesties subiects from their naturall subiection and allegiance to him. But that it may bee knowne that your treason proceeded of forethought felonie and obstinate resolution, you freely and vnrequiredly did adde to your foresaid answeres, this damnable conclusion, that you condemned the oathes of supremacie and allegiance giuen to his Maiestie, by his subiects, in his Dominions; wherby it is apparent, that your erand to this Countrie hath beene, to infect his Highnesse subiects with the poison of your pestilent and treasonable opinion foresaid, to the subuersion of Religion, ouerthrow of his Maiesties authoritie and crown, and destruction of his most sacred person. And albeit, the course of all his Maiesties life and reigne, hath manifested how vnwilling hee hath euer beene to use the seueritie of his Lawes against those who hath said and heard Masse, and otherwise controuened the Acts of Parliament made against idolatrous papistrie, and practisers thereof, within this Kingdome; desiring rather to reclaime them, by instruction, from their errours, to the knowledge and profession of the trueth: And when he found them obdurat, and of desperate resolution, relieuing the countrie of the dangerous progresse of their courses, by their imprisonment and banishment, whereof you had such experience, in the persones of your owne complices, condemned for their manifest crymes, as might verie probablie haue made you to haue expected the like; if anie memorie of your natie duetie and borne allegiance had possessed your mind: But you, beeing altogether destitute thereof, by the three last articles of your Depositions aboue written, you haue so plainly discouered, that you professedly approue the meanes, and with the effect, of the ouer-throwe of his Maiesties estate, the destruction of his Highnesse person, and seduction of his natie subiectes from their subiection and duetifull obedience; that thereby, and by euery one of your foresaid answeres, you haue committed moste hainous, detestable, and vnpardonable treason, and deseruedly



incurred the most rigorous paines therof to be executed vpon your body, lands, and goods, with all extremities, to the terrour of others.

THE Inditement being read, Maister William Hay, substitute for his Maiesties Attorney, opened the same, to the effect following.—Albeit the Inditement of it selfe be cleare enough, and representeth sufficiently to my Lordes Iustices, their honourable Lordships heere assisting, and to your selfe, Iohn Ogilvie, who standes there accused, the weight and gravitie of the crime by you committed, yet I shall resume it to you in few words, that your answeres may be the more distinct, and without mistaking.

You are not accused of saying Masse, nor of seducing his Maiesties subjectes to a contrarie religion, nor of any point touching you in conscience, properly; but for declining his Maiesties authoritie, against the lawes and statutes of the land, and for maintaining treasonable opinions; such as we, of this Realme, haue not heard by any auowed. The statutes, mentioned in your Inditement, make it treason not to answere the Kings Maiestie, or his Counsell, in any matter which shall be demanded: You beeing examined by my Lord Archbishop of Glasgow, and other honourable persons adioyned to him, by his Maiesties special Commision, refused to answere vnto diuers interrogatories proponed to you by their Lordships; and, at the same time, professedly auouched the Pope of Rome his iurisdiction, which, by the Lawes of the countrie, is many yeeres since plainly discharged: Therefore, haue you incurred the penaltie contained in the statutes, and the same ought and should be executed vpon you.

It is further laid vnto your charge, that you, being demanded in the particulars, namely, Whether the Pope hath power to depose the Kings Maiestie, our soueraigne? Secondly, Whether it be lawfull to slay his Maiestie, being deposed by the Pope? Thirdly, Whether the Pope hath power to assoile his Maiesties subjects from their naturall allegiance, or not? You denied to giue any answere, touching any of these points, except yee were inquired thereof by the Pope, or others hauing authoritie from him; and so not acknowledging that his Maiesties crowne and authoritie is held immediately and souerainely of God, the author of all gouernement; that it is detestable, once to thinke, that his sacred Maiestie may bee lawfully killed; and that no man hath power to assoile his Maiesties subjectes from their naturall allegiance to his Highnesse: You haue, in these points, and euery one of them, committed most hainous treason; for the which, what you say in your own defense, I see not. And yet further, that it may be seene, how desperate your resolution is, in al these points, although you were not required concerning the oaths of supremacy and allegiance giuen to his Maiestie by his subjectes, ye freely, and out of your owne motiues, condemned these oaths,

as impious and vnlawfull. Thereby hath it appeared, what a wicked and treasonable mind you foster against his Maiestie, our soueraigne. If you should deny it, heere are your answeres, subscribed with your owne hand, which ye cannot but acknowledge; them I desire to bee read, as likewise the seuerall statutes of Parliament, which you are alledged to haue transgressed; and thereafter, since his Maiestie is pleased that the ordinarie course of tryall be kept vnto you, you shall haue libertie to say for your selfe, either against the relevancie of the Inditement, or verification produced, what you thinke best.

Then were read the statutes of Parliament, mentioned in the Inditement, and the said Iohn Ogilvies answeres to the demands proponed vnto him; which he acknowledged for his owne, and the subscription thereto subioyned: after which, hauing licence of the Court to say what he coulede for himselfe, he spake to this effect:—‘ First, vnder protestation that I doe no way acknowledge this iudgement, nor receiue you, that haue that Commission there produced, for my iudges, I deny any point laid against me to be treason: for if it were treason, it would bee treason in all places, and in all kingdomes; but that,’ saith he, ‘ is knowne not to be so. As for your Actes of Parliament, they are made by a number of partiall men, the best of the land not agreeing with them, and of matters not subiect to their forum, or iudicatorie, for which I will not giue a rotten figge!’

‘ Where I am thought an enemy to the Kings Maiesties authoritie, I knowe none other authoritie he hath, but that which he received from his predecessors, who acknowledged the Pope of Rome his iurisdiction. If the King,’ saith he, ‘ will be to me as his predecessors were to mine, I will obey and acknowledge him for my King; but if he doe otherwise and play the runneagate from God, as he and you all doe, I will not acknowledge him, more than this old hatte!’

Heere the Archbishop of Glasgou interrupted his speech, desiring him to deliuer his mind in a greater calme, and with more reuerent speeches of his Maiestie (for he vttered those things in a vehement passion, and as one transported with fury); hee remembered him, that hee was accused vpon his life, before iudges that were authorized by his Maiesties Commission: to decline the iudgement, or raile against his Maiesties authoritie, was bootlesse, and in a man of his profession, being an Ecclesiasticke, very scandalous. He should rather take another course to amend what he had offended in, and recall his former answeres, if they had not proceeded from a deliberate purpose; or if hee were resolute to maintaine them, to doe it with reason, and in a moderate sort; that this were his best, either for iustifying himselfe, and the opinions he held, or for mouing the Iudges, and their Lordships that were assisting, to commiserat his case: he aduertised him withall, to be more temperate in his speeches concerning his Majestie, otherwise he would not be licenced thus to offend.



To this, Ogilvie made some litle answer, ' That hee would take the aduertisement, and speake more coldly : ' howbeit, hee would neuer acknowledge the iudgement, nor thinke they had power to sit on his life, but said, ' And for the reuerence I doe you, to stand bare-headed before you, I let you know it is, *ad redemptionem vexationis, et non ad agnitionem Iudicii*.

The Aduocate here insisted, that seeing all his answeres tended to decline the iudgement, and that hee brought no reason why the Inditement should not goe to a tryall, that the Iurie should be chosen and sworne at the Barre, according to the custome.

THE NAMES OF THE IURIE.

Sir Geo. Elphinston of Blythwood,	Hew Crawford of Iordane-hill,	John Dunlop of Powmilne,
Sir Thomas Boyd of Bonehaw,	John Carschore of that Ilk,	John Stewart, burges of Aire,
Sir J <sup>s</sup> Edmeston of Duntraith, elder,	Hew Kennedy, prouest of Aire,	John Dumbbar, burges there,
James Murehead of Lachope,	William Makarrel of Hill-houise,	James Johnston, burges there,
James Robertson of Ernock,	James Blaire, baylie of Aire,	John Cunningham of Rawes.

It was allowed the prisoner to challenge any of the fore-named persons, and to oppose vnto their admiffion : who said, ' He had but one exception for them all : they were either enemies to his cause, or friendes ; if enemies, they could not bee admitted vpon his triall, and if they were his friends, they should stand prisoners at the Barre with him.'

The Iurie, being knowne to be all discrete and substantiall persons, were instantly sworne and admitted.

Then was the Inditement read againe, in the hearing of the Iurie, and the evidences shewed them for verification thereof, which ofbefore were produced. And the prisoner, beeing of new remembred to say what hee would for himselfe, for the better information of the Iurie, spake these things following :

' I wish these Gentlemen to consider well what they doe. I cannot bee tried nor iudged by them ; and whatsoever I suffer here, it is by way of iniurie, and not of iudgment. *Iniuria est, non iudicium*. I am accused of treason, but haue done none offence, neither will I begge mercy.'

' This is strange,' sayeth the Archbishop, ' you haue done none offence, and yet you are come in his Maiesties kingdome, and hath laboured to peruert his Highnesse subjects ; both of these are against the law : In this haue ye not offended ?'

' Not,' he answereth ; ' I came by commandement, and if I were even now fourth of the kingdome, I should returne : neither doe I repent any thing, but that I haue not been so busie as I should, in that which yee call peruerting. I hope to come to Glasgow againe, and to doe more good in it. If all the haire of mine head were priestes, they should all come into the kingdome.'

' And doe you not,' sayeth the Archbishop, ' esteeme it a fault to goe against the King his commandement, especially in this point of discharging you his king-

dom. If a King haue any power within his kingdome, it seemes hee may rid himselfe and his countrey of those with whom he is offended; and it fauoures of great rebellion to say otherwise.'

To this Ogilvie replied, 'I am a subiect as free, as the King is a King: he cannot discharge me, if I be not an offender, which I am not.' And being asked, for what offences he might be discharged by the King? Answered, 'in the cases of theft and murther.'

'All this while,' said the Archbishop, 'you come not to answere any thing to the points of your Inditement. Why did you decline his Maiesties authoritie, and refused to shew your opinion anent the Pope his power in deposing Kings, and loosing subiects from their oath of allegiance? And when it was asked you, if it were lawfull to slay the King, being deposed and excommunicated by the Pope, which any loyall hearted subiect will abhorre to think of, why did you not simply condemne it as vnlawfull? For in that you doe not condemne it, you shewe your selfe of the opinion of the rest of your sect, who in their bookes maintaine, that it is both lawfull and commendable to slay Kings, if the Popes commission goe foorth once for it.'

'For the declining of the Kings authoritie,' sayeth he, 'I will doe it still in matters of religion, for with such matters hee hath nothing to doe; neither haue I done any other thing, but that which the Ministers did at Dundie; they would not acknowledge his Maiesties authoritie, in spirituall matters, more than I; and the best Ministers of the land are still of that minde, and if they be wise, will continue so.'

The Archbishop replied, 'that he was mistaken, both in the place and matter; for it was not at Dundie, but Aberdein, where eight Ministers, meeting to a General Assemblie, contended not against the Kinges authoritie, but that the Assemblie called to that place and time, could not be discharged by his Maiesties Commissioner: Neither should the fact of a few, taken at the worst, be esteemed the deed of the whole. These haue bene punished for their offences, and some of them haue confessed their errour, and bene graciously pardoned by his Maiestie: All good Ministers professe otherwise, and our religion teacheth us to acknowledge his Maiestie, our onely supream iudge, in all causes. The King is keeper of both Tables, and his place beares him not onely to the ruling of his subiects in iustice, and preferuing equitie amongst them; but euen to maintaine religion and Gods pure worship, of which he should haue principal care. Your lord, the Pope, hath not onely denyed this authoritie to Kings, which God giueth them, but usurpeth to himselfe a power of deposing and killing, when he is displeased; and it were the lesse to be regarded, if this his usurpation had gone no further then your pennes; but you haue entred, by this pretended right, the throats of the



greatest Kings, as your practise vpon the two last Henries of France beares witnesse. You are not able to lay such imputation vpon vs, nor our profession, which teaches, that, next vnto God Almighty, all men are bound to feare, serue, and honour their Kinges. But what answere you, touching these demandes? Hath the Pope power to depose the King? Or is it not murther to kill him, being deposed by the Pope?

‘I refused of before,’ said hee, ‘to answere such questions, because in answering, I should acknowledge you iudges in controuersies of religion, which I doe not. I will not cast holy things to dogges.’

‘And is it,’ said the Archbishop, ‘a point of faith, that the Pope may depose his Maiestie? Or do you think it a controuersie in religion, Whether his Maiestie (whom God saue) may be lawfully killed or not?’

To this Ogilvie replied, ‘It is a question amongst the Doctors of the Church, and many hold the affirmatiue, not improbably: A Councill hath not yet determined the point; and if it shall be concluded by the Church, that the Pope hath such power, I will giue my life in defence of it, and if I had a thousand liues, I would bestowe them that way, if they will make an article of faith of it.’ Being vrged to declare his owne opinion, especially in that point, whether it were murther to kill his Maiestie, being deposed by the Pope, he answered, ‘that he would not say it were vnlawfull, though he should saue his life by it.’ Then going on with a long speech of the Pope his power, affirmed the King to be subject to him, by the vertue of Christes saying to Peter, *Pasce oves meas*. ‘That if the King offended against the Catholicke Church, the Pope might punish him aswell as a shepheard or the poorest fellow in the countrey. That in abrogating the Popes authoritie, the estates of Parliament had gone beyond thair limites, and that the King, in vsurping the Popes right, had lost his owne. *Nam qui rapit jus alienum,*’ sayeth hee, ‘*perdit jus ad suum.*’

Being asked touching the oath of allegiance, why he did condemne it, and the famine being read vnto him, he said, ‘It was a damnable oath, against God and his trueth, and that it was treason to sweare it; because it brought the Kings person and state in danger; since this kingdome,’ sayeth he, ‘was Christian, the Popes supreme power was alwayes acknowledged; this being cast off, (as we see in the Act of your Parliament,) against all reason and conscience, and subiectes forced to swear to a matter so vnlawfull, what maruell that attemptes and dangerous courses be taken against him? *Iustissima lex est, ut quæ agit aliquis, talia patiatur.* But would the King leaue off his vsurping vpon the Pope, hee might liue without feare, aswell as the King of Spaine, or any other Christian prince: And with this hee intermixed some speeches, of his owne seruice, and the seruice of other Iesuits done to his Maiestie, whereof hee saide, ‘Neither Bishop, nor

Minifter, nor all the Bifhops and Minifters in his Maiefties kingdomes, had done or could doe the like.'

The further hee proceeded in fpeaking, his fpeeches ftill grew to bee the more intollerable; therefore the Archbifhop of Glasgou, willing him to make an end, did clofe all with fome wordes to the Iurie, to this effect. Gentlemen, and others, who are named vpon this Affife, though I minded to haue faide nothing, but fitten heere a witneffe of the proceeding, I haue beene forced, by his proud and impudent fpeeches, fomewhat to replie; and muft, with your patience, fay a little more. It is this fame day, two and twentie weekes paff, that this prifoner fell into mine handes; fince that time hee hath had leifure to thinke enough what courfe was fitteft for himfelf to take, for fatisfying his Maieftie, whome he had offended: neither hath he lacked counfel and aduife, the beft that we could giue him. Befides, hee hath found on our parte nothing but courteous dealing, and better intertainement then (I muft now fay it) hee hath deferved. Mine owne hopes were, that hee would have followed another courfe then I fee hee hath taken, and not ftande to the anfweres which hee made to thofe demandes, which were moued vnto him by his Maiefties Commiffioners, and you haue feene: But if his anfweres at the firft were treafonable, they are nowe fo little bettered, as in all your hearinges, hee hath vttered fpeeches moft deteftable, made a commentarie worfe then the text was, and fhewed himfelfe to carrie the minde of an arrant and desperate tratour. You perceiue, he obfcures not his affection towards the Kinges Majeftie, our foueraigne, in all his fpeeches; preferring the Pope to his Majeftie: And, which is more intollerable, affirmeth the Kinges Maieftie to haue loft the right of his kingdome, by vfurping vpon the Pope. Hee will not fay it is vnlawfull to kill his Maieftie; hee fayeth, it is treafon for fubietes to fweare the oath of allegiance; and meaneth fo much, in his laft wordes, as the Kinges Maiefties life and eftate cannot bee affured, except hee render himfelfe the Popes vaffall.

Thus hath hee left you little to doe: except that his Majefties pleafure is, the ordinarie forme bee kept with him, you fhoulde neuer neede once to remoue: all his fpeeches haue beene fo ftuffed with treafon, that I am fure the patience of the Noble-men, and others heere prefent, hath beene much prouoked.

In al that he hath faid, I can marke but two things alledged by him, for the Popes authoritie ouer Kinges: the wordes of our Sauour to Saint Peter, *Pasce oues meas*, Feede my fheepe; and the fubjection of Kinges, efpecially of our Kinges, fince the kingdome became Chriftian, to the Pope. For the wordes of our Sauour, howe little they ferue his purpofe, I haue no neede to tell you. To feed the fheepe of Chrift, is not, I hope, to depofe Kinges from their eftates, nor to inflame the heartes of fubietes againft princes: much leffe to kill and difpatch



them : Wee are better taught then to bee deceiued with such glosses. Saint Peter made neuer that sense of those wordes, and teacheth vs a farre other doctrine, in his first Epistle, fift chapter, and second and third verse.

I will not spende time with such purpose, onely this I muste saye, that whatsoever was Saint Peters prerogative, the Pope of Rome hath nothing to doe with it : for hee cannot bee Saint Peters successor, that hath forsaken his doctrine, and gone against his practise directly, both in that and other points of Christian faith. And for the antiquitie of his usurped power, I may justly say, that Master Ogilvie is not well seene in antiquitie, or then speaketh against his knowledge, when he saith, that this power of the Pope was euer acknowledged by Christian Kinges : The Bishops of Rome, for many yeeres, made no such claime, neither did Emperours or Kinges euer dreame of such subjection : Long it was ere the Pope of Rome came to the height of commanding Kinges, and not till hee had oppressed the church, vnder the pretext of Saint Peters keyes, bearing downe all the Bishops within Christendome : which hauing done, then hee made his inuasion vpon princes, and that by degrees. The histories of all ages make this plaine, and the resisting hee found by Kinges in their kingdomes, testifieth that they neuer acknowledged his superioritie. Of our owne, howbeit, as wee lye farre from his seat, so had wee lesse businesse, and fewer occasions of contradiction ; yet can I make it seene, in diuers particulars, when any question fell out anent the prouision of Bishops and Archbishops to their places, the Bulles of Rome were so little respected, as the Kinges predecessors haue always preferred and borne out their owne choice, and the interdictions made upon the realme, by these occasions, not without some imputation of weaknesse to the Sea Apostolicke, haue beene recalled. The superstitions of Rome were amongst vs last embraced, and with the first, by the mercies of God, shaken off : Whatsoever you bragge of your antiquitie, it is false, both in this and all the pointes of your profession else, which I could cleare, if this time or place were fitting. But to you of this Iurie, I haue this only more to say, you are to inquire vpon the veritie of the Inditement, whether such and such things as are alledged to be committed by him, haue beene so or not ? You haue his subscription, which hee acknowledgeth ; you heare him selfe, and how hee hath moste treasonably disauowed his Majesties authoritie : It concernes you onely to pronounce, as you shall find verified by the speeches that you haue heard, and the testimonies produced. For the rest, the Iustices knowe sufficiently what to doe, and will serue God and his Majestie, according to the Commission giuen them.

Maister William Hay, Aduocate for his Majestie, asked instrumentes vpon the prisoners treasonable speeches vttered in the hearing of the Iurie, and his ratification of the former answeres made to his Majesties Commissioners ; Likewise, for

the further clearing of the Inditement, repeated the Actes of Parliament mentioned in the said Inditement, with the Act of Priuie Counsell, made anent his Maiesties supremacie, and the oath of allegiance: And desired the Iurie deeply to weigh and consider the peruerse and diuelish disposition of the partie accused, to the effect they might, without scruple, proceede in his conuiction. And according to his place, protested for Wilfull Errour, if they should acquite him of any point contained in the saide Inditement.

[VERDICT.] The persons named vpon the Iurie remoued to the higher house, which was prepared for them; and hauing elected Sir George Elphingstone chancellor, all in one voice, found the prisoner GUILTY of the whole Treasonable crimes contained in the Inditement.—[SENTENCE.] Which being reported by the saide Sir George Elphingston, and confirmed by the whole Iurie, then returned into the Court, Iudgement was giuen, by direction of the Iustices, That the saide Iohn Ogilvie, for the Treasons by him committed, should be HANGED and QUARTERED.

THE Archbishop of Glasgowe demanded, if Ogilvie would say any thing else?

Ogilvie answered, ‘No, my lord, but I giue your lordship thanks for your kindnesse, and will desire your hand.’

The Archbishop said, ‘If you shall acknowledge your faulte done to his Maiestie, and craue God and his Highnesse pardon, I will giue you both hand and heart, for I wish you to die a good Christian.’

Then Ogilvie asked, ‘If he should be licensed to speake vnto the people?’

The Archbishop answered, ‘If you will declare, that you suffer according to the Law, justly for your offence, and craue his Maiestie pardon for your treasonable speeches, you shall be licensed to say what you please; otherwise you ought not to be permitted.’

Then saide hee, ‘God haue mercie vpon mee!’ And cryed alowd, ‘If there be heere anie hidden Catholickes, let them pray for me; but the prayers of hereticks I will not haue.’ And so the Court arose.

[OGILVIE’S *conduct at the time of his* EXECUTION.]

AFTER iudgement was giuen, by the space of some three houres, he remained in the place where he was conuicted, hauing leasure graunted him to prepare himselfe for death. Hee continued a while vpon his knees at prayer, with a colde devotion; and when the houre of execution approached, his handes being tied by the executioner, his spirits were perceiued much to faile him. In going towardes the scaffold, the throng of people was great, and he seemed much amazed; and when he was vp, Master Robert Scot and Master William Struthers, Ministers, very grauely and christianly exhorted him to a humble acknowledge-



ment of his offence, and if any thing troubled his mind, to disburthen his conscience. In matters of religion, they saide, they would not then enter, but prayed him to resolute and settle his minde, and seeke mercie and grace from God, through Iesus Christ, in whom onely saluation is to bee found. Ogilvie answered, 'That he was prepared and resolved.' Once he said, 'That he died for religion;' but vttered this so weakly, as scarce he was heard by them that stood by vpon the scaffold. Then addressing himselfe to execution, he kneeled at the ladder foot, and prayed. Master Robert Scot, in that while, declaring to the people, that his suffering was not for any matter of religion, but for haynous treason against his Maiestie, which hee prayed God to forgiue him. Ogilvie, hearing this, saide, 'He doeth me wrong.' One called Iohn Abircrumbie, a man of little wit, replied, 'No matter, Iohn, the more wrongs the better.' This man was seene to attend him carefully, and was euer heard asking of Ogilvie some token before his death; for which, and other businesse he made with him, he was put off the scaffold.

Ogilvie ending his prayer, arose to goe vp the ladder, but strength and courage, to the admiration of those who had seene him before, did quite forsake him; he trembled and shaked, sayng, he would fall, and could hardly bee helped vp on the top of the ladder: He kissed the hang-man, and said, *Maria, Mater gratiæ, ora pro me; Omnes Angeli, orate pro me; Omnes Sancti, Sanctæque, orate pro me*: but with so low a voice, that they which stood at the ladder foote, had some difficultie to heare him.

The executioner willed him to commend his soule to God, pronouncing these wordes vnto him, 'Say, Iohn, Lord haue mercy on mee! Lord receiue my soule!' which he did, with such feebleness of voice, that scarcely hee could be heard: Then was hee turned off, (his left foot for a space taking holde of the ladder, as a man vnwilling to die,) and hung till hee was dead. His quartering, according to the iudgement giuen, was for some respectes not used, and his body buried in a place that is kept for male-factors.

THIS was the ende of that unhappie man, in whose death, any man that had eyes might see what a gracelesse and comfortlesse religion Poperie is: The power of religion manifesteth it selfe chiefly in the houre of death: The sight of a reconciled God, the assurance and perswasion of fauour through Christ, furnisheth spirite and boldnesse, and maketh a man willing to depart and quite this life: But Popish religion teacheth vncertainetie of saluation, and leadeth a man to other fauours, who can neither helpe nor comfort, in the houre of death. What maruaile, that men, who leane to such rotten and vnprofitable helps, lacking and disappointed of the assistance they hoped for, shewe a faint and cowardly minde at their last!

This onely I haue further to aduertise, that since his execution, wee haue vnderstood, by some persons who visited him, at times, during his imprisonment, that, amongst other his speeches with them, hee said this, ' That if hee had escaped his apprehension at this time, and liued till Whitsonday next, hee should haue done that which all the Bishops and Ministers, both in England and Scotland, shoulde neuer haue helped ! And, if hee might haue liued at libertie vnto that time, hee woulde willingly haue beene drawne in peeces with horses, and haue giuen his bodie to haue beene tormented !' Whereof, what shall any man collect, but that this villane was about some desperate enterprife ?

God, that in mercie hitherto detected and disapointed the malicious devices of the wicked against his Church, continue with vs his fauour, and giue vs to depend stedfastly on his prouidence. And to all the enemies of God and the King, let it befall, which wee haue seene vpon this wicked and accursed person. Amen.

FINIS.

#### DEPOSITIONS of the JESUITE and Papists examined at Glasgo, 5 Oct. 1614.<sup>1</sup>

APUD GLASGOW, the fift day of October, 1614. THIR personis, vnderwryttin, wer examineit, in presens of my Lordis of Glasgou and Argyle ; my Lord Flemyng, my Lord Kilfyllthe, my Lord Boyde ; the Laird of Mynto, Sir George Elphinstoune ; James Hammiltoune, Proveft ; James Bell, James Braidwood, Colin Campbell, Baillies.

ROBERT HEYGAIT, being inquyrit, how lang he hes bene acquent with this *Preist* ? Answerit, that he neuer saw him nor spak with him bot within pir twa monethis syne, or pairby ; and pat he come down to him to his awin buithe, and gat sum paper fra him ; and pairefter zeid with him to *Mr William Stewartis* hous, to get ane chopein of wine, quha callit him self ane hors-cowper, and wes going to *Kyntyre* to by hors ;<sup>2</sup> and imployit him to by ane hors. And pairefter, callit him self ane *Preist*. Bot of his name he is ignorant ; and neuer speirit for it. And being inquyrit, gif he enterit withe him in RELIGIOUN ? So confest ; and pat he brocht him to *Mareoun Walkeris* hous ; and saw his buikis : And beleivit that he spak to him ; and pat he contentit him of pe Sacrament of pe body of Christ ; and pat he is ane Catholik. And being inquyrit, gif he desyrit him to geive him ane Mefs ? Confest he desyrit pe samyn ; and hard pe samyn at pe said tyme : And pat pair (wes) with him *Mareoun Walker, William Menteithe, Mathow Adam, Thomas Forret, James Forret*. And being speirit, gif pis *Preist* wes gone to *Sir James Clelandis* hous or not ? Hard *Williame Menteithe* say, pat he wes gone pair. And being inquyrit, gif pe *Lady Maxwell* wes at ony Mefs heir, within pis schort space, or at ony Mefs ? Denyit pat he euer saw hir. Bot he knawis pat pis *Preist* spak with hir, pe last tyme scho wes heir, and pat pe said *Preist* said to him, pat he wes ane of THE SOCIETIE OF JESUS. And being inquyrit, how pat pe freindschip and acquaintance of pe said *Preist* wes maid with *James Stewart* <sup>23</sup> Confest, pat he wes pe bringer of pame togidder to confer ; and pat pe said *James* standis still in his former Religioun ; and pat pe said *James* wes desyrus to speik with pe said *Preist*, and he wes ernist to haif pe said *James* of his Religioun, bot he wald not giue his name pairto. And also confest, pat pair wes ane wper Mefs said in pe said *Mareoun Walkeris* hous, be pe said *Preist*, within tua dayis pairefter ; and

<sup>1</sup> From the Original attested copy, in the *Denmylne Coll. of MSS.*, Adv. Library.

<sup>2</sup> Styled *James of Jerusalem*, who figures in this Collection, Vol. III. &c.

<sup>2</sup> To purchase horses.



pat pair wes present pe said *William Menteith*, *Mareoun Walker*, *David Maxwell*, brother to *New-Wark*; and pat pair wes ane wper *Preißt* in pis Toun, quha stayit ane day heir, and went Eist-throw.<sup>1</sup> And knew not his name; bot he callit him self *Ogilbie*. And being inquiryt, gif pair wes ane wper Mefs said be pis *Preißt*, in his awin hous, or nocht? Confest pat pair wes ane said pair; and pat he wes Clerk to pe maist of pir Messis him self; and pat his wyf knew not pairof, bot suspectit pe samyn. And at pat tyme, quhen he sould haue gone to haue bocht pe hors, he raid to *Sir James Clelandis* hous. And pis he declairit be his great ayth.

ROBERT HEIGAIT.

ANDRO SYMMER, declarit, pat he drank with pis *Preißt* in *James Stewartis* companie, quha intyfit him to his Religioun; bot he wald not grant to him: And pat pai reffonit wpone Religioun togidder.

ANDRO SYMMER.

THE PREIST being inquiryt, quhat his name wes, he nameit him self *JOHNE OGILBIE*, sone to *Waltir Ogilbie of Drum*: and pat he hes bein out of pis cuntraye pir twentye twa zeiris: And pat he studiet in pe *Colledgis of Olmis and Graitis*; and remanit in *Olmis* twa zeir, and in *Gratis* fyve zeir; and pat he hes ressaunt pe *Ordour of Preisthuid* in *Paris*; and come hame in *Scotland* befor now, and remanit sex oukis, or pairby: And pat he now come hame about May last, or pairby: And confest pat pe budget,<sup>2</sup> productit on pe buird befor him, wes his awin. And pat he wes ane of pe ordinar *Jesuittis*: And being askit, quidder THE POPIS Jurisdiction extendit our THE KINGIS dominiounis, in spreitwall matteris? Affermit constantlie pe samyn; and wald dye for it.

JOHANNES OGILBEUS, Societatis Jesu.

JAMES FORRET, confessis, be his great ayth, pat he knew not pis *Preißt* all pe tyme pat pe *Erle of Eglington* wes heir. And wes send for be him, be . . . . ., servitrix to *Mareoun Walker*, quho delt with him to come and heir pe Mefs: And for pat effect appointit wper morne; at quhat tyme he keipit: And pe Mefs wes said be pe said *Preißt*; being present, *Robert Heygait*, *Mathow Adam*, *William Menteithe*, *Mareoun Walker*, *Thomas Forret*, his brother. And declairit, pat he wes neuer at ony Mefs befor or eftir. And pat pair wes ane wper man, quha callit him self *Dawnie*, seducit him to pat Religioun, quhairinto he pan in ane manir agreit: And supponis, pat pe said *Dawnie* had directit pis *Preißt* to him, to draw him forder on: quha perswadit him to leive THE KIRK—quhilk he did sen syne; quhairof he cravit God forgewnes. And confessit, pat, befor he ressaunt pe Messe, pat morning, he maid a Confessioun to pe said *Preißt*, quha gaue him ane absolutioun, and tuik pe Sacrament.

J. FORRET.

JAMES STEWART, being inquiryt, quhen he knew pis *Preißt*? Be his great ayth, declarit, pat he knew him tuentie dayis syne, or pairby; and pat *Robert Heygait* maid his acquaintance with pe said *Preißt*. And eftir pe drinking of ane choppine of wyne, he went with pe said *Preißt* to pe Zaird of *Mareoun Walker*, quhair he conferrit with him anent his Religioun, and wald nawayis zeild to him. Bot he had ane guid expectatioun of him, and maid him acquent pat he had ane Mefs to say; bot he wald not go to it. As to his name, he knawis not pe sam.

J. STEWART.

WILLIAME MENTEITH, being inquiryt, gif he knew pis *Preißt* or not? Answerit, pat he saw him in pis Toun ane monethe syne, or pairby; and pat he wes in his companie, in the hous of *Mareoun Walkeris*; and pair hard pis *Preißt* say ae Mefs; and denyit ony mae. And paireftir, being confrontit with *Robert Heygait*, confest pan he hard thrie Messis, twa pairof in *Mareoun Walkeris*, and ane wper in *Robert Heygaitis*; and pat he tuik pe Sacrament. And being inquiryt, quhair he gat his beginning of pat Religioun? He ansuerit, pat he first wes instructit thairin, being servand to pe *Laird Kers*, zounger, be pe *Lady Angus*, and *Archibald Douglas*, in pe *Place of Moungtoun*, besyde *Air*, ten or twelf zeiris syne, or pairby. And declairit, pat *Thomas Forret* tauld him of pis *Preißt*; and pat *Robert Heygait* informit him pat pe said *Thomas* was of pat Religioun. As als, declairit, pat he saw *Johnne Wallace of Corsflat* at pe Mefs, in *Robert Heygaitis* hous, said be pe foirlaid *Preißt*.

WM MENTEITHE, w<sup>t</sup> my hand.

<sup>1</sup> Probably to Edinburgh; he went through the town to the eastward.

<sup>2</sup> Portmanteau, or small trunk.

THOMAS FORRET, being inquyrit, quhair he had first acquaintance with pis *Preist*? Declairit, he saw him first in *Mareoun Walkeris* hous, being fetchit in to him be *Robert Heygat*, and efter lytill conference with him anent pe Religioun, he desyrit him to cum to Mefs, quhilk he did; and befoir pe ressaung pairof, he maid his Confessioun, and ressaunt absolutioun; and pairefter tuik pe Sacrament. And pat pair wes present at pe said Mefs, *Mr Johnne Mayne, Mareoun Walker, Mathow Adam, Robert Heygat, James Forret, William Menteith*; and wes at na Mefs sene syne, seing be pe sycht pairof he despyfit pat Religioun. And pat pe remanent lykwayis ressaunt pe Sacrament.

THOMAS FORRET.

MATHOW ADAM, being inquyrit, how long he had embracit pe Popisch Religioun? Declarit, pat, about fyve zeiris syne, or pairby, he had his entrie pairto in *Dan/skin*; and hes sence ressaunt pe Communioun. And pat he had acquaintance with pis *Preist* four oukis syne, or pairby, be pe moyen of *Robert Heygat*. And siclyk, in fomer last, wes acquent with ane *Dawnie*, ane *Preist*, in *Mareoun Walkeris* hous; and pat he wes at thrie Messis; pat pis *Preist* said ane in *Robert Heygaitis*, and twa in *Mareoun Walkeris* hous. And being askit, quhat his professioun is presentlie? Answerit, pat he wes of pe Religioun, be pe lawis of pis realme.

MATHOW ADAM.

MR JOHNNE MAYNE, being inquyret, gif he knew pis *Preist* or not? Declairit, be his ayth, he knew him in *Mareoun Walkeris* hous, to pe quhilk he wes brocht be *Robert Heygat*; quhair he confessit him self to pe *Preist*, ressaunt absolutioun, befoir he hard pe Mefs and ressaunt pe Sacrament. And pat pair wes present *Mareoun Walker, James Forret, Thomas Forret, Robert Heygat, Mathow Adam, William Menteithe*. And pat, as zit, he awowis pat Religioun, and professis pe samyn, quhill he be better ressoluit.

MR J. MAYNE.

JOHNNE WALLACE of *Corsflat*, being inquyrit, gif he wes at a Mefs said be pis *Preist*, or not, in *Robert Heygaitis* hous? Confessit, pat he wes present pairat, and brocht pairto be pe said *Robert Heygat*.

JOHNNE WALLACE.

THIS is the true copie of pair CONFESSIOUNIS.

GLASGOW.

### Suborning of Witnesses—Perjury—Slaughter, &c.

MAR. 8.—ROBERT GRAHAM, callit of Langboddome; Robert Dunlope and George Wat, wobsteris<sup>1</sup> in Edin<sup>r</sup>; Adame Blaiklok, duell-and at the West-poir<sup>t</sup> of Ed<sup>r</sup>; James Boyle, wobster in Edin<sup>r</sup>; Johnne Hammiltoun, tailzeour thair; Adame Mossfet, chopman;<sup>2</sup> Williame Tok, beltmaker at the Wast-poir<sup>t</sup>; James Or, flescheour in Crawmound.

Dilaitit, accuset, and persewit, be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intreis, off the seuerall crymes vnder-writtin, contenit in thair Dittayis, eftir specifcit, viz.

#### DITTAY against Robert Grahame for Suborning of Witnesses and Perjury.

THE said ROBERT GRAHAME: Forfamekill as it is expresse provydit, statute, and ordanit, be dynerse Actis of Parliament, speciallie, be the 80 Act of the sext Parliament of our souerane lordis darrest guidfchir, King James the Fyft, of famous memorie; and be the 22 Act of the fyft Parliament, and 48 Act of the saxt Parliament of our souerane lordis darrest mother, Quene Marie, of worthie memorie, that all sic persones as induces ony man to beir ffals Witnes, or ar seducearis or corrupteris of Witnessis, inducing pame pairby to depone ffalslie, that all sic persones fall be pwneischet in thair persones and guidis, with all rigour, according to the dispositioun of the Cowmone Law, baithe Canone,

<sup>1</sup> Weavers.

<sup>2</sup> It does not seem clear whether this denotes shopman, or chapman (*pedlar*), a dealer in small wares. The latter, however, is thought most likely.



Ciuite, and Statutes of this realme, that is to say, ather be peirfing and boiring of pair tungis, confiscatioun of pair moveable guidis, and sic vther pwneischment to be inflictit vpon thame, accordring to the discretioun of the Lordis: Nochtwithstading quhairof, it is of verritie, that pe said Robert Grahame, being ane fraudulent and fals man, studeing and imploying his witis thir mony zeiris bygane, how, be craft and dissait, to suborne and seduce dyuerse persones to be Witnesses in findrie actiones, alsweill depending befor the Lordis of Sessioun as vther Judicatories of this realme: And making vp to him self a plane tred and professioun pairof, He, for pe manifestatioun of his forder skill and knowlege in the said professioun, vpone hoip and esperance of his expectit gayne, vnderstanding laitlie, that pair was ane Actione of Spuilzie intentit and persewit befor the Lordis of Sessioun, at the instance of Mark Gledstanes, indueller in Ed<sup>r</sup>, aganis James Guidlet and vtheris, his complices; the said Robert Grahame, as ane oppin and manifest coofsiener and dissaver, with wonderfull peartnes and double deilling, first adressit him self to the said Mark Gledstanes, and discoverit to him the haill secreittis of his actioun; declairing to pe said Mark, how he had bene in Mussilburgh, and had conferrit with sum folkis pair, quha had resset sum of pe said Markis guidis and geir, that was spuilzeit frome him be pe said James Guidlet; and that pai war in grit feir leist pe said Markie sould prevaill in his said actione: At quhilk tyme, lykwayis, the said Robert Grahame, maist falslie and craftillie, declairit to the said Mark, that he wald find out dyuerse men to be Witnesses, quha vnderstuid of the spoliatioun of his guidis; and offerit frelie to him, for gayne and commoditie, to bring thame to him, and to cause thame be Witnesses for preving of his actioun: Lyk as, accoirding pairto, the said Robert Grahame, vpone hope of gayne and commoditie, in the letter end of Januar lastbypast, or pairby, convenit to himselff Adame Moffet, chopman in Ed<sup>r</sup>, Robert Dunlop, wobster pair, George Wat, wobster pair, and Williame Tok, beltmaker pair; quhilkis foure persones he maist fraudulentlie perswadit and inducet to vndertak to be Witnessis, to depone in the said cause, in fauouris of the said Markie Gledstanes, aganisthe said James Guidlet, albeit pai knew nathing of the verritie pairof. LYK AS, pe said Robert, immediatlie estir his induceing and suborning of the saidis Witnessis, to pe effect foirsaidis, for acqyreing of his forder gayne, past and reveillit pe haill premiffes to the said James Guidlet, and put him vpone the counsell pairof: The verritie of the quhilk knaverie and dissaitfull deilling of the said Robert Graham being detectit to the Lordis of Counsell and Sessioun, and pai, vpone diligent examinatioun of pe said Robert, and pe Witnesses foirsaidis, haifing ryppit vp the haill secreit of all pair proceidingis; and in end, finding pe said Robert Grahame to be bot ane false and leying lymmer, the saidis Lordis brocht him to this poynt; and, of his awin consent, maid him to bind him self and to be content, that in caice it sould be fund be the saidis Lordis, that he ony wayis vareit in his Depositiones pairestir, *that he sould be content to be HANGIT but fauour!* Lyk as, pe said Robert, being dyuerse tymes pairestir solemnie suorne, in presens of the haill Lordis, to declair pe verritie, vpone ane only poynt, viz. quhiddor or nocht pe said Robert first proponit pe purpois to the said Mark Gledstanes him self, anent the bringing to him of pe saidis Witnesses, for preving to him of his caus, or gif pe said Markie socht him first to that effect; the said Robert, estir dyuerse examinationes and solemne aithes maid be him, haifing constantlie declairit pat the said Mark first come to him and proponit pat matter; in end, pe said Robert, as ane manifest periuret and lieing lymmer, be his posterieur Deposition, acknowlegit and confessit, that he first adressit him self to Mark, and maid the first motioun of pe said matter to him: In the cairfull and exact tryell of the quhilk matter, be the saidis Lordis of Sessioun, thair lordschipis, be pair sentence and decreit, nocht only hes ffund and declairit the said Robert Grahame to be ane fraudulent and fals suborner of the saidis Witnessis, seduceing, be craft and dissait, vpone hoip of gayne, thame to depone in the said caus betuix Gledstanes and Guidlet, quha vnderstuid nathing pairintill: Bot lykwayis, be the same sentence, he is fund and declairit to be ane fraudulent and fals suborner of Witnesses, be craft and dissait, in dyuerse vtheris actiones and causses; speciallie, in the fraudulent suborning and seduceing of Witnesses in the caus of spuilzie persewit be Quintene Braidfute aganis Coupland; and lykwayis, in the caus of Divorcement persewit be the Lady Torthorrell aganis my lord hir husband, and in dyuerse vtheris

actiones and caussis, moveing the saidis Witnesses, be his intyseing and fals Subornatioun, to vndertak vpon thame to beir testimonie, and to preve and affirme for treuthe, that, quhair of thay of thame selfis war altogidder ignorant. And be the said Sentence, he is ffund be pe saidis Lordis to haif frequentlie hantit that damnable tred of lyfe, with wonderfull peartnes and double deilling, betuix pairteis, so synelie proveing pe disflaver, chopping, changeing, and triking at his humour, fra hand to hand, that quhairas pe said Robert was evin now, be his inventiones and forgereis of his brane, about pe on-drawing of sum one partie to his designes, quhilk he wald promeis and avow to mak guid, so incontinent paireftir he wald discover and detect all to the vther partie, quhome lykwayis, be his falsse surmises, he wald induce to sum contrarie motioun; in baith, intending nathing bot double and fals deilling, to the preiudice of aither<sup>1</sup> partie. And in end, in the said Robert his tryell and examinatioun, in prefens of the saidis Lordis, he is ffund, be pair said Decreit, to be dyuersed,<sup>2</sup> and many tymes menfuorne, and periuret; as the said Decreit beiris. AND pairfoir, the said Robert, as ane manifest seducer and Corrupter of Witnesses, induceing and intyseing thame, for his awin lucre and gayne, falslie, aganis pair knowlege and conscience, to depone in dyuerse caussis, speciallie in the caussis aboue writtin; quhair of he is declairit giltie, be the saidis lordis Decreit, and also conforme to his volunter offer aboue specifeit, quhairby he, of his awin consent, was content to be hangit, in caice he war ffund to varie in his Depositiones, and pairthrow menfuorne; and as a falsse and periuret disflaver, aucht and shold vnderly the pwneischment of death, in maist exemplarie maner, to pe terrour of vtheris.

*DITTAY against Robert Dunlop, &c. for Perjury and False-witnessing.*

THE saidis ROBERT DUNLOPE, GEORGE WAT, and ADAME BLAIKLOK; fforamekill as, by dyuerse Actis of Parliament, it is expresse provydit, statute, and ordanit, that all sic persones as beiris fals Testimonie and Witnessing, in ony caus quhatsoeir, falbe pwneisched to the death, according to pe Disposition of pe Cowmone Law, baith Canon, Ciuile, and Statutes of this realme: And trew it is, that the foirnament persones, nochtwithstanding of the saidis Actis, haifing moift wilfullie plunget and fetterit thame selfis in matteris of damnable flafetis, and iniust beiring of Witnessing, with sic evidencie of precogitat Periurie, that albeit thay war conscious of pair awin malicious and falsse intentiones, zit wald thay fwrne heidlongis, and combine and vniformelie agrie togidder to mak merchandice of pair consciences, resolveing with thame selfis, to beir testimonie, and effrontedlie for veritie to avow, that (howsoeuer in it self) zit to thame vnkawin, thay being inducet pairto, nocht samekill vpon the hoipis and promiseis of expected gayne, as out of thair continual hant and consuetude of leying, quhilk, throw custome in thame, did turne to nature; quhairin be degrees, thay haifing attynit to sic fynes,<sup>3</sup> that gif pair course pairin had nocht happelie bene interruptit, the estait of ony quhatsoeir, without exceptioun, mycht haif bene generallie endangerit: And namelie, the foirsaidis persones, and everie ane of tham, be the convoy and craftie dealling of pe said *Robert Grahame*, callit of *Langboddome*, pair pylet<sup>4</sup> and leader in pis pair vnconscionable tred of lyfe, haifing fauld thame selfis to all maner of mischief, and making schipwrack of all ffaith and honestie, nocht only vpon refflaut commoditie and gayne be thame and everie ane of thame, laitlie fra Mark Gledftanes, indueller in Edr, offerit thame selfis to depone, as Witnessis, in ane caus persewit be him aganis James Guidlet, befor the Lordis of Seffion, quhair of thay war altogidder ignorant; and quhairin the saidis *Robert Dunlope* and *George Watt* war maist deiplye sworne to geve trew Testimonie; albeit, in pair examinatioun, pair fals and damnable proceiding, by pe vigilant panes tane be the saidis Lordis, was maist happilie brocht to licht: Bot lykwayis, the saidis Robert Dunlope and George Watt, nocht as rasche and rekles liearis be officious testimoneis, bot as Witnessis deliberately flals, haifing quyte banished the feir of God, quha is pe witnes of conscience, ze<sup>5</sup> aganis<sup>6</sup> pair knowledge and conscience, being corruptit and seducet be

<sup>1</sup> Each.

<sup>2</sup> Contradictory; varying in his evidence.

It is probable, however, that this infers that he was a dyvour or bankrupt, which was considered most infamous.

<sup>3</sup> Refinement. Fr. *finesse*.

<sup>4</sup> Pilot.

<sup>5</sup> Yea.

<sup>6</sup> Against, or contradictory to.



greid of gayne and guid deid, hes gevin fals and vntrew Testimonie, in ane actione and caus persewit be Williame Cant aganis Thomas Gray, in the quhilk Marioun Crufurd, spous to the said Williame Cant, in absence of hir husband, was speciall doar: And the said *Adame Blaklok* gaif the lyk fals and vntrew Testimonie, in the actione and caus persewit be pe said Quintene Braidfute aganis Coupland. As everie ane of pair Depositiones, tane in presens of the haill lordis, testifeing pair acknowledgement of the foirfaidis falssetis, in pe selff beiris. AND pairfoir, the saidis persones, and ilk ane of thame, as fals and periuret Witnesfes, of certane knowlege, and aganis the licht of pair awin consciences, deponeing in the saidis caussis, as said is, cleirly tryit by the saidis Lordis, aucht and sould reffae pair dew and deseruit pwneischment, to the terrour and example of vtheris.

*DITTAY against Johnne Hammiltone, &c. for Perjury and False-witnessing.*

AS ALSO, the saidis *JOHNE HAMMILTOUN*, *ADAME MOFFET*, and *WILLIAME TOK*: fforamekill as, albeit, be the foirfaidis Actis of Parliament, it be expresse provydit, statute, and ordanit, that all fals Witnesfes, and faules<sup>1</sup> persones, offering thame selffis, for greid and perticuler gayne, to beir fals Witnessing in ony matter; and all sic as conduces with ony persone, to that end and effect, ar Ordanit to be pwneischet be Banischment, peirfing of pair tungis, dismembring of pair hand, and be vther panes and pwneischmentis provydit be dispositioun of the Cowmone Law; and forder pwneischment to be inflicted vpon thame, according to the discretioun of the Lordis of Sessioun: Nochtwithstanding quhairfof, it is of veritie, that the saidis *Johnne Hammiltoun*, *Adame Moffet*, and *Williame Tok*, being corruptit with promeissis of rewaird, and be resait of guid deid and vtherways, war seducet and intyset to be fals Witnesfis, willinglie and wittinglie offering thame selffis, vpon hoip of rewaird, to geve fals Testimonie, in preving of certain actiones, altogidder vnknawin to thame; namelie, the said *Adame Moffet* and *Williame Tok*, conforme to pair Depositiones maid be thame in presens of the haill Lordis of Sessioun, fauld and conducet thame selffis for rewaird, to be fals Witnesfis in the Actione of Divorcement, persewit be *THE LADY TORTHORRELL* aganis *THE LORD OF TORTHORRELL*, hir husband; as also, in ane actione of Spuilzie, persewit befor the saidis Lordis, at the instance of *Mark Gledstanes* aganis *Guidlet*: And siclyk, the said *Johnne Hammiltoun*, conforme to his Depositione, maid in presens of the saidis Lordis, fauld and conducet him selff, as ane fals Witnes, to haif deponit in the said actione of Devorcement, persewit be the said Lady Torthorrell aganis hir husband: And albeit the saidis actiones war altogidder vnknawin to thame, zit the foirnameit persones, and ilk ane of thame, aganis thair knowlege and conscience, maist forwardlie and malapairtlie, vnderuik to verifie and preve the samyn; quhilk wikket intentioun thay had nocht failzet, wittinglie and wilfullie, to haif put in practize, gif thay had nocht bene lattin,<sup>2</sup> be the intervening tryell tane be the saidis Lordis of Sessioun, alswell be pair Confessiounes, as vther cleir and evident probatioun tane pairintill: And pairfoir, thay, and ilk ane of thame, as persones seducet and intyset to beir fals Testimonie, anent the probatioun of the foirfaidis causses, quhairfof thay war altogidder ignorant, aucht to reffae pair dew and deserued pwneischment, to the terrour and example of vtheris.

*DITTAY against James Boyle, &c. for Suborning of Witnesses.*

IN lyk maner, the said *JAMES BOYLE*, &c. in the lait tryell and examinatioun, taine of him in presens of the Lordis of Sessioun, he, conforme to his awin Confessioun and Depositione, and vther probatioun had aganis him, is fund to haif delt with dyuerse Witnesfes, suborning and induceing thame to Depone in dyuerse actiones, quhairfof the saidis Witnesfes war altogidder ignorant; speciallie, in the said actione and caus persewit be pe said *Williame Cant* aganis the said *Thomas Gray*, quhairin, be pe saidis Lordis Sentence and Decreit, he is ffund to haif past the boundis of deutie, and nocht a littil to haif oversene him selff, haifing sa heichlie transgressit pairintill, that his offence, in that behalfe, requyres

<sup>1</sup> *Saulless*, void of soul and conscience.

<sup>2</sup> *'Let,'* hindered, prevented.

heichlie to be pwneist : And pairfoir, as ane manifest Suborner and seducer of Witneffis, aucht and sould reffauie his dew and deserued pwneischment, to pe terrour and example of vperis to abstene fra the yk heirefter.

*DITTAY against James Or, for Slaughter.*

AND last, the said JAMES OR : sforamekill as, vpon the saxt day of Marche instant, the said James, in his passing furth of pe burgh of Edr to Crawmond, haifing forgadderit with *Johnne Chirritie* in Crawmond, vpon the Grene pairof, thay haifing past in to the dnelling hous of Thomas Mathiesone pair, quhair thay drank togidder ane hour or pairby : And the said James and Johnne haifing paireftir come furth of pe said hous, certane speiches haifing fallin out betwix thame, and be occasioun of a lie gevin be pe said Johnne Chirritie to the said James Or ; he, in his beiftlie rage and furie, drew ane knyfe or braig, with the quhilk he strak pe said vmq<sup>le</sup> Johnne Chirritie ane crewall and deidlie straik aboue his left pape ;<sup>1</sup> off the quhilk straik, he immediatlie, within ane hour paireftir, departit pis lyfe ; and sa, was crewallie and vnmerciefullie flane, vnder nycht, be pe said Jame Or : ffor the quhilk, he was tane *in flagrante crimine*, and being examinat pairupoun, hes confessit the premisses to be of verritie.

My lord Aduocat producet the DITTAY ; and eftir reiding thairof, in respect the persones on pannell could allege nathing aganis the relevancie thairof, to stay proces, desyret the samyn to pas to the knowlege of ane Assyse ; and producet ane roll of the persones lauchfullie summond to that effect. Quhilkis persones of Assyse being chosin, suorne, and admittit, eftir accusatioun of the saidis persones, be Dittay, of the crymes *respectiue* aboue writtin, quhilkis war verifeit be production of the saidis Lordis Decreit, and thair awin Depositiones, maid in presens of the haill Lordis of Sessioun : As also, the said Slauchter was verifeit be the said James Or his awin Confessioun, maid in Judgement, in presens of the Justice and Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of James Raulstoun, mercheand burges of Edinburgh, stand, pronuncet, and declairit, conforme to the Depositiones and Decreit producet, and the said Judicial Confessioun maid be the said James Or, the foirnameit haill nyne persones vpone pannell to be fylet, culpable, and convict of the feuerall crymes and pointis of Dittay aboue mentionet.

SENTENCE. The said *James Or* to be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin fra his body ; and all his guidis and gear to be escheit, &c. : AND siclyk, the saidis *Robert Grahame*, *Robert Dunlop*, *George Wat*, and *Adame Blaiklok*, to be tane to the said Mercat-croce of Edinburgh, and thair to be Hangit, quhill thay be deid ; and all thair moveable guidis to be escheit to his Maiesteis vse : THE saidis *James Boyle*, *Johnne Hammiltoun*, and *Adame Moffet*, to be first Scourget throw the burgh of Edinburgh, fra the Castell-hill to the Nether-boll thairof, and Brunt with ane hett irne vpone the cheik, and thaireftir Banischet this realme of Scotland ; and nevir to be fund agane within the samyn, without his Maiesteis Licence, vnder the pane of deid :

<sup>1</sup> Breast.



AND laist, that the said *Williame Tok* be lykwayis Scourget throw the said burgh, and thairefter Banischet this realme; and nevir ffund agane within the samyn, without his Maiesteis Licence, as said is, vnder the pane foirlaid.

**Uttering “Tressonable, Blasphemous, and Damnable Speiches”  
against the King.**

[THE Trial of JOHN FLEMING, elder, in Cockburnspath, which follows, is so remarkable in its nature, and the Sentence of death pronounced upon the unfortunate pannel, is so frightfully disproportioned to the pretended *crime* for which he stood charged, that, did it not occur in the authentic Records of a Supreme Tribunal, and were it otherwise unvouched, no honourable mind could for an instant admit the probability of its truth. Had mention been made of this fact in any private correspondence of the period, or in contemporary Memoirs or Annals, it would have been at once discredited by all, as an unprincipled libel on the character of our *British Solomon*! Unhappily, however, for the character of King James VI, the event here recorded is too true, and there can be no doubt that it did actually occur. The names of other victims to the same insane ideas of justice, are inscribed, in characters of blood, on the pages of our Criminal Records. It is unnecessary to recapitulate such instances, at any length, in this place. It is enough merely to refer the reader to the Cases of *Dik-soun*, Aug. 3, 1596;<sup>1</sup> *Tennent*, Oct. 10, 1600;<sup>2</sup> *Cornuall*, Apr. 25, 1601;<sup>3</sup> and *Ross*, executed Sep. 10, 1618.<sup>4</sup>]

May 17.—JOHNE FLEMYNG, elder, in Cokburnespeth.

Dilaitit of dyuerse tressonable, blasphemous, and damnable speiches vtterit be him to Johnne Lawder, Minister, aganis our fouerane lordis most sacred persone, &c. viz. FORSAMEKILL as, Johnne Lauder, Minister at Cokburnespeth, haifing laitlie reprehendit and fund falt with the said Johnne Flemyng, becaus his sone repairit nocht to the Communioun; saying to the said Johnne, that ‘albeit he contemnit be ordour and discipline of the Kirk, zit the Kingis most gracious Maiestie, quho is a most religious and godlie Prince, and vnder whois blisset government the trew Religioun and discipline of the Kirk is establischet and advancet, wald nocht suffer fuche contempt and dissobedience pas over vnpw-neisched:’ the said Johnne Flemyng, vpone delyuerie of the saidis speiches, schaiking af all feir of God, and that reverent respect, quhilk in conscience, befoir God, and in his deutie and allegiance, he aucht<sup>5</sup> to HIS MAIESTIE, most tresson-abillie, blasphemoullie, and mischantlie<sup>6</sup> replyit to þe said Minister, in thir woirdis: ‘ffeind nor THE KING schoote to deid or þe morne—and that he die of þe falling seiknes!’ And it being demandit of the said Johnne, quhat movet him to vtter fuche blasphemous and horrible speiches aganis his Maiestie?—maid this scornefull and disdainfull ansuer: ‘War nocht<sup>7</sup> THE KING and his lawis, he had nocht wantit his landis—and pairfoir, he cairt nocht for þe King—for hanging wald be þe worst of it!’ Be the vttering of the quhilkis damnable and blasphemous

<sup>1</sup> See this Collection, I. 385.

<sup>2</sup> *Ibid.* II. 332.

<sup>3</sup> *Ibid.* II. 349.

<sup>4</sup> *Ibid.* III. under the above date.

<sup>5</sup> Owed.

<sup>6</sup> Wickedly. O. Fr. *meschantment*.

<sup>7</sup> Had it not been for the King, &c.

speiches aganis his Maieftie, he had committit moft haynous and vnpardoneable Treffone. Lyk as, he being convenit and presentit befor the Lordis of his Maieftieis PREVIE COUNSELL for the faidis speiches, the faidis Lordis of Secreit Counfell hes tryit the famyn to be of verritie; and thairfoir, Ordanit him to be pwneift *exemplarie*, to the terroure of vtheris.

The Dittay being red to the pannell, (he) maift humblie offerit him felf in his Maieftieis Will, for the faid crymes: Quhairupoun my lord Aduocat askit instrumentis. Quhilk Dittay was verifeit, be production of the Counsellis Decreit.

VERDICT. The Affyfe, all in ane voce, be the mouth of Cuthbert Mure, furriour in Edinburgh, chancellor, ffand, pronuncet, and declairit the faid Johnne Flemyng to be Giltie and convict of the faidis Treffonable Speiches vtterit be him, in maner fpecifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be hangit quhill he be deid: And all his moveable guidis to be efcheit, &c.

### Slaughter.

May 30.—JOHNE BRAND, Student in the Colledge of Philosophie of Ed<sup>r</sup>, fone to vmq<sup>le</sup> Johnne Brand, Minifter at Halyrudhous.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq<sup>le</sup> Williame King, fone naturall to James King, Aduocat; committit vpon the xxvij day of Maij instant, vpon St Leonardis Craigis, neir to the faid burgh, befide the Park-dyke of Halyrudhous, be ftreking of him with ane drawin knyfe, vnder the left pape; quhairof he immediatlie deceiffit.

PERSEWARIS, James King, Aduocat, as fader; Mr Alexander King, Aduocat; Mr Adame King, ane of the Commiffaris of Edinburgh, as fader-brether.

The pannell acknowledges the Dittay to be of verritie, and craves God, and our Souerane lord, and the pairtie, maift humblie, pardoun for the fact: And gif any meanis of fatisfacioun (refervand his lyfe) may be acceptit, accoirding to his habilitie, is maift willing to fulfill the famyn, accoirding to the perfewaris iniunction: Bot gif na vther thing bot his bluid will mitigat the perfewaris wraith, offeris the famyn to be pwneift accoirding to the Law; defyreing the Lord, throw the mereitis of the precious bluid of his Sauour Chryft Jefus, to be mercifull vnto his faull!

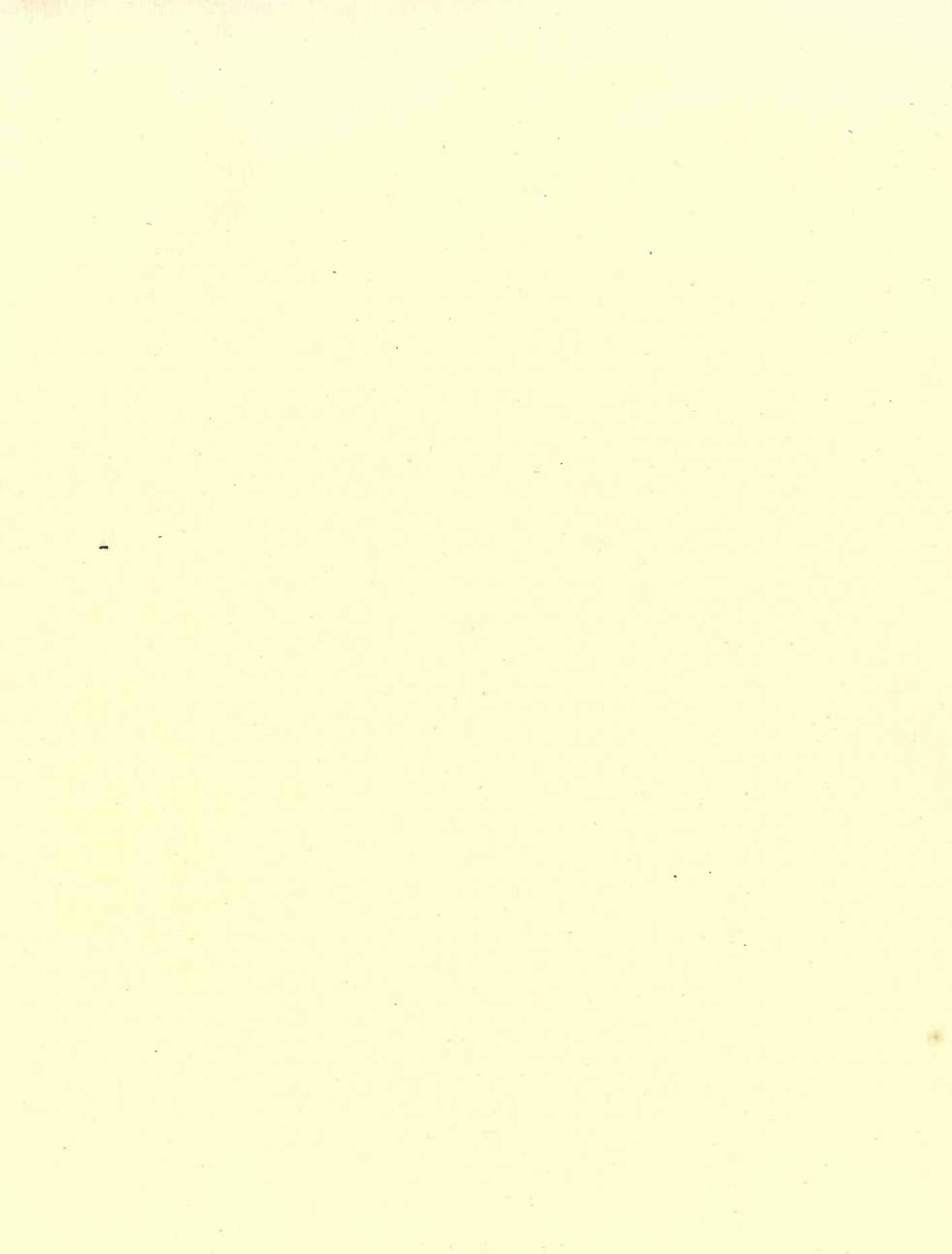
VERDICT. The Affyfe, all in ane voce, be the mouth of Johnne Mafoun, mercheand in Ed<sup>r</sup>, chancellor, ffand, pronuncet, and declairit the faid Johnne Brand, accoirding to his awin Confessioun, to be ffylet, culpable, and convict of the Slauchter of the faid vmq<sup>le</sup> Williame King.—SENTENCE. To be tane to the mercat croce of Ed<sup>r</sup>, and thair his heid to be ftrukin frome his body: And all his moveabill guidis to be efcheit, &c.

















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