

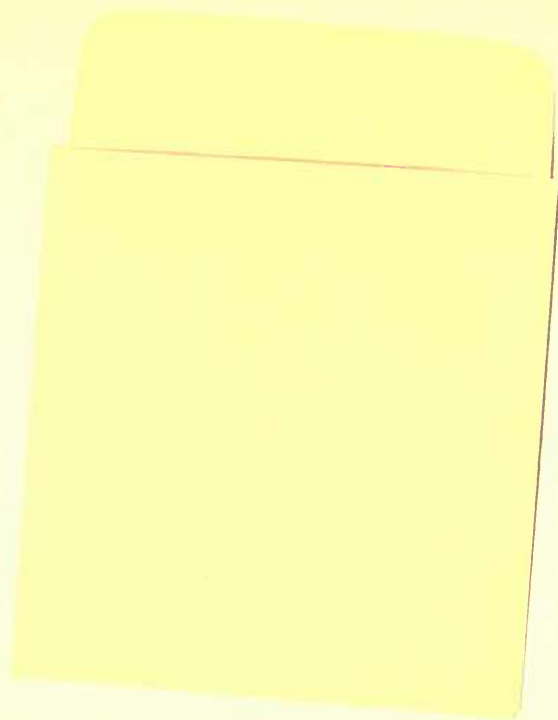
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ANCIENT  
CRIMINAL TRIALS  
IN SCOTLAND.

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VOL. III.—PART II.

1615—1624.

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**ANCIENT**  
**CRIMINAL TRIALS**  
**IN SCOTLAND;**

COMPILED

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

BY

**ROBERT PITCAIRN, ESQ.**

**VOL. III.**

**PART SECOND.**

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





**Treasonable Fire-raising in Coal-pits.**

Jun. 10.—JOHNNE HENRIE in Littill Fauſide.

Dilaitit, accuſet, and perſewet, be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our ſouerane lord, for his hienes intereis, of the crymes vnder-writtin, viz.

FORSAMEKILL AS, albeit be the 146 Act of our Souerane lordis tuelf Parliament, haldin at Ed' vpon the fyft day of Junij, 1592 3eiris, makand mentioun that his Maieſtie and eſtattis, for þe better pwneichment of the wiked cryme of ſetting ffyre in coil-heuches<sup>1</sup> be ſum vngodlie perſones, vpon privat revenge and diſpyte, haif pairfoir Statute and Ordanit, be vertew of the ſaid Act of Parliament, that þe committing of the ſaid cryme, in ony tyme paireſtir, ſall be Treſſone; and that the committeris of þe ſaid haynous and deteſtable cryme, being ordourlie convict pairof, ſall ſuffer and vnderly ſic pwneichment in pair bodeyis, landis, and guidis, as is dew be the law in cauſes of Treſſone: As in the ſaid Act of Parliament at lenth is contenit. Nochtwithſtanding quhairof, it is of verritie, that þe ſaid John Henrie, being a ſervand and workman within the Coil-heuch of Littill Fauſyde, and pairthrow beſt acquetit with the haill ſecreit paſſages and pairtis of the ſaid heuche, haifing conſauet ane deidlie rancour and evil will aganis Mungo Mcall, now of Littill Fauſyde, becaus þe ſaid Johnne had nocht that libertie and commandiment vnder him quhilk he had vnder Johnne Levingſtoun, his prediceſſour; in a devillifch diſpyte, and to þe wrak and diſtruction, nocht only of the ſaid Mungois coil-heuch, bot to þe grit preiudice of þe cuntrie and Cowmounwelthe, in the monethis of februar, March, and Apryle, in the 3eir of God I<sup>m</sup>.Vj<sup>e</sup>. and fourtene 3eiris, at the leiſt, in ane or vther of the ſaidis monethis, immediatlie eftir þe ſaid Mungo Mcall acqyret the rycht and poſſeſſioun of the ſaid coilheuch, come, vnder ſilence and clud of nycht, to þe ſaid Coilheuch of Littill Fauſyde, and enterit pairintill be ane previe hoill and paſſadge of his awin, and maiſt treſſonable pat ffyre within the ſaid heuche, of purpois and intention to burne and diſtroy þe ſamyn and haill coillis being pairintill: Lyk as, for the gritter ſecrecie and doun-halding of the ſaid ffyre, he nychtlie, be þe ſpace of tuentie dayis togidder, reſoirtit to the ſaid heuche in ſecreit maner, ffed, and nureiſchet þe ſaid ffyre, ſtoppit þe haill air and vent hoillis with ſtray,<sup>2</sup> quhairthrow þe ſaid ffyre ſould nocht be diſcoverit: Be reaſone of the quhilk ffyre, and ſtopping of the haill air and vent hoillis, thair arraiſe ſic ane peſtiferous and foule air within the heuche, that nane of þe workmen war able to work pairintill; quhairvpon, and be þe pulling furth of ane bottell of ſtray furth of ane hoill in the ſaid heuche, quhilk hoill was callit þe ſaid Johnne Henreis vue,<sup>3</sup>

<sup>1</sup> Coal-pits.

<sup>2</sup> Straw.

<sup>3</sup> Perhaps for view, prospect.

the vehemencie of þe said fyre was discoverit. Be þe committing of þe quhill detestable fact, he hes committed maist haynous and vnpardoneable Treffone.

The pannell denyis the Dittay; and takis instrumentis that na pairtie infistis in his perfute bot my lord Aduocat; and that thair is nocht ane fuorne Dittay. My lord Aduocat productet Thomas Cochrane, his lordschipis informer, quhais aithe he desyret to be tane, anent the treuth of the Dittay.

*Thomas Cocherane*, greif<sup>1</sup> at Littill Faufyde, being fuorne vpon the verritie of the Dittay productet be my lord Aduocat, declairit that Johnne Henrie was giltie of þe cryme contenit pairintill, bot he wald nawayis follow nor perfew him for the samyn, in respect he had na intereis; quhairvpoun my lord Aduocat askit instrumentis.

The Assyse being fuorne, my lord Aduocat takis instrumentis of thair fueiring; and protestis for Errour gif thay acquit.

VERDICT. The Assyse, being ryplie and at lenth advyset thairwith, togidder with the taikynis<sup>2</sup> and Depositiones productet for instructing thair of, be pluralitie of voitis, stand, pronuncet, and declairit, be the mouthe of Alexander Penman in Lyttill Faufyde, chancellor, the said pannell, to be ffylet, culpable, and convict of the tressonable cryme specifeit in the said Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed<sup>3</sup>, and thair to be hangit vpon ane gibbet, quhill he be deid; and his heid thaireftir to be strukin frome his body, and put vpon ane prik, fixt and fet vp vpon the landis of Littill Faufyde, besyde the said Coil-heuche: And all his moveable guidis, gif he ony hes, to be escheit, &c.

### HAMESUCKEN—SLAUGHTER.

Jun. 22.—ALEXANDER DAVIDSOUN, in Wester Kerfe.

Dilaitit of the crewall and vnnaturall Slauchter of vmquhile George Suord, his sone in law, be streking of him with ane lance-stalff in the bellie, and gorring his puddingis, within the said George awin duelling hous in Wester Kerfe, vpon the xxix day of Maij last: Off the quhill fraik he deceisfit, vpon the tuelf day of Junij instant; committit vpon set purpois, prouisioun, and foirthocht ffellonie, in hie and manifest contempt of his hienes autoritie and lawis.

PERSEWARIS, Patrik Suoid and Johnne Suoid, as brether.

VERDICT. The Assyse, being ryplie and at lenth advyset thairwith, togidder with the said Alex<sup>4</sup> his Judiciall Confessioun and acknowledgement of the said haynous cryme to be of verritie, and his penitencie for the samyn, be pluralitie of voittis, stand, pronuncet, and declairit the said Alexander Davidfoun to be ffylet, culpable, and convict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Ed<sup>3</sup>, and thair to be heidit; and his haill moveabill guidis to be escheit, &c.

<sup>1</sup> Grieve; overseer.

<sup>2</sup> Proofs; tokens; evidence.

### Mutilation and Demembration.

Jun. 30.—JOHNE PITSCOTTIE of Loncardie, Colene Pitscottie, his eldest sone.

Dilaitit of airt and pairt of the Mutilatioun of Margaret Stewart, spous to Thomas M<sup>c</sup>duff of Glenelwart, of hir richt airme ; committit vpone the xxix day of August, 1613.

PERSEWARIS, Margaret Stewart, Thomas Duff of Glenelwart, hir spous.

The persewaris passis fra the perfute of the pannell, for the crymes contenit in the Letteris, *pro loco et tempore*. Quhairupone the pannell askit instrumentis.

THE Justice continued this case 'to the thrid day of the Air (of Perth) or foner, vpone xv dayis wairning.' Robert Creichtoun, brother to the Laird of Innernytie, became cautioner for their appearance, &c.

### High Treason—Taking and Detaining the Castle of Dynniebaig —Resisting King's Lieutenant, &c.

[As the Editor has already entered so fully into the subject of THE REBELLION IN ILAY by *Sir James Macneill*, &c., it is unnecessary to occupy further space here ; more especially as *Mr Gregory's* Historical Researches, already far advanced, are exclusively devoted to the elucidation of such points.<sup>1</sup>

The following interesting memorials have been preserved by *Calderwood*, in his MS. Church History,<sup>2</sup> which the Editor believes will prove an acceptable illustration of this subject. They have been discovered since the former sheets were sent to press. 'SIR JAMES M<sup>c</sup>KONNELL escaped out of the *Castle of Edinburgh*, where he had been wardit the space of eighteen years, upon the 24 of Majj, the day after *Angus Ooge*, his brother, and eight or nine of his complices, were brought to *Edinburgh*. It was thought that he escaped not without the privity of these who had credit. In the beginning of July, he entered in *Ila*, with a number of men of THE ISLES, and, within three or four dayes after his landing, took the *Castle*, slew the *Captain* and other three or four. His forces increasing, he went out of and spoiled the lands belonging to the *Earl of Argyle*, compelled the tenants to pay him their maills and duties, and kept about him five or six hundreth men. Upon the eight of July, *Angus Oge*, brother to *Sir James M<sup>c</sup>Konnell*, and his complices, were hanged at the Market Crofs of Edinbr<sup>t</sup>. They affirmed that *George Grahame* assured them, in the *Chancellours* and *Counfills* name, that they would procure the Kings favour and safety, both of their lives and lands, if they would render the pledges ; and desired them to keep the House till the King's favour were obtained, or elis they had not made resistance to the King's Lievtennant. Because the said *George* was not troubled by the Counsell or any other, the people thought hard of it.—Aug. 16. The *Earl of Argile* came to *Edinburgh*, sent from Court be THE KING to passe upone *Sir James M<sup>c</sup>Konnell*. He had Commiffione to warne and raise the *Sherifdomes* nixt adjacent, and to wage shouldiers, upon the King's charges. One of THE KING'S Ships, and four pinnages, were sent by Sea, with cannon, musket, powder, bullet, picke, and corslet. The *Counsell* gave their directione, upon the thrid of August. About the middest of September, their forces drawing near to others,<sup>3</sup> *Coline Campbell of Kilberrie*, and some with him, were surprisid and taken be *Coll Mackgilespicke* and his followers. *Mr Donald Campbell*, that Gentleman of the *House of Caddell*, accompanied with six or seven hundreth men, went out of *Argiles Campe*, and surprisid, in a suddane, *Col Mackgilespick* and his companye ; killed some, tooke others, and hanged some. Col him self and the most part hardlie escaped. *Sir James*, and so many as might flie with him,

<sup>1</sup> See Vol. III. p. 1.

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

<sup>3</sup> Each other.

fled out of *Kintire* to *ILA*. All his followers could not flee, because *Mr Donald Campbell* had ceased (*seized*) upon many of the boats. *Argile*, finding it dangerous to remain long in the fields, winter drawing one, for it now was mid-October, and his company dissolving, practised with *Mackgilespicke*. *Col* rendered *THE CASTLE OF DUNNIVEGE*, *Coline Campbell of Kilberrie*, and himself to the Earle.'

A number of ORIGINAL PAPERS are appended to this Trial, which, in addition to those already furnished, afford ample and suitable illustrations of this remarkable passage of History. But for *Mr Gregory's* work, the Editor would have deemed it his duty to have made still further researches. To that gentleman's History, reference is made for the minuter particulars attending that subject, and, in general, for all other topics connected with the Fends and Insurrections which took place in the Isles and West-Highlands.]

Jul. 3.—ANGUS OIG M'DONALD,<sup>1</sup> Allafter M'allafter, Angus M'allafter, Allafter M'arliche, Johnne M'condochie, Johnne Gair M'moylane.

Dilaitit of the tressonable taking, keiping, and detening of his Maiesteis Castell of Donyvage, in Yla, and refisting of the Laird of Caddell, his hienes Leutenent and Commiissioner, &c. ; as in *THE DITTAY* following :—*FORSAMEKILL*. AS, thay, accompaneit with *Coill M'gillespik* and vperis, pair complices, all rebellis and brokin men,<sup>2</sup> to the number of fyftie perones or pairby, in the moneth of November laft, maift tressonabillie convocat thame selfis in airmes, come forwardis in oppin and arrayit battell to his Maiesteis Castell and strenth of Dynnievaig, in Yla ; and pair, be craft and policie, tuik in the said Castell, whilk thay stuffit<sup>3</sup> and furneissit with muscattis, hagbuttis, poulder, leid, and vper weirlyk furnitour,<sup>4</sup> for halding pair of : Quhilkis tressonable practizes, sa interpryset be thame and thair complices, being maid knawin to the Lordis of his Maiesteis Secreit Counsell ; and thay, for redres of the saidis rebellis enormiteis, haifing directit the Laird of Caddell,<sup>5</sup> with companeis of wageit men of weir, as Leutenent to his Maiestie, with ane Herauld,<sup>6</sup> and trumpettar, to charge thame, in his hienes name and authoritie, to rander the said Castell, and to recover the samyn fyrth of pair handis. *LYK* AS, the said Leutenent with his forces, togidder with the said Herauld and trumpeter, haifing cum to the said cuntrie of Ilay, to the effect fairsaid, the foirnamet perones, with pair rebellious associattis, vnderstanding pair of, directit furth ane grit number of pair rebellious cumpany aganis the said Herauld and trumpeter, and maift tressonabillie stayit and interruptit thame fra cuming forwardis to be said Castell, for geving of the said charge ; quhairthrow, for feir of pair lyfes, thay durst nocht cum forwardis to the said hous : *Lyk* as, eftir his Maiesteis Leutenent had plantit him self with his forces round about the said Castell, and had salutet the saidis rebellis,

<sup>1</sup> See May 13, 1609, &c., and Note to the Introduction to *Sir James Makconell's* Trial, Vol. III. p. 1, &c.—and Vol. I. p. 224, where the Trial of *Angus Makconell*, his father, occurs.

<sup>2</sup> Outlaws, and men attached to no particular Clan, who, for pay and the hope of plunder, would join in any enterprise.

<sup>3</sup> Provisioned.

<sup>4</sup> Furnishing ; provision.

<sup>5</sup> Campbell of Calder, or Caddell.

<sup>6</sup> Robert Wynrahame, Albany (Ylay) Herauld.

being pairin, with nyne scoir schottis of ordinance, schote be thame pairat, the saidis perfonen on pannell, nochtwithstanding of þe said Assault maid be þe said Lieutenent to þe said Castell, maist tressonablie held out, keipit and detenit þe samyn aganis him, he being cled with his Maiesteis authoritie, as Leutenent and Commiffioner, for releifing pairof; and tressonabillie schote furth agane, out of þe said Castell, at þe said Leutenent and his companie dyuerse schottis of muscattis, and pairwith slew *Capitane Craufurd*, with foure vther of his Maiesteis faithfull servandis and subiectis, quha war in seruice with the said Leutenent, in the executioun of his Commiffioun. AND the saidis perfonen on pannell, and ilk ane of thame, ar airt and pairt of the saidis tressonable crymes.

My Lord Aduocat producet the Dittay, with the roll of the Assyse; and defyret proces.

## ASSISA.

Mr Rannald Bayne, burges of Ed<sup>r</sup>, Huchoun Frazer of Kilboig, James Sprowle of Cowden, Andro Meldrum of Dumbrek, Williame Cunningheam of Dolphingtoun.<sup>1</sup>

The Aduocat, for verificatioun of the Dittay, producet the pannellis Depositiones, and takis instrumentis vpon the production thair of, &c. And protestis for Wilfull Errour, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouthe of the said James Sprowle, chancellor, ffind, pronuncet, and declairit the saidis perfonen on pannell, and ilk ane of thame, conforme to thair awin Depositionis, and approbatioun thair of in judgement, to be ffylet, culpable, and convict of airt and pairt of the hail tressonable crymes contenit in the Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed<sup>r</sup>, and thair to be hangit vpon ane gibbet, quhill thay be deid: And all thair moveable guidis to be escheit and inbrocht: And all thair landis, heritages, and annuelrentis pertening to thame, to be sforsaltit to his Maiesteis vse, &c.

## APPENDIX OF DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF ANGUS OIG M<sup>c</sup>DONALD, &c.

I. OFFERIS to be presentit to our maist gracious fouerane and his hienes honorabill Counsell, in the name of Angus M<sup>c</sup>Donald of Dcnavaig, his freindis and followeris.

FIRST, with all humelite, I adheir to my former OFFERIS, maid and subferyuit with my hand, in prefens of THE COUNSALL, at *Glasgo*, in the yeir of God 1<sup>m</sup>. Vj<sup>o</sup>. and fyf yeir, and delyuerit to my Lord of *Shone* to haif bene schawin to HIS MAIESTIE; promeing to performe euery heid of the samin.

Secondlie, I offer my self to abyid the tryell of the lawis of this HIS MA<sup>TES</sup> realme, twiching my obediens to his hienes and *Counsellis* derectiounes, in all poyntis; and keiping of all dewateis appertenyng to a loyall subiect, ewir sen his M<sup>TES</sup> past to mak residens within his hienes kingdom of ENGLAND.

<sup>1</sup> The remainder 'burgesses of Ed<sup>r</sup>.'



*Thridlie*, seing I haif compleitlie payit all hygane males<sup>1</sup> of his hienes propper landis, within IYLA and KYNTYR, pofessit be me, heirtfoir, and hes obtenit HIS MAT<sup>IES</sup> *Controllerris* discharge thairof, I offir, in lyk manir, in all tym cuming, during my lyftym, to mak thankfull payment of the full Rentall of the saidis landis, wnto the quhillis I and my foirbeiris hes bene kyndlie tenentis;<sup>2</sup> and that termelé and yerlé,<sup>3</sup> wnder the pane of tynfall<sup>4</sup> of all kyndis of rycht, tytill, or pofessioune that I can cleame to any landis within any part of HIS MAT<sup>IES</sup> dominionis; his hienes respecting for the present *the Wayt landis* of IYLA, quhill thai be pleneischit and manwrit.<sup>5</sup>

*Ferdle*, I offir sufficient cautionne, within the *Law-landis*, that I salbe obedient to the lawes of this HIS MAT<sup>IES</sup> cuntré of SCOTLAND; and to that effect, fall compeir befor the *Counfall* of the said realme, vpon lauchfull premonitione, quhairfoewir the samin fall sit.

*Fyftlé*, I offir to concur with thais quhomvnto it fall seme guid to (his) hines to gif Commissiounne, with my haill freindis and followaris, and to fet fordwart and aüst sic reformatiounne of the barbarité of thir cuntreis of THE WAST and NORTH IYLES of this HIS MAT<sup>IES</sup> kingdome of SCOTLAND, as it fall pleas his hienes best to dewyfe, be thir presentis, subscryvith with my hand, AT KILNACHTANE, IN IYLA, the aucht of September, 1606.

ANGUS M'DONALL of Dwnevaig.

## II. LETTER, *Angus M'donall of Dwnevaig* to THE KING. Sep. 10, 1606.

PLEIS 3OUR EXCELLENT MAT<sup>IES</sup>,

IT is knawin to 3OUR MAT<sup>IES</sup> honorabill *Counsaile*, within 3OUR hienes realme of *North Britane*, quhat hes bene my behaviour evir fen 3OUR hienes past out of thir the North pairtis of 3OUR MAT<sup>IES</sup> dominion; how many fustis, and how many offeris of all dewiteis that it become a loyall subiect to his dred fouerane, I haif maid to pair Lo.; and how that, efter I haid fullie satisfeit and compleitlie payit all byrwn mailis adddebit be me to 3OUR MAT<sup>IES</sup> *Comptroller*, I obtenit his discharge pairpoun. I fend with his lo. to haif bene presentit to 3OUR MAT<sup>IES</sup> certane speciall OFFERTIS, subscryuit with my hand, befor 3OUR hienes COUNSALE in *Glesgue*, in the moneth of Junij, 1605, of the quhill I haif as zit receavit na anstwer nor<sup>6</sup> quhat 3OUR MAT<sup>IES</sup> resoluiss and dederetis me to do; and being refusit of Licite to haif cum and presentit my self personalie befor 3OUR hienes, to haif maid my awin supplicatioun out of my awin mowth, I am enforceit to mak the samyn be a mediat persone, *my Lord Bishop of the Iyles*,<sup>7</sup> quhome-by I haif gewin credeit to offer, in my name, to 3OUR MAT<sup>IES</sup> my lyfe and all pat I may command, to be vfit as it fall pleisse 3OUR hienes direct; beseking 3OUR MAT<sup>IES</sup>, for the cause of God, to respect my aige and puir estait, and to lat me knaw 3OUR hienes awin mynd, signet with 3OUR MAT<sup>IES</sup> awin hand; and gif it mycht pleisse 3OUR MAT<sup>IES</sup> to continew me the pofessioune of thais kyndlie rowmes,<sup>8</sup> quhillis my forbearis<sup>9</sup> and I hes haid of 3OUR MAT<sup>IES</sup> and 3OUR hienes royall progenituris, I fall nocht onlie paye the dewiteis and mailis vfit and wount pairfoir, bot also fall find sufficient fouertie for obedience to 3OUR MAT<sup>IES</sup> lawis, in all poyntis, and in all tyme cuming; or vpirwayis, that it mycht seem guid to 3OUR MAT<sup>IES</sup> to let me kend,<sup>10</sup> how and quhairpoun I fall leive; for it salbe knawin, I fall seik na vther refuge bot onlie 3OUR MAT<sup>IES</sup> clemencie, nor na vther leiving bot that quhill of 3OUR MAT<sup>IES</sup> princelie liberalitie it fall pleis 3OUR hines bestow vpon me; as at mair lenth the beairr will informe 3OUR MAT<sup>IES</sup>. And sua, I besek God to blis 3OUR hienes with a long and prosperous ring.

3OUR MAT<sup>IES</sup> maist humbill and obedient subiect,

IYLAIE, the tent of September, 1606.

ANGUS M'DONALL of Dwnevaig.

<sup>1</sup> *Mails*, rents, feu-duties, &c.

<sup>2</sup> Feudal Tenants, termed *kindly*, from the circumstance of their being *natives*, born on those lands which had been possessed by their ancestors for many generations. Such persons were seldom ejected, so long as they paid the almost nominal rents of those lands, which they were thus permitted to occupy by a sort of hereditary title, after the decease of the former tenant. They were styled *Nativi* in old Charters.

<sup>3</sup> Termly and yearly.

<sup>4</sup> Loss; forfeiture.

<sup>5</sup> Stocked and manured.

<sup>6</sup> Than.

<sup>7</sup> ANDREW KNOX, of the family of Ramfurly, who had been Minister of Lochwinnoch and Paisley, was appointed Bishop of the Isles, Apr. 2, 1606, having been the first Protestant Bishop of that See. Reference may be made to the Trial of Sir James Mackoneill, *Appendix*.

<sup>8</sup> Possessions held by him as a *kyndlie Tenant*.

<sup>9</sup> Ancestors.

<sup>10</sup> Know; understand.

III. LETTER, *the Privy Council to THE KING.* May 27, 1608.

MOST SACRED SOUERANE,

THIS beirar, *the Bishope of the Ilis*, haueing the occaſioun to repair to your Maieſtie for ſome materis concerning the ſeruice in THE ILIS, We haif committit vnto him the relation vnto your ſacred MAIESTIE how far we haue procedit in that buſynes, and what courſe is tane for the furtherance and proſequotion of that ſeruice, vnto whoſe ſufficiencie remitting all thingis, We pray God to grant vnto your Maieſtie, efter a long and happy reigne, eternall felicitie. FROM your Maieſteis burgh of EDINBURGHE, the 27 of May, 1608.

Your Maieſteis moſt humble and obedient ſubiectis and ſeruitouris,  
AL. CANCELL<sup>r</sup>. ABERCORNE. J. BALMERINO<sup>r</sup>. D. SCONE.  
BEWLY. HALYRUDHOUS. JO. PRESTOUN.

TO THE KINGIS moſt excellent MA<sup>TIE</sup>.IV. LETTER, *Lord Wchiltrie to THE KING.* May 27, 1608.

MOST SACRED AND GRATIOUS SOUERAN,

I RESSAVID your MA<sup>TIE</sup> Lettir, with *Aliſter Ogis* Remiſſiounne, and ſalbe cairfull to gif vnto your MA<sup>TIE</sup> full contentment and ſatiſfactionne in everie particular of the Letter. I haif reteinit the Remiſſiounne in my handis, quhill I haiff ane certaintie of *Aliſteris* conformitie; quhairin I expect to find him anſuerable, in ſome meaſure, to that great favour quhillk it hes pleſit your MA<sup>TIE</sup> to beſtow wpon him. In all wtheris your MA<sup>TIE</sup> directionis, quhairin it fall pleis your ſacred MA<sup>TIE</sup> to burdene me, I fall haif ane ſpeciall cair and regard to approve my ſelf worthie of that truſt quhillk your hienes repos in me; having na wthir thing git to acquyt your heines ineſtimable favouris, bot ane hart diſpoſit, in all ſinceritie, to diſcharge that dewtie quhillk your MA<sup>TIE</sup> expectis, and quhillk to my awin credit appertenis, and to ſacrifice my lyffe and all that I haiff, in the executioun of all your MA<sup>TIE</sup> royall directionis. And ſua, recommending your ſacred MA<sup>TIE</sup>, with your royall progenie, to the protectione of God, I reſt

30<sup>r</sup> MA<sup>TIES</sup> moſt humbill and obedient ſeruitour,

EDINBURGH, the xxvij of Majj, 1608.

AL. WCHELTRIE.

TO THE KYNGIS moſt excellent MA<sup>TIE</sup>.V. 'COPY of THE LIEUTENNENTIS LETTER to the Counſall, to be ſend to Courte with *Sir Alexander Hayis Letter, &c.*' Aug. 18, 1608.

PLEIS YOUR LORDSHIPIS,

I CAUSIT wey oure ankeris and deparitit from YLA the 14 of this inſtant, at efter none, and arryved at *Douart*, in MULE, the 15 of the ſame monethe; and that with gryte difficultie, in reſpect of the greateſt tempeſt of wedder and contrarie tyddis, quhairby we wer put in great danger all pat nycht; quhairthrow I failit downe ane of the maſtis of my awne ſchippe. Att oure out-coming from YLA, we mett *the Ingliſhe gallay*, with ane vther ſhipp, that caryis the munition and ordinance, the quhillk gallay, yf it haid not pleaſit God to haif givin hir that luke<sup>1</sup> to anker in *the Sound of YLA*, tho could not haif eſchaupt ſaiff, in reſpect of the gryte tyddis heir, and hid gait to paſ throw, the quhillk tho appeiris to be verie vnmeit: And finding hir nawife ſufficientlie furneiſt with victuall, to remane heir to await on this ſervice, yf it war bot for the ſpace of aucht dayis; and not being certane of ony victuallis to come heir to furneiſh hir, bot onlie, at my ſpeciall requeiſt, *Sir Williame St Johnne*, HIS MAIESTEIS *Admirall* heir, hes tane vpon him, out of his awne furnitour,<sup>2</sup> to ſupplie hir with viveris, quhill bak advertעיſment come from your ll.; and ſeing we have no ſervice in thir *Ylandis* that tho is meit for, and knowing hir to be gryte expenſis to HIS M<sup>TIE</sup>, vpon the aviſement with *the Admirall*

<sup>1</sup> Luck; good fortune.<sup>2</sup> Provision.

and remanent *Capitaneis* of THE *INGLISHE FLEITT*, and especialie with him wha is present *Gouverneur* of hir, wha be painfull experience knawis, and hes declairit to ws, how difficle it is to keepe hir saiff, vncaffin away, lett bee to do ony good office with hir, I haif thocht good to craue your ll. aduise, quhiddir tho salbe direct bak agane to ENGLAND, with all expedition, as we think all expedient—or yf sho sall be continewit heir—and to what vse, and how sho salbe furneist—for we knaw not. As to the ship caryare of the batterie and instrumentis appertening thairto, albeit we think not meit to keepe the ship heir, bot remit hir bak with the gallay, for hir better preservation, yit, for fundrie caussis tending to the forder and finall ending of this service, we think it expedient to keepe the munition with the instrumentis, the quhilk I fall sie to be put in sic surtie, as I salbe answerable to HIS MA<sup>TIE</sup> and your ll.

Thir thingis I haif thought good to communicat vnto your ll., imparting vnto your ll. oure opinioun heir, and craving your ll. forder resolutioun in the premisses, quhilk I think, God willing, to follow furth. Vpoun the 16 of this instant, I directit Commissionaris to the *Houfe of Dowart*, quhairin M<sup>C</sup>CLAYNE haueing his residence for the tyme, promesit to delyuer the Houfe; the quhilk he did vpoun the 17 of this instant. I ressaueing the fame, hes furneist with men and viveris that Houfe to be kept during HIS MA<sup>TIES</sup> and your ll. pleasour. I haif proclamit Courte to be haldin, the xxij of this instant, in *Arrofe* of MULL, when I think, be Godis grace, to tak ordour with pat Yland, in executioun of pat pairt of my Commissionioun, in distroying of lumfaddis,<sup>1</sup> birlingis,<sup>2</sup> and Hieland gallayis.

I find this ane gryte difficultie, that in respect of the great number of theis vashellis, quhilkis ar intertenyt vpoun the mayne-foir, quhilkis ar so offensive to the *Yllifinen*, that onles thay keepe the lyk counter with jame, thay can not eschaip thair oppressioun, nather can I iustlie spoilzie jame pairf, vnles the lyk ordour be tane with these that ar vpoun the mayne-foir, opposith to THE NORTH and WEST YLLIS; and thairfoir, yf it wald pleis your ll. to gif me lyk power and Commissionioun, for the abolishing of sic vashellis vpoun the mayne-foir, as I haue with in the YLLIS, I fall do accordingly with both. The quhilk Commissionioun I expect, with diligence; into the quhilk Commissionioun, I wald desyre your ll. to inclnde the intaking and asledgeing and dimoleitheing of all sic Houffis vpoun the mayne-foir, apperteneing to ony Yllifinan, or that may be ayd or resett to ony fugitiue rebell out of THE YLLIS.

I will not trouble your ll. with farder Letteris quhill mair occasioun be offerit; bot, requeisting your ll. to haist bak answere, becaus I can not depairt out of this Yll, withoute resett of the fame, I rest,

Be your ll. alwise to be commandit,

DOWART, in Mull, 18 August, 1608.

A. VCHILTRE.

## VI. LETTER, the *Privy Council* to THE KING. Oct. 6, 1608.

MOST SACRED SOUERAINE,

THIS Nobleman, the Lord Vchiltre, whome it pleasit your heynes to prefer to the charge of Leutenandrie of THE YLLIS of this your Maiesteis kingdome, hes, with verie greate cair, pane, and travellis, and with greate hafaird of his persone, broght that service to ane goode perfectioun, by the entrie and exhibitioun befor ws of a noumer of the principallis and Chifitanes of THE YLLIS; and by his awne promeis and Band, to mak some othis of thame, whome he hes not presentit, answerable and obedyent; as mair particularlie he will informe your sacred MA<sup>TIE</sup>. And sua, recommending him to your Maiesteis gracious regaird and consideratioun, We pray God to blisse your sacred Maiestie with all happynes, and restis for evir,

Your Maiesteis most humble and obedyent subiectis and seruitouris,

AL. CANCELL. ARGYLL. CRAFT. BUKCLUGHE. ABERCORNE. BLANTYRE.

EDINBURGH, 6 October, 1608.

To THE KINGIS most excellent MAIESTIE.

<sup>1</sup> Lymphads.

<sup>2</sup> A *birlin* is a small sort of vessel, peculiar to the Western Islands of Scotland.



VII. LETTER, *the Privy Council to THE KING.* Oct. 13, 1608.

MOST SACRED SOUVERANE,

THE beirar, *the Bishop of the Yllis*, having the occasioun to repair towardis your sacred MAIESTIE, we haif thocht meit to accompany him with this our testimonie and approbatioun of his dewtiful cariage and behaviour in your MAIESTEIS seruice, in THE YLLIS, wherin he hes caryed him selff with verie goode credite and reputatioun; and is able, be his counfall and advyse, (in respect of his awne credite and freindshippe among the Yllisfimen,) to do vnto your MAIESTIE goode seruice thair. And fua, recommending him vnto your sacred MAIESTIE, and most humilie beseking your heyne to heir him, in sache thingis as he will propone, anent the prosequitioun of this seruice, We pray God to blisse your sacred Maieitie with all happynes and felicitie, and restis for ever,

Your Maiesteis most humble and obedyent subiectis and seruitoris,

AL. CANCELL<sup>r</sup>. ROSS. TORPHECHIN. BUKCLUGHE. HALYRUDHOUS.CL<sup>r</sup>. REG<sup>nt</sup>. A. ELPHINSTON. S. T. HAMILTON. JO. PRESTOUN.

EDINBURGH, 13 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

VIII. THE COPIE ANGUS OGE's *first* LETTER to Sir Oliver Lambert. (No date.)

MY HONORABILL GOOD LORD,

I HAVE receavet your Letter, and hes vnderstand be your meaning, that ye wuld hawe me to rander this Hous to yow into THE KYNGS name. My Lord, as to that, if I had not receavit ane better Warrand from *my Lord Chancellor and Counsell of Scotland* to rander thame this Hous of DUNYWEGE, I wald obey your lo. or any wper subiect, hawing his MAIESTEIS Warrand. My lord, if ye doubt of this, send me your awin Secretar, or anie wper pat can reid, and I shall let him sie my Warrand from *the Counsell*, desyryng me to keip this *Castell*, wnto the tyme that his MA<sup>ties</sup> wilbe declarit to me. The quhillk my Warrand fall testefie. And if yow will trouble me, efter I hawe obeyit his highnes will, be yow assurt that I fall complayne to his MA<sup>ties</sup> *Counsell*. Not troubling your lo. any forder, comitts yow to God. FROME DUNYWEGE, the 14 of this instant month. And if ye will send any of your awin men, ye fall hawe frie passage to pas and repas to and fro.

Your friend, to your deservings,

ANGUS OG MA<sup>c</sup>DONALL.IX. EXTRACT from MINUTES of *Privy Council Proceedings.* Apr. 1614.

THE HOUSE OF DVNYVEG, in YLA, being possessed and kepted be THE BISCHOP OF THE YLES his brother, and two or three servandes, the same Houfe hes bene of late surprysed and tane be one *Ronnald Oig*, alegeand to be Bastard sone to vmq<sup>le</sup> *Angus M<sup>c</sup>conneill of Dvnyveg*, whom the said *Angus* did neuer, in his tyme, acknowledge to be his sone. This *Ronnald*, being a vagabound fellow, without any certane residence, come latelie to YLA, and finding the Houfe to be but slenderlie kepted, resofuled to surpryse and tak the same: And for this effect, he and his complices, being four or fyue in number, retered thame selues to ane wood, neare by the Houfe, whair they made some laderes, and with thame, one day, airtie in the morning, thay clam the vtter wall, kepted thame selues obscure whill the yettes were opined; and then they took the Houfe, and put the *Bishopes* folkes oute thereof. The reporte whereof coming to young *Angus M<sup>c</sup>conneill*, lausfull brother to *Sir James*, who wes within sex myles of the Houfe for the tyme, he immediatlíe, according to the cuntries fassioun, send the *Fyrcroffe*<sup>s</sup> athorte the countrey, warning all the countrey people, who wer affected to his MAIESTEIS obedience, to ryfe, and concur with him in the recoverie of the Houfe. And so he, with such assistance as come to him, inclosed the Houfe. Thay within held good for sex dayes, being weel prouyded

<sup>1</sup> Probably this should be read, "wnto the tyme that his MA<sup>ties</sup> will salbe."

<sup>2</sup> The Fiery Cross. See the *Lady of the Lake*, and other works of Sir Walter Scott, for illustrations of this remarkable custom.

with pulder, lunt,<sup>1</sup> and bullett, whereof thay fand good flore in the Houfe; and thay wer prodigall enough in bestowing the same vpon the besegares; bot in end, perceauing that thay war not able to keepe the Houfe, thay in the night eschued<sup>2</sup> at a bak yett, in a litle boat with sex oares, which lay at the Castell; and took with them such goodes as thay fand in the Houfe.

*Angus* followed thame, bot what farder has fallen oute, is not as yitt come to the *Counsell*s knowledge. *Sir James M<sup>c</sup>conell* is the *Counsell*s informar of all this busynes; and as he sayes his brother hes offered to delyuer the Houfe bak againe to the *Bishopes* serfandes, who refused to reffau the same. The *Counsell* having hard at lenth *Sir James* discourse, made in this earand, and looking shortlie to heere from the *Erle of Ergyle*, or els frome the *Bishope*, the constant and certane truthe of all this mater, thay haue reserued all deliberation bearin, till thay heere from the *Bishope* or *Erle*.

#### X. SIR JAMES M<sup>c</sup>DONALD HIS OFFERS.

FIRST, I offer, if it might please HIS MA<sup>TIE</sup> of his clemencie to give me ILAY, I would pay eight thousand merkis yearlie thairfoir; and find sufficient caution of Lordis and Barrounes for good payment and obedience, be my selfe, and all THE CLANNIS that shall dwell there: And craves but a sevin yeare Tak, to try me.

*Secondlie*, I offer, if HIS MA<sup>TIE</sup> please to hold ILAY in his awin hand, to mak it worth Ten Thousand merkis yearlie to HIS MA<sup>TIE</sup>; and to transport my selfe, my brethir, and my kin to IRELAND, or to whatsumewir other place HIS MA<sup>TIE</sup> will appoynt ws; and his highnes to give ws one yearis duetie or rent of ILAY, to by land with; and in the mein tyme, I shall go with the *Bishop* of THE ILES, and shall, God willing, ather get the Houfe and his pledgis, without any chaigis to HIS MA<sup>TIE</sup>, or than returne heir to mynd my owne waird, within fourtie dayis. Provyding, if I get this done, I haue affurance of HIS MA<sup>TIE</sup> and COUNSALL, that my self and my brothir shall get leave to go, presentlie thereafter, with my lord *Bishop* to Courte, and get a kifs of HIS MA<sup>TIE</sup> hand; and my cautionaris shall remaine bound for me, that I and my brother shall returne bak heir to HIS MA<sup>TIES</sup> COUNSALL, to abyid such order as it shall pleas his highnes to inioyne to ws. And I shall leive my sone heir, as pledge for my performance in all, and for satisfacioun to HIS MA<sup>TIE</sup> and COUNSALL. I shall bring *Rannald M<sup>c</sup>allaster*, who first took the Houfe, and *Ronnald M<sup>c</sup>donald Vallich*, to suffer for their fault; and *Coll M<sup>c</sup>gillaspie* to be kept in Irnes, during HIS MA<sup>TIES</sup> pleasour. My cautioneris salbe the *Erle of Tullibairne*, *Lord Burlie*, *Sir Ronnald M<sup>c</sup>Sorle*, *Johnne Campbell of Cadell*, *Malcum Tofhe*,<sup>3</sup> and the *Laird of Grant*; every one for Fyve Thowland merkis—and my sone to die if I fail.

*And last*, I offer, without any condition of land or money, that if it please HIS MA<sup>TIE</sup> to give me libertie, vpon such suretie by cautioneris as I am able to performe, or pledgis, I shall transport my self and my brothir and kin out of all HIS MA<sup>TIES</sup> dominiounes, having HIS MA<sup>TIES</sup> Letter of Recommendation to THE ESTAITTIS of HOLLAND; and libertie to tak vp men, if we be imployit; with HIS MA<sup>TIES</sup> frie pardoun for all byganis.

#### Fire-raising—Theft—Reset of Theft.

Jul. 14.—JOHNNE M<sup>c</sup>ALLASTER M<sup>c</sup>JAMES, in Daill of Rothiemurchus; Andro M<sup>c</sup>allaster M<sup>c</sup>James, in Kynveachie; Johnne Dow M<sup>c</sup>kay, in Duchill.

Dilaitit of airt and pairt of the trefsonable Raifeing of fyre, Burneing and destructioun of the Houffis and bigingis pertening to vmq<sup>10</sup> George Dunbar in

<sup>1</sup> Match.

<sup>2</sup> Escaped; escheved.

<sup>3</sup> Probably meaning the *Laird of MacIntosh*.

Clwne; and thiftious Steilling and away-taking of the hail infycht and pleneiffing, guidis and geir, being within the faidis Houffis, to the avall of ane thowfeand merkis; at the leift, of the thiftious Refetting of the faidis guidis and vtheris contenit in the Letteris direct thairupoune, eftir the thiftious steilling thairof be David McWilliam and his complices; committit in October, 1598 zeiris.

PERSEWAR, Mr Robert Dumbar, fone to the said vmq<sup>e</sup> George Dumbar.

The Justice, with advyse of my lord Aduocat, continewis this matter to the thrid day of the next Justice-air of the schereffdome of Innernes, quhairin thay duell, or foner, vpone xv dayis warning, to vnderly the law for the crymes aboue specifiet: And ordanis caution to be fund for the defenderis compeirance to that effect; vnder the panes contenit in the Actis of Parliament.

Johnne Roife of Glenbeg, as cautioner for the entrie of the perfonen on pannell, tuik instrumentis of thair entrie; and protestis he may be fred of his cautionrie. Gregour Grant of Gartmoir become fouirtie, that thai and ilk ane of thame fall compeir, &c.

[*Sir Willame Heart, Justice-Depute.*

ASSESSOURIS to the Justice, in this cause.—MY LORD ARCHBISHOP OF ST ANDROIS; SIR GEDIONE MURRAY, Thesaurar-depute; MY LORD CLERK OF REGISTER, (Sir Alexander Hay of Whitburgh); MY LORD OF KILSYTHE.]

**Treasonable Resetting of Jesuits and Trafficking Papists, &c.**

[AFTER the details which have already been given in the Case of OGILVIE,<sup>1</sup> it seems unnecessary to occupy farther space in attempting to elucidate the present Trial. It must, however, be interesting to the reader that there should be preserved, in this place, some remarks made by *Calderwood*, in his larger MS. History,<sup>2</sup> which strongly depict the popular feeling, in relation to these State prosecutions against the Jesuits.

‘William Sinclair, Robert Wilkie, (and) . . . Cruikshanks were convicted, upon the fourteen of August, for Resetting the *Jesuits* above named, and bearing of Masse. The day following, betwix four and five afternoone, they were brought furth, with their hands bound, to the Scaffold, sett up beside the Crosse, and a gallows in it, according to the custome of Executione. While a great multitude of the people was gazing to see the Executione, there was a Warrant presented to the Magistrats of Edinburgh, to stay the Execution; for they were carried back again to their wards. The people thought this forme of dealing rather mockery then punishment!’]

Jul. 14.—WILLIAME SINCLAIR, agent in Edinburgh; Robert Wilkie, browdinst<sup>3</sup> in the Cannogait; and Robert Cruikshank, staibler in Ed<sup>t</sup>.

Dilaitit of the tressonable Resetting of Mr James Moffett, Mr Johnne Ogilvie, and Mr Johnne Campbell, Jesuites and Traffiqueing Papists, within thair duelling houffis, dyuerse dayis and nychtis, in the monethis of August, September, and October lastbypast, &c. viz.

*DITTAY against the Pannel.*

FORSAMEKILL AS our most gracious and sacred Souerane lord, furth of pat godlie zeill ever borne

<sup>1</sup> See his Trial, Vol. III., p. 330, &c.

<sup>2</sup> Church Hist. MS., Adv. Library.

<sup>3</sup> Embroiderer, a lucrative

employment in those times; not *browster*, or brewer.

be his Maiestie to þe maintenance of the trew RELIGIOUN, presentlie (to the honour and praise of Almychtie God) profitit and establischet within this Kingdome, and for the rateing out of all Papistcall and Idolatrus Religioun, with the blinded professouris pairof, furth of the samyn; be mony godlie lawis and Actis of Parliament, deulie maid and publeist, allweill in his hienes minoritie, as since his acceptatioun of the government in his awin persone, hes nocht onlie expresse flatute and ordanit, that na professit JESUITE, SEMINARIE PREISTIS, nor TRAFFIQUEING PAPISTIS (being all soorne ennemeis to his sacred Maiesties croun and estait) be fund within this his hienes realme, or any part of the samyn, vnder dyuerse capitall panes mentionat pairiatill; bot lykways, be dyuerse vtheris guif and godlie Lawis, Actis, and constitutions of Parliament, speciallie, be the 120 Act of his hienes tuelf Parliament, baldin at Ed<sup>r</sup> vpon the fyft day of Junij, 1592 zeiris, his Maiestie and Estaitis than convenit, hes, be vertew of the said Act, decernit and declairit, that in tyme paireftir following, the RESSETTING of the saidis JESUITIS, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, aganis the Kingis Maiestie and Religioun, presentlie profitit within this realme, is and fall be ane just caus to infer the cryme and payne of TRESSONE aganis the said receperis:<sup>1</sup> As the said Act of Parliament, ratifeit and approvin in dyuerse his Maiesteis Parliamentis, baldin senfyne, in the self proportis. AND albeit it be of veritie, that vmq<sup>le</sup> *Mr Johnne Ogilvie*, alias *Watfone*, *Mr James Moffett*, alias *Halyburtoun*, and *Mr Johnne Campbell*, alias *Sinclair*, all professit JESUITES and MESS-PREISTIS, with dyuerse vtheris of that vnhappie and curfet sect, war directit frome ROME, this last zeir, 1614, be THE POPE and his CARDINALIS, to cum to this cuntrie and vtheris pairtis of his Maiesteis dominiones, to put in executioun, na dout, sum feirfull and tressonabill conclusioun, as persones maist meit for sic ane dangerous employment; and haifing, according to pair commissioun, cum to this cuntrie, in the monethis of Junij or Julij, the zeir of God soirfaid; quhair, eftir pair cumming pairto, in all pairtis and companeis quhair thay refoirtit, speciallie, the said *Mr Johnne Ogilvie*, ane vylde and abhominable Tratour, quha iustlie reffaut his defernet pwneschment, be pair perverse speiches and insolent cariages, maist tressonabillie and oppinlie condemned and disavowit his Maiesteis souerane authoritie, setting vp and mantaining, in place pairof, THE POPE OF ROME his vsurpet power for excommunicatting, deposing, and dethroneing KINGIS, and absolueing subiectis from the othe<sup>2</sup> of pair naturall allegiance; intending na les, be thais pair tressonabill speiches and informationes, nor<sup>3</sup> to haif waknit and sleirit vp ane oppin and feirfull REBELLIOUN. THIR pernicious and vnhappie miscreantis, schakin louse be þe authoritie of pair Generallis, to put in executioun sic tressonabill attemptis, nochtwithstanding of his Maiesteis Lawis and Actis of Parliament maid aganis the recepting of thame and vtheris of pair devillische sect, war, in the monethis of Julij, August, September, and October lastbypast, at the leist, in ane or vther of the saidis monethis, maist tressonabillie reffett, harbourit, and interteneit be 50w, and everie ane of 50w, viz. the saidis *William Sinclair*, *Robert Wilkie*, and *Robert Cruikshank*, within pair (50ur) duelling houffes, in maner as followis; that is to say: THE said *Mr James Moffett*, alias *Halyburtoun*, ane professit JESUITE, a PREIST, and TRAFFIQUEING PAPIST, haifing cum to this burgh of Ed<sup>r</sup>, to pervers, be his erroneous doctrine, our souerane lordis subiectis fra þe trew RELIGIOUN presentlie professit, was, for that effect, maist tressonabillie reffett, harbouret, and interteneit be the said *William Sinclair*, in ane or vther of the saidis monethis of Julij, August, September, and October lastbypast, dyuerse dayis and nichtis, within his duelling hous in Ed<sup>r</sup>; and all necessar comforte, releif, and intertenement ministrat to him, at all occasions, as gif he had bene (ane of) his Maiesteis faithfull and loyall subiectis and professouris of þe trew RELIGIOUN; eftir he was knawin to þe said *William Sinclair* and his wyfe to be of the contrair<sup>4</sup> RELIGIOUN, be þe informatioun of ane James Colt, he keptit daylie socieatie and companie with þe said JESUITE, vpon the stretis, keptit tryftis and meittings with him and with the said vmq<sup>le</sup> *Johnne Ogilvie*, ane notorious Tratour, within the duelling houfe of *Robert Wilkie*, in the Cannogait, and duelling hous and stable of *Robert Cruikshank*, and within the Abbay

<sup>1</sup> Receivers; resettters.<sup>2</sup> Oath.<sup>3</sup> Than.<sup>4</sup> Opposite; adverse.



5airdis, and in dyuerse vtheris pairtis of this burgh of Ed<sup>e</sup> and suburbis pairfo; committing pairthrow, maist oppin and unpardonable Tressone, and according to the said Act of Parliament, incurring pairthrow the panes and pnnieichment expressit pairintill. LYK AS, the saidis *Mr James Moffet*, *Mr Johnne Campbell*, and *Mr Johnne Ogilvie*, all professit and avowed JESUITES, war, in ane vther of the saidis monethis, tressonabillie resset, hurdit,<sup>1</sup> keipit close, with thair horffis and provisoun, be the said *Robert Cruikshank*, staibler, within his duelling hous and stable in Ed<sup>e</sup>; be the space of dyuerse dayis and nychtis, war interteneit be him pairintill, and furneist with all maner of conforte, help, and releiff, according to his habilitie, committing pairthrow, oppin and manifest TRESSONE, conforme to the said Act of Parliament. AND siclyk, the saidis *Mr James Moffet* and vniql<sup>e</sup> *Mr Johnne Ogilvie* war maist tressonabillie resset, harbouret, and interteneit, in ane or vther of the saidis monethis, be the said *Robert Wilkie*, within his duelling hous in the Cannogait, of certane knowlege that thay war JESUITES, insafar as three feuerall MESSIS<sup>2</sup> war said be the said *Johnne Ogilvie*, within your chalmere, of your speciall knowlege; to the quhilkis MESSIS, dyuerse perfonas maid pair resoirt, and the said Robert keipit the dur, and was quhyles within and quhyles without. BE the wilfall and tressonable Ressetting of the quhilkis JESUITES, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, professit and avowed enemeis to his Maiesteis perfone, Crown, and estat, and trew RELIGIOUN presentlie professit, and that within thair duelling bouffis, and vtherways, as is aboue declairit, the foirlaidis perfonas, and ilk ane of thame, according to the tennour of the said Act of Parliament, hes incurret the pane and pwnieichment of TRESSONE, viz. to be pwneist and demanit<sup>3</sup> as Tratouris, and pair haill landis and guidis florfalt and escheit to his Maiesteis vfe; to the terrour of vtheris to abstene fra the lyk heireftir.

WILLIAME SINCLAIR, eftir reiding of the Dittay, declairit, that it is of treuth that he hes offendit God and the Kingis Maiestie, by Ressetting of *Mr James Moffet*, Jesuite, in the moneth of October last; quhilk he did only vpon simplicite:<sup>4</sup> And denyis the Resset of *Mr Johnne Ogilvie*, or *Mr Johnne Campbell*, Jesuites, at ony tyme: As also, denyis the Ressetting of the said *Mr James Moffet*, in the monethis of July, August, and September, set down in the Dittay. My lord Aduocat acceptis his Confessioun, in that he acknowledges his Ressetting of Moffet, in the moneth of October; and adheris only thairto, aganis Williame Sinclair.

It is allegit be Williame Sinclair, for him selff and remanent perfonas vpon pannell with him, that the Dittay is nocht relevant, nather can the samyn be put to the knowlege of ane Assyse, except it war speciallie condiscendit thairin, that *Mr James Moffet* said Mefs, and was a traffiker aganis the Kingis Maiestie and the Religioun.—It is ansuerit be my lord Aduocat, the allegiance aucht to be repellit, in respect of the Dittay and Act of Parliament, beirand distinctlie, that nocht only the Ressetteris of the Sayeris of Mefs committis Tressone, bot also the Ressetteris of Jesuites, Seminarie Preistis, and Traffiking Papistes aganis the Kingis Maiestie and Religioun, committis Tressone. And trew it is, that the said *Mr James Moffet* is ane notorious Jesuite, and ane traffiker aganis the Religioun professit within this realme, as is confessit be the said Williame Sinclair

<sup>1</sup> Literally, *hoarded*; concealed with extreme caution, as one would a hoard of money. <sup>2</sup> Masses.

<sup>3</sup> Used; treated.

<sup>4</sup> Goodnature; without any treasonable intent.

him self, in his awin Deposition, beirand, that Moffet declairit to him, that he was cum to this cuntrie to venter his lyfe for the saiftie of faules that war in danger; and sa, was sufficientlie knawin to the said Williame, that he was ane Jesuite and traffikeing Papist aganis his Maiestie and Religioun: Be recepiting of the quhilk Jesuite thaireftir, he has fallin vnder the danger of the said Act of Parliament.

It is forder allegit be the pannell, that he can nocht pas to ane Assyse for the Recepiting of Jesuites, except, conforme to the Act of Parliament, made in anno 1593, cap. 164, he had resset thame, *scienter et prudenter*, be the space of thre nychtis togidder, or thre nychtis at feuerall tymes; be the quhilk Act, it is provydit, that gif it be sa tryit,<sup>1</sup> that the persone convict for the *first* falt, his escheit fall fall; ffor the *secund* falt, fall amit<sup>2</sup> his Lyfrent; and (ffor) the *thrid* falt, fall incur the crymes of Tressone. And thairfore, except the said Recept be sa tryit, the Dittay is nocht relevant.—It is answert, that the allegiance aucht to be repellit, in respect the said Act of Parliament nawayis derogattis the Act of Parliament quhairupoun the Dittay is foundit: And thairfor, nochtwithstanding of the said allegiance, fould pas to ane Assyse.

It is forder allegit be the pannell, that be the Act of Parliament maid in anno 1600 3eiris, cap. 18, thair can be na forder exactit of the Recepteris of Jesuites, bot ane pecuniall payne; quhilk he is content to pay, according to the Lordis modificatioun: And thairfor, the Dittay for Tressone can nocht pas to an Assyse.—It is answert, that the allegiance aucht to be repellit, nochtwithstanding of the said Act quhairupoun the samyn is foundit, in respect the samyn nawayis derogatis the Act of Parliament maid be his Maiestie and Estaittis, in anno 1592, bot ratifies the said Act in everie poynt.

It is allegit be the pannell, that he can nawayis pas to ane Assyse for Ressetting of the saidis Jesuites, nather is the Dittay relevant aganis him, in respect, be ane Act of Parliament maid at Edinburgh, in anno 1609, cap. *quinto*, it is thair planelie explanet and declairit, that all Actis maid of befor aganis the Ressetteris of Jesuites, &c. haif full force, and be put to dew executioun aganis the said Ressetteris, sa sone as intimatioun and denunciatioun beis maid of the saidis Jesuites, Seminarie Priestis, and vtheris contenit thairin, at the Mercat-croce of the heid burgh of the schyre quhair thay duell, and Mercat-croce of Edinburgh;<sup>3</sup> bot sa it is, that thair was na intimatioun nor denunciatioun maid at ony Mercat-croce of the said *Mr James Moffet* his name, befor his Ressetting withlin the pannellis hous, to be ather a Jesuite, Seminarie Preist, or of ony vther ordour: And thairfor, the said Dittay for his Recept can nocht pas to ane Assyse.—It is answert be my lord Aduocat, that the explanatioun repetit be the pan-

<sup>1</sup> If it so turns out upon Trial.

<sup>2</sup> Lose.

<sup>3</sup> As the *commune forum*.

nell, set down in the said last Act of Parliament, nawayis derogatis or takis away the former Act of Parliament maid aganis the Resfetteris, quhairupoun the Dittay is confaet; bot be the contrair, the said Act is Ratifeit, and ordanit to haif frie strenth, effect, and executioun, accoirding to the tennour thairof; and the explanatioun of the said Act, in anno 1609, is only in fauouris of sic as Resfettis Papiftis ignorantlie, nocht knowing thame to be Papiftes, or of ane contrair Religioun: Bot it was fufficientlie vnderftuid to the pannell, befor *Moffettis* Resfet, that he was ane Catholik ffather, and was cum to venter his body for the Catholik Faith, as is confeffit be his Depofitioun: And thairfoir, the said allegiance aucht to be repellit, and the pannell pas to ane Affyse.

INTERLOCUTOR *of Relevancy.*

THE JUSTICE, with advyse of the Affessouris present, Repellis the hail allegances proponit be the pannell; and findis the Dittay relevant: And Ordanis the samyn to be put to the knowlege of ane Affyse.

ASSISA.

Thomas Fifer, mercheand bur- ges of Edinburgh,	Robert Halybrntoun, merchand thair,	Dauid Williamefone, elder, mer- cheand thair,
Eduard Johnestoun of Ryhill,	Johnne Inglis, skynner thair,	Capitane James Hunter, burges
Willame Cocherane, mercheand burges of Edinburgh,	Nicoll Vduard, mercheand thair,	thair,
Dauid Mitchell, merchand thair,	Willame Nemok, tailjeour thair,	Alexander Broun, elder, mer- cheand thair,
Alexander Speir, mercheand thair,	Thomas Weir, penderer thair,	Jo. Fairlie, younger, burges thair.

My lord Aduocat takis instrumentis of the fuering of the Affyse: And for VERIFICATIOUN of the Dittay, producet the pannellis Depofitiones, viz. the said William Sinclairis Depofitioun, all writtin and fubfcriuit with his hand; and the vther tua Depofitiones maid in prefens of dyuerfe Lordis of his Maieftis Secret Counsell, confeffing thair particular Resfetting of the Jefuites, in maner fpecifeit in thair Dittay, and thairupoun askit instrumentis; and protestis for Wilfull Errorr, gif thay Acquit.

VERDICT. The Affyse, all in ane voce, be the mouth of Dauid Williamefone elder, chancellor, fand, pronuncet, and declairit the saidis *Willame Sinclair*, *Robert Wilkie*, and *Robert Cruikshank* to be flyet, culpable, and convict of the trefsonable Resfetting of the saidis Jefuites, in maner fpecifeit in thair Dittay; accoirding to thair awin Depofitiones, producet for verificatioun thairof.

SENTENCE. To be tane to the places of thair Executioun, and thair to be execute to the daith, and vtherwayis demanit as, *Tratouris*: And all thair landis, guidis, and geir to be fforfalt and efcheit to his Maieftis vfe.

Aug. 15.—THE quhilk day, THE JUSTICE being fitand in Judgement, ane WARRANT was producet be him, and ordanit to be red, quhilk was direct to him fra his Maieftie, &c. viz.

JAMES R.

To our truſtie and weilbelouit SIR WILLIAME HEART, kny<sup>t</sup>, deputy Juſtice generall, in our kingdome of Scotland. QUHAIR AS, Williame Sinclair, Aduocat, Robert Wilkie, imbroderar, and on Cruikſchank, a ſtaibler, ar convicted and condemned of Treafſone, for the Wilfull Recept and ſupplieing of Moſſet the Jeſuite: It is our pleaſour, that 3e proceed to the final pronunceatioun of the Sentence and Execution of the pwneichment provydit by our Lawis in the lyk caices againſt thame, with all convenient expedition: For doing quhairof, theſe preſentis ſhall be 3our ſufficient Warrant. GEVIN at Sarisburie, the 26th of Julie, 1615.

For obedience of the quhilk WARRANT, the Juſtice ordanit the ſaidis Williame Sinclair, Robert Wilkie, and Robert Cruikſchank, to be brocht furth of Waird to the Mercat-croce of Edinburghe; and thair to be Hangit vpon ane gibbet, quhill thay be deid: And all thair landis, heritageis, guidis, geir, and vtheris pertening to thame, to be forfalt and eſcheit to our ſouerane lordis vſe, &c.

Eftir the pronunceatioun of the quhilk Sentence, the ſamyn was intimat to thame be Johnne McNight, bailzie of Edinburgh, to quhome direction was gevin be the ſaid Juſtice, for cauſeing put the ſamyn to executioun, conforme to the Warrant aboue ſpecificit.

Aug. 30.—BEING of new agane brocht furth of Waird, and preſentit vpon pannell, be the Bailles of Edinburghe, as thay quhais dome and executioun thair of, &c. was of our ſouerane lordis meir mercie and grace delayit and ſuperceidit, THE JUSTICE, for obedience of his Maieſteis poſterior WARRANT, direct to my lord Archebiſchope of St Androis, My Lord of Bynning his hienes Secretar, and Sir Gedione Murray his hienes Theſaurer depute, quhairof the tennour followis, pronounced Sentence accordingly.

JAMES R.

WHEARAS, We ar crediblie informet, that Williame Sinclair, ane Aduocat before 3e Seſſioun, Robert Wilkie, browdinſter, and on Cruikſchank, ane ſtaibler, is convict of Treafſone, for Reſetting of Moſſet and Ogilvie the Jeſuite: It is our pleaſour, that Williame Sinclair and Robert Wilkie, be Banifchet our dominiones during our pleaſour: And that 3e ſaid Cruikſchank be Banifchet the toun of Edinburghe during our pleaſour. GEVIN at Salſiberrie, the xxvij day of Julij, 1615.

Quhilk DOME and SENTENCE, the ſaidis perſones, in all humilitie, imbracet and acceptit vpoun thame, &c.

[CURIA Jufficiarie, f. d. n. regis tenta in Pretorio ciuitatis Glaſguen. per D. Will. Heear.]

### Treasonable Reſetting of Jeſuits—Hearing of Maſs, &c.

Sept. 5.—SIR JAMES CLEILLAND (KNEILLAND) of Monkland, kny<sup>t</sup>, Williame Maxwall of Cowglene,<sup>1</sup> Robert Vrie, wryter, burges of Paiſlay.

Dilaittit of the treſſonable Reſetting of Mr Johnne Ogilvie, Jeſuite, within thair duelling houſſis: And heiring of dyuerſe Meſſis ſaid be him thairintill;

<sup>1</sup> See their Examinations appended to the Trial of *John Ogilvy*, Vol. III., 330.



contrair the Actis of Parliament ; committet in the monethis of July, August, and September, 1614 yeiris ; at the leift, in ane or vther of the faidis monethis.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our sonerane lord.

PRELOCOUTOURIS in defence, The Laird of Keir, the Laird of Mufchett, the Laird of Pollok, Johnne Cranfoun, Mr Johnne Halyday, Aduocat, Mr Thomas Pollok, Aduocat.

THE Justice, with advyse of my Lord of St Androis, my lordis Kilsythe, Clerk of Register, and his Maiefties Aduocat, continewis this matter to the fext day of December nixt, to be tryit at Edinburghe : And Ordanis the pannell to find Caution for their entrie that day and place, in the hour of caus, vnder the panes following, viz : The said Sir James Kneilland, vnder the pane of Ten Thowfeand merkis ; the said Williame Maxwell, vnder the pane of Fyve Thowfeand merkis ; and the said Robert Vrie, vnder the pane of Fyve Hundreth merkis money.

The perfones on pannell offeris thame selffis to the Tryell of the Law for the said cryme, disaffenting to the said continewatioun ; and thairupoun askit instrumētis : And for obedience of the said Justice Ordinance, the said Sir James Kneilland ffind Sir Johnne Home of Huttonehall cautioner for him ; the said Williame Maxwell ffind Sir Johnne Maxwell of Pollok, kny<sup>t</sup>, cautioner for him ; and the said Robert Vrie ffind Alexander Cocherane of that Ilk, cautioner for him, that thai fall compeir befor the Justice and his Deputis, in the Tolbuth of Edinburghe, the said fext day of December nixt, in the hour of caus, and vnderly the Law for the saidis crymes, vnder the feveral panes aboue writtin.

COMPEIRIT Harbert Maxwell, burges of Edinburghe, and product ane Warrant of the Lordis of Secreit Counsell, anent the deserting of the dyet appointit for tryell this day.

JUSTICE, Justice-clerk, and your deputis : 3e fall, vpon the sicht heirof, desert the dyet appointit for Tryell of Sir James Kneilland of Moukland, Williame Maxwell of Cowglen, and Robert Vrie, burges of Paislay, the fext day of December nixtocum, ffor the Resfetting of v<sup>m</sup>q<sup>le</sup> Mr Johnne Ogilvie, Jesuite : Anent the quhilk, thir presentis falbe your Warrant. Subfcrvuit AT ED<sup>a</sup>, þe xxiiij day of November, 1615. SANCTANDROIS. S<sup>a</sup> J. MURRAY. ALEX<sup>a</sup> HAY. S<sup>a</sup> J. OLIPHANT. KILSYTH.

The pannell disaffentis to all forder continuatioun ; and protestit, in respect that this is the fecund dayet keipit be thame in this matter, first at Glasgow, and now at Edinburgh, that their cautioneris be fred, viz., Sir Johnne Home of Huttonehall for the said Sir James, and Alex<sup>r</sup> Cocherane of that Ilk, for the said Robert Vrie.

### Hearing of Mass, &c.

Sep. 13.—MR JAMES MOFFET, alias HALYBURTOUN, ane Jesuite Preist.

Dilaitit of the Tressonable Hearing of Mass within this cuntrie, specialie within the place of Auchindoun, a tuentie yeir syne or thairby : And for con-

travening the Actis of Parliament in refoirting within this cuntrie, he being ane Jesuite and Seminarie Preift, directit from Rome, to peruert his Maiesteis subiectis from the trew Religioun; and vtheris crymes contenit in his DITTAY.

*DITTAY against Mr James Moffet.*

[The preamble is similar to those which precede, and founds upon the Act 29th July, 1587. It then states,]

"THAT 3e, being tranet vp at scoles and Colledges within this Kingdom, and haifing accomplischet your course in the College of St Androis, quhair 3e was laureat; and haifing paireftir applyit your mynd to the studie of Theologie, and dyuerse tymes maid your privat exerceiffis within pe New Colledge pairof, 3e, in your awin fulfiche opinioun, playing the rwnigait<sup>1</sup> frome the trew Religioun, first studeit and professit be your within this Kingdome, adreftit your self to the place of Auchindoun, quhair 3e, aganis the saidis Actis of Parliament, hard ane Mels, and was present at pe Celebratioun pairof, the Auld Laird of Auchindoun and Mr James Gordoun being present withe your, at the heiring of pe laymn: LYK AS, 3e, haifing schortlie paireftir past furth of this cuntrie to Rome, in Italie, and haifing pair ressaunt the ordour of a Jesuite Preift, and haifing remanit furth of pis cuntrie be the space of tuintie yeiris togidder, studieing to pe said Roman Religioun, 3e being ane professit Jesuite, expres contrair the tennour of the soirsaid Act of Parliament, and in manifest contempt pairof, and of his Maiesteis royall authoritie, in the moneth of Julij, 1614, returnet to this realme, be directioun of CLAUDIUS AQUAVIVA, your General, off plane purpois and intencioun to pervert and seduce his Maiesteis subiectis frome the trew Religioun presentlie professit; refoirit in dyuerse pairtis of this cuntrie, speciallie, within the burgh of Edinburghe, Cannongate, and Citie of St Androis, quhair 3e was tane, apprehendit, and brocht to this burgh of Edinburghe, and Tolbath pairof, quhairin 3e haif bene detenit priffoner, as ane Jesuite Preift, and a perverter of pe Kingis Maiesteis subiectis from the trew Religioun, presentlie professit," &c.

The pannell, efter reiding of the DITTAY and his accusatioun of the crymes mentionet thairintill, offerit him selff in his Maiesteis Will for the samyn: Quhairupoun my lord Aduocat askit instrumentis.—Thairefter my lord Aduocat product the WARRAND following:—

JUSTICE, Justice-clerk, and your deputis: Your fall appoint a Justice Court to be baldin in the Tolbuth of Ed<sup>r</sup> at fuche convenient day as you think goode; and pairin you fall put Mr James Moffet, Preift, to the knowlege of ane Assyse for fuche crymes as fall be gevin in Dittay againes him, be his Maiesteis Aduocat, and proceed and minister Justice vpone him, conforme to pe lawis of this realme; Bot yf the said Mr James fall happin to cum in his Maiesteis will, your fall pronounce his Maiesteis will as followis, to wit: That the said Mr James fall be Banischet his Maiesteis dominiones, and nevir return agane within the samyn, vnder the pane of deid: And that he act him selff, judicallie, to depairt and pas away betuix and fuche a day as your fall appoint, and nocht to returne vnder the said payne: And forder, that he find cautionn actit in the Buiks of Secret Counfall to this same effect, vnder the pane of Thre thousand merkis, to be incurrit be his cautioner, besyde the pane of deid to be execute vpone him selff, in caice he failzie in the premisses. And this Dome being pronuncet, and he having actit him selff, that your fend him bak agane to his waird, quhill the said caution be fund, and quhill a schip be in reddines quhairin he may be transpoirit. Quhairanent pir presentis fall be your Warrant. AT EDINBUR<sup>r</sup>, the xxij day of August, 1615.

AL. CANCELLS. SANCTANDROIS. SCONE. BINNING. J. PRESTOUN. AL. DRUMMOND.

<sup>1</sup> Runagate; renegado.

SENTENCE was pronounced accordingly. He was adjudged to 'depart and pas away furth of his Maiesteis dominiones, betuix and the tuentie day of October nixtocum, wind and wedder fervand.'

### Slaughter.

Nov. 29.—JAMES KING, sumtyme of Barro; Alexander Lummisdene of Clova; Mr Gilbert Arnould, indueller in Aberdene; and David King in Hoy, in Orknay.

Dilaitit, accuset, and persewit at the instance of Elizabeth Seatoun, only dochter to vmq<sup>le</sup> Alexander Seatoun, than ffar of Meldrum, Johnne Vrquhart of Craig-Fintrie, hir spous, for his intereis, Johnne Seatoun now of Meldrum, &c., off airt and pairt of the Slauchter of the said vmq<sup>le</sup> Alexander Seatoun, with schottis of hagbuttis and muscattis; committit vpone the landis of Barro, in the hie-way betuix Meldrum and the Kirktown of Bourtie, vpone the xxviij day of Auguft, 1590: And siclyk, ffor beiring and schuitting of Hagbuttis, muscattis, and pistolettis, &c.

Mr Robert Fairlie, seruitour to Mr Alex. King, Aduocat, produceit ane War-rand of his Maiestie, daitit at Newmarket, the sixtenth of November, 1615, anent deserting this dyet. The Diet was deserted accordingly.

### Letters of Exemption

IN FAVOUR OF THE PROVOST, BAILIES, COUNCIL, AND COMMUNITY OF  
The Burgh of Aberdeen.

Dec. 2.—Compeirit personallie Mr Thomas Nicolfone, Aduocat, in name of the Provost, &c. of Abirdene, and product to my Lord Justice LETTERS OF EXEMPTION, vnder the Previe seill, quhair of the tennour followis.

JAMES, be the grace of God, King of Scottis: To all and findrie our schereffis, stewartis, Justice, Justice Clerkis, Thesaurer, Aduocat, and all vtheris Judges and ministeris of our Lawis, thair deputis and officeris, present and to cum, leisgis, and subiectis, quhome it effeis, to quhais knowlege thir our Letteris fall cum, Grating. Wit 3e ws, vnderstanding that the Provost, bailleis, counfall, and community of our burgh of ABERDENE, ar oft tymes atteichet and summondit to pas vpone Inqueistis and Assyis to our burgh of Edr and utheris pairtis outwith pair boundis and Jurisdictiones, in crymes committit far distant fra thame, quhair of thay ar altogidder ignorant; and that thay had ane Exemption to the effect vnderwritten gevin and grantit to thame be ws, with advyis of vmq<sup>le</sup> our rycht trest cousing James Erle of Moirtoun, Lord Dalkeith, &c. Regent to ws our realme and legis for the tyme; as the samym Exemption, of the dait at Aberdene, the thrid day of September, the zeir of God 1590 threfcoir fourtene zeiris, deulie and ordourlie past and admitit in the Justice Court haldin at our said burgh of Aberdene, immediatlle pairfester, be vmq<sup>le</sup> Sir Johnne Bellenden, our Justice clerk for the tyme, at mair lenth beirs. AS ALSO, considering, how vpone the occasioun of Commiffiones of Leutenendries and Justiciareis, grantit in fauouris of the Noblemen of the cuntrie, or to vtheris, for administratioun of Justice passing vpone our Rebellis, and disorderit perfones for revenge of privat

quarrellis and contraverfeis betuix pairtie and pairtie; the saidis Proveift, bailleis, counfall, and communitie ar oft tymes drawin furth of pair awin Toun to vtheris pairtis of the cuntrie, to the grit hazard of pair lyves and wrak of pair guidis; albeit, that according to the libertie of frie Burgh, quhair with thay and pair prediceffouris ar infeft and foundit, thay aucht only to attend vpon our felf, being in the ffeildis in proper perfone, or with our Leutenent, in defence of our realme aganis forane nationes. AND haifing confideratioun, that our said Burgh of Aberdene lyeis within the North pairtis of our realme, far diftant fra ws, and of the guid, trew, and thankfull fervice done to ws and our prediceffouris be the Proveift, bailleis, counfall and communitie of our said Burgh, alſweill in tyme of weir as of peace; and of pair reddie and dentiefull obedience towards ws, quhairof we haif daylie pruiſ and experience, and reſpecting pair guid mind to continew pairin hereſtir: THAIRFOIR, we haif gevin and grantit, and be thir our Letteris gevis and grantis to the Proveift, bailleis, counfall, communitie, burgefſis, craftſmen, and induelleris of our said Burgh of Aberdene, preſent and to cum, ſpecial LICENCE to remane and abyde at hame fra all Raidis, Conventionis, Oiftis, Affemblis, Airmeis, Gatheringis, Wappon-fchawingis or Weiris, to be maid be ony our Juſtices, be Commiſſioun of Leutenendrie, Juſticiarie, or vther Commiſſioun quhatſumewir, to be grantit be ws, or meiting of thame in ony pairt within our realme in tyme cuming, except pat either our felf be preſent in proper perfone, or that our Leutenent, accompaneit with the remanent of our realme, be vpon the defence of the cuntrie, aganis forane nationes, or that our felf pas for repreſſing of Rebellis and Traitouris, aganis our perfone within the cuntrie: And fra all compeirance or paſſing vpon ony Aſſyſis or Inqueſtis, in quhatſumewir crymes or actiones, (except ſic crymes as ar committit within our said burgh, friedom thairof, and tua myles about the ſamyn,) Exemis and diſcharges thame and ilk ane of thame pairfra, during all the dayis of pair lyftymes. And willis and grantis pat pay in doing pairfof fall incur na payne, ikayth, cryme, nor danger in pair perfones, landis, or guidis, nor be callet nor accuſet pairfoir criminalle nor civille, be ony maner of way, in tyme cuming, nochtwithſtanding ony our Actis, ſtatutis, ordinances, Letteris, proclamations, or charges quhatſumewir, ſpecial or general, maid or to be maid in the contrair; anent the quhilkis, and all panes contenit pairintill, We haif diſpenſit, and be thir our Letteris diſpenſis with the Proveift, bailleis, counfall, communitie, burgefſes, craftſmen, and induelleris of our said burgh, preſent and to cum, for ewir. DISCHARGEING heirfoir, ſow, all and ſindrie our Schereffis, Stewartis, Juſtices, Juſtice clerkis, Theſaurer, Aduocat, and all vtheris Judges and miniſteris of our lawis, ſour Deputis and officeris, preſent and to cum, off all calling, accuſeing, atteiching, arreifting, ſummond-ing, wairning, poynding, trubilling, or ony wayis intrometting with the ſaidis Proveift, bailleis, counfall, communitie, burgefſis, craftſmen, and induelleris of our said Burgh, preſent or to cum, pair landis or guidis, in ony wayis, in tyme cuming, for pair ſaid remaning and abyding at hame fra our ſaidis Raidis, Airmeis, and vtheris foirſaidis, and fra all and ſindrie Inqueſtis and Aſſyſtis, to be committit, as ſaid is; and of ſour offices in pat pairt, be thir our Letteris. GEVIN vnder our Previe Seill, At Dalkeithe, the ſaxtene day of Maij, the zeir of God I<sup>m</sup>. ffve hundreth fourſcoir tuelft zeiris, and of our regne the tuentie ffve zeir.

PER Signaturam manibus f. d. n. Regis ac Secretarij ſubſcriptam.

[*D. Will. Heart, Juſticiarius-deputatus;*

ASSESSORES Juſticiario, D. Alex. Drummond de Meidhoip, D. Will. Levingſtoun de Kilſythe,  
Senatores Collegij Juſtie f. d. n. Regis.]

### **Barbarous Slaughter and Maiming of Sheep—Oppreſſion, &c.**

[THE following Caſe is altogether unparalleled, even in the annals of Border or Highland revenge. On account of its ſingularity, it has been conſidered neceſſary to make ſome investigation into the

<sup>1</sup> Exempts.

subject, for the information of the curious enquirer. The story is so forcibly told in the proceedings before the Criminal Court, that the Editor shall not weaken its effect by attempting to rehearse the facts in this place. It is enough for the purposes of this Collection, that the reader is informed, that the property of *Howpaslot*, an estate of one of the most ancient branches of the name of *Scott*, having, by some means, come into the temporary possession<sup>1</sup> of *Sir James Douglas of Drumlanrig*, a powerful Border Baron, who had distinguished himself by the activity with which he aided the suppression of the disturbances on the Marches, the *Lady Howpaslot* appears to have been roused into fury at the very idea of the domains of her ancestors coming into the hands of a Douglas. She therefore instantly held a council of war in the *Town of Hawick*, of which *Drumlanrig* was the Superior, in the month of April, 1615, at which she and her friend, *Jean Scott of Satchells*, presided. The bravos and ruffians who figure in this Trial, and of whom every Clan had a few to do their worst work, at once undertook to execute the orders of these infuriated females, and, as will be seen by the subsequent proceedings, they succeeded in effectually preventing *Drumlanrig* from ‘plenishing,’ or stocking, the farms. These villains greedily engaged to maim and destroy the whole of the sheep which had been brought to the grounds ; and this cruel and barbarous act they performed in a manner almost too horrible to be related.

*Sir James Douglas* did not long survive the perpetration of this atrocious fact, having died Oct. 16, 1615. He was succeeded by his son *Sir William*, who was afterwards created *Viscount of Drumlanrig*, *Lord Douglas* of Hawick and Tibbers, Apr. 1, 1628 ; and *Earl of Queensberry*, Jun. 13, 1633. *Sir William* actively pursued these heartless ruffians, and was successful in bringing all of them to deserved punishment. In the Appendix to this Trial, the reader will find a characteristic Letter from this Nobleman to his kinsman, *Murray of Lochmaben*, the Original of which the Editor has fortunately discovered in the Advocates’ Library.

In an interesting communication from *SIR WALTER SCOTT*, Bart., on the subject of this Trial, with which the Editor has been favoured, some interesting particulars are detailed, regarding *THE SCOTTS* of the Border. No apology need be made for enriching these pages with the following extract :—

‘OUR Name were very clannish. I have, for the time, in my possession, a BAND or ASSOCIATION between *Sir Walter Scott of Brunxholm, knight, Laird of Buccleuch*, and about fifty of the most important men of his kin and Clan, [dated 3d June, 1589.] It proceeds upon an Association made to the same purpose by *SIR WALTER SCOTT*, the father of the Chief, and is calculated to secure against any Clansman taking any “room” or possession over the head of another of the Name. Any one who was accused of having done so, bound himself to stand by the award of five men, to be mutually chosen, bearing the Name of Scott. Even if the Chief should encroach upon the possessions of any inferior person of the Name, he declares he will submit the cause, in like manner, to four persons of the Name of Scott ; which shows an independence on the part of the Clansmen which I was not prepared for. The BAND is the property of my cousin and relative, *William Scott, Esquire, of Raeburn*. It seems to have been calculated to prevent kinsmen from going to law with each other, and to secure a species of justice within the Clan, to the advancement of the “guid and godlie purposes” of their Chief. The “guid and godlie purpose” of the *Cordiner* and the *Suckler* seems to have been intended for the same reason. *HOWPASLOT* was an old inheritance of the *Scotts*, and, on whatever grounds *Douglas* possessed it, returned to the Name again. *Douglas*, you are aware, was *Lord of Hawick*, to which *Buccleuch* afterwards succeeded.

‘Of the people mentioned in the Trial, I know little. *Satchells* is probably the place of the name, lying on the *Ale* or *Teviot*, now part of *John Corse Scott of Synton’s* property. The individual termed

<sup>1</sup> It is by no means unlikely that *Howpaslot* was ‘conquist’ by means of Wadset, Apprising, or other legal ‘Diligence ;’ for it is certain, that it was but a short period in the occupation of the *Laird of Drumlanrig* or his Tenants. The summary mode by which his ‘guidis’ were disposed of, may have precipitated his bringing these matters to a close, and his accepting of a pecuniary accommodation.



*William Scott, called in Satchells, may have been the father of Walter Scott of Satchells, the Historian of the Clan, terming himself,*

An old Souldier, and no Scholler,  
And one that can write nane,  
But just the letters of his name.'

The singular work here quoted by SIR WALTER SCOTT, a copy of which is in the Editor's Collection, is titled, 'A TRUE HISTORY of several honourable FAMILIES of the right honourable NAME OF SCOT in the Shires of Roxburgh and Selkirk, and others adjacent. Gathered out of Ancient Chronicles, Histories, and Traditions of our Fathers, by *Capt. Walter Scot*. EDINBURGH, printed by the Heir of *Andrew Anderson*, Printer to his most sacred *Majesty*, City, and Colledge, 1698.' It was composed by the author at the very advanced age of *Eighty-eight*! He states that he was fifty-seven years in active service, abroad and in Scotland, having entered the army at the age of twenty-nine. Although he boasts of being illiterate, he seems to have had much of the spirit of a staunch Member of the *Roxburghe, Bannatyne, or Maitland Clubs*—for he concludes his extraordinary work with the following '*L'Envoje*.'

'Therefore he gone my Book, stretch forth thy VVings and fly  
Amongst the Nobles and Gentility:  
Thou'rt not to sell to Scavengers and Clowns,  
But given to worthy persons of Renown!  
The Number's few I've printed, in regard  
My Charges have been great, and I hope Reward;  
I cauf'd not print many above twelve-score,  
And the Printers are engaged that they shall print no more!'

The Editor, thinking that the Original CONTRACT or BAND of ASSOCIATION between the heads of the powerful FAMILIES of the NAMES of KER and SCOTT, will prove most acceptable, as preserving the memory of times so powerfully depicted by *Sir Walter Scott* in many of his works, he has, after examining the ancient Records, procured a transcript, which is also appended to the present Trial. So able an abstract of the renewal of this '*Band*' has been given by *Sir Walter Scott*, that it has not been deemed necessary to apply for liberty to present the reader with a copy of it.]

Feb. 20, 1616.—GEORGE SCOTT, cordiner in Hawik, '*the Souter*,' callit  
*Mariones Geordie*; Walter Scott, sone to *Braidis*  
*Andro*; Ingram Scott, and Jok Scott, callit *the Suchler*.

Dilaitit of the crewall and barbarus Slauchter of threfcoir schein, or thairby, pertaining to the Laird of Drumlangrig; committit vpone the Landis of Howpallot, in the moneth of Apryle last, conform to the Dittay following.

DITTAY against *George, Walter, Ingram, and Jok Scot, alias the Suchler*.

FORSAMEKILL AS, albeit be dyuerse loveabill lawis and Actis of Parliament, it be expresse provydit, statute, and ordanit, that all Slayers of Horffis, oxin, or vther cattell and guidis,<sup>1</sup> fall be estemit and pwneist as Thevis; as the saidis Lawis and Actis of Parliament in tham selfis proportis: Nochtwithstanding quhairof, it is of verritie, that sic is the perverse dispositioun of dyuerse perfones, quha, preferring pair awin privat grudge, and revenge arryfyng pairupoun, to

<sup>1</sup> Stock; sheep.

the dew reuerance and obedience of his Maiesteis authoritie and lawis, ceissis nocht to profecute and follow furthe all godles and indirect meanis to effectuat pair malice, be sic monstuous and vnhard of crewaltie, as the lyk quhair of hes nocht bene hard amangist the *wyld Irish* and savadge people, let be within any reformat and ciuile pairt of his Maiesteis dominionis : And namelie, the persones particulerlie aboue writtin, be the instigatioun, na dout, of sun persones of gritter qualitie and conditioun nor thame selfis, vpone consideratioun, that pe landis and leving of *Howpaslet* war deulie and lawfullie conquiest and acqyret be vmq<sup>le</sup> SIR JAMES DOUGLAS of *Drumlangrig*, *knycht*, and he pairby setlet in possessioun pairof, be plenissing of the samyn with his bestiall and guidis ; thay and vtheris of pair vnhappy socieatie, altogidder disdaneing that pe said *Laird of Drumlangrig* sould inioy or possesse ony landis or possessiounes within that pairt of this kingdome ; and pairfoir, plotting and devysing all godles and vnlauchfull meanis how to interrupt his peceable possessioun of the saidis Landis, and to lay the samyn waist, and pairby to mak thame vnprofitable to him and his posteritie—in the moneth of Apryle lastbypast, the saidis *George Scott*, *Walter Scott*, *Ingrems Scott*, and *Jok Scott*, callit the *Suckler*, haifing assemblit and convocat to thame selfis *Williame Scott*, callit in *Satchellis*, and vtheris, pair complices, first keipit ane generall meitting within pe *Toun of Hawik*, quhair, in pair devillische counsell, it was concludit and aggreit vnto amangis thame, that, within a fyve or sex dayis pairfter, they sould all meit togidder, vnder nycht, vpone the saidis landis of *Howpaslet*, and pair to slay and distroy the said *Laird of Drumlangrigis* haill bestiall and guidis being pairupoun : LYK AS, accordiing to the foirsaid damnable conclusioun, the said *George Scott*, accompaneit with the said *Williame Scott*, callit of *Satscheillis*, vpone the . . . day of pe said moneth of Apryle lastbypast, come, vnder silence and clud of nycht, fra the said *Toun of Hawik*, to *Eilrig-burne-fute*, and the said *Williame Scott* being than mussellit,<sup>1</sup> at the quhilk place, the said *Jok Scott*, callit the *Suckler*, met with thame ; and pairfra, thay thre past vp the watter, be the space of thre quarteris of ane myle, to ane Cleuch,<sup>2</sup> callit *Birny-cleuche*, betuix *Eilrig* and *Howpaslet* ; quhair, accordiing to pe former appointment, the saidis *Wattie* and *Ingrems Scottis* met with thame : fra the quhilk place thay foure, accompaneit with the said *Williame Scott*, callit of *Satschellis*, come to the saidis landis of *Howpaslet* ; and pair, being bodin<sup>3</sup> with suordis, bandit stalffis, and vtheris wappones, provydit be thame for pe purpois, in ane Cleuch-syde, quhair pe said *Laird of Drumlangrig* his scheip war lying in pair lairis,<sup>4</sup> maist barbaruellie and inhumanelie, as savadge and crewall beistis, destitute of naturale

<sup>1</sup> Disguised ; *mussled*. Old Fr. *emmuselé*.  
hollow between precipitous banks, &c.

<sup>2</sup> A rocky ascent, or cliff. It also signifies a cleft or  
<sup>3</sup> Furnished.

<sup>4</sup> Beds ; folds.

reasone, with pair drawin suordis and vtheris wappones foirfaidis, ran throw þe haill flok of scheip, flew, lamet, and menzet<sup>1</sup> to the number of threscoir of the said scheip, quhairof fouretie or pairby war slane, be streking of<sup>2</sup> pair heidis, and cutting thame in tua throw pair bakis; and the rest of thame, pair spaldis<sup>3</sup> and legis wer strukin away fra thame in maist barbarous maner, and war fa left spreuleing in pair deid-thrawis<sup>4</sup> vpone the grund of the saidis landis; committing pairthrow maist haynous and vnhard of Crewaltie and Oppressioun: And the saidis persones aboue complenit vpone, and ilk ane of thame, ar airt and pairt of the saidis crewall, monstuous, and vnhard of crymes: ffor the quhilk, thay aucht and sould be pwneist be ane exemplarie pwneischment, to the terrour and example of vtheris to commit the lyk heireftir.

THE VERITIE of pair giltines of the quilkis haynous crymes is cleirlye provin, be the TAIKINIS<sup>5</sup> following, viz. 1. BE the Deposition maid be þe said *Jok Scott*, callit *the Suckler*, quha was fend for be THE LADY HOWPASLET to cum to þe *Toun of Hawik*; and at his cuning, haifing met with þe LADY, and with *Jeane Scott*, callit of *Satschellis*, and with þe said *George Scott*, callit *Mariones Geordie*, at þe *Croce of Hawik*, it was pair concludit amangis thame, that *the Laird of Drumlangrigis* scheip sould be all slane: AND for that effect, according to þe appointment than maid, a thre dayis paireftir, *Jok the Suckler* come to *Eilrig-burne-fute*, quhair, in the glomeing,<sup>6</sup> he mett with the said *Mariones Geordie*, and with *William Scott*, callit in *Satschellis*, quha was with þame in companie; quhilk *William Scott* was than mussellit. Lyk as, at þe said *George Scottis* desyre, the said *Jok the Suckler* past with sow and the said *Willie Scott* vp the watter, the space of thre quarteris of ane myle, to ane cleuch callit *Birnie-cleuche*, betuix *Eilrig* and *Howpaslett*, quhair þe said *Wattie Scott* and *Ingrem Scott* met with thame, the said *Wattie* and *Ingrem* haifing plaidis and blew bonnetts: fra the quhilk place thay past togidder to *the lands of Howpaslett*, quhair the said *Laird of Drumlangrigis* scheip lay, and pair flew þame, in maner speificeit in þe Dittay and þe said *Jok the Suckleris* Deposition.—2. To the taikin lykwayis, the said *George Scott* persaveing þat *the Suckler* wald nocht pas forwardis to the committing of the fact, he pairfoir drew his suord, and pairwith thraitnet *the Suckler*, that gif he past nocht with him and thair complices to þe deid, he sould hew *the Suckler* pairwith in peces.—3. LYK AS, in regard of the former Deposition sa maid be *the Suckler*, the said *George Scott* being presentit befor my *Lord Justice Clerk*, my *Lord Aduocat*, and my *Lord Juslice*, and examinat pairupoun; the said *George* was content to tak the giltines of þe said cryme vpon him, gif *the Suckler* wald affirme the vereitie pairof, in his face:

<sup>1</sup> Maimed.  
death.

<sup>2</sup> Off.

<sup>5</sup> Tokens; proofs.

<sup>3</sup> Shoulders. O. Fr. *espaule*.

<sup>4</sup> Struggling in the agonies of

<sup>6</sup> Twilight; after sunset.



Lyk as, the said *George* and *the Suckler*, being confrontit, he ratifeit and renewit his former Deposition and haill circumstances pair of in the said *George* face; and offerit to haif fochin pe Singular Combat with the said *George*, vpon the verritie pair of.—4. To the taikin lyk wayis, pe said *George*, haifing ane dog named *Hyde-the-bastard*, he being convenit at dyuerse tymes with his companionis, brak out in thir woirdis, saying, ‘Sa lang as I and my Bastard brother levis (meaning be his dog), *Howpaslet* fall nocht plenische.’—5. To the taikin also, eftir pe slauchter of the said scheip, the said *George* being suspectit pair of, and vrget be *James Douglas* to geve ane test,<sup>2</sup> quhair he was pat nycht of pe barbarous slaying of thame; becaus he could nocht geve pe said test and cleir him self pair of, he querrellit the said *James Douglas* pairupoun, within the *Towne of Hawik*, and presentit ane bendit<sup>3</sup> pistolet to him, of purpois to haif slane him pairwith; quhilk he wuld half schote, gif he had nocht bene stayit be *James Weymes*, *Johnne Scott* callit *Bony Jony*,<sup>4</sup> and *James Lechen*, quha tuik pe pistolett frome him.—6. To the taikin lyk wayis, the said *George*, being examinat in pe premisses be pe saidis Lordis Examinatouris, vpon the xxviij of December last, and being demandit, quhair he was the tyme of the keeping of the Justice Court of Jedburgh? Declairit, that he come the day of the halding of the said Justice Court to the Toun of Jedburgh, quhilk was vpone ane Thursday; and vpone the Tyfday and Wedinfday of befor, was also in Jedburgh, in maner specifeit in his Deposition: Lyk as, the said *George* being removet for a tyme, and of new re-examinat, he was contrair to his former Deposition, declairing, pat vpone the Sondag, Monondag, Tyfday, and Wedinfday befor the Court, and vpone the Thursday, the day of halding pair of, he was within the *Town of Hawik*, accompaneit with the perones fet down in his posteriour Depositione.—7. To the taikin also, the said *Walter Scott*, at his cuming with *Jok the Suckler* to *Birniecleuche*, the said *Jok the Suckler*, haifing refuset to pas forwardis with him to pe slaying of pe said scheip, the said *Walter*, nochtwithstanding his refuseall, earnestlie delt with him to cum fordwardis, saying to him, ‘Jok, thou art als giltie alreddie as thou canst be, cum fordwardis pairfoir with ws to the deid; and paireftir, thou fall gang with us *Northe*, quhair we will be weill trett and interteneit; for we haif ane place prepairit for our reslett.’<sup>5</sup>—8. To the taikin lyk wayis, the saidis *Walter* and *Ingreth Scottis*, the tyme of pair lait apprehending in pe *Northe*, being inquiryet, gif ony of thame knew *Jok the Suckler*? Thay denyit to pair takeris<sup>6</sup> that evir thay knew him: Bot being brocht to waird to pe *Tolbuth of Edr*, quhair pe said *Jok* being presentit to

<sup>1</sup> Shall not be stocked.

<sup>2</sup> Proof or testimonial.

<sup>3</sup> Cocked.

<sup>4</sup> Bonny, or handsome,

Johnnie. <sup>5</sup> Reception and concealment.

<sup>6</sup> Examinators.

thame, thay nocht only knew, bot be his name askit him faying, ‘ Quidat now, *Jok!* How come thow heir—and quhairfoir ar thow wairdit<sup>1</sup> in this hous?’ SA that be þe taikinis aboue written, þe saidis perfonis giltines of the said fact is cleirlye provin.

PERSEWARIS, Williame Douglas of Drumlangrig, Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat.

PRELOCUTORIS in defence of George, Wattie, and Ingrem, allenarlie,

Mr Thomas Nicolfoun, Laurence Scott, Adame Cunninghame, Aduocattis.

Efter reiding of the DITTAY set down in the sunmondie, at command of my Lord Justice and Assessoris, it is declairit be Mr Thomas Nicolfoun, as prelocutour for George, Walter, and Ingrem Scottis, that he acknowlegis the cryme set down in the Dittay to be haynous and worthie of condigne puneischment; bot as to the Dittay it selff (nocht granting the cryme thairin mentionet to be of veritie) aganis the pannel, alledgis the samyn is nawayis relevant to pas to the knowlege of ane Assyse; nather can the committing of the fact lybellit infer daithe, becaus the grund and fundatioun thair of is vpon tua Actis of Parliament, the first quhair of is the 100 Act of his Maiesteis sevint Parliament, haldin in October 1581, quhilk is only extendit aganis the slayeris and hocheris<sup>2</sup> of horffis, oxin, and vther cattell, the tyme of laubouring the grund; and the vther Act is the 82 Act of his hienes ellevint Parliament, haldin vpon the xxix of July 1587, quhilk is only ane Ratificatioun of the first: Bot the Dittay beiris only the Slauchter and Hocheing of scheip, quhilk is nawayis expreffit nor prohibeit be the saidis Actis: And, thairfoir, the Dittay and Actis of Parliament being difconforme, the samyn can nawayis pas to ane Assyse; speciallie, in respect na penall Statute may be forder extendit nor<sup>3</sup> the samyn is set down *per expreßum*: quhilkis Actis he defyret to be red.

It is ansuerit be my Lord Aduocat, that the mynd and intentioun of the lawis, and making thair of, man<sup>4</sup> be advertit vnto, quhilk is the puneischment of all haynous and detestable crymes, committit be quhatsumeuir way and be quhatsumeuir persone: ffor, als it is estemit ane haynous cryme, be the saidis Lawis, to hoche ane ox or ane horse, sa the cryme is far moir haynous to slay and cut af ane haill flock of four or fyve scoir scheip, and thairby to displenishe and lay waist ane gentilmannis possessioun and rowme; quhilk the haill lawis and Actis of Parliament, vnder the name of ‘ vther cattell,’ expresselie forbidis, and concludis puneischment aganis the committeris: In respect quhair of, the Dittay is maist relevant to pas to ane Assyse, nochtwithstanding of the allegiance aboue writtin.

THE JUSTICE Repellis the allegiance; and findis the Dittay relevant to pas to the knowlege of ane Assyse. Quhairupone the Aduocat askit Instrumentis,

<sup>1</sup> Imprisoned.

<sup>2</sup> Hamstringers.

<sup>3</sup> Than.

<sup>4</sup> Must.

## ASSISA.

Thomas Wauche of Schawis,  
Johne Coluile in Preifloune,  
Gilbert Greirfoun of Beochane,  
George Lyell in Spachhouffis,  
Malcolme Dalrumpill of Wat-  
terfyde,

Robert Hunter in Halywoid,  
Rodger Padzeane of Newtoun,  
Thomas Greirfoun of Barjarge,  
Archibald Menzeis in Enoche,  
Patrik Hair in Glenquhirrie,  
Rob. Phillope, burges of Dumfreis,

Adame Trumhle in Lyntlawis,  
Peter Broun in Durisdeir,  
Johne Mcmorrane of Glaslene,  
James Williamefone in Craufurd-  
toun.

OBJECTIONS *againſt certain Affifors paſſing upon the Inqueſt.*

It is allegit aganis *Thomas Wauche*, that he can nocht be reſſaut vpon this Affyſe, becaus he duellis nocht within the foure-halſis-about. Anſueris, aucht to be repellit, in reſpect he duellis within the Kingdome of Scotland, and he is ſummond to pas vpon the tryall of ane haynous cryme.—The Juſtice admittis him vpon the Affyſe.

It is allegit aganis *Johne Coluile*, that he can nocht pas vpon this Affyſe, becaus he is tennent to *my Lord of Angus*, quha is cum to Edr at the deſyre of the *Laird of Drumlangrig* to aſſiſt this perſute. Anſueris, aucht to be repellit, in reſpect the Erle of Angus nocht preſent, nather as perſewer or defender.—‘Admittis.’

It is allegit aganis *Gilbert Greirfoun*, that he can nocht be admittit, becaus he is tennent to the *Laird of Lag*, quha is preſent at the bar, aſſiſting the *Laird of Drumlangrig* in this perſute. Anſueris, aucht to be repellit, in reſpect he is ane ſewar and na removeable tennent.—The Juſtice, vpon the geving of *Gilbert Greirfones* ayth, that he is ane ſewar, and that he gaiſ na partiall counſell, in preiudice of the pannell, admittis him vpon this Affyſe.

It is allegit aganis *Robert Phillope*, that he can nocht pas vpon this Affyſe, becaus he is the *Laird of Drumlangrigis* penſioner.—The Juſtice, in reſpect of *Robert Phillipis* ayth, gevin be him, that he is nocht *Drumlangrigis* penſioner, and that he lies na guid deid of him, bot as ane vther gentilman of the cuntries reſpectis and honouris him, Reſſaues him vpon the Affyſe.

It was, eſtir his admiffioun and reſſaueing, allegit be *Laurence Scott*, in name of the pannell, that *Robert Phillope* can nocht pas vpon this Affyſe, becaus he is Bailzie Clerk to the *Laird of Drumlangrigis* Regalitie. Anſueris, he can nocht be declyned nor put at the Affyſe, eſtir his ayth tane, and purgatioun of partiall counſall; ſpeciallie, ſeing it is vpon tryell of ane cryme, quhilk is *factum obſcurum et clandestinum*.—The Juſtice ordanis him to remane ane Affyſfour.

THAIREFTIR, the Dittay being of new red, in preſens and audience of the Affyſe, with the Taikynes product be the perſewer for verificalioun thair of, it is allegit be Mr *Thomas Nicolſone*, in name of *George Scott, Walter and Ingrem Scottis*, that the Taikynnis product and red for cleiring of the Dittay, ſould nawayis be reſpectit be the perſones of Inqueiſt, nather ar the ſaidis Taikynnis concluding argumentis to verifie the Dittay. And *ffirſt*, the Depoſitiones maid be *Jok Scott*, callit the *Suckler*, ſould nawayis be reſpectit, becaus he being apprehendit for the ſamyn fact, and haifing confeſſit him ſelf to be *focius eiufdem criminis*, his Depoſitioun can nocht work aganis ony honeſt man quha is innocent; and thairfor ſould nocht be reſpectit. *Secundo*, as to the Taikin foundit vpon *George Scottis* dog, albeit the ſamyn be na grund to infer the Slauchter of the ſcheip lybellit, zit he denyis it. *Tertio*, the Taikin for ſlaying and querrelling of *James Douglas* inferris nothing; becaus he was nocht bund to confeſs or ſchaw him any teſt quaher he was the nycht of the ſlaying of the

scheip ; and as to the Taikin it self, denyis the samyn. *Quarto*, concerning his Deposition maid be him, quhair he was the tyme of the Justice Court of Jedburgh ; the samyn inferris nathing for probatioun of the Dittay ; And as to his contrair Deposition, that he was in Hawik, it can nawayis infer him to be culpable of the cryme. And allegis, that the haill former Taikynnis previs na thing aganis *Walter* and *Ingrem Scottis*. *Item*, the last taikin anent *Walter* and *Ingrem*, that thay war tryet the tyme of thair taking, gif thai knew *Jok the Suckler* ; thair granting or nocht granting thair of can nawayis infer thame to be giltie of the fact.

THE *Laird of Drumlanerig*, being suorne, and his aithe tane thair of, gif<sup>1</sup> he hes just cause to persue the pannell for the crymes contenit in the Dittay, as giltie and culpable thair of ? Declairit, that this Dittay is suorne to him to be of veritie, be honest and credible men, viz. that *George, Walter*, and *Ingrem* war thre of thame that was at the slauchter of his scheip, in maner specifeit in the Dittay : And thairfor, be his ayth, declairit that he hes just caus to persue thame, as doaris of sic ane odious fact. And as to *Jok Scott*, callit *the Suckler*, he hes also hard of his meitting and keiping tryftis with thame in that matter ; bot, in respect he is nocht certanelie informet that he was at the doing of the deid, he can nocht persue him as ane principall committer : And finallie, declairit, that gif he war nocht persuaidit, in his conscience, that the saidis *George, Wattie*, and *Ingrem Scottis* war the special slayeris of the scheip, (be quhais direction the samyn was done, remittis that to thame selfis,) he wald nocht haif followit thame thairfor.—Quhairvpone my lord Aduocat askit instrumentis.

My Lord Aduocat, for preving of the Dittay, repeittis *the Laird of Drumlangrigis* ayth and Declaratioun : Producet the Depositiones of *Jok Scott*, callit *the Suckler* ; and repeittis his ratification thair of in judgement, and constant affirmation of the veritie thair of in the vtheris thre faces :<sup>2</sup> And lykwayis, repeitis the Actis of Parliament red, quhairvpone the Dittay is foundit : And desyres the Assyse to consider the haynousnes of the cryme ; and Protestis for Wilfull Error aganis thame, gif thay Acquit the pannell thair of.

VERDICT. The Assyse, all in ane voce, be the mouthe of the said Thomas Wauche of Schawis, chancellor, stand, pronuncet, and declairit the saidis *George Scott, Walter Scott*, and *Ingrem Scott*, to be flylet, culpable, and convict of the actual slaying of the said Laird of Drumlangrigis scheip, in maner specifeit in the Dittay : AND felyk, stand, pronuncet, and declairit the said *Jok Scott*, callit *the Suckler*, to be Culpable, flylet, and convict of being vpone the counsell and foirknowledge of the fact aboue writtin, and in keiping of dyuerse tryftis and meattings with the vther thre, conforme to his awin Deposition : And Clengis

<sup>1</sup> If.<sup>2</sup> When confronted with them.

him of the actual deid, be fleing away fra the doing thair of, befor it was comittit.

SENTENCE. The Justice, be the mouth of Johnne Dow, dempfter of Court, Decernit and Ordanit the saidis *George Scott*, *Walter Scott*, and *Ingrum Scott*, to be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis and geir to be efcheit and inbrocht to his Maiesteis vfe, as culpable and convict of the crymes aboue specifeit. AND lykways, Ordanit the said *Jok Scott*, callit *the Suckler*, to be tane bak to waird, thair to remane vnto the tyme he (the Justice) be advyset with the Lordis of Secreit Counfall, anent his dome.<sup>1</sup>

## APPENDIX ILLUSTRATIVE OF THE PRECEDING TRIAL.

### I. LETTER, the Laird of Drumlanrig to Murray of Lochmaben.<sup>2</sup>

RIGHT WORTHIE AND LOWING BROTHER,

SE remember, in on of my former Letteres, I schew ȝow, þat I had gotin sum tryall<sup>3</sup> of that uylde and barbarous uillanie quibill was comitit, in þe slaying of my scheip, quhen I was last at Court; quhairin I did than write þe more spairinglye, being lothe (in respect of ȝowr griter affaires) to truhill ȝow with it, till I had brocht it till sum further cleirnes; quhill now I have done, and hes tuo fallows presfentlie in hand þat war actoris in it; þe on callit *Jok Scott the Suckler*, quho hes confessit þe simpell treuth, in all poyntis, both of his ain parte, and þe rest þat war with him at þat filthie actioun; to wit, *Geordie Scott the Souter*, callit *Mariounes Geordie*, *Watt Scott*, callit *Braidis Wattie*, *Willie Scott*, callit of *Satchelis*, and *Ingrum Scott*. This *Suckler*, in his Confessioun, he condifendis cleirlye both vpoun þe tyme, place, and forme of thair meiting and pairting, with all wther takinis and circumstances þat past amongst thame, quhen they war togidder (as his Deposition beiris.) Nochtwithstanding this vther, callit *Geordie Scott the Souter*, (quhom I have also in handis,) standis ȝit to his denyall, altho they be many grit presumpciounis of his guiltinefs; aluayis<sup>4</sup> *the Suckler*, being fundry tymes examinat and confrontit with him befor THE LORDIS OF COUNSALL, he abydis constantly at everye poynt of his first Confessioun; and offeris, nocht only to fecht *the Souter* on it, bot all þe rest, everie on of thame efter another, quhensoever they can be had, gif it will pleis HIS MA<sup>TIE</sup> and THE COUNSALL to suffer him. The vther thrie ar fugitiues for that and vther crymes of Thift and Slaachter; and, as I wonderstand, ar all out of the countray, sum in *Irland*, and sum ellis quhair; vtherways, befor this tyme, I think I had fund meanis to haue gotin thame in handis, (ȝit according till our auld Scottis proverb, 'Ane ȝule feist may be quat at Pafe!') Quhen perhapis they may imagin it be forgot.) In the meintyme, let me intreit ȝow, þat ȝe will do me that fauour to motioun this maiter to HIS MA<sup>TIE</sup>, quhairby I may have it, by his Letter, recommended to þe Counfall, nocht only for þe exact tryall and punischnent thair of to þe daithe, for þe wrang that is alredie done, bot also to terrife all other malefactoris from attempting þe lyk heirefter; quhillk, I protest to God, I ponder more in respect of þe preparatiue and consequens þat may follow thairvpoun to þe preiudice of þe comounweill of þe countray, in cais it be lichtlie passit over vnpunischt, than for any particular of my awin. Now, gif ȝe find it expedient, it war nocht amis, seing the *Shanjer*<sup>5</sup> and *Secreter*<sup>6</sup> (quba knawis þe

<sup>1</sup> It is likely that the Suckler had been promised his life, when he turned informer; but being a most dangerous character to turn loose on society, the public prosecutor appears to have been instructed by the Council to rake up a few of his former misdeeds, and have him cleverly put out of the way. See the following Case, Jun. 21, 1616.

<sup>2</sup> From the Original, preserved among the *Dennistown MSS.* Adv. Library. <sup>3</sup> Proof; evidence. <sup>4</sup> Nevertheless.

<sup>5</sup> The Lord Chancellor, Alexander Earl of Dunfermline.

<sup>6</sup> Thomas Earl of Haddington.



hail estate and progress of this business) as to be with HIS MA<sup>TIE</sup> at Court, that se could have thame neir-hand by, quhen se propoun it to HIS MA<sup>TIE</sup> at Court, in cais he hapin to desyre thair opinioun in it. And this, I wald besek seow to do with all pe convenient haist seow can, pat I may have seowr answer with HIS MA<sup>TIES</sup> Letter befor pe seuinth or aucht of pe nixt month, becaus I do intend, God willing, at pat tyme, to have thir tuo fallows, at leist on of thame, put to the tryall of ane Assyse; at quhilk tyme (if nocht befor thane) I do assuir my self pat God fall mowe pe hart of him quho standis most obstinatlie to his denyall, euin to confes the treuth, as pe other hes done: albeit thair be sum buisie-headit men heir, quhom I will nocht name at this tyme, pat wald wis pe contrair; and ar deiling, be all meanis possibill, so far as in thame liis, to pat effect; bot be pe grace of God, and HIS MA<sup>TIE</sup> fauowr, with seowr help, I howp to disapoynt jame. As for the rest of my particulars, I trust seow will nocht be forgetfull of thame; and when seow find seowr auin tyme, will let me knaw, pat I may luik for in jame. So I hawe no more to say, bot alwayis efter on<sup>1</sup> I rest,

Seowris in quhat I can to serue seow,

EDINBURG, the vi day of  
Januar, 1616.

DRUMLANGRIG.

Seow will do me pe fauowr to present my humbill seruice to seowr lady.  
To his muche honoured and worthie broper **JOHNE MURRAY** of Lochmaben, Grume of his Ma.  
Bed-chamber, Thes.

## II. "CONTRACT BETUICH THE SCOTTIS AND THE KERRIS."

(It has already been noticed, in the Introduction to the present Trial, that the Editor has been fortunate enough to discover the Original BAND or CONTRACT referred to by *Sir Walter Scott*, preserved in Record of Deeds,<sup>2</sup> Mar. 23, 1564. This remarkable and interesting document is preceded by a solemn entry in the Register, in these words. "In presens of the Lordis of Counsaile, compeirit (SIR) **WALTER SCOTT of Branzhobae**, with his Curatouris vnderwrittin, personalis, except ane nobill and mychtie lord, *James Duke of Chateaubault*, quha compeirit be *Maister David Borthuik*, his procurat, one that ane pairt; and **SIR WALTER KER of Cesfurde, kny<sup>t</sup>**, for him self, and takand the burding vpoune him for his barnis, and the remanent of his kynd freindis, specifit and content in the Contract vnderwrittin, personale, on that vther pairt; and gair in the samyn, subserluit with thair handis, as followis; and desirte the samyn to be insert in the Bukis of Counsaile, and to hawe the strenth of ane Act and Decreit of the Lordis thairof, and thai to interpone thair auctoritie to the samyn," &c.

It is only necessary, farther, to refer the reader to the valuable annotations of *Sir Walter Scott*, appended to 'The Lay of the Last Minstrel,' for a perfect knowledge of the deadly Feuds which had so long raged between two of the greatest Border Families, the SCOTTIS and KERRIS, to 'staunch' which was the professed object of the present BAND.)

AT EDINBURGHE, pe xxij day of Marche, the seir of God Im.Vc.lxiij zeiris. It is appointit, aggreit, and finalé concordit, betuich rycht honorabill menne, **SIR WALTER KER OF CESFURDE, KNY<sup>t</sup>**,<sup>3</sup> for him self, and takand pe burding vpoune him for his barnis,<sup>4</sup> and for his bruder *Mark Commendater of Neubottle*, and his barnis; *Johne Hume of Coldenknowis*, and his bairnis; *Andro Ker of Fawdounfyde*, his bairnis and breder;<sup>5</sup> *Thomas Ker of Marfingtown*, his fader-bruder,<sup>6</sup> and pair bairnis; *George Ker of Lyntoune*, his bairnis, his ovis,<sup>7</sup> and bruder-bairnis;<sup>8</sup> *Richard Ker of Gailfchaw*, his bairnis and breder; *Andro, Williame, and Johne Kerris*, brether to *Sir Thomas Ker of Pharynhirf, kny<sup>t</sup>*; *Mark Ker of Kippesfchaw*, and his sone *Robert Ker of Bothtown*; *Robert Ker* elder, burges of Edinburgh; and all vperis pair barnis, brether, kynne, freindis, menne, tennentis and fersvandis, except pe freindis vnder specifit, nocht comprehendit vnder jis appoyntment, one pat ane pairt; AND **WALTER SCOTT OF BRANXIOLEME AND BUCKLEUCH**,<sup>9</sup> with consent and assent of ane rycht michtie

<sup>1</sup> Always after one; steady; unchangeable.

<sup>2</sup> General Register House, Vol. V.11. fol. 131.

<sup>3</sup> Ancestor

of the Ducal Family of Roxburgh. He married *Isabel*, daughter of *Sir Andrew Kerr of Fernihirst*.

<sup>4</sup> Children.

<sup>5</sup> Brothers.

<sup>6</sup> Uncle.

<sup>7</sup> Grandchildren.

<sup>8</sup> Nephews and Nieces.

<sup>9</sup> He married *Lady Margaret*

*Douglas*, eldest daughter of *David*, seventh *Earl of Angus*, niece of the Regent Morton. This great man died Apr. 17, 1574. It was his son who performed the matchless exploit of relieving *Kimmont Will*, Apr. 13, 1596, from the Castle of Carlisle, being accompanied with a mere handful—only 200 horse!

and noble lord, *James Duike of Chattaularault, Erle of Arane, Lord Hamiltoun, &c.*; *Sir Johnne Maxwell of Terreglis, kny<sup>1</sup>*; *Sir Johnne Bellendene of Auchnoul, kny*, Justice Clerk; *Maister Johnne Spens of Condé, Advocat* to our sowerane Lady; *Andro Murray of Blak-Barony, Michell Balfour of Burlie, Thomas Scott of Haning, and Robert Scott of Thirfane*, Curatouris to þe said WALTER, for þair interes, for him self, and takand þe burding vponne him for HIS HAILL SURNAME, and þe Relict and bairnis of vmq<sup>le</sup> *Sir Walter Scott of Branzholme, kny<sup>2</sup>*, his gudfether,<sup>1</sup> and als for *William Cransfoune of that ilk*, his bairnis and breder, the brether of vmquhile þe *Laird of Chisholme*; *Johnne Glaidfianis of that ilk*, and his bernis; *James Langlandis of that ilk*, and his bairnis; *Walter Vache of Syntoun*, and his barnis; and for *James Ormifoun of that ilk*, conditionally, as followis; and als, for all vperis his kynne, freindis, servandis, menne, tennentis, assistaris, and pairtakeris, one þat vper pairt; in maner, forme, and effect, as efter followis. THAT IS TO SAY, þe said LARD OF BUKCLEUCHT, nor na vper for quhome he takis burding, as said is, fall ony way perlew þe said LARD OF CESFURDE, nor na vper comprehendit vnder þis present appointment, criminalé nor civille, for ony Slauchter or blude committit in tyme bipast, and is content to be perpetuallie secludit pairfra, *per pactum de non petendo*; and fall neuer move actionn, beir hatrent, grudge, or displefour pairfor, bot bury and put þe samyn vnder perpetuale silence and obliuione; and to leif in perfite amité, lufe, and Cristiane nychtburheid, in all tymes cuming. PROVIDING alwayis, þat heirby þat þe said LARD OF BUKCLEUCHT, and all vperis quhome he takis burding, be na wayis preiugit anent þair actionis quhatfumeir þat þai haif intentit or may intent aganis *Sir Thomas Ker of Phairneyhirf, kny<sup>2</sup>*, *Sir Andro Ker of Hirfell, kny<sup>2</sup>*, *Robert Ker of Woidheid, Johne Haldane of that ilk, Gilbert Ker of Prymsydloch, James Ker of Torbet, Robert Ker of Gradene, Andro Ker of Hietoune*, þair barnis, brether, and seruandis, and all vperis þat ar nocht comprehendit vnder þis appointment; bot þat þai may perlew and obtene þe samyn as þai think maist expedient, be þe law; and þat becaus þe saidis personis, being requirit be þe said LARD OF CESFURDE to cum with him, and to do þair devore, for þair pairt of þis appointment, hes refusit to do þe samyn; and als, becaus þat in þis present appointment, þair is na proffett nowther gevin nor takin, quhairby þe said LARD OF BUKCLEUCHT, and his freindis and vperis soirfaisid, ar preiugit anent þair saidis actionis; and þat it is þe expres mynd of all þe pairteis presentlie contractaris, þat þe samyn be fullie leifervit: And siclyk, vpon þe vper pairt, þe said LARD OF CESFURDE, nor na vperis quhome-for he takis þe burding, fall in ony wyise perlew þe said LARD OF BUKCLEUCHT, nor na vperis his kynne, freindis, servandes, menne, tennentes, assistaris, or pairt-takaris, criminalé or civilé, for ony slauchter or blude committit in ony tyme bipast; and is content to be perpetuallie secludet pairfra, *per pactum de non petendo*; and fall nevir move actionn, beir hatrent, grudge, or displefour pairfoir, bot bury and put þe samyn vnder perpetuall silence and obliuione, and to leif in perfite amité, lufe, and Cristiane nychtbourheid, in all tyme heirfter. ATTOUR, it is heirby expresse and saythfullie contractit, þat for mair suir removeing, flenching,<sup>2</sup> and away-putting of all inymité, hatrent, and grudge, standand and consavet betuix þe saidis pairteis, throw þe unhappie slauchter of þe said vmq<sup>le</sup> *Sir Walter Scott of Branzholme, kny<sup>2</sup>*,<sup>3</sup> and for þe better continuance of amité, favour, and freindship amangis þame in tyme cuming, the said SIR WALTER KER of *Cesfurde, kny<sup>2</sup>*, fall, vponn the xxiiij day of Marche instant, cum to THE PARROCHE KIRK OF EDINBURCH, now commonelie callit SANCT GEILLIS KIRK, and þair, befor none, in sycht of þe pepill present for þe tyme, reuerently vponn his kneis ask God mercy of þe slauchter soirfaisid; and siclyk, ask forgevenes of þe same fra þe said LARD OF BUKCLEUCHT, and his freindis, quhilkis salhappin be þair present; and pairrefter promise, in þe name and feir of God, þat he and his freindis fall trewle keip þair pairt of þis present Contract, and fall stand trew freindis to þe said LARD OF BUKCLEUCHT and his freindis, according heivnto, in all tyme cuming. THE quhillk þe said LARD

<sup>1</sup> Grandfather.<sup>2</sup> Stanneching; extinguishing.<sup>3</sup> This great man was unhappily slain on the streets of Edinburgh, in October, 1552. To pave the way for a lasting reconciliation between the Clans, a Remission was granted to Sir Walter Kerr of Cessford, and to John Kerr of Fernihirst, under the Great Seal.

OF BUCKLEUCHT fall reuerentle accept and ressaue, and promise, in pe feir of God, to remit his grudge, and neuer remember pe same; bot fall observe and fulfill his pairt of pis present Contract to pe said LARD OF CESFURDE, according to pe tennour pairrof, siclyk, in tyme cuming. AND als, *Thomas Ker*, secund sone to pe said LARD OF CESFURDE, fall, God willing, solempnizeat and compleit pe band of matrimony, in face of Christis Congregationne, with . . . . *Scott*,<sup>1</sup> sifter to pe said LAIRD OF BUCKLEUCHT, betuix jis and pe last day of Maij nixttocum, but ony tocher<sup>2</sup> to be payit be hir said bruder, or ony vper freindis with hir: And pe said LARD OF CESFURDE fall provide pame ane honest and reffonable sustentatioun and leving, efferand<sup>3</sup> to pair elstait and conditione; and als, fall caus pe said . . . . be infest in her virginité, in coniunct-fee or lifent, with hir said future spon, and pair airis lauchfullie gottin or to be gottin betuix pame, quhilk failzeing, pe said *Thomas* airis quhatfumeur, in all and haill landis or annualrent of pe avall of ane hundreth merkis be zeir, to be haldin of pe Supérieur be Resignatioun or Confirmatione, at pe pleour of hir said bruper; and pairstir, pe said . . . . to be infest in coniunct-fee or lyfrent with hir said future husband, at his and his said faderis gude will and pleafour, in sik landis and leving as pai pleis mak hir; quhilk is referit in pair will. AND siclyk, *George Ker*, eldest sone and apperand air to pe said *Andro Ker of Fawdounfyd*, fall, God willing, solempnizeat and compleit pe band of matrimony, in face of Christis Congregationne, with *Jonett Scott*, tocher-fré; and siclyk, failzeing of hir be deceis, befoir pe said mariage, pan and (in) pat caise pe said *George*, and failzeing of him be deceis, his nixt bruper soirsaid, fall solempnizeat and end mariage with hir nixt sifter pat falhappin pan be alyve, tocher-fré; and sua, salang as pe said *Andro* fall haif ane sone, and the said *Jonet* ane sifter, pe ane to marie pe vper tocher-fré, as said is; ay and quhill mariage be anis complete amangis pame: AND gif (it) falhappin pe said mariage to failzie in pe saidis *Georgis* or ony vper his brederis defalt, pan and in pat cais, pe said LARD OF CESFURDE, be the tennour heirof, oblißis him and his airis to pay and deliuer the sowme of ane thousand merkis to pe said *Jonett*, or to hir vper sifter to quhome pe said mariage fall failzé, within XL dayis nixt estir pe said failzé be kuawin. ATTOURE, becaus pe said LARD OF CESFURD hes ofbefoir requyrit and desyrit, vnder pe forme of instrument, *Sir Thomas Ker of Pharnyhirsl, kny<sup>t</sup>*, *Sir Andro Ker of Hirsell, kny<sup>t</sup>*, and *Gilbert Ker of Prymfsydloch*, for pame and pair freindis to adheir, concur, and assist to him in pis present agreeance, and -at pai haif refusit pe samin, as is aboue writtin, thairfoir pe said LARD OF BUCKLEUCHT, nor his airis, fall nocht aggré with pame, or ony of pame, by<sup>4</sup> pe awyfe of pe said LARD OF CESFURD and his airis; and gif it falhappin pe said LARD OF BUCKLEUCHT, or his airis, to aggré with pe saidis *Sir Thomas*, *Sir Andro*, and *Gilbert*, or ony of pame, by<sup>4</sup> pe awyfe of pe said LARD OF CESFURD, befoir pe completing of mariage betuix pe said *George* or ane of his brethir with the said *Jonet* or ane of hir sifteris, as said is, without pe said LARD OF CESFURDE be previe and consent pairto, than and in pat cais, pe said *George*, nor nane of his brethir, salbe haldin or astricteit to compleit pe said mariage, bot salbe fré pairrof; nochtwithstanding pis present Contract, and siclyk as gif the samyn had neur bene maid. AND lik wyife, gif it falhappin pe said LARD OF BUCKLEUCHT to aggré with pe saidis personis, or ony of pame, estir pe completing of pe said mariage betuix ony of pe said *Androis* sonis and pe said *Jonet*, or ony hir sifteris, by<sup>4</sup> pe awyfe of pe said LARD OF CESFURDE, than and in pat caise, pe said LARD OF BUCKLEUCHT oblißis him, with auise of his Curatouris soirsaidis, to content

<sup>1</sup> JANET, the eldest sister of Sir Walter Scott of Buccleuch, was married to *Sir Thomas Kerr of Fernihirst*, in anno 1569; 2. MARGARET, to Sir John Johnston of that ilk; 3. ELIZABETH, to 'the Captain of Crawford,' Sir John Carmichael of Meadowflat.—*Wood's and Crawford's Peerages*.   <sup>2</sup> Without any dowery or marriage-portion.   <sup>3</sup> *Efferring*; corresponding.   <sup>4</sup> Without; contrary to; independent of.



and pay to þe said LARD OF CESFURDE þe soume of ane thowfand merkis, as for þe tocher of þe said *Jonet*, or ony vper her syster þat happnis to be nearest, within XL dayis nixt eftir þe said aggreance, gif it happynnis to be maid, as said is; but<sup>1</sup> ony exceptionne or remeid be vertew of þis present Contract, quhairby þe said mariage suld be tocher-fré, as is aboue specifeit, to be proponit or allegeit in þe contrar. PROVIDING alwayis, þat gef þe said LARD OF BUKCLEUCHT aggré with þe saidis *Sir Thomas, Sir Andro, and Gilbert*, or ony of þame, with auise of þe said LARD OF CESFURDE, than and (in) þat cais þe said LARD OF CESFURDE fall not laubour nor delyre þat pair offeris, ellis<sup>2</sup> offerit, be diminist, bot rather þat þai be augmentit. AND zit, mairouer, becaus pair is particularelie deidlie Feid and actionis betuix þe said WALTER KER OF CESFURDE, *knycht*, and þe said *James Ormsfoune of that ilk*, thairfoir þai salbe compromittit<sup>3</sup> in *David Spotiswod of that ilk*, and *Thomas Hoppringill of that ilk*, to be chofin for þe pairt of þe said LARD OF CESFURDE; and in *James Langlandis of that ilk*, and *Nicholace Ruperfurde of Hundley, knycht*, to be chofin for þe pairt of þe said *Lard of Ormsfoune*; and in odmanne and ouermanne<sup>4</sup>, in caise of varence or discord betuix þe saidis Jugis, to be commonel<sup>5</sup> chofin be bayth þe saidis LARDIS OF CESFURDE and BUKCLEUCHT, anent þe taking, be þe said *Lard of Ormsfoune*, of þe landis of *Nether Aucrome* and *Bailleie* pairrof, in Tak, our þe said LARD OF CESFURDE heid, it being his kyndlie rowme<sup>6</sup> of befoir, as he allegis; and anent þe slauchter of vmq<sup>10</sup> . . . . *Best*, servand to þe said LARD OF CESFURDE; AND als, anent all vper materis, actiones, querrellis, and debeittis betuix þame; and þai to be bund to abyde at þe decreit and sentence of þe saidis Juges and ouermanne, or maist pairt of þame, deliuerand in þe saidis materis, quhilkis salbe haldin to deliuer pairin, betuix þis and þe first day of August nixtocum; and ane compromit<sup>7</sup> to be maid pairupone, and extendit in ampill forme, as vse is in sic caissis. AND gif it falhappin þe said *Lard of Ormsfoune* to reclame fra þe Decreit to be gevin be þe saidis Jugis and ouermanne, or maist pairt of þame, and nocht to abyde pairat, and fulfil his pairt pairrof, as he fall be ordanit be þe same, than and in þat caise, þe said LARD OF BUKCLEUCHT fall refuse him, and fall nowther manteine, fortifié, nor assit him pairrester, in ony tyme cuming; bot fall tak pairt and fortifié, in honest and lesum<sup>8</sup> maner, with þe said LARD OF CESFURDE, in his contrar. AND gif þe said LARD OF CESFURDE falhappin to reclame fra þe said Decreit to be gevin as said is, than and in þat caise, þe said LARD OF BUKCLEUCHT fall tak pairt with þe said *Lard of Ormsfoune*. AND finalé, þe saidis pairteis, be þe tennour beirof, bindis and obliissis þame and pair airis, þat þai and personis abouewrittne, for quhame þai haue takin burding, respectiue, for pair awin pairtis as said is, fall in all tyme cuming keip and retene amité, freindschip, lufe, favour, and kyndnes, ilkane to vperis,<sup>9</sup> without ony grudge, or occasioun to be mouit in þe contrar, be þame or ony of þame, to vperis,<sup>10</sup> be ony maner of way, in tyme cuming. AND gif it falhappin ony contraverse<sup>11</sup> or pley to fall betuix ony of þe freindis abouewrittin, comprehendit vnder þis present Contract, for taking of vperis steding or rowme,<sup>11</sup> owther in tyme bigane or tocum, thanne and in þat caise, þe mater salbe first schawin to þe saidis LAIRDIS OF CESFURDE and BUKCLEUCHT, be quhais auise þe saidis pairteis sal cheis<sup>12</sup> soure frendis, with ane ouermanne as þai can aggré one, for ending and deciding of þe said contraverse; and gif þe pairteis can nocht aggré one þe said ouerman, þan and (in) þat cais þe saidis LARDIS OF CESFURDE and BUKCLEUCHT fall cheis ane ouermanne quhame þai can aggré one; quhilke ouermanne being chofin be þame, it fall nocht (be) lesum to þe pairteis to refuse him, bot to approve and chuse him: and gef þe saidis LARDIS can nocht aggré one þe said ouerman, than and in þat cais, þai fall huimlé swte<sup>13</sup> and delyer þe QUENIS MAIESTIE and COUNSALE to cheis ane ouermanne; quha being chofin, þe pairteis salbe haldin and bund to stand content with him, and to abyd at his and þe Arbitratouris delyuerance, or maist pairt of þame delyuerand; vpon þe contra-

<sup>1</sup> Without, &c.<sup>2</sup> Already.<sup>3</sup> Compromised; referred to the arbitrament of.<sup>4</sup> Umpire and

Oversman.

<sup>5</sup> Mutually.<sup>6</sup> Certain property held by him and his ancestors as *kyndlie tenants*.<sup>7</sup> Award;

Decreit Arbitral.

<sup>8</sup> Lawful.<sup>9</sup> To each other; each party to the other.<sup>10</sup> Each other.<sup>11</sup> For

taking each other's farm-standing or possession.

<sup>12</sup> Elect; choose.<sup>13</sup> Make suit; petition.

verfè pat fallhappin to be debatabill for pe tyme, but<sup>1</sup> ony declaratiounne to be maid in pe contrar. AND for obferuing, keeping, and fulfilling of all and andré pe premisses, aper of pe faidis pairteis bindis and obliiss jame faithfullie to vperis,<sup>2</sup> in pe maist strait forme and ficker stile of obligatiounne can be dewifit, but<sup>3</sup> fraud or gyle, na remeid nor exceptiounne of law quhatfumeuir to be proponit or allegeit in pe contrar; renuncand pe famin, for jame, pair airis, executouris, and assignais, for now and evir, be jir presentis. AND for pe mair securité, pai ar content pat jir present Contract be infert and registrat in pe Bukis of Counsale, and decernit to hane pe strenth of ane Act and Decreit of pe Lordis pairfo; and pat Letteris and executoriallis to be direct pairvponne, for compelling of aper of pe faidis pairteis to fullill pe samyn, for pair pairteis, to vperis, in forme as effeis: AND for acting and registratng heirof, pe faidis pairteis makis and constitutis, be jir presentis,<sup>4</sup> [*Maister David Borthuik*] thair vndowit and irrevocabill procuraturis, gevand and committand to jame, coniunctlé and feneralé, pair full power, expres bidding, and chairge, to compeir befoir pe Lordis of our foverane Ladeis Counsale, quhatfumevir dayis and place lauchfull; and pair defyir jir present Contract to be registrat in pe faidis Bukis of Counsale, and pe faidis Lordis to interpone pair auctorité pairto; promittand<sup>5</sup> to abyd ferme and stabill, &c. IN WITNES of pe quibill thing, bayth pe faidis pairteis and Curaturis abouewrittin, for pair intereis, hes fubfcriuit jir present Contract with pair handis; and als DAME JONET BETOUNE,<sup>6</sup> pe relict of pe said vmq<sup>le</sup> *Sir Walter*, hes, in signe of hir consent to pe premisses, fubfcriuit pe famin with hir hand, day, zeir, and place foirlaides, befoir jir Witneffis, *Sir James Douglas of Drumlanrig, knyght, Johne Stewart of Trocquair, Patrik Murray of Fallowhill, . . . . Murray of Cokpule, and Thomas Sinclair*, Writter to pe Previe Seall, with vperis diuerfe.

[*Sic fubfcribitur*] WALTER KER OF CESFURD. WALTER SCOT OF BUCKLEWCH. JANET BETOUNE, LADY OF BUCKLEWCH. JAMES,<sup>7</sup> THOMAS SCOT OF HANYNG. M. JOHNE SPENS, Curatour abouewrittin. JOHNE MAXVELL. J. BELLENDENE, as Curatour. ROBERT SCOT OF THIRLSTANE,<sup>8</sup> with my hand at pe pen, led be *David Lauté*, Notare Publict.<sup>9</sup>

### III. BAND *fubfcreuit* at KELSO, be THE BARONIS, &c. of the *Scheresfdomes* of BERWIK, &c. 6th April, 1569.

(THE Editor believes that little apology will be deemed requisite for once more encroaching on the limits of this work, in his desire to preserve, in this place, the following remarkable document, the original of which is deposited in the General Register House, Edinburgh. The reader will readily perceive, that it is chiefly from an extensive perusal of such original and authentic Papers, that he can expect to arrive at a minute knowledge of the internal state of Scotland during the darkest periods of our History.)

BE IT KEND till all men be jir present letteres, WE THE BARONIS, landit men, Gentilmen, Inhabitantis of THE SCHERESFDOMES of BERWIK, ROXBURGH, SELKIRK, PEBLIS, and Provestis and Baillies of Burrowis and Townis within pe faids boundis, in name of pe Inhabitantis of pe samyn, vnder-fubfcriuand, to be bundin and obleift, and be pe tennour heirof, bindis and obleiiss ws to pe KINGIS MAIESTIE, oure foverane lord, and his dearest coufing JAMES ERL OF MURRAY, Lord Abernethie, REGENT to his hienes his realme and lieges, as followis: THAT IS TO SAY, floramekill as my said

<sup>1</sup> Without.

<sup>2</sup> Each other.

<sup>3</sup> Without.

<sup>4</sup> In all deeds where a clause for Registration is inserted, a blank is left to insert the name of the Procurators. In the present instance, all the parties appeared personally, with the exception of the Duke, who had granted a procuration to the person whose name is filled up, according to custom, in the Register.

<sup>5</sup> Promising.

<sup>6</sup> This able Lady has been rendered immortal by *Sir Walter Scott*, in his Lay of the Last Minstrel. She was daughter of *John Beaton of Creich*, and possessed the hereditary abilities of her family to such a degree, that the superstition of the vulgar attributed them to magic. After her husband's murder, she rode at the head of her Clan.

<sup>7</sup> James Duke of Chastelherault, who uniformly adopted this princely mode of subscribing his name.

<sup>8</sup> Ancestor of Lord Napier; a better swordsman than an expert clerk. It was by no means unusual, at that period, that persons of considerable rank were but indifferently skilled in scholarship. All business of importance was of old transacted by churchmen or notaries; the office of which last was frequently performed by priests, who thereby added considerable emoluments to the revenues of their monastery.

lord Regentis grace hes at all tymes, and specialie sen his acceptatioun of þe regiment of þis realme, takin greit and paynefull travellis in þe quieting of þe bordouris pairfoi, and namelie of þe rebellious people Inhabitantis of þe cuntrie of LIDDISDAILL, and vtheris Thevis, AND we having regard to the innumerabill slauchteris, fyre-rafigis, heirschippis, and detestabill enormities, dalie committit be þame vpoun þe peceabill and trew subiectis of þis realme, in tymes bipast, quhairin pai ar nocht abill to execute pair crueltie, gif we, in þe feir and obedience of God and our souerane lord, ansauldie<sup>1</sup> concur togidder to resist þame, THAIRFOIR we, and enerie ane of ws, underscriving, be thir present letteres, avowis and declairis our selfis obedient subiectis to THE KINGIS MAIESTIE, oure onelie souerane lord and his authoritie, and professit inymeis to all Thevis, Inhabitantis of THE CUNTRIE OF LIDDISDAILL, ESKDAILL, EWISDAILL, and ANNANDDAILL; and in speciall, to all perfonis of þe fairnames of ARMESTRANG, ELLOT, NIKSOUN, CROSER, LITTILL, BATESOUN, THOMSOUN, IRWING, BELL, JOHNNESTOUN, GLENDONYNG, ROUTLAIGE, HENDERSOUN, and SCOTTIS OF EWISDAILL, and wperis notorious Thevis, quhair euir pai dwell, and to pair wyffis, bairnis, tennentis, and seruandis; Obliffand ws, þat we nor nane of ws at any tyme heireftir, fall resset, supplé, or intercommoun with ony of þe saidis Thevis, pair wyffis, bairnis, or seruandis, or gif þame meit, drink, hous, or herbry; or suffer ony meit, drink, or victualis to be bocht, had, or cairit to þame, furth or throw our landis, baillieries, townis and boundis, quhair we may lett:<sup>2</sup> Nor zit fall we tryst or haue intelligence with þame, in previe or apairt, without knowlege and leif of THE WARDANE obtein to þat effect: Or suffer þame to refort to Marcattis or trystis, throw oure boundis: Nor zit permit þame, pair wyffis, bairnis, tenentis, or seruandis, to dwell, remane, or abyde, or to pasture pair gudis<sup>3</sup> vpoun ony landis outwith LIDDISDAILL, except sic<sup>4</sup> as within viij dayis estir þe dait heirof, fall fud sufficient and responfall fouerteis<sup>5</sup> to THE WARDENIS OF THE MARCHES and their clerkis, that pai fall reforme all enormities committit be þame in tyme bipast, and keip gude rewle in tyme cumming, and be obedient to þe Lawis, quhen pai salbe callit vpoun: AND all vtheris not findand þe said fouertie, within þe said space, we fall persw to þe deid with fyre, sward, and all vther kynd of hostilitie, and expone<sup>6</sup> þame, and all þing in pair possessioun, in pray to þe men of weir, as oppin and knawin inymeis to God, THE KING oure souerane, and this Commoun-well, without fauour, assurance, or freindschip, Renunceand all kyndnes, Bandis, promiseiss, assurances, and conditionis, þat we or ony of ws hes enterit in with þame, in ony tyme bigane, befoir þe dait heirof, as we will ansuer to God, and vpoun our dewitie and allegiance to our souerane lord his authoritie, and Regent foirlaid. AND in caise we failþe in ony pairt of þe premiiss, or revelis not þe contravenaris of þis BAND, gif we knaw þame, we ar content to be pvneist pairfoir, according to THE GENERAL BAND, and panis contenit pairin. As ALSUA, in caise in þe resistance or persute of ony of þe said Thevis, it salhappin ony of þame to be flane and brint, or ony of ws and our freindis to be harmit be þame, we fall euir esteme þe qwerrell and deidlie Feid equal to ws al, and fall neur aggré with þe same Thevis, bot togidder, with ane consent and avyfe: And in þe menetyne fall tak afauld, trew, and plane pairt, ilk ane with vther, and specialie, fall assist THE LARD OF BUKLEWCH, and vtheris LARDIS maist ewest<sup>7</sup> to þe saidis Thevis, at all occasiounis convenient. THIS our present BAND quhill þe first day of August nixtocum in full effect and force inviolable to endure, to þe effect a perpetuale

<sup>1</sup> Sincerely; heartily; literally, *one-foldly*, without duplicity. Even to this day, *two-fold*, *two-faced*, &c. are employed to denote *double* or *deceitful* persons. <sup>2</sup> Hinder. <sup>3</sup> Flocks of sheep, or cattle. <sup>4</sup> Such persons.

<sup>5</sup> Cautioners. <sup>6</sup> Expose; give them up. <sup>7</sup> Nearest in point of local situation. It must be confessed, that this very remarkable Document gives rather an unfavourable view of the state of the Borders at the commencement of the reign of King James VI.; but reference to other 'Bands' and State Papers, which are faithfully conveyed to the public in the works of *Sir Walter Scott*, *Redpath's* Border History, and similar sources of Information, prove the picture to be correct and unexaggerated. The influence of THE KING and his Lieutenants was but small, when opposed by the more powerful Barons; who could, in an incredibly short space of time, by means of their signal-fires, &c. alarm the country, and gather a prodigious force, with which they could easily overwhelm the royal troops. The usual policy of the Crown, therefore, was to appoint, as WARDENS OF THE MARCHES, the most stirring spirits of the time; who, vain of their 'brief authority,' were cajoled into the measures of the King and Council, and thus preserved 'guld rewle' on the Border. The private Feuds of the several Clans were also turned by the Government to good account; and by means of such 'Bands' as the present, the more unruly tribes were kept in check.

and perfyte ordour anent þe repressing of þe saidis Thevis may be takin in þe menetyne. IN WITNES QUHAIROF, we baif subfcryuit þe samyn with our handis, as followis, AT KELSO, þe xext day of Aprile, the 3eir of God Im.Vc. three scoir nyne 3eris.

Sr NICHOLAS RUTHERFURD of Hundoley, ANDRO KER.

ALEX<sup>r</sup> L. HOME.<sup>1</sup>

knyt.

GILBERT KER of Prinsydclouch.

WALTER KER of Cesford.

JHONE RUTHERFURD of Hunthill.

JOHNE EDMESTOUNE of yat Ilk, knyt.

BUCKLEWTH, knyt.

JHONE Mow of yt Ilk.

WILLIAME DOWGLAS of Cavers.

THOMAS KER of Feruhirst.

RICHARD RUTHERFURD, Provost of Jedbur.

JHONE HALDANE.

WILLIAME KER.

JAMES SCOTT, Baillie of Selkirk.

THOMAS TRUMBUEL of Bederowill.

PATRIK MURRAY of Feulahill.

JAMES GLEDSTANES of Cokdrw.

RICHART RUTHERFURD of Edzerstone.

WALTER KER of Dolphiustone.

WATT SCOTT in Beillauch.

ALEXANDER COKBURN.

ANDW. . . . .

WATT SCOTT of Tuschelaw.

ROBERT SCOT off Edilstane.

ANDRO KER of fla . . .

HECTOR TURNBULL, Tutor of Mynto.

THOMAS MANDOWELL.

T. CRANSTOUNE of yt Ilk.

CUTHBERT CRANSTOUN of Thirlstanemanis.

THOMAS KER of Nether Howdane.

ROBERT SCOTT, Baillie of Hawkye.

### Sheep-Stealing—Common Theft and Reset of Theft.

JUN. 21.—JOK SCOTT, alias callit *Jok the Sukler*, sone to Thome Scott in Nether Braidlie.

Dilaitit of airt and pairt of the thiftious Steilling and away-taking fra Adame Almonse, ane of the Laird of Chifholmes tennentis, furth of that pairt of the landis of Chifholme callit Mouflie, occupyit be the said Adame, sfoure scheip pertening to him; committit in the moneth of October, 1612. ITEM, off tua fcheip, viz. ane 3ow<sup>2</sup> and ane hog,<sup>3</sup> pertening to George Scott, callit of Dering-ftoun, furth of his landis of Castell-hill; in the moneth of Februar, 1613. ITEM, off ane blak 3ow, pertening to Rowie Scott, callit *Rowie of Huttikill*, furth of the Lyn befyde Eilrig; at Mertimes, 1614. ITEM, off sevin 3ow fcheip, pertening to James Rowie in Raeburne, sfurth of the landis of Raeburne, in Efkdailmure; in the moneth of October, 1613 yeiris. ITEM, ffor cownone Thift, and cownone Reifet of Thift.

PERSEWARIS, Rowie Batie, callit James Rowie; Rowie Scott, in Vtterfyde; Walter Scott, his sone; informeris to his Maiefteis Aduocat: Sir Williame Oliphant of Newtoun, kny<sup>4</sup>.

PRELOCUTOR in defence, Mr Vmphra Blindschellis, Aduocat.

The pannell denyis the hail poynntis of Thift contenit in his Dittay.

#### ASSISA.

Frances Airmestrang, callit of Andro Airmestrang of the Kirk-Kynmonthe,<sup>4</sup> toun,

Walter Gledftanes of Quhytelaw,

Williame Airmestrang, his sone, Williame Airmestrang in Nether in Gryftaill, Wrae,

Robert Wauch of Hoip,

Robert Scott in Schellifwoid,

Robert Airmestrang, callit *Rattas*,

Alexander Airmestrang in Wallis, George Langlandis of that Ilk, Johane Ellote of Fallin-afche, Lencie Airmestrang in Quhit-

Williame Airmestrang, callit

*Bald*,<sup>5</sup>

Thomas Airmestrang in Giogillis, hauch,

Hectour Trumbill of Clarielaw.

VERDICT. The Assyse, having reffonit and voittit vpon the pointis of the

<sup>1</sup> The two principal columns contain autograph subscriptions, the third is all written in the same hand.  
<sup>2</sup> Ewe. <sup>3</sup> A year-old sheep. <sup>4</sup> A descendant of *Kimmont Will*, famous in History and Border Ballad.

<sup>5</sup> *Bauld*, bold; intrepid. Bald-headed was uniformly written and pronounced *beld*.



Dittay, and being ryplie and at lenth advyfet thairwith, togidder with dyuerse Depositiones product be our fouerane lordis Aduocat, for verificatioun of the said *Jok Scott* his giltines of the saidis crymes; as also, vpone consideratioun had be thame to the fweiring of thais tua pointis of Dittay, suorne in their presens be the saidis thre perfewaris; thay all, in ane voce, be the mouth of the said George Langlandis of that ilk, chancellor, ffand, pronuncet, and declairit the said *Jok Scott*, callit *the Suckler*, to be ffylet, culpable, and convict of airt and pairt of the haill poyntis of Thift aboue specifeit; and of cowmone Theft, and Refset of Thift.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and vpone ane gibbet thair set vp, to be Hangit quhill he be deid: And all his guidis to be escheit, &c.

### Egyptians or Gipsies contemptuously repairing and abiding within the Realm.

[THE following is one of the instances of the persecution of the once formidable race of GIPSIES, whose numbers were so considerable, as to excite the legislature to make various enactments for their banishment and extirpation. Notice of this pursuit has been preserved in the *Denmylne MSS.* Adv. Library, among various Minutes of the Proceedings of the Privy Council of Scotland, in the following brief memorandum. August 28, 1616. “ANENT that mater of EGIPTIANIS, now lyand in the *Tol-buith of Edinburgh*, thay war only convict for contraveining the Act of Parliament, in not departing furth of the Kingdome; and no vther cryme was layed to thair charge, and no cryme is knawin whairvpone thay may be challengit. *The Counsell*, according to HIS MA<sup>TIES</sup> direction, hes gewin Warrant for staving the pronouncing of Dome, till HIS MA<sup>TIES</sup> farder pleafour be knawin.”

The Editor has found no other trace of the fate of these unhappy creatures; but it is hoped that the King contented himself with ordering their banishment from the country, under the usual certification.]

Jul. 19.—JOHNNE FAA, Egiptiane<sup>1</sup>; James Faa, his sone; Moyfes Bailzie, Egiptiane; and Helene Broun, spous to Williame Bailzie, Egiptiane.

Dilaitit of contravening of the Act of Parliament, maid in anno 1609 yeiris, in thair contemptuous repairing to this cuntrie, being repute and haldin to be Egiptianis, and abiding thairintill, nochtwithstanding thairrof, &c. viz.

DITTAY *against Johnne Faa, &c.*

FORSAMEKILL AS, be Act of Parliament, haldin at Edinburgh, vpone the xxiiij day of Junij, I<sup>m</sup>.Vj<sup>c</sup>. and nyne 5eiris, it is expressely provydit, statute, and ordanit, that all Vagabundis, Soirneris, and cowmone Thevis, cowmonlie callit EGIPTIANIS, sould depairt furth of þe kingdome, and remane perpetuallie furth pairrof; and nevir to haif returnet agane within the samyn, nor be fund pairintill, eftir þe first day of August pairrestir, in the foirlaid 5eir of God I<sup>m</sup>.Vj<sup>c</sup>. and nyne 5eiris, vnder the pane of deid; and that it sould be liefsum to all his Maiesteis

<sup>1</sup> See Jul. 31, 1611.

guid subiectis, or ony ane of thame, to caus tak, apprehend, imprissone, and execute to death, all maner of Egiptianis, alfweill men as wemen, as cowmoun, notorious, and condampned Thevis; only, to be tryit be ane Assyse that thai ar callit, knawin, repete, and haldin Egiptianis: As the said Act of Parliament at lenth proportis. NOCHTHELES, it is of verritie, that the foirsaidis persones, being Egiptianis, sua callit, knawin, repete, and haldin, in contempt of þe said Law and Act of Parliament, as Vagabundis, hes lurkit and remanit within this kingdome, sen þe making and publicatioun of the said Act, and nawayis hes past away furth pairof: At þe leift, aganis þe tennour of þe said Act, hes, sen þe said first day of August, 1609 ȝeiris, repairit within this cuntrie, and ar tane and apprehendit as Vagabundis, and maisterles lymmeris<sup>1</sup> and thevis, reput and haldin, knawin and callit to be Egiptianis; quhairin thay and ilk ane of thame hes contravenit þe tennour of þe said Act of Parliament, and incurrit þe panes and pwneschment mentionet pairintill; quhilk aucht and sould be inflictit vpone thame, with all rigour, to þe example of vþeris of pair race and vnhappie Companie to eschew þe lyk heireftir.

PERSEWER, Sir Williame Oliphant, kny<sup>t</sup>. PRELOCUTOR in defence, Mr Thomas Wilsoun, Aduocat.

It is allegit be the pannell and thair prelocutour, that the Dittay is nawayis relevant to pas to ane Assyse, in respect it is nocht subsumet thairintill, that the persones dilaitit was within the cuntrie, the tyme of the making and the publicatioun of the said Act of Parliament, quhilk is the grund of this persute; nather yit is the pannell tane and apprehendit for ony Thift, Soirning, or Oppressioun, nor accuset thairfoir: Off all quhilkis crymes, thay ar willing to byde ane tryell: And thairfoir, the Dittay, as it is set down aganis the pannell, can nocht pas to ane Assyse,—It is answert be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay and Act of Parliament.

THE Justice Repellis the allegiance; and Ordanis the pannell to pas to ane Assyse.

VERDICT. The Assyse, be the mouth of Thomas Creichtoun, mercheand in Edinburgh, chancellor, stand, pronuncet, and declairit the saidis *Johnne Faa*, *James Faa*, his sone, *Moyfes Baillie* and *Helene Broun*, all Vagabundis, and repete and haldin to be Egiptianis, to be sylet, culpable, and convict of contravening the tennour of the said Act of Parliament.

THE Justice Continewit the prounceatioun of Dome vpone the persones foirsaidis, quhill he be advyset with the Lordis of Secreit Counsall: And ordanit thame to be returnit to waird, to the Tolbuth of Edinburgh, in the meyne tyme.

Jul. 24.—SENTENCE. The Justice, in respect na cautioun could be stand

<sup>1</sup> In our old Laws, this term was always applied to denote a worthless scoundrel, a professed thief, or *reiver*. At present it is applied solely to females of loose character.

be thame, for thair departour furth of his Maiesteis dominionis, and that thai sould never returne agane within the samyn during thair lyftymes, ilk ane of thame vnder the pane of ane thowseand merkis money; accoirding<sup>1</sup> to ane Ordinance of the Lordis of Secreit Counfall, direct for that effect, vnder my Lord Chancellers subscriptioun, daitit the xxiiij day of Julij instant; be the mouth of Johnne Dow, dempster of Court, Ordanit the saidis Johnne Faa, James Faa, his sone, Moyfes Bailzie, and Helene Broun, Egiptianis, and sa reput and haldin, tane and apprehendit, to be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and all thair moveabill guidis to be escheit, &c.

Quhillk was pronuncet for Dome; and that, conforme to the Ordinance of the Lordis of Secreit Counfell, of the dait above expremit.

### Slaughter.

Jul. 31.—ALEXANDER DUMBAR of Kilboyak, and others.<sup>1</sup>

Dilaitit for the Slauchter of vmq<sup>lo</sup> Alexander Dumbar of Waftfield.

PERSEWARIS, James and Thomas Dumbaris, as brether.

THE Justice, for caussis moveing him, specialie, that the pairties war vnder the termes of aggrement, Ordanit the dyet to Defert.

### Usurping his Majesties Authority—Convocation of the Lieges—Murder under Colour of Law, &c.

[THE particulars of this very remarkable and keenly contested Case<sup>2</sup> are so fully narrated in the proceedings which follow, and in the various Histories of the *Family of Gordon and Sutherland*, that it is unnecessary for the Editor to add any thing farther. It only seems proper to give, in this place, the following notice from the MS. Collections of *Sir James Balfour*, preserved in the Library of the Faculty of Advocates; which, though only relating to the preliminary arrangements, forcibly shows the spirit with which such matters were conducted, even before the Supreme Criminal Tribunal of the kingdom, where the parties were connected with noble and powerful families.—August 28, 1616. ‘THIS day being appointit to THE LAIRD OF GEICHT, *Johnne Gordon*, Sheref-depute of *Aberdein*, and the rest of thair complices, for thair compeirance before the Justice and his deputis, in the Tolbuth of Edinburgh, to vnderly the lawis for the slaughter of vmq<sup>lo</sup> *Frances Hay*; the Sheref-depute, accompanied with sum Gentilmen of the name of *Gordon*, and vtheris, came to this burgh, with outwarde shew, and apperance to have presented himself to his tryell; and by his Petition, gewin in this day to the *Counsell*, he craved Licence to sum Gentilmen of his name to accompany and assift him at the Bar: Which was grantit to sex perones selected and maid choife of be himself. The *Erle of Erroll* came lykwayes heir, for perfute of that mater, he haveing procurit ane Licence from the *Counsell*, convenit at *Aberdene*, for his cuming heir; with conditionn that he sould keip his lodging, and not come furth thairof, without the *Counsellis* Warrant. He, be Petition gewin in this day to the *Counsell*, cravit Licence that he might go to the bar, to assift the perfute of that mater; bot, in regard he was excommunicat, it was not thought expedient that he sould go in perfone to the bar, becaus it was suspectit

<sup>1</sup> See Jul. 24, 1611. On Jan. 15, 1617, “*Sir Williame Hairt*, his Maiesteis Justice, Ordanis the dyet to defert.” Whereupon *George Duff*, writer, protests for relief of the cautioners, &c. <sup>2</sup> See also two entries immediately following this; and especially, that of *George Gordon of Geicht*, Feb. 26, to June 27, 1617.



that the excommunication would be obiectit aganist him, to debar him from proces: And als, becaus HIS MA<sup>TIES</sup> *Advocat* was pairtill perfewar in the Letteris, who wald prosecute that mater, als weil as if the *Erle* war present. The Court being senit, *the Justice, Justice Clerk*, with the hail memberis of the Court, and the pairteis perfewaris being all present, and *the Sheref-depute* being constantlie looked for to compeir, he notwithstanding absenit him self; and is thairfor declairit fugitiue, and his cautioneris vnlawit.']

Aug. 28.—JOHNNE GORDOUN of Clubisgoule, Scherref-depute of Aberdene.<sup>1</sup>

Dilatit ffor airt and pairt of the Vfurpatioun of our Souerane lordis royall power and autoritie, in the arrogant and presumptuous cuming, with convoca-tioun of ane grit number of his Maiesteis legis, vpone the xvij day of December I<sup>m</sup>.V<sup>c</sup>. and fyftene yeiris, to the duelling hous of *Williame Hay of Logyruiſ*; and without ony lauchfull Warrant, autoritie, or Commissioun, puting violent handis in the persone of vmq<sup>le</sup> *Frances Hay, sone to vmq<sup>le</sup> George Hay of Ardlethame*, bringing him perforce and aganis his will furth of the said hous, cayreing him with ane grit number of men in airmes to the burgh of Aberdene, as ane captiue and prissoner; committing him in prissone, within the ludgeing of *George Gordoun of Geicht*, ane of his principall takeris, callit "*the Bony Wyſes Inne*," in the Gallowgait of Aberdene, keeping and detening him in maist strait firmanche thairintill, be the space of fourtie aucht houris; nocht suffering any man of his kyn or freindis to haif acceſs to him, during all that tyme: Committit be the said *George Gordoun of Geicht, Williame Hay*, his sone in law, *Johnne* and *Alexander Gordones*, his brether, James Baird his seruand, and vtheris thair complices. Off the speciall causeing, sending, hounding out, airt, plane pairt-taking, counselling, devyſeing, command, assistance and ratihabitoun of the said Johnne Gordoun Scherref depute of Aberdene, and quha, during the tyme of the said Frances imprissonement within the said Inne, resoirtit dyuerſe tymes thairto with the said Laird of Geicht, to countenance and assist the vnlauchfull keeping and detentioun of the said vmq<sup>le</sup> Frances thairintill: AND sicklyk, the said Johnne Gordoun of Clubbifgoule, pretendit Schereff depute of Abirdene, being giltie in his own conscience, befoir God, of parcialitie and preoccupyt opinioun, and knawing weil aneuch that the tyme of his priuilege, gif he ony had, was expyrit; notwithstanding thairof, to the heich offence of Almichtie God, contempt of our Souerane lordis princleie power, and to the grit ſcandall of the Justice of this kingdome, ffor his presumptuous and arrogant vfurpatioun and aſſumeing to him self, with ane evill conscience, of the place and office of the Criminal Judge, in presenting him self in Judgement, and setting down thairintill as Judge, ſſenceing of Court, and calling and accuſeing befoir him of the said vmq<sup>le</sup> *Frances Hay*, for the allegit Slauchter of vmq<sup>le</sup> *Adame Gordoun*, brother germane to the said

<sup>1</sup> See Feb. 26, 1617, &c.

*Laird of Geicht*; and for nocht admitting and suffering prelocutouris to compeir and defend the said vmq<sup>le</sup> Frances, the tyme of the said perfute; bot be the contrair, debarring *Mr Williame Barclay, Aduocat*, quha was reddie to compeir in his defence, and quha had mony guid and sufficient exceptiones to haif proponit, to haif stayit<sup>1</sup> his puting to the knowlege of ane Assyse, for the said allegit cryme; be sending of *George Leslie of Kinragie*, with ane commissioun to the said Mr Williame, discharging him, vpon the perrell of his lyfe, to compeir in the said Frances defence; and assuring him, gif he sa did, fra he war anes down the stair,<sup>2</sup> thair sould be tuentie quingeris put intil him: And sua, for debarring of the said vmq<sup>le</sup> Frances, and defrauding him of the benifeit of lauchfull defence, quhilk God and nature hes indifferentlie allowit vnto all men: AND for the maist partiall proceeding aganis the said vmq<sup>le</sup> Frances, nochtwithstanding of the premisses, in putting him to the knowlege of ane Assyse of ane number of persones selectit and inaid chose of be the said *Laird of Geicht*, perfewar, and his freindis, and altogidder adictit to thair mynd and directioun; quha, accoording thairto, convictit him of the said allegit Slauchter: AND for the partiall and wilfull pronouncing vpon the said convictioun, of the Dome and Sentence of daithe aganis the said vmq<sup>le</sup> Frances, to loise his heid: AND for that effect, maist partiallie and vndentifullie, aganis the office of ane Judge, delynering of the said Frances bak agane to the said *Laird of Geicht* and his complices, the pairtie perfewaris, quha tuik him to thair awin privat prissone; and vpon the morne thairefter, caryeit him furth at ane bak zet, to ane hole betuix tua mottis,<sup>3</sup> quhair they crowned thair tragidie with so butcherlie mangling and demaning<sup>4</sup> the puir gentill-man, be geving to him sex feneral straikis vpon his schoulderis, heid, and nek, as the lyk hes nevir or feldome bene hard or sene: AND sa, vnder the pretext and cullour of law, and scandall of Justice, ffor the crewall and barbarus maffacaring and slauchter of the said vmq<sup>le</sup> Frances, be the said Johnne Gordoun, scheref-depute, his pretendit vsurpeing Judge; quha thairthrow in a heich degrie hes contemptit and abuset his Maiesteis royall name and autoritie, in making it a cloke and cover to the revenge of the perticuler querrell of him selff and his freindis. In maner specifeit and sett down in the criminall Letteris direct aganis him thairupoun.

THE Justice, be the mouth of Thomas Young,<sup>5</sup> dempster of Court, Ordanit Adame Gordoun of Boighoill (as cautioner and fouertie for John Gordon's entry) to be vnlawet in the pane of ffyve hundreth merkis, for the nocht entrie: And that the said Johnne Gordoun sall be denuncet our souerane lordis rebell, and put to his hienes horne; and all his moveabill guidis to be escheit, &c.

<sup>1</sup> Delayed; prevented.    <sup>2</sup> By the time he got down stairs.    <sup>3</sup> To a hollow betwixt two moats or fosses; the ground being probably selected, or constructed, so as to prevent a rescue of the unhappy victim of their barbarity.    <sup>4</sup> Using; treating.    <sup>5</sup> Who appears in this office for the first time.

**Murder under Colour of Law, &c.**

Aug. 28.—GEORGE GORDOUN OF GEICHT,<sup>1</sup> Williame Hay, his sone in law ; Johnne Alexander, Robert and Patrik Gordones, brether to the said Laird of Geicht ; Johnne Gordoun of Clubisgoule, Scheref depute of Aberdene ; Williame Gordoun in the Maynes of Geicht, fervand to the said Laird ; Johnne Sinclair, brother to the Laird of Achannachie ; Andro Nicolfoun, fervand to the said Williame Hay ; Patrik Cantlie in Airdifferie, and Andro Mylne, ffalconer.

Dilaitit for the usurpation of our souerane lordis autoritie, &c.<sup>2</sup> at the instance of Mariorie Keith the relict of vmq<sup>le</sup> *George Hay of Ardllethame*, as mother ; George Hay, as brother to vmq<sup>le</sup> Frances Hay, sone to the said vmq<sup>le</sup> George Hay of Ardllethame ; and of Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes intreis. The said Mariorie, &c. producet the Letteris deulie execute and indorfate ; vpone the production quhairof, the saidis persewaris askit instrumentis, and protestit for releif of thair cautioneris.

**Murder under Colour of Law, &c.**

Aug. 28.—GEORGE GORDOUN OF GEICHT, and others above mentioned, and James Baird,<sup>3</sup> in the Maynes of Geicht, fervand to the Laird of Geicht.

Sir William Oliphant of Newtoun, kny<sup>t</sup>, producet his Maiesteis Letteris deulie execute and indorfate, raifit at his lordschipis instance, as Aduocat to his Maiestie, for his hienes intreis allanerlie.<sup>4</sup>

**Horrible Abduction and Marriage of a Minor, without having obtained the lawful consent of his Guardians.**

Nov. 8.—SIR PATRIK CHIRNESYDE OF EIST NISBET, Alexander Cranftoun of Burnecastell, Johnne Cranftoun, brother to Williame Lord Cranftoun, Williame Home of Hardeifnylne, and Williame Moffet, his fervand.

Dilaittit of violent Rape and Raveifching,<sup>5</sup> taking, and detening of Adame Frenche of Thornydykis, ane young bairne scarce past xiiij geiris of age, furth of the Toun of Hadingtoun ; and thairfra transpoirting him to Rymmiltoun-law,

<sup>1</sup> See Feb. 26, 1617.

<sup>2</sup> As in the previous case.

<sup>4</sup> Alone ; solely.

<sup>3</sup> This person is omitted (probably by a clerical error) in the former case.

<sup>5</sup> These terms, in the Ancient Criminal

Law of Scotland, as has been frequently noticed in this work, signify merely the act of carrying off by violence, or against the will of the party so abused. The term employed to denote RAPE, as now understood in Scotland and England, was 'FORCEING.' 'Rapt' and 'Raveifching' only inferred what is at present technically termed 'Forcible Abduction.' A stronger illustration of the meaning formerly attached to these phrases could hardly be adduced than the present Trial.

and thairfra, as ane captiue, to Eift Nisbet; and thairfra to Beruik, quhair, but (*without*) consent of Sir Johnne Home of North Beruik, Donatour to the Gift of his Waird and Mariage, he was mareit to Jean Chirnesfyde, dochter to the said Sir Patrik; committit in the moneth of November, 1615 zeiris.

PRELOCUTOURIS in defence, Mr Alexander Peiblis, Johnne Belfis, Mr Robert Fairlie, Aduocatis.

PRELOCUTOURIS in persute, Sir George Home of Manderstoun, Sir Williame Oliphant of Newtoun.

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, for his hienes intreis; Sir Johnne Home of North Beruik, kny<sup>t</sup>, as Donatour to the Waird of the said Adame French mariage, for his intreis.

The Aduocat, with Sir Johnne Home of North Beruik, kny<sup>t</sup>, as persewaris, produces the summondiss. Eftir reiding thair of, the Aduocat produces, for Sir Johnne Home of North Beruik his entreis, the Gift of the said Waird and Mariage of Adame Frenche of Thornydykis.

The Pannell, befor farder proces, desyres my lord Justice to heir Adame French of Thornydykis, presentlie in Judgement, quha is the persone allegit ravischet and tane away, to mak his awin Declaratioun of the forme and maner thair of; and thaireftir, thay fall cum to thair Defencis in the cause.—My lord Aduocat Dissentis to ony Declaratioun to be maid be the said Adame Frenche, in this matter; and desyres the pannell to cum to thair awin allegiances, quhy the fact lybellit sould nocht pas to ane Assyse.

THE Justice Ordanis the pannell to propone thair defenssis aganis the lybell and relevancie thair of.

Adame Frenche of Thornydykis, being personallie present, dissentis fra this persute; and thairupoun askit instrumentis.

It is allegit be my lord Aduocat, that the dissenting of Adame Frenche sould nocht be respectit, becaus he is naither persewar nor defender in the caus; and the Aduocat, with the persewar, haifing sufficient entreis for the King, may persew.—It is ansuerit, that my Lord Aduocatis ansuer touching the persute, movet be his lordschip and Sir Johnne Home, nawayis can stay this young Gentilman to dissent thairfra, *sed valeat cum processu quantum valere potest*.

It is allegit be the pannell and thair prelocutouris, that Sir Johnne Home hes na intreis to persew this caus, being criminall; becaus his only intreis is as Donatour to the waird and marriage of Adame Frenche; quhiilk Gift, *per se*, can geve him na intreis to persew criminallie, becaus, be the Gift of Waird, he hes nather entreis *in personam neque in rem*: *In personam*, becaus this young Gentilman, befor the intenting of this caus, was past fourtene yeiris compleit, and hes electit and choſin Curatouris to him, for administratioun of his persone: *In rem*, he has na intreis, becaus howbeit it may appeir be the Gift producet, that Sir Johnne Home is Donatour to the Waird of this young Gentilman, yet, *in rei veritate, res aliter se habet*, as Sir Johnne Home will nocht deny, and as fall be maid cleir to

the Judge ; in ſa far as (at) the tyme of vmq<sup>le</sup> Robert French deceis, father to this young Gentilman, haifing tua father-brether<sup>1</sup> on lyfe, viz., James and Johnne Frenches ; James haifing ane cair of the bairnes educatioun and ſtanding of the hous, delt for the Gift of the Waird and Mariage, to the vtilitie of the bairne ; bot, becaus he was nocht hable to diſcharge that adminiſtratioun of the bairne as become him, in reſpect of dyuerſe trubbillis and cummoris<sup>2</sup> he come vnto, he makis choſe of the ſaid (Sir) *Johnne Home of North Beruik*, as ane truſtie freind to him and the bairne, borrowis his name to the ſaid Gift, and inſertis his name thairintill ; nocht that the ſaid Sir Johnne ſould rype<sup>3</sup> ony commoditie thairrof, bot vſeing the ſaid Sir Johnnes name, nocht being hable to diſcharge the office him ſelff. For cleiring<sup>4</sup> of this, it is of verritie, that nocht-withſtanding of the inſerting of the ſaid Sir Johnnes name in the Gift, the ſaid vmq<sup>le</sup> James French intronettit with the haill leving pertening to the ſaid bairne, during his lyfetime, keipit the ſaid bairne in his cuſtodie, at leiſt was in the cuſtodie of his guidſchir on the mother ſyde,<sup>5</sup> within the place of Hardiesmylne, and that but<sup>6</sup> interruption, challenge, or queſtioun made be the ſaid Sir Johnne, anent the cuſtodie of the bairne, or vplifting of the maillis<sup>7</sup> and deuteis of his leveing : For forder qualificatioun of this argument, it is lykwayis of verritie, that eftir the deceis of the ſaid vmq<sup>le</sup> James Frenche, vmq<sup>le</sup> Johnne Frenche, younger brother to the ſaid James, being ſervet and retouret air<sup>8</sup> to the ſaid vmq<sup>le</sup> James his brother, nocht only intronettit with the ſaid vmq<sup>le</sup> James his leving, bot lykwayis with the haill rentis of the ſaid bairnes leving, *Tutorio nomine*, the ſaid vmq<sup>le</sup> Johnne being ſervet and retouret Tutour to him ; quhairby it is clair that this Gift of Waird of the ſaid minor can gif the ſaid Sir Johnne no intreis to perſew this cauſe, his name being only borrowit to it, as ſaid is. Lyk as, thair is actioun depending at the inſtance of the bairne and his Curatouris befor the Lordis of Seſſioun aganis the ſaid Sir Johnne for his intro-miſſioun with the maillis and deuteis of his landis, and for transferring and tranſlating of the Gift of the Waird in the perſone of the minor, as tane to his awin behuif, and the ſaid Sir Johnnes name only borrowit thairto. And ſa, haifing nather entreis *in perſonam neque in rem minoris*, his Gift can geve him na intreis to perſew this caus. *Secondlie*, albeit it war grantit, as it is nocht, that the Gift was tane to the behuif, utilitie, and proſſeit of the ſaid Sir Johnne, yet the Gift of the Waird can geve the ſaid Sir Johnne na intereis to perſew this caus, being ane Criminal perſute, without the expres concourſe, aſſiſtance, and ratihabitoun of the ſaid minor him ſelff, aganis quhome the Rapt lybellit is allegit to be com-

<sup>1</sup> Paternal uncles.<sup>2</sup> Literally *cumbers*, encumbrances, difficulties, embarrasments ; but in this inſtance it denotes ſtrife, feud, &c., as the word then denoted.<sup>3</sup> Reap.<sup>5</sup> Maternal grandfather.<sup>6</sup> Without.<sup>7</sup> Rents,<sup>8</sup> Served and retoured heir.



mittit; quha nocht only refuiffis to concur and affist the faid Sir Johnne; bot, be the contrair, compeiris with the defenderis, and affistis thame; affirmeing all that was done be thame, to be lauchfullie done, and quhat was done to him was at his awin defyre, and be his awin speciall consent.

It is anfuert, be my lord Aduocat, and the faid Sir Johnne Home, that the faid Sir Johnnes entreis is fufficientlie qualifeit and instructit for perfute of the actioun lybellit, feeing it is lybellit that he is Donatour to the Waird and marriage of Adame Frenche, aganis quhome the haill wrongis lybellit war committit, being our fouerane lordis frie lege; and that the custodie and keiping of minoris, quhais landis fallis in our fouerane lordis handis be refson of Waird, properlie pertenis to the Donatour of the Waird and Mariage: Lyk as, it is exprellie qualifeit in the faid Summondis, that the faid minor was in the faid Sir Johnnes poffeffioun mony yeiris befor the tyme lybellit, furth of quhais poffeffioun it was nocht lauchfull to the defenderis nor nane of thame to mell<sup>1</sup> with him, in maner lybellit, nor tak him furth of his poffeffioun: Lyk as, complement being made of befor be the faid Sir Johnne, befor the Lordis of Secreit Counsell, aganis the speciall perfones his away-takeris, viz. William Home and William Moffet, the faid Sir Johnne was ffund to be ane pairtie compliner to call for exhibitoun of the faid bairne; in quhais favour ane sentence was gevin and pronuncet, ffuinding and declairing that the faidis William Home and William Moffet had committit ane verrie grit offence and ane moft pernicious and wicket preparatiue and example, in trayning and taking away the faid Adame Frenche out of the faid Toun of Hadingtoun, quhair he was placet at the fcole be the faid Sir Johnne; in refpect quhairof, the faid Sir Johnne hes indoutit rycht and intreis to perfew the actioun lybellit; and speciallie, to informe and concur with our fouerane lordis Aduocat, quha hes speciall entreis be him felff, in his hienes name, to perfew the crymes lybellit. As ffor the impertinent<sup>2</sup> difcourfe, that the richt of the Waird was tane to the behove of the bairne be the advyfe of vmq<sup>le</sup> James and Johnne Frenches his father-brether, that alledgeance is nather releveant nor instructit; and fa, na refpect aucht to be had thairto: And yit, to anfuwer to the firft pairt, anent James intromiffioun, the allegeance is altogidder irrelevant; for albeit he had intromettit, that eftablifches na richt of the Waird in his perfone, bot the Donatour had fufficient intreis to perfew the intromitteris with the mailis and douteis of the Waird landis: And, to mak the matter mair manifef, James deceit within fyftene dayis efter Robert his brother: Lyk as, vmq<sup>le</sup> Johnne was ane actual feruand to the faid Sir Johnne, during his lyftyme, eftir the dait of the faid Gift. And as to the laft pairt of the fecund allegeance, beiring that the faid Adame French difaffentis fra the perfute, and concurris with the defenderis,

<sup>1</sup> O. Fr. *mesler*, to intermeddle; to interfere.

<sup>2</sup> Irrelevant; not pertinent.

affirmyng that all [that] was done to be done of his awin consent, it is anfuert, as of befor, that his disaffenting fra the perfute can nocht preiudge ony of the perfewaris: And as to the last pairt of the said allegiance, quhilk appeiris to be proponit aganis the intreis, it is rather affirmatioun that the said Sir Johnne hes intreis nor<sup>1</sup> oppositioun aganis the samyn; and gif it fall pleis the pannell to propone it, as ane defense in the cause, thay fall haif ane direct anfuert; ffor, be the proponing of that allegiance, it is grantit that the Donatour hes intreis; and that he is Donatour, it is verifeit be the Gift producet: Bot to mak this matter cleir, it is anfuert directlie, that ane cryme being committit aganis pairteis quha hes intreis, the Confessioun of the pairtie offendit can nevir tak away thair intreis, nather yit the Kingis intreis efter committing of the cryme, ffor, albeit wrang had bene done to ane maior,<sup>2</sup> and the maior wald renunce the actioun, that can nawayis preiudge the Kingis Maiesteis intreis, nor na vther pairtie quha is preiudget; as is cleir in the haill article of the Cod. L. vnica Codice *de Raptu Virginum*, et *Lege Raptores, C. de Episcopis et Clericis*: And to mak this matter the mair cleir, it is speciallie declairit be the Act of Parliament maid in October 1612, that the declaratioun of the persone ravischet fall nawayis preiudge the Kingis Maiestie of his intreis to persue the committer of the cryme: And to cleir this matter forder, the said Adame Frenche, eftir his away-taking, be ane Letter, all writtin and subscryuit with his awin hand, grantit and confessit that he was tane away aganis his will and vndone; as the Letter heirwith producet beiris.

To the quhilkis it is anfuert be the pannell, that the allegiances proponit be thame aganis the said Sir Johnne Homes intreis standis relevant, nochtwithstanding of my Lord Aduocattis anfuert; becaus the defendaris affirmes constantlie, that of the Law nor Practique of Scotland, the Donatour of the Waird or Mairiage of ony persone hes na actioun criminall competent to him for ony wrang done to the minor, without the concurse of the minor quha is offendit, bot that the Gift of the Waird inferis to the Donatour only ciuile actioun, *per se*: And howbeit the keeping of the minor during the Waird pertenis to the Donatour, yit gif the minor be past xiiij yeiris, *et sic sui juris*, divertis him self willinglie out of the companie of the Donatour, passis forwardis to the electioun of his curatouris, thair is na actioun competent of the law to the Donatour, for exhibitoun and delyvering to him of the minor. Lyk as, Williame Home being summoned befor the Counfell, for exhibitoun of the said Adame Frenche, and being be Ordinance of the saidis Lordis, thaireftir, sequesterat in the handis and custodie of *James Archbyschop of Glasgou*, vpone ane Supplicatioun gevin in be the said Adame him self to the saidis Lordis, the saidis Lordis, be thair Decreit, Ordanit the said Adame to be put to libertie to pas and repas at his plesour, nocht-

<sup>1</sup> Rather than the contrary argument.

<sup>2</sup> A person arrived at lawful age, or majority.



withstanding of the Gift of the Waird disponit to the said Sir Johnne Home, quhais entreis could be na impediment to stay the said Adames libertie: Lyk as, conforme to the said Decreit, being put to libertie, he frelie, volunterlie, and willinglie repairit to the Place of Eist Nisbet, quhairin he hes remanit sensyne, as to ane speciall freind; and, gif neid beis, the said Adame, be his awin Declaratioun, will declair his intentioun of passing to Eist Nisbet. And for instructing thair of, produces the bairnes grevis,<sup>1</sup> to be confiderit be my lord Justice, desyreing the samyn to be red as ane speciall pairt of the proces. As to the Letter productet be my lord Aduocat, the said Adame denyis the same altogidder to be his hand writt, and thairfor na respect sould be had thairto: Lyk as, the said Adame being personallie present, Judicialle declairis he can nocht wryte; and this Letter productet be my Lord Aduocat was writtin by<sup>2</sup> his knowlege in the *Guidman of Manderstones* hous, the tyme of his sequestratioun; and in cace it war his hand writt, it could mak na faith in judgement, being direct be ane minor. As to the Act of Parliament productet, quhilk is in anno 1612, the alledgeance foundit thairupoun militatis nawayis in this eirand, nather is this persute foundit vpon that Act of Parliament; and quhan as my lord Aduocat foundis a persute thairupoun, it fall haif the awin ansuer.<sup>3</sup> *Igitur, &c.*

The Aduocat, for him self, and for the pairtie, repeittis his former ansueris, with this additioun, that the minor being in the Donatouris possessioun of his Waird and Mariage, lyk as, he was be the space of fyve yeiris befor the Rapt lybellit, could nocht haif been tane out of his possessioun, in maner contenit in the Summondis; and the away-takeris of him aucht to be pwneist accordiing to the desyre of the Summondis. As to the impertinent discourse, that the Waird was tane to the behuif of the bairne, thair is nathing productet to verrifie the samyn; and albeit it war verifeit, it is altogidder irrelevant, in respect of the former ansuer; and speciallie, in respect that the Defenderis had na intreis, in maner lybellit, to haif mellit with the minor: And quhairas thair is mentioun maid of the electioun of his Curatouris, thair was na Curatouris chosin the tyme of the committing of the crymes lybellit, quhilk was done in November 1615, the Curatouris being alledget chosin in Julij thaireftir, 1616. And quhair mentioun is maid of the bairnes libertie and sequestratioun, that is nawayis pertinent to this purpois, in respect of the lybell. *Igitur, &c.*

It is allegit be the pannel, that the electioun of the Curatouris be Adame Frenche in July 1616, is sufficient, nochtwithstanding of his away-taking of befor; and that be resson that howbeit the Curatouris was nocht chosin befor

<sup>1</sup> Probably *grievances*. There is marked on the margin of the Record, 'Thir grevis tane vp and Reipit be my lord Justice.' <sup>2</sup> Without; beside; contrary to. <sup>3</sup> Its own, i. e. a special answer to the pursuit so founded.

the allegit Rapt, yit he was maior befor the allegit Rapt, past fourtene yeiris of age, &c. *Igitur*, &c.—It is answert thairto be my lord Aduocat and the persewar, that na respect aucht to be had, quhidder he was past xiiij yeiris of age the tyme of the committing of the crymes or nocht, quha being at that tyme in the custodie and keiping of the Donatour to the Waird, and na curatouris chofin to him, the defenderis had na intres to haif mellit with him, as is lybellit. And quhair it is allegit, that the Missiue uset and producet for the said Adame, aucht nocht to be respectit, in respect of his minoritie; it is answert, that the samyn aucht to be respectit, being all writtin and subscryuit with his awin hand: And to convert that argument aganis the defenderis, na respect aucht to be had to his Declaratioun, nather be word or writ this day, in respect of his minoritie. As to the Testimoniall producet for his age, na respect aucht to be had thairto, for the ressones aboue writtin, speciallie, in respect he was baptizet the xij of November, 1601, and was tane away in November 1615, sua that it is nocht constant<sup>1</sup> thairby, quhidder he was past xiiij yeiris or nocht the tyme of the Rapt lybellit. *Igitur*, &c.

It is allegit for the Defenderis, that the Dittay is nawayis relevant to infer aganis thame ony criminall persute, nather can thay pas to the knowlege of ane Inqueist thairfor; becaus the fact contenit in the Dittay, it is *vel Raptus vel Plagium*: *Raptus*, of the Law, it is nocht; becaus *raptus et raptura* of the Law is only concerning Virginis, and nocht more. *Cap. de Raptu Virginum, toto titulo*:—Bot quhidder it be *vel Raptura vel Plagium*, yit the Dittay is nocht relevant, becaus *ad crimen Plagii vel Raptura, oportet accedat et interveniat vis et violentia*: *Oportet de jure ut deportatur de loco in locum, clandestinè, violenter*, and that his freindis and kinefinen be debarrit fra haifing acceß to him, quhairby he is depriyvet of the libertie of ane frie ledge: Bot sa it is, that nane of thir perticularis, without the quhilkis the Dittay can nocht be relevant, is set down in this Dittay; ffor first, thair is no violence nor violent fact set down thairin; it is nocht lybellit that he was violentlie, quyetlie, and clandestanlie transpoirtit fra place to place; or that he was detenit, *quasi in carcere*; or that he was debarrit fra his freindis, or fra haifing acceß to his freindis, or thay to him; bot be the contrair, it is affirmet in the Dittay, that he frelie, volunterlie, and willinglie past with Williame Home, his mother-brother,<sup>2</sup> out of the Hous of Mr Williame Bowie, quhilk inferris a frie away-cuming, being with his mother-brother, and nerrest of his kyn, haifing na kyn of the father fyde knawin to him: And sa, the Dittay is altogidder irrelevant. As to that pairt of the Dittay, beiring that the remanent defenderis are airt and pairt thairof, thay can nocht pas to ane Assyse vpone that point of the Dittay; becaus, gif thair be nocht

<sup>1</sup> Clear; apparent.<sup>2</sup> Maternal uncle.

ane cryme committit be the principallis, nor a relevant cryme set doun against thame, the persones can nocht be alledgit to be airt and pairt thair of; and albeit it war relevant for the principallis, it is nawayis relevant aganis the remanent persones, as airt and pairt; becaus airt and pairt, of the Law, is, *qui prodet vel auxilium vel consilium; auxilium, vel ante factum, vel in facto, vel post factum*; Thair is nather *auxilium* nor *consilium* relevantlie lybellit aganis thir defenderis, *neque ante factum, in facto, vel post factum*; ffor thair is nathing lybellit aganis thame, bot that he was first transpoirtit to Rymmiltone-law, and thaireftir to Eist Nisbet; and that thaireftir he was mareit to Jeane Chirnesyde, quhilk is na qualificatioun of violence *cum matrimonia sunt libera de jure*; and the mariage of ane minor, eftir his compleit age of xiiij yeiris, quha hes *consensum* of the Law, can nocht be comptit ony violent fact, becaus it proceedis of his awin proper fact; speciallie, seing the mariage proceedit vpone the Proclamatioun of his bands, publictie, in the paroch kirk, quhilk takis away the grund of the argument of violence vset aganis him. *Igitur, &c.*

It is answerit be the persewaris, for verifeing of thair Summondis, and haill memberis thair of, that the samyn is verrie relevantlie confaueit, and aggreis with the Lawis and practique of the realme of Scotland, Ciuile, and Commoun Law, and Lawis of all Nationis maist ciuile, England and ffrance; and thir answers ar proponit be him to verife all the memberis of the propositioun contenit in the Summondis, and to elyde<sup>1</sup> the exceptiones proponit be the pannell, baith for the principallis, and thais that ar callit for airt and pairt: And as to the first member of the propositioun, the persewaris alledges, that the samyn is sufficientlie verifeit be the haill article of the Cod. L. nono, Tit. 20. ad Legem Fabiam *de Plagiariis*; lyk as, be the Lawis and practique of this realme, the taking of ony frie persone is capitall, and sumtyme thocht to be tressonable: It was fund to be capitall aganis *George Meldrum of Dumbrek*, for taking of *Mr Alexander Gibsone*; lyk as, he was persewit and pwneist to the death thairfor: *The Marquis of Huntlie*, and *the Erles of Cranfurd* and *Bothuell*, war persewit criminallie, for the taking of vinq<sup>l</sup> *Thomas Maister of Glammes*, and put to the knowlege of ane Inqueist. As concerning the Ravischeing, that pairt is verifeit to be capitall, be the Act of Parliament maid in the dayis of King James the Fyft, of worthie memorie, in the moneth of Marche, 1540, cap. 118; and sielyk, be the foirnameit Act, in October, 1612; be the Ciuile Law, the same member anent the Ravischeing is capitale, toto Titulo et Lege vnica *de Raptu Virginum* et *Lege Raptoris*, Codice *de Episcopis et Clericis*: And albeit the saidis Lawis chieffie makis mentioun of violence committit against Wemen, yit the Glofs and haill Jurisconsultis resolues, that the same lawis hes place quhair ane man is ravished:

<sup>1</sup> Cut off; redargue. Lat. *elidere*.

And albeit na violence war lybellit, yit thair is sufficient circumstances lybellit to infer the violence; beiring directlie, that quhan the said *Adame Frenche* defyret to be bak agane to Hadingtoun, the principall perfonnes defenderis, at the leift *Williame Home, Alexander Cranstoun of Moriestoun, and Williame Moffet*, of the speciall causing, counsfalling, and devyfeing of the haill perfonnes contentit in the Summondis, had the said Adame in thair power, and tauld to him planelie that he sould nocht returne, bot that it behovet him to go to Eist Nisbet, to marie the Lairdis dochter; and this was done be thame, eftir that the said Adame was tane and apprehendit be the said *Williame Home*, (and) was craftilie movet, persuaidit, and intyfet to pas with thame furth of Hadingtoun, of intentioun to haif viffeit *Margaret Haitlie*, his guidame, and sifteris, albeit that was nocht thair intentioun; bot that followit quhilk thay proponit to thame felffis frome the begynning, to keip him in thair handis quhill he war mareit with *Eijl Nisbetis* dochter: Lyk as, he was quyetlie and secreitlie convoyit and cayreit fra Hadingtoun to Rymmiltone-law, in the Merse, than the duelling-hous of the said Alexander Cranstoun of Moriestoun, and thairfra, be the said *Williame Home, Alexander Cranstoun, Johnne Cranstoun, and Williame Moffet*, to the Place of Eist Nisbet; and thairfra, furth of the realme of Scotland, to the Toun of Beruik in Ingland, quhair he was secreitlie mareit *clandestine*: Quhill ansuer is sufficient to infer the conclusioun of the lybell, in respect of the circumstances contentit in the Dittay: And yit to mak the Dittay relevant, of the Law, albeit thair war na violence lybellit, quhan pairteis are seducet and intyfet, the cryme remanis capitall, as is contentit in the lybell; and alleges Godfredus, ad dictam Legem *Raptores*, et Bald ibidem; Farinacius de *Delictis carnis*, quest. 146, Tit. 16, numero 40; Cheffa. de *consuetudine Burgund.* Rub. 1, pag. 57; Salicetus ad dictam Legem vnica, Cod. de *Raptu Virginum*, quhais woirdis ar thir schortlie, ‘*quod persuasio dolosa, in talibus, plus est quam violenta tractio.*’ Forder, be ane expres Statute maide be Henrie the Third of France, it is ordanit, that quhofoeur fall be fund to haif subornet or intyfit ane chyld, minor, and within xxv yeiris of age, without consent of thair parentis, or vtheris in quhais custodie thay ar, salbe pwneist to the daithe, without ony pardoun. This Law was set doun, *per expremum*, in the grit Code of the said King Henrie, Lib. 60, Tit. 2°, Stat. 8°. Lyk as, in the sevint buik of Papon. de *crimine Raptus*, it is exprellie ffund and declairit, that ane Woman, for seduceing or intyfeing of ane young man to marie hir dochter *clandestine*, was condampnit to the daithe. Lyk as, be the Lawis of Ingland, this cryme is pwneist with fyve yeiris impriffonement, and ane grit fyne at the Princes will; and this Law was set doun quhair ony perfone is ravifchet fra thair parentis, tutouris, or guardianis: And of this Law mentioun is maid in the 555 leif of the Registar of the Lawis

of England. Julius Clarus, § *Raptus*, num. 6, ait, ‘*Raptum viri etiam puniri pena Raptus, ac si Virgo rapta esset.*’ Be the Lawis of the Maiestie of Scotland, Quon. Attach. cap. 95, *de Raptu heredis Maritagium debentis, et ejus pena*, &c. Be the self same Law of the Maiestie, in findrie pairtis, Ravisching of Men or Wemen, whois Mariage pertenis to the Prince, is appointit to be criminallie persewit befor the Justice. And last, Ravischeing is sa odious ane cryme in Scotland, that the samyn is exceptit furth of Remissiones, as ane cryme maist haynous and detestable.—In respect of the quihilkis alledgeances, proponit for verificatioun of the propositioun contenit in the Summondis, the Dittay is relevant aganis the haill perfonen on pannell. And that pairt of the lybell, ‘airt and pairt,’ is verrie relevant aganis all perfonen, and speciallie appointit to be lybellit be Act of Parliament; and the Law is verrie expres in that, that all the perfonen that concurris and assistis the fact quihilk is capitall, or all culpable as the committeris thairof: Bot in this caice, it is lybellit expreslie, that Williame Home and William Moffet intyset and tranet<sup>1</sup> the said Adame furth of Hadingtoun, and convoyit him to Rymmiltounelaw, quhair he was ressaute be the said Alexander Cranstoun; quihilk Alexander and Johnne Cranstoun convoyit him thairfra to Eist Nisbet, and thairfra altogidder to Beruik, quhan he was mareit *clandestinè*, as said is, and ressaute be the said *Laird of Eist Nisbet*, and keipit be him quhill he mareit with his dochter, purpoissie done to preiudge the said Sir Johnne Home of the double availl of his Mariage; quihilk makis the haill pannell nocht only to be assistis of the fact, bot airt and pairt, and direct doaris thairof. And to verifie that he was seducet, intyset, and cayreit away aganis his will, repeittis the foirsaid Letter, all writtin and subscryuit with his awin hand; and the Decreit gevin to the Secreit Counfall, finding ane wrang done, be the away-taking of him. And thir argumentis ar proponit, nocht only to verifie the propositioun of the Summondis, bot also to elyde the exceptiones proponit be the perfonen on pannell aganis the relevancy of the Dittay.

To the quihilk it is ANSWERIT be the perfonen on pannell and thair prelocutouris, that the pannellis allegiance proponit aganis the irrelevancy of the Dittay standis relevant, nochtwithstanding of all the arguments proponit be my lord Aduocat aganis the samyn: ffor, as to the Lawis Ciuile, French Lawis, Inglis (Lawis, and) Municipall Lawis of this realme, thay ar verrie pertinentlie citit be my lord Aduocat, for confirmatioun of the propositioun of the Dittay, and to infer the conclusioun thairof, gif the subsumptioun war relevant, quihilk is *factum*; ffor it is nocht contravertit with<sup>2</sup> my lord Advocat, that *Raptus Virginis*, Ravischeing of wemen, *vel crimen Plagij*, as the taking of his Maiesteis frie lege, is capi-

<sup>1</sup> Trained; led away craftily, or by stratagem.  
the doctrine laid down by the Lord Advocate.

<sup>2</sup> It is not controverted, even according to the



tall of the Law, and may be criminallie perfewit at his Maiesteis Aduocattis instance; bot the questioun in this judgement<sup>1</sup> is, quhidder gif this pannell haif committit ony of thir crymes, at the leist quhidder the samyn be relevantlie lybellit to infer the cryme cravet; ffor his lordschip will nocht deny, that of the Law, to aither of thir crymes thair aucht to intervene *vim et violentiam*, and the remanent circumstances allegit be me of befoir, viz. *Abductio per violentiam*, *Deportatio de loco in locum clandestinè*, *Seclusio parentum*, quhairby nather of thame sould haif access to the pairtie ravischet, and detenit, and withaldin fra thair kyn and freindis, *quasi et tanquam in carcere*; sua that without thir circumstances concur in this caice, it can nather be *Raptus* nor *Plagium*; and consequentlie, thay can nocht pas to the knowlege of ane Assyë thairfoir. As to the instances citet be my lord Aduocat, betuix *Dunbrek* and *Mr Alex<sup>r</sup> Gihfone*, nixt betuix vmq<sup>6</sup> *Thomas Maister of Glammis* and the *Erles of Huntlie*, *Craufurd*, and *Bothuell*, thay militat nathing in this caice; ffor as to *Dunbrek*, he expresselie committit *crimen Plagiü*, in taking of the Kingis Maiesteis frie lege, quyetlie and clandestinlie, by<sup>2</sup> all his freindis knowlege, be plane violence and force, being accompaneit with ten or tuelf perfones in hosteill and weirfair maner, with wappounes prohibeit to be borne or worne, transpoirting of him from place to place vnder nycht, debarring his freindis to haif acces to him, and be carieing him to the Castell of Harbottill, in England; sua that the pwneischment inflictit vpon him was dew, according<sup>3</sup> to the fact. As to the secund instance, anent *the Maister of Glames*, it lykwayis far les militatis in this caice, ffor it is not-tour, as my lord Justice, his Assessoris,<sup>4</sup> and my lord Aduocat knawis rycht weill, that *the Erles of Huntlie*, *Craufurd*, and *Bothuell*, being banded against the Kingis Maiesteis autoritie, deprehendit *the said Maister of Glammis*, in the Kingis Maiesteis high way, chaiffit him to the Hous of Kirkhill, and pat fyre thairto, quhilk inferris *crimen Plagij* of the Law, and ane gritter puneischment: And as to that part of the Dittay, beiring that the said Adame was intyset and seducet, that is nawayis relevant to infer ane cryme, ffor ffraud is nocht capitale, of<sup>5</sup> the Municipall Law of this realme, nor yit according to<sup>6</sup> the practique of the same: And as to the Lawis citet to infer the samyn to be *crimen capitale*, and speciallie the Law of the Maiestie, *Quon. Attach.*, I oppone<sup>7</sup> the daylie custome of this Judgement, the Municipall Law of this realme, and speciallie the Act of Parliament in anno 1612, ffor it is expresselie set down in the Dittay, that the said Adame Frenche come with the said Williame Home out of the said Mr Williame Boweis hous, the samyn can infer na Rapt; nocht only

<sup>1</sup> Court; tribunal.<sup>2</sup> Without; against; beside.<sup>3</sup> Corresponding; conformable.<sup>4</sup> It was the uniform custom, in all cases of difficulty and interest, for several Members of the Privy Council to sit in judgment with the Justice, as Assessors. Their names are only occasionally inserted in the Record in remarkable Cases.<sup>5</sup> According to.<sup>6</sup> Corresponding with.<sup>7</sup> Oppose.

for the argumentis, that he was, *sui juris*, past the age of xiiij yeiris, bot his being in companie with his kynsmen, can nocht infer ane Rapt, speciallie, quhair he is nocht detenit *per vim nec violentiam* fra the presens of his freindis. And quhair as, my lord Aduocat affirmes the Mariage to haif bene clandestine, and sa, nocht lauchfull, the contrair is affirmit—it was nocht clandestine; becaus thair preceidit Proclamatioun of Bandis,<sup>1</sup> the mariage was maid publictlie in the paroch Kirk, within the town quhair the parentis of the Gentilwoman had residence, off the speciall consent and assent of the said Adame; the said Williame Home being present at the time of the geving of his consent, and in companie with him, being his mother-brother. And sua, thair being nathing qualifeit in the subsumptioun of the Dittay to infer ony violence, the pannell can nocht pas to the knowlege of ane Assyse thairfor: ffor as to thais wordis set down in the Dittay, that thai wald nocht suffer him to pas bak agane, thair is nathing producet to instruct that point of the Dittay, nor na pairt thairof, tuicheing the allegit fact; ffor, be the Cowmone Law and diuerse Doctouris, sic as Julius Clarus, Baldus, Hostiensis, and remanent Doctouris treitand *de crimine Plagij vel Raptu Virginis*, thay conclud the samyn nawayis to be ane cryme quhairvpone ony pairtie may be accuset criminallie, except thair concur violence and violent deidis to that effect. This is cleir in the Cowmone Law, Digest. *de Incendio, Rapina, et Naufragio*, &c.; sua that the haill Doctouris and Cowmone Law concludis, that *nunquam fit Raptus sine vi et violentia. Igitur*, &c.

The Persewaris repeatit thair former answers, with the haill argumentis proponit for verificatioun of the propositioun of the Summondis: and lykwayis repeatit the Summondis, and haill pairtis thairof, quhilkis ar relevantlie lybellit, as ane direct answer to the last argument proponit. And as to the consent of the said Adame, answers as ofbefoir, that ane fact capitall being committit, the pairtie aganis quhome the samyn is done may mak na<sup>2</sup> confessioun nor declaratioun to the prejudice ather of the Kingis Maestie, or the pairtie interesse.<sup>3</sup> *Igitur*, &c.—To the quhilk it is answert, that the pannell declairis, that as yet thai haif proponit na alledgeance vpone ony contrair Confessioun of the pairtie; bot gif ony sic allegeances he hes to propone, referues the samyn to be proponit *suo loco*: And thairupoun askit instrumentis.

THE JUSTICE continewis Interlocutour vpone the allegeances foirsaidis, and answers maid thairto, to the morne, the nynt of November instant. The pairteis and Assyse wairnit, *apud Acta*: And Ordanet the pannell to find Cautiounes for thair compeirance the morne, to the effect foirsaid.

The Laird of Eist Nisbet elder, become fouertie for the entrie of Alexander Cranstoun of Burnecastell, vnder the panes contenit in the Actis of Parliament.

<sup>1</sup> Bans.<sup>2</sup> Is not entitiled to make any confession, &c.<sup>3</sup> Interested.



—The said Alexander become cautione for the entrie of Eist Nisbet, Johnne Cranftoun, Williame Home, and Williame Moffet, the morne, vnder the panes, &c.

Nov. 9.—THE JUSTICE, befor Interloquitour to be pronouncet be him in the matter, Ordanit the perfones on pannell, and siklyk the said *Sir Johnne Home of North Beruik, knycht*, persewar, to find caution for keiping of his Maiesteis peace, in nocht trubilling and molesting of vtheris,<sup>1</sup> by way of deid, in thair bodeyis, landis, or guidis, vtherwayis nor by ordour of Law and justice, under the panes following, viz. The said *Laird of Eist Nisbet*, the said *Sir Johnne Home of North Beruik*, and *Alexander Cranftoun*, ilk ane of thame vnder the pane of fyve thowseand merkis; and the saidis *Johnne Cranftoun* and *Williame Home* vnder the pane of I<sup>m</sup> (1000) merkis, for ather<sup>2</sup> of thame.

James Faufyde, younger of that Ilk, become plege and fouertie for Sir Patrik Chirnesfyde; Johnne, Maister of Cranftoun, for Alex<sup>r</sup> Cranftoun; Alexander Chirnesfyde, younger of Eist Nisbet, for Johnne Cranftoun; and the said Alexander Cranftoun of Burne Castell, for Williame Home, that thai fall keip his Maiesteis peace, and that Sir Johnne Home of North Beruik, kny<sup>t</sup>, fall be harmles and skaithles of thame in his body, landis, possessiones, and guidis, and onnawayis<sup>3</sup> fall be molestit nor trubillit be thame or any of thame thairintill, nor be na vtheris of thair causing, sending, hounding out, command, reffet, assistance, or ratihabitoun, quhome thay may stop or lat,<sup>4</sup> directlie nor indirectlie, vtherwayis nor be ordour of Law and Justice, &c.

Sir George Home of Manderstoun, Johnne Home, younger of Aytoun, and David Home of Wedderburne, younger, become pleges and fouerteis, coniunctlie and feuerallie, for Sir Johnne Home of Northberuik, that Sir Patrik Chirnesfyde, &c. fall be harmeles and skaithles, &c.<sup>5</sup>

(Nov. 20.)—MY LORD ADVOCAT, befor Interloquitour, declairis he will nocht insist any forder at this present, in persute of the perfones on pannell, for the crymes lybellit: And in respect of the haynoufnes of the fact, and evill preparatiue<sup>6</sup> and consequence quhilk may follow, desyres that caution may be tane of the defenderis for thair entrie, vpon a fyftene dayis wairning, to abyde tryell for the samyn, &c.—It is allegit be the pannell and thair prelocutouris, that in respect of the allegeances proponit, alswell dilatour as peremptour in this cause, and of my Lord Advocattis ansueris maid thairto, quhilk lyis at Interloquitour, his lordschip, as persewer, can nocht be hard to refeill<sup>7</sup> fra this persute; nather can the pannell be astrictit to find caution, seing thay ar willing, vpoun my lord Justice Interlocutour, to defend thame selffis, as accoordis of the Law: And in all humilitie abydis his lordschipis Interloquitour thairupoune.

<sup>1</sup> Each other.

<sup>2</sup> Each.

<sup>3</sup> In nowise.

<sup>4</sup> Hinder.

<sup>5</sup> In the same terms as above.

<sup>6</sup> Precedent; example.

<sup>7</sup> Resile; draw back.

Mr Alex<sup>r</sup> Peiblis, as prelocutour for Adame Frenche, personallie present, produces ane Supplicatioun to my lord Justice, for his lordschipsis informatioun in this caus, anent the said Adames passing away ffurth of Hadingtoun with the pannell, and that the samyn was of his awin frie will and consent; and desyret the samyn to be red, and to remane in proces; and takis instrumentis vpone the production thairof.—It is allegit be my lord Aduocat, that eftir his Declaratioun aboue writtin, that he desiftis fra this perfute, the persones on pannell, and far les the said Adame Frenche, quha is nawayis convenit, ather as persewar or defender in this matter, can be sufferit to produce ony informatioun or vther allegiance in this cause; nather aucht my lord Justice to admit the production thairof, eftir the Declaratour foirsaid.

The pannell desyret the Supplicatioun foirsaid to be red, befor my Lord Justice geve any Interloquitour, quhidder my lord Aduocat may refeill *pure et simpliciter, vel pro loco et tempore*.—The Supplicatioun gevin vp agane to the pannell, at command of my lord Justice.

THE JUSTICE findis that my lord Aduocat may verrie weill desift fra this perfute and tak vp his proces, seing he is persewar of the caus; and that, nocht-withstanding of the alledgeance maid be the pannell in the contrair.

The pannell takis instrumentis of the production of the former Supplicatioun be Adame Frenche, and that the said Adame Frenche is personallie present, reddie to declair, baith be woird and writ, that he past away with his Mother-brother of his awin frie will and consent.—My lord Aduocat, in the contrair, sayis the samyn sould nocht be admittit.

The parties find caution 'that thai fall compeir befor the Justice, or his deputis, the thrid day of pe nixt Justice-air of the Scherefdom quhair thai duell ["Beruik"], or soner vpone xv dayis wairning, to vnderly the law for the crymes aboue specifeit; vnder the panes contenit in the Actis of Parliament.'

### Slaughter.

Nov. 13.—ROBERT ROBERTSOUNE, feruitour to James Fawfyde, younger of that Ilk.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Johnne Faufyde, fervand also to the said James Faufyde, be streking him in the bellie with ane knyfe, within the barne of Faufyde, vpone the tent day of November instant; quhairof, vpone the tuelf day of this instant moneth, he deceifit.

PERSEWAR, James Faufyde, Younger of that Ilk, as maister.

The pannell Confessis the cryme, and craves Godis and the pairteis pardoun, and mercie for the samyn.

**VERDICT.** The Assyse, all in ane voce, be the mouthe of Johnne Hall in Prestoun, chancellor, ffind the said Robert to be Culpable and conuict of the said crewall Slauchter.—**SENTENCE.** To be tane to the Castell-hill of Edin-burgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

### **Falsct—Perjurg.**

Dec. 20.—ALEXANDER CUIK, Notter, Schereff clerk of Beruik.

Dilaittit of Falsct, committit be him in his office of Notarie, in geving out tua feuerall extractis of ane Seasing, of tua feuerall daittis: And of Periurie, eftir he was solempnelie suorne, in prefens of the Lordis, to declair the veritie in the premiffis.

### *DITTAY against the Pannell.*

FORSAMEKILL AS, it is expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, maid aganis falsc Notteris, and falsc periuret Witnessis, that gif ony Notter committis falsct, and beis conuict and fund giltie pairfof, (he) fall be pwneist to the daithe: And siclyk, quhair ony Witnes depones falslie, fall lykways be pwneist, be pearceing of pair tungis, and escheiting of all pair moveabill guidis; and forder pwneischment to be inflictit in the persone of pe saidis fals Witnesses, at the sight of and discretion of pe Judge, according to the qualitie of pe fact: As pe saidis Lawis and Actis of Parliament in thame selfis proportis. Nochtwithstanding quhairfof, it is of veritie that pe said *Alexander Cuik*, being imployit as Notter be *Johnne Home of Slegden* for geving Seasing to him of pe Landis of Eister Pleulandis, gifet and disponit to him be our Souerane lord, as vaikand<sup>1</sup> in his Maiesteis handis be pe sforsfaltour of vmq<sup>le</sup> *Frances Erle Bothwell*; and that, conforme to ane Precept direct furth of pe Chancellerie to Adame Cockburne, Schereff depute of pe Scheresdome of Beruik for pe tyme, vnder pe Quarter Seill, for geving Seasing to pe said Johnne Home pairfof; and to extract and draw furth to him ane Instrument pairupoun; the said Alexander maist falslie and erroneousslie, for his awin gane and lucre, extractit out of his Prothogoll<sup>2</sup> tua feuerall Extractis of pe foirsaidis Instrumentis of Seasing, of tua dyuerse daittis, the ane of pe dait pe xxij of Februar 1592, and the vper in anno 1593: As pe saidis tua Extractis productet, vnder pe saidis Alexanderis subscriptionn, beiris. Lyk as, in regard of pe said falsc Extract of pe foirsaid Seasing, ane actioun of Improbation being intentit, and as zit depending befoir pe Lordis of Sessiou, at pe instance of his Maiesteis Advocat, and *Walter, Lord of Balclench*, as heritour of pe Lordship and barony of Haillis, quhairfof pe saidis landis of Eister Pleulandis ar pairt and pertinent, and lykways at pe instance of *Alexander Hailie*, burges of Edr, as takisman pairfof, aganis pe said *Johnne Home*, sfir improving of pe foirsaid Instrument of Seasing, extractit be pe said *Alexander Cuik*, and gevin to pe said Johnne Home of the saidis Landis; and pe said Alexander being dyuerse tymes summond in pe said actioun of Improbation, to haif gevin Testimonie and declaratioun pairanent; and, in end, compeirand befoir pe saidis Lordis, vpone the tuelf day of December instant, and being examinat in pair lordschipsis haill prefens, anent pe trew dait of pe foirsaid Instrument of Seasing, and being solempnelie suorne to declair pe verittie pairin, the said *Alexander Cuik* than affirmet, constantlie, that pe trew dait of pe said Seasing was vpone pe xxij day of Februar, 1591, to the quhilk he was Notter; and abaid at pe Extract of pe Instrument gevin furth be him to pe said Johnne Home pairupoun; and pairwith declairit that pe vther Extract of pe same Seasing, drawin furth be him to *Alexander Hailie*, beiring dait pe xxij of Februar, 1591.

<sup>1</sup> Lat. *vacare*. Fr. *vaguer*.

<sup>2</sup> Protocol-book—an official Register ordained to be kept by every Notary.

fourfoir threttene, was falshe; AND þe said Alex<sup>r</sup> being pairestir, vpon the xvij and xix dayis of þis instant moneth, re-examinat, in þe saidis Lordis prefens, and solemnelie suorne to declair þe verritie, concerning þe dait of þe saidis Alex<sup>r</sup> Extractis, he varet fra his former Depositiones, maist impudentlie : Lyk as, his Prothogoll buik was viciat be him, in þe dait foirsaid, scoiring out ‘ primo,’ and putting in ‘ tertio,’ and pairefter scoiring furth ‘ tertio,’ and wryting agane ‘ primo.’ Quhairin he hes declairit him self to be ane fals and infamous Notter; and be his contrair Depositiones, maid in his examinatioun, to be ane manifest fals and mensuorne Witnes : Lyk as, þe saidis Lordis of Counsell, be þair Decreit, gevin vpon his tryell and Examinatioun, hes fund þe said Alex<sup>r</sup> to be ane fals Notter and manifest Periuret Witnes : As the Extract pairof, vnder þe subscriptioun of *my Lord Clerk of Register*, daitit þe xix day of þis instant, togidder with his Depositiones, maid in prefens of þe saidis Lordis, beiris. LYK AS, for verifeing of his falsset aboue writtin, þair was ane Band maid be him to the said *Alexander Haitlie*, quhairin he obleist him self to stand and abyde at the Instrument extractit be him, daitit þe 23 of Februar, 1593, he procureing his Maistreis Remission for þe samyn. For þe quhilk falsset and Periurie, committit be þe said Alexander, he aucht and shuld be pwnest to þe daith, in example of vtheris.

## ASSISA.

James Levingstoun of Jeriswoid,	Jo <sup>n</sup> Keir, mercheand burges, Ed <sup>r</sup> ,	Thomas Mulliekyn, mercheand
George Logane of Bonytoun,	Patrik Somervell, mercheand	burgess of Edinburghe,
James Nasmyth of Possö,	burgess thair,	James Halyburtoun, mercheand
Joseph Douglas of Pompharfoun,	Robert Halyburtoun, mercheand	burgess thair,
Johne Gairdin, merchand burges	burgess thair,	Jo <sup>n</sup> Mitchelhill, mercheand burges
of Edinburghe,	Jo <sup>n</sup> Keir, skipper, burges thair,	thair,
James Douglas in Lugtoun,	Johne Reid, indueller in Leyth,	Rob. Moffett, merch <sup>d</sup> burges thair.

The Aduocat takis instrumentis of the sweiring of the Assyse : And for verifeing of the Dittay, productet the tua Instrumentis of Seasing, vnder the pannellis subscriptioun, baith to ane effect, of dyuerse daittis : Productet lykways, the pannellis feuerall Missiue Letteris, direct to *Alexander Haitlie*, beirand, that the Seasing extractit to him, of the dait the xxij of Februar, I<sup>m</sup>.V<sup>c</sup>. fourfoir threttene, was the trew Extract, and that he wald abyde thairat : Productet also, dyuerse Letteris, writtin be the pannell to *Williame Ker*, beirand that the Seasing extractit to him, of the dait the xxij of Februar I<sup>m</sup>.V<sup>c</sup>. fourfoir ellevin, was the trew Extract, and that he wald abyde thairat : And siclyk, productet ane Letter, direct be him to the Lordis of Seffioun, being seik for the tyme, all writtin and subscryuit with his hand, testefeing the said Extract gevin to the said *Williame Ker*, daitit in anno 1591, to be the only trew Extract : Productet also, the pannellis Depositiones, maid be him in prefens of the Lordis, beiring the Confessioun of the Extract of the Seasing in anno 1591, to be the trew Extract, and the vther, of the dait 1593, to be fals : And vpon his Re-examinatioun, beiring the Seasing gevin in anno 1593 to be trew, and the vther in anno 1591 to be fals : Togidder also with his Prothogoll-buik, also productet, quhair it is twyse mendit in the dait of the said Seasing. And last, productet the Lordis Decreit, finding the pannell to be ane fals Notter, and ane manifest

periuret Witnes. And vpone the productioun thairof, askit instrumentis ; as also vpone the pannellis Judiciall Confessioun of the said ffalset.

Quhill crymes be Confessit, judiciallie, in thair presens and audience, to be of verritie ; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouthe and declaratioun of the said George Logane of Bonytoun, chancellor, ffand, pronuncet, and declairit the said Alexander Cuik to be ffylit, culpable, and convict of the saidis crymes, specifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed<sup>t</sup>, and thair, as ane ffalse Notter and Periuret Witnes, to be Hangit vpone ane gibbet, quhill he be deid ; and all his moveabill guidis to be escheit, &c.

[*Sir Willame Heart of Prestloun, Justice-Depute.*

ASSESSOURIS TO THE JUSTICE, nominat be the Lordis of Secreit Counsell, conforme to thair lordschip Actis of Counsell, daitit the xx of Februar, 1617.

Sir Richard Cokburne of Clerkingtoun, kny<sup>t</sup>,

Sir Alexander Drummond of Meidhope, kny<sup>t</sup> ;

Lord Previe feill ;

Sir Andro Hammiltoun of Reidhous, kny<sup>t</sup> ; and

Sir Willame Levingftoun of Kilfythe, kny<sup>t</sup> ;

Sir James Skene of Curriehill, kny<sup>t</sup>.<sup>1</sup>]

**Usurping his Majesty's Authority—Murder under Colour of Law.**

Feb. 26, 1617.—GEORGE GORDOUN of Geicht.

Dilaitit of Vfurpation of our fouerane lordis autoritie, in the violent and vnlauchfull taking of vmq<sup>le</sup> Frances Hay, sone to vmq<sup>le</sup> George Hay of Ardlethame, ffurth of the Place of Logyrui<sup>t</sup>, pertening to Willame Hay, ffiear of Brunthillis, his brother-in-law, vpone the xvij day of December, 1615 yeiris ; bringing him as ane captiue and prissoner to the burgh of Aberdene ; keiping and detening him in captiuitie, in a priuat hous or ludgeing of the said Laird of Geicht, within the Gallowgait, callit ' the Bony wyfe's Inn,' for the space of ffourtie aucht houris, or thairby, &c.<sup>2</sup>

PERSEWARIS, Sir Willame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our fouerane lord, for his Maiesteis intreis ; Mariorie Keith, as mother to the said vmq<sup>le</sup> Frances Hay.

PRELOCUTOURIS in defence, The Laird of Clwny, (Alexander Gordoun,) the Laird of Strathdoun, Mr Thomas Nicollfone, elder, Mr Alexander Peibles, Mr Robert Fairlie, Aduocattis.

The JUSTICE and ASSESSOURIS, with the advyse of ather pairtie, alswell persewar as defenderis, continewis this dyet to Fryday nixt, the last of this instant. The persones of Assyse wairnet *apud Acta* ; ilk persone vnder the pane of thre hundreth merkis.

Alexander Gordoun of Clwny become fouertie for the entrie of the said Laird of Geicht, &c., vnder the pane of ffyve thowfeand merkis money.

<sup>1</sup> All ordinary Lords of Session, with the exception of Sir Alexander Drummond, who was an Extraordinary Lord. <sup>2</sup> See Aug. 28, 1616, where the Dittay is inserted. The great importance of this remarkable Case induces the Editor to preserve all the useful information which is to be gathered from the Records.



[*Sir Williame Heart and Mr Alexander Coluile, Justice-Deputes.*]

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>; Mariorie Keith, as mother; George Hay, as brother to the defunct; Williame Hay, s<sup>r</sup>ear of Brunthillis, George Hay, his brother.

PRELOCUTOURIS in perfute and fortification thairof, Frances Erle of Errole, Laurence lord Oliphant, My Lord Zester, Alexander Keith of Ludquharne.

PRELOCUTOURIS in defence, George Marqueis of Huntlie, My lord of Eglington, My lord Viscount of Lauderdale, My lord Ochiltre, Mr Thomas Nicolfoune, and Mr Alexander Peiblis.

Feb. 28.—THE lord Aduocat producet his Maiesteis WARRAND, anent the perfute of the pannell for the crymes contenit in the Summondis, daitit at Quhytehall, the 17 of ffebruare instant; and desyret the samyn to remane in proces.

Eftir reiding of the Dittay, it is allegit be the pannell and his prelocutouris, that thair is dyuerse substantiall heidis contenit thairintill, quhilkis ar nawayis insert in the coppie gevin to thame be the Messinger executour of the Summondis; and producet the coppie, subferyuit be the Messinger, for verifiatioun thairof: And in respect that na autentik coppie is delyuerit, desyres ane continuatioun of this dyet to the morne, to the effect thai may be advyset with the Dittay, and vpone thair Defensfis to be proponit be thame aganis the samyn.—It is ansuerit be my lord Aduocat, that the allegiance foirsaid acht to be repellit, and na continuatioun shold be grantit, in respect of the Summondis and Executiones thairof, producet, beiring ane autentik coppie to be delyuerit to the pannell: And forder, thair was na necessitie to charge the pannell, or to geve him ane coppie of the Summondis, bot only to his cautioneris, quha become fouertie for his entrie to vnderly the law for the crymes lybellit.

THE Justice Repellis the allegiance; in respect of my lord Aduocatis ansuer.

Thaireftir the pannell, nochtwithstanding of my lord Justice interlocutour, desyres ane convenient tyme to be grantit to thame to reid and consider the Summondis producet; and that thai may haif libertie to remoue thame selffis apairt, to aduysf thairupoun.—Quhilk the Justice grantit; and ordanit the Summondis to be gevin vp to the pannellis prelocutouris, to be advyset thairupoun.

IT is allegit be Mr Thomas Nicolfoun, for the pairt of the pannell, that he did na wrang in taking of s<sup>r</sup>ances Hay *privata autoritate*; becaus it is of verritie, that vpone Fryday, the fyftene day of December, immediatlíe preceeding the day of his allegit taking, quhilk was vpone the xvij day of the said month, the said vmq<sup>le</sup> *Frances Hay* had flane vmq<sup>le</sup> *Adame Gordoun*, brother to the pannell, for the quhilk he fled; and sa, the said Laird of Geicht, being the avenger of bluid, viz. the eldest brother of the said Adame, it was lauchfull to him to serche and seik the malefactour, to the effect he mycht be presentit to the Justice: Lyk as, be Act of Parliament, maid in the dayis of King James the first, of worthie memorie, Parlamento sexto, cap. 89, the Scheref and hail cuntrie is



commandit to ferche and feik the man-slayer, being certifeit of the Slauchter; and fa, mekill mair mycht the avenger of bluid, be doing na wrang in the taking: Lyk as, eftir the taking of him, he presentit him to the Schereff but<sup>1</sup> ony hurt of fence, or iniurie done to him: And that it is lauchfull to ony of the people, alswell as to the avenger of bluid, it is cleir, be ane verrie trew example; ffor gif ane Theif steill ony manniss guidis, it is lauchfull to the persone fra quhome the guidis ar stowin, to convene his kyn and freindis, and raife the cuntrie, and persew the Theiff sa lang as he is *in fuga*, ay and quhill he apprehend him, or put him out of the cuntrie; and this he may do but ony Warrant of ane Magistrat; as is cleir and nottour be the daylie practique of the cuntrie: *Ergo*, in this cryme of Slauchter, quhilk is of far gritter importance than steilling of guidis, it was lauchfull to ony of the people, *multo magis* the avenger of bluid, to apprehend the malefactour, and delyuer him to the Justice: And as it was lauchfull to the pannell to ferche, feik, tak, and apprehend the malefactour, and delyuer him to the Justice, evin sa it was lauchfull to him to do the samyn with convening of his freindis, (nawayis granting he did the samyn,) and with quhatfumeur armes; ffor vtherwayis, this absurditie sould follow, that the malefactour sould escaip, and the innocent persone sould be flane; in sa far as, gif the innocent persone fall preise to apprehend the malefactour airmet with hagbutis and pistolettis, namelie, haifing the benefit of ane house, it war easie for him to sla sic as socht him; and sa he sould nocht be apprehendit. *Secundo*, for this caus he did na wrang, becaus it is an reule of the Law, that *concesso aliquo extremo, conceduntur omnia media, per que pervenitur ad illud*; than it is subsumet, gif it was lauchfull to tak the man-slayer, as is afoir provin, *ergo*, it was lauchfull to vse all the middis<sup>2</sup> be the quhilk he sould be taken, baith of airmour and vtherwayis.

It is answert be my lord Aduocat, to the *first* pairt, anent the avenger of bluid, thair is nather Law nor reffone can mak the *Laird of Geicht* the avenger of bluid, bot only the Kingis Maiestie, his Justice, and vtheris haifing power and autoritie of his Maiestie. As for the argument proponit vpon the Act of Parliament maid in the dayis of King James the first, the allegiance foundit thairupoun is altogidder irrelevant, impertinent, and altogidder repugnant and disconforme to the Act; be the quhilk, it is statute, that the Man-slayer sould be persewit be the Schereff, and the cuntrie to concur; and gif the malefactour be tane be the Schereff, he sould be put in fure firmance, quhill<sup>3</sup> the Law be done vpon him; and gif he be tane reid-hand,<sup>4</sup> to be done with that sone.<sup>5</sup> It is nevne allegit that the Schereff followit the allegit malefactour, nather that he was

<sup>1</sup> Without.<sup>2</sup> Means.<sup>3</sup> Until.<sup>4</sup> With the red or bloody hand; instantly after

commission of the fact.

<sup>5</sup> Sun; day; before sunset of that day.

tane with reid-hand ; sua that the allegiance is altogether irrelevant, quhilk is founded vpon that Act, as direct repugnant thairto : And as to that pairt of the allegiance, beirand that the Laird of Geicht tuik and apprehendit the allegit malefactour, that alledgeance contenis ane grit absurditie, haifing nather Warrant, grund, nor fundament, nather of the Lawis of the realme, nor of the Ciuile Law ; feing, be the Lawis of this realme, the Schereff is appointit to follow the Man-flayer ; and be the Ciuile Law, it is nocht leifum<sup>1</sup> to ony privat man to tak and apprehend ony perfone, without ane Commiffioun and Warrant frome the Magistrat : Leg. *Neminem*, Cod. *de exhibendis Reis*, lib. 9, Tit. 3, Leg. vltima, *Neminem exhibendum esse in iudicio precipimus, nisi de cuius exhibitione Iudex pronunciauerit*. Item, Bartolus, ad dictam Legem : Et Domaderius, cap. 15, num. 40, idem asserit : Et toto titulo, Codice *de Plagiariis* : Et lege *Raptores*, de Episcopis et Clericis : Item, Julius Clarus, § finali quest. 31, in principio : Be the quhilkis premisses, it is cleir, that ane privat perfone, and speciallie the pairtie, had na power to tak the allegit malefactour. As to the argument proponit vpon the example of the prosecutioun and following of ane Theif, it is altogidder impertinent to this purpois ; feing the Theif is followit, *in ipso actu*, immediatlie eftir the committing of the cryme, with the guidis and geir of the followeris ; quhilk is permittit be the Lawis of this realme, be the Actis of Parliament maid thairanent, and the vniuersall consuetude of the same, it is lauchfull to ony man, in following of his awin guidis and geir, to apprehend the Thevis ; and albeit the Theif be slane in the following, the Slayer is maid frie be the lawis of the realme. It is absurditie to think that the Schereff him selff may follow ony man committer of the Slauchter, and instantlie put handis in him, at his awin hand, *nisi in flagranti crimine*, quhilk is nocht allegit in this caise ; and albeit he war tane *in flagranti crimine*, or reid-hand, as the Act of Parliament beiris, the Law ought to be done vpon him within that sone. And quhair it was allegit, that gif it war lauchfull to the Laird of Geicht to perfew or tak him, it was lauchfull to tak him with convocatioun of our fouerane lordis legis, and with wapponis forbiddin ; it is ansuerit, that the first propositioun is altogidder absurd, in respect of the first ansuer maid be the perfewaris ; and consequentlie, the taking with convocatioun of his ffreindis, and forbiddin wappones, feing he had na autoritie, nather to tak, nor beir forbidden wapponis : In respect quhairof, the first allegiance, and hail argumentis thairin contenit, aucht to be repellit.

It is duplyit for the pannell, that his allegiance proponit ofbefoir standis verrie relevant, nochtwithstanding of ony ansuer maid thairto ; and quhair the samyn is querrellit,<sup>2</sup> that thair is no law that makis the avenger of bluid, bot

<sup>1</sup> Lawful.<sup>2</sup> Disputed ; argued.

the samyn pertenis only to the Kingis Maiestie, it is anfuert, that the pannell makis no questioun thairin *quo ad executionem*; bot the Law callis him the ane avenger of bluid, *quia habet jus prosequendi secundum formam juris*. As to that pairt, alledgeing the difconformitie betuix the allegiance and the Act of Parliament, it is duplyit, that thai ar verrie conforme; becaus be baith the Actis allegit, the Kingis haill legis ar commandit to concur and assist the taking of the malefactour with the Scheref, *ergo*, thair was na wrang done, feing the Schereff was in ferching; and in respect that he could nocht serche in all pairtis; and the notorietye of the fact, and the maliefactouris fleing, being *in fuga*, and sa taking the cryme vpon him, quhatfoeuer was done be the pannell man be estemit as concurring with the Sher e speciallie, haifing respect, that the pannell tuik the malefactour but ony wrang or hurt of his body, or iniurie done to him, and referuit him saif but ony iniurie, quhill he was presentit to the Schereff, &c.<sup>1</sup>

THE JUSTICE, with advyse of his Assessoris, Continewis all forder disputatioun in this mater to the morne, the first of March, 1617.—The Laird of Clwny again becomes his surety.

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

#### DECLINATURE OF THE JUDGE.

Mar. 1.—It is allegit be the pannell, that Mr Alexander Coluile can nocht be Judge in this cause, in respect he is fourtis of kyn to the Countes of Errole; my Lord of Arrole, hir husband, being persewar, viz. The said Mr Alex<sup>r</sup> Coluiles grandame was ane dochter of the Houfe of Lochlevin, quha is ane; the said Mr Alexanderis guidfchir, tua; the said Mr Alexanderis father, thre; and him self the fourt: And referris the probatioun of this rekning to Mr Alexanderis awin ayth of verritie.—It is anfuert be my lord Aduocat, that this Declinatour can nocht be ressauiit this day, becaus Mr Alexander Coluile, being Justice-depute in this Judgement, quhill is ane ordiner and Supreme Jurisdiction, na declinatour aucht to be proponit aganis him; at the leif, na kinreid<sup>2</sup> fould be ony caus to declyne him. *Secundo*, the declinatour can nocht now be ressauiit, becaus the Court being fenfit yesterday, he sitting as Judge, the persewaris and defenderis compeirand with thair prelocutouris, thair is ane Interlocutour pronuncet in this caus; and eftir pronunceing thairof, ane peremptour exceptioun (was) proponit be the pannell aganis ane member of the Dittay; eftir the quhillk, ane declinatour can nocht be proponit.

To the quhillk it is anfuert be the pannell, that the declinatour exceptioun

<sup>1</sup> It has not been deemed expedient to insert the whole of the arguments of the parties in this keenly contested case, which are extremely prolix, and occupy above sixty pages of the Record. The opening of the pleadings has been given as a specimen of the procedure of the Court at this early period.

<sup>2</sup> No objection on the ground of kindred or relationship.

standis relevant, nochtwithstanding of my lord Aduocattis twa answers; namelie, the *first* beirand, that Mr Alexander is ane Ordiner Judge of this Court, creat, electit, and suorne; that pairt of the answere *non relevat*; becaus the creatioun and admiffioun of Mr Alexander Coluile takis nocht away the pannellis exception declinatour, *ex superveniente causa*, vpon consanguinitie of bluid to the perswair; for than it sould follow, that in an actioun perswair befor the Lordis of Sessioun, quha are supreme Judges of the land in ciuile caussis, at the instance of ane persone, quhais brother is ane of the Lordis of Sessioun, it sould follow that he sould be Judge to his brother, perswair in the caus perswair be him aganis ane vther, quhilk can nocht be: As to the *secund* member of the answere, beirand, that the pannell can nocht be hard to propone this Declinatour this day, be resson that in ane Court haldin yisterday in the samyn caus, Mr Alexander sat as Judge, befor quhome the pannell proponit dyuerse exceptiones dilatour and peremptour, aftir the proponing quhairrof, the pannell can nocht be hard to propone ony exception declinatour, be resson that ane exception declinatour is the first exception sould be proponit in judgement; —to the quhilk it is answairit, that nochtwithstanding of the said secund answere, the exceptioun declinatour standis relevant aganis the said Mr Alexander Coluile, be resson thair was ane sufficient judgment and iudicatorie establischet yisterday by<sup>1</sup> the said Mr Alexander, to wit, Sir Williame Heart, ordiner Justice, quha sat in judgement, and pronuncet Interloquitour in this caus; sa that this exception, gif it had bene proponit yisterday, could nocht be respectit, becaus the Judgement had bene ane perfyte Judgment without him, quhilk is nocht this day in this caise; and sua, be the presens yisterday of the said Sir Williame Heart, and his absence this day, the caise is alterit: In respect quhairrof, the exception standis relevant, nochtwithstanding of the answere. And forder, quhair it is answairit, that Mr Alexander Coluile is Justice-generall, *in criminalibus*, thair can no exception of consanguinitie be proponit aganis him as depute, it has nather Law to sustene the answere, and it is aganis the daylie practique; for thair is na Judge in Scotland that hes that priuilege to sit *in causa consanguinei*, bot only the Lordis of Sessioun; quhilk is done of necessitie, for vtherways thair will be no judgement thair, quhilk is nocht in this caise,—for the removeing of ane only Judge may be supplieit be the sitting of ane vther, *ubi non est penuria*: And this was practizet in the grittest pannell that was in our dayis, betuix the Lairdis of Caddell and Ardkinglas, for the slauchter of the Laird of Caddell; in the quhilk, the Justice-depute was set,<sup>2</sup> as being depute to the Erle of Ergyle, quha bakit<sup>3</sup> the perswair; lyk as, the Kingis Maiestie haveing chosin dyuerse Judges *successiué* eftir vtheris, thay war all declynit, pairtlie vpon consanguinitie with the Erle of Ergyle, and pairtlie as being pensioneris to sic as assistit

<sup>1</sup> *Forbye*; besides; independent of.<sup>2</sup> Declined.<sup>3</sup> Backed; countenanced; supported.

the perfute; and namelie, Mr Thomas Henderfoun, Commiffar, was fet, becaus he was within greis<sup>1</sup>-defendant with the Hous of Bafs; and Mr Thomas Nicol-foun, as pensioner to my Lord Ogilvie, quha fortifeit the perfute.

It is allegit be the perfewaris, that the declinatour aucht nawayis to be refflaut for the refones proponit of befor; and fpeciallie, that this Court is a Supream Court *in suo genere, viz. in criminalibus*, and that the faid Mr Alexander Coluile hes alreddie fittin and voittit in this caufe, eftir the proponeing of dilatour and peremptour exceptiones thairin, na declinatour exceptioun being proponit aganis him: And quhair it is allegit be Mr Alexander Peibles, that the Lordis of Sefsioun will be declynit, viz. ane brother may nocht judge in ane vther brotheris caus, nor the fone in the fatheris caus, *et e contra*; that is of verritie, in refpect of ane fpeciall Act of Parliament maid thairanent; but in all vther cauffis, thair is na exceptioun, nather of affinitie nor confaguinitie, that will declyne ony of the Lordis of Sefsioun. As to the practique allegit concerning *Arkinglas* proces, that aucht nawayis to be refpectit in this Judgement, becaus the Justice Generall was partie perfewer, and affistit the perfute, and fa nane of his deputis could fit; bot we ar nocht heir in that caice.

THE JUSTICE, with advyfe of his Affeffouris, continewis Interloquitour vpone the allegiances foirfaidis, and anfueris maid thairto, anent the declinatour proponit aganis him, to Tyfday nixt.—The Affyfe wairnit *apud Acta* for thair compeirance the faid day, ilk perfone vnder the pane of floure hundreth merkis.

#### DECLINATURE of two of the Affeffors.

Mar. 4.—It is allegit be my lord Aduocat, that my Lord of Meidhoip can nocht be Affeffour to the Justice in this caus, in refpect my Lord Marqueis of Huntlie, and my Lord of Meidhopes wyfe, ar within greis-defendant, viz.: My Lord Marqueis is ane; his Lordfchipis mother, the Countes of Huntlie, tua; and hir father, James Duik of Chattellerault, third; on the ane fyde: And the Bifchope of St Androis, brother to the Duik, ane; the Laird of Blair, his fone, tua; and my Lord of Meidhopes wyfe, the Laird of Blairis dochter, the third; on the vther fyde. In refpect quhairof, he can nocht be Affeffour.

It is lykwayis allegit be my Lord Aduocat aganis *Sir Andro Hammiltoun of Reidhous*, that his lordfchip can nocht be Affeffour to the Justice in this caufe; becaus my Lord Marques and he ar ferdis of kyn, and fa within greis-defendant, viz.: my Lord Marqueis is ane; his Lordfchipis mother, the Countes of Huntlie, tua; James, Duik of Chattellerault, hir father, thred; and Beatoun, the Duikis mother, quha was fister to the Laird of Creiche, fourt; on the first pairt:—And ficylk, the Laird of Creiche-Beatoun, brother to the Duikis mother, ane; the Lady Balcleuch, dochter to the faid Laird of Creich, tua; my Lord of Reidhouse mother, the faid Lady Balcleuches dochter, thrid; and my Lord of

<sup>1</sup> Certain degrees of near relationship, called *degrees-defendant*.



Reidhous, him selff the fourt. In respect of the quhilk rekning, the veritie quhairof is sufficientlie knawin to my Lord him selff, he can nocht be Assessor in this cause.—It is anfuert be Mr Thomas Nicolson, as prelocutour for the pannell, that he can nocht be bund to geve ane anfuert to the tua allegiances foirfaidis, foundit vpon the declinatour of the tua Assessoris; becaus in the last Court haldin on Setterday, the first of this instant moneth of Marche, thair was ane Declinatour exceptioun proponit be the pannell aganis the Justice him selff, quhy he could nocht sit as Judge in this cause, viz., that he was within greis-defendant to the Countess of Errole; my Lord of Errole, hir husband, being ane persewar. To the quhilk declinatour, dyuerse anfuertis, duplyis, and triplyis war proponit, quhilk as yit ar nocht descussit, bot the Judge continewit Interloquitour vpon the said exceptioun-declinatour to this day: And thairfoir, *ante omnia*, befoir ony alledgeance may be had ather be persewer or defender, Interloquitour man<sup>1</sup> be first pronuncet vpon the said alledgeance, conforme to the ordour of the proces; quhilk man be done of necessitie; for, gif the Justice find the declinatour relevant, quhilk will be provin be his awin aith of verritie, than consequentlie he can nocht sit as ane Judge; and gif he be removet as Judge incompetent, he can nocht pronounce Interloquitour in the allegiances proponit aganis my Lord of Meidhoip and my Lord of Reidhouse as Assessoris, quhiddir thay may be Assessoris or nocht, *qui ubi non est Judex, ibi nec Assessor, nec processus, nec sententia interloquutoria, litiscontestatio, nec sententia definitiva*: And thairfoir, quhill first it be pronuncet vpon the foirsaid declinatour proponit aganis the Judge him selff, thair can na alledgeance be proponit or discussit aganis the Assessoris.

It is anfuert be my lord Aduocat, as of befoir, that the said Declinatour aganis the Judge, as Justice-depute, can nocht be ressaunt, in respect of the estait of the proces.

THE Justice continewis the dyet, and Interloquitour vpon the exceptiones-declinatour aboue written, to Fryday nixt, the sevint of Marche instant: And Ordanis Cautioun to be of new fund be the pannell for his entrie that day, to vnderly (the Law) for the said cryme, vnder the pane of ffyve thowland merkis.

The Assyse wairnit thairto, *apud Acta*, ilk persone vnder the pane of ffyve hundreth pundis money.

[*Mr James Bannatyne and Mr Alexander Colville.*]

COMPERIT judicialle William Hay, seruitour to my lord Erle of Errole, and productet ane Commissioun of Justiciarie, vnder his Maiesteis Caschet<sup>2</sup> and Court signet, subscryuit be my Lord Chancellor, my Lord of Mar thesaurer, and

<sup>1</sup> Must.

<sup>2</sup> A silver stamp, bearing an exact *fac-simile* of the King's signature, invented for the purpose of abridging labour to the King, whose subscription is required to so many documents. It is still in use, and is affixed to certain writings not requiring his Majesty's 'sign-manual.'



my lord Marqueis of Hammiltoun; quhairby Mr James Bannatyne of Neutyld is constitute his Maiesteis Justice be Commissioun. As also producet thairwith ane Act of Counfall, beirand the said Mr James acceptatioun of the said Commissiounne of Justiciarie and office thairof, and geving his ayth in thair lordschipsis prefens, for his faithfull discharge of the said office. Of the quhilk Commissioun and Act of acceptatioun and creatiounne, the tennour followis:

*COMMISSION in favour of Mr James Bannatyne of Newtyld.*

JAMES R.

JAMES, be the grace of God, King of Grit Britane, France, and Ireland, defender of þe faithe. To all and findrie our legis and subiectis quhome it esseiris, to quhais knowlege thir our letteris fall cum, greting. FORSAMUKIL AS George Gordoun of Geicht, being callit and convenit befor our Justice, in our Tolbuthe of Edinburghe, to haif vnderlyne þe law for þe taking, detening, and executionn of vmo<sup>le</sup> Frances Hay, and for beiring, weiring, and schuiting of bagbutis and pistolettis, and for þe perseute and invasioun, hurting, wounding, and mutilatioun of the thre brether of Bruntillis; in maner, and at þe tyme specifeit and contentit in the Criminall Letteris direct pairpoun: And dyuerse dyettis being keipit to this effect; in end, the matter bes ressauit ane delay and continuatioun, by the age, infirmite, and seiknes of Sir Williame Heart, quho may nocht attend pairpoun; and by ane declinatour proponit aganis Mr Williame Coluile, colligne to þe said Sir Williame, in the office of Justiciarie, sua that now the delay and hinder of Justice proceedis vpon the want of ane vn suspect Judge. QUHAIRFORE, We, with advyse of the Lordis of our Secreit Counfall, haif maid and constitute our louit *Mr James Bannatyne of Newtyld*, our Justice in that pairt, to the effect vnderwritten; Geveand, grantand, and committand to him our full power and commissioun, expres bidding, and charge, to vse and exerce the office of our Justice in all and findrie thingis concerning the Tryell of þe said George Gordoun of Geicht, vpon the perticuler crymes and pointis of Dittay specifeit and contentit in þe Criminall Letteris raiset aganis him. And for this effect, to fence, hald, and continew Justice Courtis, ane or ma, within the Tolbutth of our burgh of Edinburgh, suitis to mak be callit, absentis to amerchiat, and to creat officeris and memberis of Court neidfull, if neid beis; and in the saidis Courtis the said George to call, be Dittay to acense, and him to the knowlege of ane Assyse to put; and as he fall happin to be fund culpable or innocent of þe crymes contentit in the saidis Criminall Letteris, or any of thame, to caus Justice be ministrat vpon him, conforme to þe lawis of our realme; Assyffis neidfull to this effect, ilk persone vnder suche panes as fall be thocht meit, to summond, wairne, chuse, and caus be suorne, and generallie all vper thingis to do, exerce, and vse, quhilis for executioun of þis our Commissioun, ar requisite and necessar; ferme and stable halding, and for to hald all and quhatsoeuer thingis fall be lauchfullie done heirin. GEVIN vnder our signet, Att Edinburghe, þe fourt day of Marche, and of our reguene þe xiiij and fiftie 3eiris, 1617.

AL. CANCELL<sup>r</sup>. AL. MAR. HAMILTON.

APUD EDINBURGHE, *quarto die mensis Marcij, anno domini millesimo sexcentesimo decimo septimo*, Red, past, voittit, and allowit. J. PRYMOIRS.

*ACT of Acceptation by Mr James Bannatyne.*

APUD Ed<sup>r</sup>, *quarto die mensis Marcij*, 1617. The quhilk day *Mr James Bannatyne of Newtyld*, being maid and constitute our souerane lordis Justice, for trying of George Gordoun of Geicht, vpon the crymes specifeit and contentit in the Criminall Letteris raisit aganis him, at the instance of the mother, broþer, and freindis of vmo<sup>le</sup> Frances Hay, and at the instance of the brether of Bruntill, and of our souerane lordis Aduocat, for his hienes intreis; as in the Commissioun maid to the said Mr James pairpoun, of the dait of thir presentis, at lenth is contentit. The said Mr James compeirit personallie, befor the Lordis of Secreit Counsell, Acceptit the said Commissioun vpon him, and gave his aithe

that he fall discharge the said Commissioun vprichtlie and faithfullie, according to his knowlege; as he will answer to God and the Kingis Maiestie pairupoun.

*Extractum de libris Actorum Secreti Consilij s. d. n. Regis, per me Jacobum Prymrois Clericum ejusdem, sub meis signo et subscriptione manualibus.*

JACOBUS PRYMROIS.

[*Mr James Bannatyne and Mr Alexander Coluile.*]

Mar. 7.—THE Justice continewis this matter to the morne, the aucht of this instant. The Assyse wairnit thairto, *apud Acta, &c.*

The Laird of Geicht protestis, that the production of the said Commissioun of Justiciarie, and fencinge of this dayis Court, sould nawayis preiudge him of his declinatour the nixt dyet, nor ony vther declinatour proponit be him of befor in this cause.—My lord Aduocat protestis in the contrair.

[*Mr James Bannatyne.*]

Mar. 8.—THE persewaris, nochtwithstanding of the former declinatour proponit aganis the tua Assessouris, ar content that thai remane Assessouris in this caus, conforme to the Counfellis Act maid anent thair constitutioun; and passis fra the saidis declinatouris.

Mar. 11-12.—THE 'disputatiounis' proceeded at great length, on both sides, on this day, 'Tyfday the xj instantis,' and the following day, on the merits of the cause. They are very prolix, and unnecessary to be inserted in this place.

Mar. 13.—THE Justice and Assessouris, ffor obedience of ane WARRANT of the Lordis of Secreit Counfall producet be my Lord Justice Clerk, continewis this Justice Court, and all forder disputatioun in this cause, to the aughtene day of Junij nixtocum; and Ordanis the pannell to find caution, &c.

JUSTICE, Justice Clerk, and your deputis. Sow fall, vpon the sight heirof, continew your Court and dyet appointit for Tryell of George Gordoun of Geicht, ffor the taking, detening, and execution of vmq<sup>le</sup> Francis Hay; and for pe beiring and weiring of haquebutis and pistolettis; and for pe persute and invasioun of the breper of Brunthillis, vntill the aughtene day of Junij nixtocum; takand new caution, conforme to pe ordour: Quhairanent thir presentis fall be your Warrant. ATT ED<sup>s</sup>, the xiiij day of Marche, 1617.

AL. CANCELL<sup>r</sup>. AL. MAR. BYNNING.

My lord Aduocat declaris that he consentis to the former continewatioun, only becaus of his Maiesteis Letter, direct to the Lordis of Secreit Counfall, in that matter, and vpon na vther respect.—The parties find caution for keeping of his Maiesties peace, &c.

(Jun. 18.)—THE Justice, be directioun of his Maiestie, continewis this dyet to the xxvij of Junij instant, &c.

(Jun. 27.)—THE Justice, be directioun of the Kingis Maiestie, declairit be my lord Aduocat, Continewis all forder disputatioun in this proces, and tryell of the perticuler crymes *respectiue* contenit in the summondis, to the thrid day of the nixt Justice-air of the scherefdom quhair the pairteis, allweill persewaris as defenderis, duellis ('Aberdene'), or soner vpon xv dayis warning: And Ordanis

the *Laird of Geicht* to find Cautioun for his compeirance, to the effect and in maner aboue writtin, vnder the pane of fyve thowseand merkis, conforme to his Maiesteis directioun, reportit be his Maiesteis Aduocat, as said is.

The said Laird stand Williame Gordoun of Rothemay, fear of Cairneburrow, fouertie for his entrie, &c.

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

**Adultery—Bigamy.**

Mar. 14.—ALEXANDER THOMESONE, skynner, burges of Edinburghe, brother to Johnne Thomesone, Leyth; Johnne Guthrie, *alias* callit Williame Laird, and Jonet Cuthbert.

Dilaittit of the crymes of Adulterie, committit be thame, in maner, and at the tymes specifeit in thair Dittayis.

The pannell acknowleges the crymes contenit in thair feuerall Dittayis, and craves God and the Kingis Maiesteis pardoun; and offeris thame in his Maiesteis will thairfoir.

VERDICT. The Assyse, be the mouthe of George Carnebie, indueller in Ed<sup>r</sup>, all in ane voice, stand the saidis persones to be flylet, culpable, and convict.—

SENTENCE. In respect of the quhilk convictioun, THE JUSTICE, conforme to ane Warrant of the Kingis Maiestie, quhairof the tennour followis:

TO OUR JUSTICE GENERAL of our Kingdome of SCOTLAND, and his deputis quhatsoeuer, quhome thaise presentis may concerne; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrant and command from ws, our Aduocat is criminallie to accuse and perfew befor yow one Alex<sup>r</sup> Thomesoun and one Jonet Cuthbert, tuo famous and notorious Adulteraris: Althogh thair cryme and offence thairin be capitall, and most, by our Lawis, infer payne of death against thame, zit, out of our princelie grace and mercie, We ar plesed to mitigat the severitie or extremitie of Law in thair behalf. Requyreing yow, by these presentis, in caice of pair convictioun, to ordane the said *Alexander* to be Banished our dominiones, and his escheit to be furthwith vptakin for our vse be our thesaurer: AND that ye said *Jonet* be Banished our burgh of Ed<sup>r</sup>, and the pairtis of ye cuntrie pairabout. In which behalf, and for performinge of ye whole premisses, these salbe to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januare, 1617.

Ordanit and Adjudget the said *Alexander* to be banished his Maiesteis haill dominionis, and nocht to returne within the samyn at na tyme heireftir, without his Maiesteis Licence, vnder the pane of deid; as also, that his haill moveable guidis be escheit, &c. AND siclyk, Ordanit the said *Jonet* to be banished furth of the burgh of Ed<sup>r</sup> and tuelf myles thairaboutis, and nawayis to be fund thair-intill, at na tyme heireftir, without his Maiesteis Licence, vnder the said pane of deid. And as concerning the said *Johnne Guthrie*, Ordanit him to be tane bak to the Tolbuth of Ed<sup>r</sup>, therein to remane in sure firmance, vnto the tyme Dome be pronuncet against him.

SENTENCE *against Johnne Guthrie, alias Williame Laird.*

Compeirit Sir Williame Oliphant of Newtoun, knycht, Aduocat to our souerane lord for his hienes intreis, and producet his Maiesteis Warrant, direct to the Justice, quhairof the tennour followis :

To our JUSTICE GENERAL of our Kingdome of SCOTLAND, and his deputis quhatsoever, whome these presentis may concerne; and to all and each of thame.

JAMES R. QUHAIKAS, by expres Warrant and command from Ws, our Aduocat is criminallie to accuse and persue, befor yow, on *Johnne Guthrie*, for mariage of tuo wyfes, and keeping (befydis thame) of a thrid woman for his concubene; whiche being a cryme so odious and intollerable amongst Christians, and meriting to be most exemplarie puneished: THEASE ar pairfoir exprellie to will and command yow, in caice of the said Johnes convictioun, to caus pronunce and execute Dome and Sentence of Death aganis him, accordring to the ordinance of our Lawis maid for pwneischment of fuche offenderis. In which behalf, and for performeing of the whole premisses, these fall be to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januar, 1617.

THE JUSTICE Ordanit the said Johnne Guthrie, *alias* Laird, to be tane to ane gibbet, befyde the croce of Ed', and thair to be HANGIT quhill he be deid; and all his moveable guidis to be efcheit and inbrocht to his Maiesteis vse, &c.

[*Archibald Earl of Ergyle, Justice General; Mr Alex. Coluile, his depute.*]  
Slaughter.

Jul. 16.—JOHNNE KIRKPATRIK, seruand to Mr Walter Kynnymmonth of Callinche (Kilduncane.)

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Andro Kynnymmond, sone to David Kynnymmond of that ilk; committit vpone the tent day of Junij last-bypast, viz. The said Johnne being in companie with Mr Walter Kynnymmond, appeirand of Kilduncane, his maister, Jedione Kynnymmond, brother to the said Mr Walter, Patrik Kynnymmond, sone to the said Mr Walter, Hew Dik, seruand to the said Mr Walter, Thomas Fentoun, messinger citiner<sup>1</sup> in St Androis, Thomas Fentoun, his sone, thair, Johnne Clelland, and . . . Clelland, sones to Robert Clelland of Fermlaw, and . . . Broun, citiner of St Androis, with convocation of his Maiesteis leiges, to the number of tuentie persones, or thairby, all bodin in feir of weir, with suordis, daigeris, plait-slevis, hagbutis, and pistolettis, expresse prohibeit to be borne, worne, vsed, or schote with, be the Actis of Parliament; haifing consaueit ane deidlie feid, rancour, and malice aganis the said vmq<sup>le</sup> Andro, vmbeset<sup>2</sup> his hie way and passage, vpone Cires-mure, ane myle or thairby fra the burch of Couper; quhair he, being only accompaneit with ane servand of his awin, war, in sober and quyet maner, for the tyme, cuming furth of the hie way, lipning for na harme, &c., and thair set vpone the said vmq<sup>le</sup> Andro, schot him throw the body with hagbutis, and crewallie hurt and demanit<sup>3</sup>

<sup>1</sup> Citizen; inhabitant; probably inferring that he was not a free *burgess*.  
'waylaid.'

<sup>2</sup> Beset; blockaded;

<sup>3</sup> Abused. Literally, treated; used.

him and his feruand with fuordis, in dyuerse pairtis of thair bodeyis, to the effusoun of thair bluid in grit quantiteis : Off the quhilkis (woundis) and hurtis gevin to the said vmq<sup>le</sup> Andro, he immediatlie deceissit, &c.

VERDICT. The Assyse, be pluralitie of voittis, fand, pronuncet, and declairit the said Johne to be ffylet, culpable, and convict of airt and pairt, &c.

The Justice superceidis the pronouncing of Dome, &c.<sup>1</sup>

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

### Child-Murder.

Jul. 24.—BESSIE DUNCANE, seruatrix to George Craig in Eister Dudingstoune.

Dilaitit of the crewall and vnnaturall Murthour and putting to death of ane young infant man-bairne of hir awin, immediatlie eftir the beiring thair of, be putting it vnder the stra of the bed quhairupone scho lay ; and thaireftir lying thairupoun, and snoiring<sup>2</sup> the said infant to deid : committit in ane bak hous of the said George Craigis, vnder nycht, vpone the fourtene day of Julij instant ; Williame Borthuik, sone to Johnne Borthuik in Waster Dudingstoun, ane young boy of xvijj yeiris of age, being the father thair of.

The said Bessie, with teiris, in grit penitencie, confessit the Dittay to be of verrie ; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Levingstoun, bailzie of Dudingstoun, fand, pronuncet, and declairit the said Bessie, in respect of her awin Judiciall Confessioun, to be ffylet, culpable, and convict, &c.

SENTENCE. To be tane to ane gibbet at the mercat croce of Ed<sup>7</sup>, and thair to be Hangit quhill scho be deid ; and all hir moveabill guidis and geir, gif scho ony hes, to be efcheit, &c.

### Falset—Forgery—Perjury.

Nov. 17.—MR JOHNNE MUREHEID, Notter in Tueidmouthe.

Dilaitit of airt and pairt of the formeing and wryting of ane fals nyntene-yeir Tak,<sup>3</sup> and counterfuteing of vmq<sup>le</sup> Johnne Nisbet of Swannisfeild his subscripioun thairto (allegit setter<sup>4</sup> of the said Tak) eftir his deceise : And of periureing him self, in maner set down in his Dittay.

The pannell allegit that my lord Justice can nocht be Judge competent to him, in this matter ; becaus he (the pannell) is ane stranger, quha hes duelt and had his continuall residence out of this cuntrie within the toun of Tued-mouth, in Ingland, thir dyuerse yeiris bygane ; and thairfoir, conforme to the Act of Par-

<sup>1</sup> No farther entries occur ; so that it is probable a Remission was granted.

<sup>2</sup> Smothering ;  
<sup>3</sup> A Lease for nineteen years.

<sup>4</sup> The landlord or proprietor of the ground, who set it in Lease.



liament, aucht to be remandit fra this Judicatorie to the Justice of Ingland, at the leift, to the Bifchope of Dureham, within quhais diocie he duelt, the pannell being ane Ecclesiasticall perfone, fervand at the Kirk of Tuedmouth: And laft, he appaillis to his Maieftis mercie and clemencie; and offeris him felf in his hienes will, for the crymes contenit in the Dittay.

My lord Aduocat, for verificatioun of the Dittay, producet the pannellis Depofitiones, with the fals Tak, quhilk is fund to be ffals and ffengeit befor the Lordis of Sefsioun, and in refpect thair of ordainit to be cancellat and diftroit: And anfuerand to the allegiances maid be the pannell, fays, that nochtwithffanding thair of, he aucht to be put to ane Affyle, in refpect the Act of Parliament allegit, is only in fauouris of fic perfones as duellis in Ingland, and being citet for flauchter, thift, burning of houffis, and vtheris crymes, perticulerlie expreffit thairin, quhair of the cryme lybellit is nawayis comprehendit, and ar fugitiue thairfor; and the pannell, cuming willinglie to this cuntrie to beir witness in ane matter betuix tua Scottis perfones, was nawayis fugitiue: And as to the privilege of his profefsioun, that he is ane Ecclesiasticall perfone, fays that the famyn aggraves his offence: And thairfor, fould be iuftlie puneift for the ffalfet and Periurie confeftit be him and contenit in his Dittay.

THE JUSTICE, nochtwithffanding of the pannellis allegiances, Remittis him to the tryell of ane Affyle.

## ASSISA.

Ednard Johnneftoun, Proveift of Annon, James Douglas, bailzie of Dalkeith,  
Johnne Ramsay, mercheand burges of Ed<sup>r</sup>, James Nafmyth of Poffo.<sup>1</sup>

VERDICT. The Affise, all in ane voce, be the declaratioun of Eduard Johnneftoun, chancellor, ffand the faid Mr Johnne to be ffylet, culpable, and convict of the forgering and fformeing of the faid fals Tak; and of counterffuteing of the faid vmq<sup>le</sup> Johnne Nifbetis fubfcription thairto, eftir he was deid; and Periureing of him felf, in maner fpecifeit in his Dittay.—SENTENCE. To be tane to the mercat croce of Ed<sup>r</sup>, and thair vpone ane gibbet to be Hangit quhill he be deid; and all his moveabill guidis to be efcheit, &c.

### Usurpation of the King's Authority—Jamesnucken, &c.

Jan. 9, 1618.—THOMAS MELDRUM of Idene,<sup>2</sup> Walter Grant, his fervand, James Grant in Tulliebo, his brother, and Johnue Roifs, alfo his fervand.

Dilaitit of Vfurpation of our fouerane lordis authoritie, in cuming, vnder ffilence and clud of nycht, to Johnne Meldrum of Ordley his duelling hous of

<sup>1</sup> The remainder are 'mercheandis in Ed<sup>r</sup>.' George Drummond of Cattifelbok (*Cat's-elbow*), Mr Johnne Rutherford, Proveift of Jedburgh, and six others, were each 'vnlawit in þe pane of ane hundreth merkis,' for not passing on the said Assise.

<sup>2</sup> See Nov. 20, 1618, &c.



. . . ., and thair, be way of Hamefucken, clymmyng the walls thair of, turring<sup>1</sup> he ruif of the chalmer quhair he lay bedfast, nochit weill convalescit of ane fever quhairwith he was afflictit and visseit, be the space of tuentie foure oulkis ofbefoir: And for taking of him furth thair of, and cayreing him as ane captiue and prissoner to the place of Idene, quhair he was detenit in privat and frait prissone, be the space of foure dayis and foure nychtis; vrgeing him, all that tyme, to discharge certane actiones quhilk he had depending aganis the said Thomas: And for the haill remanent crymes contenit in the Letteris: Committit vpone the aucht of Maij, 1612 yeiris.

PERSEWAR, Johnne Meldrum of Ordley, Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our fouerane lord, for his bienes intreis.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, Mr James Lawtie.

THE JUSTICE, for obedience of the Warrant of the Counsell, direct to him, subscryuit be my Lord Chancellor, continewis this dyet to the xvj instantis: And Ordanis the pannell to find cautoun for thair compeirance that day, vnder the panis contenit in the Actis of Parliament.—Patrik Meldrum, ffear of Idene, become fouertie for the said Thomas, his father, &c.

(Jan. 16.)—Continued, by Warrant of the Secreit Counsell, to the xxj instant.

(Jan. 21.)—The Justice, of consent of pairtie, continewis this matter to the thrid day of the nixt Justice-air of Aberdene, or soner, vpone xv dayis warning. George Seatoun of Schettin and the said Patrik Meldrum become pleges and fouerteis, coniunctlie and feuerallie, &c.

[*Mr Alexander Coluile, Provost of Kilmondy, Justice-Depute.*]

### **Slaughter—Convocation of the Lieges, &c.**

Jan. 14.—WILLIAME JOHNNSTOUN, callit of *Lokerbie*; Archibald J., his brother; Mungo and Hercules J., sones to the said Williame; Williame J., sone to vmq<sup>le</sup> George J., in Lokarbie; Williame J., in Grenesfyde; Thomas Harknes, in Lokarbie; Johnne Chalmer, thair; Andro Chalmer, thair; Johnne Johnnestoun, sone to David J., in Cleuchheid; Williame J., in Auldwallis; Patrik J. of Mylnebank, his brother; Johnne J., in Turmour, callit of *Lokarbie*; Andro J., his sone; Archy Halyday, in Turmour; Andro Chalmer, thair; Johnne Bell, in Lokarbie; Francis Bell, thair; James Kennydie, in Bektoun; Andro Chalmer, in Dames.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> James Johnnestoun, in Kirktoune; committit with convocation of our fouerane lordis leigis, vpone the

<sup>1</sup> Forcing a passage, by breaking through the roof. Fr. *tirer*; and A. S. *tyr-an*, to tear.

xxv day of April, 1617, be geving to him of dyuerſe crewall and deidlie woundis in the heid, left airme, left hand, and left pape :<sup>1</sup> Off the quhilkis he nevir convaleſſit, ſpeciallie of the woundis reſſaut in his heid, threfcoir and nyne banes being tane furth thair of ; and at laſt, vpone the firſt day of December laſt, he deceiſſit, being vnder cure of the ſaidis woundis ſevin monethis and ten dayis of befoir.

PERSEWARIS, Agnes Johnneſtoun, the relict, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTORIS in defence.

Mr Thomas Nicolſone, Mr Alexander Peiblis, Mr James Oliphant, Adame Cuninghame.

The Juſtice, of conſent of pairtie, continewis this dyet to the xxv of Februar nixt, and Ordanis the pannell to find caution for thair entrie that day, vnder the panes contenit in the Actis of Parliament : Quha for obedience of the ſaid ordinance, ſtand James Johnneſtoun of Waſtraw, and Archibald Douglas of Kelheid, brother to my lord of Torthorrell, bayth perſonallie preſent, cautioneris and fouerteis, conjunctlie and ſeueralie, for thair re-entrie, &c.

(Feb. 25.)—Compeirit Mr James Oliphant, and product ane Warrant of the Lordis of Secreit Counſell, procuret be the (ſaidis) perſones (on pannel), daitit the xix day of Februare iſtant, be the quhilk the Juſtice is ordanit to continew this dyet to the xxvij day of Marche nixtocum, &c. Which deſire was granted ; Robert Johnneſtoun of Raecleuch becoming cautioner for the pannels' eutry.

PERSEWAR, Andro Johnneſtoun, as ſone.

PRELOCUTOR in perſute, Sir Robert Gordoun of Lochinvar, kny<sup>t</sup>.<sup>2</sup>

(Mar. 27.)—It is declairit be the pannell, befoir thai cum to thair allegiance, be way of information to the Juſtice, that it wald pleis his Lordſchip vnderſtand, that the matter fell furth eftir this maner. My Lord of St Androis that now is, being Archebiſchope of Glegſow for the tyme, haifing ane cair to haif the hail Kirkis within his dyocie<sup>3</sup> ſufficientlie plantit ; and eftir vizitation, cuming to the Kirk of Dryſdail, quhair it was fund be him that the watter of Dryfe ran ſa violentlie, eftir ane ſpeat,<sup>4</sup> throw the hail kirk yaird and landis adjacent thairto, that the Kirk it ſelf was liklie to becum ruinous and decay, except the courſe of the ſaid watter had bene divertit and drawin ane vther way thairfra : For remeid quhair of it was aggreit, with conſent of the hail gentlemen of the parochin, that the ſaid watter ſould be divertit ane vther way ; and according thairto, it was appointit, that vpone the ſaid xxv day of Apryle, the ſaid Williame Johnneſtoun, with aſſiſtance of the parochin, ſould cum, with ſpaidis and ſchuiles, to mak ane watter-gang : In the doing quhair of, the ſaid vmq<sup>le</sup> James Johnneſtoun, with his ſones, come bodin in feir of weir, and maid interruption to the perſones foirſaidis that war caſting the ſaid watter-gang, and invaidit and perſewit dyuerſe of the perſones that war working, for thair ſlauchter ; be occaſioun of the quhilk

<sup>1</sup> Breast.

<sup>2</sup> These in addition to the persons abovenamed.

<sup>3</sup> Diocese.

Flood

perfute and invasioun ane straik was gevin to the said vmq<sup>le</sup> James vpone the heid with ane spaid or schule, be quhat persone the pannell knawis nocht: Eftir the quhilk straik he convalescit, and was at tua feuerall Justice-Courtis in Jedburgh; was also at the Parliament in Ed<sup>r</sup>; raid in dyuerse pairtis of the cuntrie, and within England; and thaireftir, fell seik of ane fever, quhairof he deceissit; as is nottour to the haill cuntrie.

Quhilk being premitit,<sup>1</sup> it is allegit peremptourlie for the pannell, that thay can nocht be put to ane Assyse for the cryme lybellit, in respect the said vmq<sup>le</sup> James Johnnstoun, for quhais slauchter thai ar persewit, was slane at the horne, and deceissit vnrelaxit thairfra, ffor ane criminall cause, viz. ffor airt and pairt of the Slauchter of vmq<sup>le</sup> Hew Dowglas of Dalvene. *igitur*, &c.—To the quhilk it is answert be the persewaris, that the allegiance aucht to be repellit, becaus the said vmq<sup>le</sup> James was relaxt fra the said Hoirning: And product the Relaxatioun for verificatioun thairof.<sup>2</sup>—It is duplyt be the pannell, that the Relaxatioun product meittis nocht the Hoirning; becaus the said vmq<sup>le</sup> James Johnnstoun is relaxt fra the horne lang eftir the tyme lybellit of the straikis gevin to him quhairof he deceissit, to wit, lang eftir the xxv day of Apryle, 1617, he nocht being relaxit quhill the xxvij of October thairefter.—To the quhilk it is answert be the persewaris, and allegit,<sup>3</sup> that the Hoirning quhair-upoun the said allegiance is foundit is null, becaus the said vmq<sup>le</sup> James Johnnstoun being designet be the said Letter of Hoirning to haif ane certane duelling-place, viz. in Twnnnergathe, the tyme of the raising thairof, he is nather charget personallie nor at his duelling-place, quhilk aucht to haif bene done; he being ane Scottis subiect, duelland within Twnnnergath, quhair he duelt the tyme of the geving of the charge to him, be oppin proclamatioun; lykas, he duelt thairin dyuerse yeiris ofbefoir.—It is answert be the pannell aganis the allegiance, foundit be the persewaris vpone the nullitie of the Hoirning, that the said allegiance aucht to be repellit, in respect of the privilege and Dispensatioun set down in the Letteris of Hoirning product, quhilk sustenis the charge gevin to him, be oppin proclamatioun at the croce of Dumfreis, to be als lauchfull as gif he war charget personallie or at his duelling-place, for the ressonne specifeit in the Letteris.

It is allegit be the persewaris, as to the Relaxatioun and allegiance maid thairupoun, that the said Relaxatioun is lauchfull and sufficient in the selff; becaus the samyn is purchest be the said vmq<sup>le</sup> James, and he lauchfullie relaxt, be vertew thairof, lang befor his daithe.—The pannell repeittis thair former answer.

<sup>1</sup> Premised.

<sup>2</sup> On margin, '1 Aprilis, 1618. This Relaxatioun gevin vp agane to Andro Johnnstoun, producer thairof.'

<sup>3</sup> Pleaded; urged as a plea.

It is ffordere allegit be the pannell and thair prelocutouris, that thai can nocht be put to ane Assyse for the cryme lybellit, becaus the said vmq<sup>le</sup> James Johnnstoun was flane and deit at his Maiesteis horne ffor ane criminall cause, viz. ffor the steilling of tua horse pertening to James M'mathe in Knokinhair; committit be him in the moneth of September, 1597; ffor the quhilk, being perfewit criminallie befor the Justice, and charget to vnderly the Law within the tolbutth of Ed', vpone the xxj day of Januar, 1607 yeiris, was, for nocht finding of cautioun, denuncet and declairit fugitiue fra his hienes lawis for the said cryme: And ffor verificatioun thair of, producet the Extract of the Hoirning.—To the quhilk it is anfuert be the perfewaris, that the Summondis and Dittay aucht to pas to ane Assyse, nochtwithstanding of the allegiance proponit be the pannell, foundit vpone the tua criminal Hoirningis producet; becaus the said vmq<sup>le</sup> James Johnnstoun of Kirkstoun was nocht only relaxt fra the first Hoirning befor his deceis, bot also becaus it is speciallie provydit be Act of Parliament, maid in the moneth of October, 1612 yeiris, that all persones duelland vpone and within the boundis of the lait Bordouris of this kingdome, speciallie within the boundis of the scherefdom of Dumfreis and stewartrie of Annandaill, quhair the said vmq<sup>le</sup> James duelt, ar fred and releuit of all and quhatsumeir criminell caussis that could be laid to thair charges, ffor quhatsumeir ffyre-raisingis, slauchteris, thiftis, and stouthes, or vther criminall caussis quhatsumeir, befor his Maiesteis going in England, quhilk was in Apryle, 1603 yeiris, &c.

THE JUSTICE continewis Interlocutour, vpone the allegiances foirsaidis, to Wednissday nixt. The Assyse wairnit *apud Acta*, ilk persone vnder the pane of ij<sup>s</sup> merkis. Williame Douglas, younger of Caschogill, become fouertie for the entrie of the haill persones on pannell, &c.

(Apr. 1.)—THE Justice, be directioun of the Lordis of Secreit Counfall, Ordanis the persones on pannell to find cautioun for thair entrie and compeirance of new agane, befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdom or stewartrie quhairin thay duell; or soner, quhan or quhair it fall pleis his Maieste, vpone xv dayis wairning, &c. Williame Douglas of Caschogill pleige and fouertie, &c.

### Inbading—Hurting and Wounding—Slaughter.

Feb. 13.—HEW FALCONER of Innerlochtie; Hew Falconer, his sone; Frances Hay and Alexander Hay, sones to Williame Hay of Mayne; Thomas Grant, brother to James Grant in Daltulleis; Lauchlane Grant of Wester Elcheis; Johnne Grant, his sone.

Dilaitit of airt and pairt of the invading, hurting, and wounding of Thomas Grant of Cardellis, and slauchter of vmq<sup>le</sup> Patrik Grant, his sone; committit within the burgh of Elgyn, the xj of November last, 1617.

PERSEWARIS, Thomas Grant of Cardellis, as father; Johnne Grant, appeirand of Cardellis, as brother; Sir Williame Oliphant of Newtoun, knycht, for his Maiesteis intreis.

THE JUSTICE, of consent of ather pairteis, and accordiing to ane directioun gevin to his lordschip be the Lordis of Secreit Counfall, continewis this matter to the thrid day of the nixt Justice-air of the scherefdom quhair the defenderis duellis, (Elgyn,) or soner, vpone xv dayis wairning, &c.

Sir Alexander Gordoun of Clwnie, kny<sup>t</sup>, become fouertie for the said Thomas Grant, vnder the pane of tua thowfeand merkis; Sir Alexander Falconer of Halkertoun, kny<sup>t</sup>, become fouertie for the said Hew Falconer and his sone; James Hay, appeirand of Mayne, become fouertie for Frances and Alexander Hayis, his tua brether; and Robert Innes of Balvany for Lauchlane and Johnne Grant—all vnder the panes contenit in the Actis of Parliament.

### Slaughter.

Mar. 18.—WILLIAME JOHNNSTOUN, callit of Lockerbie, and Johnne Carutheris of Ranmerfeacillis.

Dilaittit of airt and pairt of the Slauchter of vmq<sup>le</sup> Cristopher Wigholme,<sup>1</sup> burges of Sanguhar; committit in Junij, 1594.

PERSEWAR, Niniane Wigholme, as sone; Sir Williame Oliphant, knycht. PRELOCUTORIS in defence, Mr James Oliphant, Adame Cuninghame, Aduocat.

The persewar passis fra the persute of the said Johnne Carrutheris *pro loco et tempore*.—It is allegit for Williame Johnnstoun, that he can nocht be put to the knowlege of ane Affyse for the crymes lybellit, in respect his Maieftie and Estaittis, be Act of Parliament, maid in October 1612, hes, for the reffone mentionet thairintill, geving ane generall pardoun to all maner of persones duelland within the boundis of the lait Bordouris of this Kingdome, for all maner of crymes committit be thame preceding his Maiesteis going in Ingland, &c.—To the quhilk it is anfuert, that the allegiance aucht to be repellit, in respect of the summondis beiring the fact lybellit to be persewit be the pairtie, with concurse of his Maiesteis Aduocat; quha is speciallie exceptit in the said Act, and hes power, be vertew thairof, to persew.

THE Justice continewis Interloquitour to Fryday nixt; and Ordanit the pannel to find caution for his compeirance, as also for the entrie of his brother, the said day.—Robert Somerwell of Smailhomes become fouertie, &c.

(Mar. 20.)—THE JUSTICE ordanit caution to be ffund, that the said Williame and Frances fall compeir befor the Justice or his deputis, the thrid day of the Justice-air of the scherefdom or stewartrie quhairin thay duell, or soner, vpone xv dayis wairning.—Robert Somerwell of Smailholme, and Williame Johnnstoun of Currielaw, become pleges and fouerteis, &c.

<sup>1</sup> This name is now written *Wigham*, and *Whigam*.



**Slaughter.**

Mar. 18.—ROBERT SYMMER, sone to the Laird of Balgordie.

Dilattit of the crewall Slauchter of vinq<sup>le</sup> David Graham, sone to vinq<sup>le</sup> James Grahame of Leuchland ; committit vpon the xxix day of Apryle, 1616 yeiris, vpon the Hauche of Infche, neir to the Mekill-mylne of Brechin, be streking him throw the body with ane rapper-fuord ; quhairof, within sex or fevin dayis thaireftir, he deceifit.

PERSEWER, James Grahame, as brother to the defunct ; James Keith of Harviestoun, brother-in-law ; Sir Robert Grahame of Morphie, neir kinfman ; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr George Symmer.

The pannell, being accuset be Dittay, of the slauchter of the said vinq<sup>le</sup> David Grahame, denyis the samyn, with the haill circumstances set down in the Dittay, concerning the said slauchter.

**ASSISA.**

David Lyndsay, in Brechin,	David Gairdin of Lawtoun,	Johnne Cob, citiner of Brechin,
James Ramsay, thair,	Patrik Guthrie of Kinblakmonth,	Williame Carnagy, fkyenner, burges
Johnne Vdny of Kethik,	James Halyburtoun, mercheand	of Edinburghe,
James Smyth, in Brechin,	burges of Edinburghe,	Williame Ruthvene of Bandane,
Andro Thomefoun, thair,	Johnne Peter, wryter, burges thair,	Williame Elder, tailzeour, burges
Johnne Anderfoun, burges of	Laurence Hering, brother to	of Edinburghe.
Montrois,	Lethindie,	

VERDICT. The Assyse haifing reffonit and voittit vpon the pointis of the said Dittay, and being ryplie and at lenth advysed thairwith, togidder with the Letteris of Hoirning product be his Maiesteis Aduocat, beiring the said Robert to haif bene denuncet rebell in Maij, 1616, for nocht finding of caution to haif compeirit befor the Justice to haif vnderlyne the Law for the said slauchter ; ffor the quhilk fact, he hes bene fugitiue and furth of the cuntrie senfyne ; togidder with ane Commiffioun, and vther probatioun product also be his hienes Aduocat, for instructing the said Dittay—thay all in ane voce, be the mouth of the said Johnne Vdny, chancellor, fand the said Robert to be FYLET, culpable, and convict of the said Slauchter.

SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body ; and all his moveabill guidis to be escheit, &c.

**Intercommuning with the Clan-Gregor.**

Mar. 18.—COLENE BRUCE, sumtyme duelland in the Middilhauch of Huntingtoun.

Being brocht furth of the Tolbuth or Waird-hous of Edinburgh, quhairin he hes bene wairdit thir dyuerse monethis bygane, and presentit vpon pannell, be direction of the Lordis of Secreit Counfall, to heir and sie the dome vnder-writtin pronuncet aganis him, as he that became in his Maiesteis will ofbefoir,



ffor the affisting, reffett, fupplie, and intercowmoning with THE CLANGREGOUR; and according to his Maiefteis will than publeift and declairit, vpone the faxt day of Auguft, 1605, was ordanit to be Banifchet his Maiefteis haill dominiones, nevir to be ffund agane within the famyn, vnder the pane of deid, for the faid cryme.—(See this Collection, II. p. 457.)

SENTENCE. The Juftice of new agane, conforme to ane Warrant and delyuerance of the Lordis of Secreit Counfall, fubferyuit be my Lord Chancellor, and be my Lord of Mar, Grit-Thefaurer, daitit the xvij day of Marche instant, Ordanit the faid Colene Bruce to be Banifchet, as ofbefoir, his hienes haill dominiones, and nevir to be fund within the famyn, vnder the pane of deid, but forder fauour: Lyk as, to be returnet bak agane to the faid waird be the Magiftratis of Edinburgh, to be keipit be thame thairin, in fure firmance and captiuitie, vnto the tyme a Schip be preparit, quhairin he may be tranfpoirit.

### Slaughter at a Funeral.

Jun. 10.—JOHNE JOHNESTOUN of Tunnergathe; Blench Bell, his fpos (*'paft fra'*); Johnne, *alias* Jok, Williame, frances, and James, four fones to the faid Johnne; James Johnneftoun; Andro Johnneftoun, in Kirketoun; Williame, francie, and George, his thre brether; David Bell, callit of Craighous; Williame Johnneftoun, in Hilbank; Johnne, his brother; Williame and Johnne Johnneftoun, in Schaw; Williame J. in Hilbank; Johnne, his brother; James Johnneftoun, in Hill (*'paft fra'*); Patoun Bell, in Yle (*'paft fra'*); Jok Burges, in Kirkhouffes (*'paft fra'*); Jok Johnneftoun, in Foulraw (*'paft fra'*); James Johnneftoun, fone to Twnergathe; frances J. in Myreheid; James J. in Court; James Bell, in Twnergathe (*'paft fra'*); Johnne Bell, in Holmheid (*'paft fra'*); George Johnneftoun, fone to Johnne Johnneftoun of Twnergathe.

Dilaitit of airt and pairt of the Slauchter of vm<sup>le</sup> Frances Johnneftoun, brother-germane to Williame Johnneftoun of Lockerbie; committit vpone the xxj day of Apryle laft, at the Buriall of Thomas Johnneftoun, 3ounger of Fingland, befye the Kirk of Twnergathe, and 3aird thairof.

PERSEWARIS, Williame Johnneftoun of Locherbie, brother; Sir Williame Oliphant, kny<sup>t</sup>.

James Johnneftoun of Waftrow became fouertie for the entrie of James of the Hill, the thrid day of the nixt Juftice-air of the fcherefdome quhair he duellis; or foner, vpone xv dayis wairning.—Johnne J. of Twnergath, fouertie for the entrie of Patoun Bell, Jok Burges, Jok J. of Foulraw, and James Bell of Twnergathe.—And Johnne Carmichell in the Maynes, fouertie for the entrie of Johnne Bell in Holmeheid.

THE JUSTICE, of consent of the perfewaris, continewis this dyet aganis the remanent perfonis nocht paft fra, to the fevnt day of Auguft nixt; and Ordanis thame to find fouertie for thair entrie that day.

James Gordoun of Buithill, brother to Lochinvar, fouertie for the entrie of

Johnne of Twnergathe and his sones—Johnne of T. fouertie for Frances of Myreheid, &c.—Johnne Gordoun of Hissilfeild, for Andro J. in Kirktown, &c.

(Aug. 7.)—The Justice, of consent of pairtie, continewis this dyet to the xvij of November nixt.—Niniane Johnnestoun of Powdene, cautioner for Twnergathe and Andro J. of Kirktown—and thay, conjunctlie and severallie, for the entrie of the remanent persones.

(Nov. 18.)—Continued to the thrid day of the nixt Justice-air of Dumfreis, or soner, vpone xv dayis wairning.

### Slaughter at a Funeral.

Jun. 10.—JAMES JOHNNSTOUN of Wastraw; William J. of Locherbie; Archibald, his brother; Nicolas Cairleill, spous to the said Williame ('*past fra'*'), and others.<sup>1</sup>

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Andro Johnnstoun, sone to Johnne Johnnstoun of Twnergathe; and Slauchter of vmq<sup>le</sup> Johnne J., brother-germane to Andro J. of Kirktown; committit the xxj day of Apryle last, within the Kirk-gaird of Tounergathe, at the Buriall of Thomas Johnnstoun, 3ounger of Fingland.

#### PERSEWARIS.

Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord; Johnne Johnnstoun of Twnergathe, as father to the said vmq<sup>le</sup> Andro; Johnnstoun of Kirktown, as brother to the said vmq<sup>le</sup> Johnne.

The same procedure takes place in this case as in the preceding; and is finally, on Nov. 18, continued to the Justice-air of Dumfries, &c.

### Rape—Forcing and shamefully Abusing, &c.

Jun. 17.—MR DAVID WEDDERBURN, indueller in Dundie, and Andro Cryftie, indueller in Leith.

<sup>1</sup> The other pannels follow:—Mungo Johnnstoun, sone to the said Williame; Williame J., brother-sone to the said Williame of Locherbie; Andro Chalmer, in L. ('*past fra'*'); Johnne C. and Andro C., his tua sones, thair ('*past fra'*'); Williame Brydane, in Gymmenbie ('*past fra'*'); Mathow Brydane, thair ('*past fra'*'); Heckie Johnnstoun, thair ('*past fra'*'); Andro Grahame, in Locherbie; Williame Grahame, in Westwoid ('*past fra'*'); Hercules Johnnstoun, in Locherbie; Margaret J., wedow, in Nitholme ('*past fra'*'); Williame Kennedie, 3ounger of Hallaithes; Johnne K. of Hallaithes ('*past fra'*'); Johnne Chalmer, in Studrigis ('*past fra'*'); Thomas Harknes, oistler in Locherbie; Johnne Johnnstoun of Turmour, callit of Locherbie; Dorathie J., his spous ('*past fra'*'); Andro J., his eldest sone; Andro J., brother to the said Johnne of Twrmour; Williame J., also his brother; Johnne Bell, his serrand ('*past fra'*'); Thomas J. of Fingland; Johnne J. in Buris, callit of Fingland; Johnne J., callit *Gavinis Johnne*; Gib Mundell, in Lairdholme ('*past fra'*'); Adie Blaiklok, thair, callit of Birkay ('*past fra'*'); Hercules J., callit the *Bastard*, in Locherbie; Johnne J., sone to Williame J. of Auldwallis ('*past fra'*'); George J. in Mylnebank; Johnne J., sone to David J. of Cleuch-heidis; Mungo Kennydie in Aftork; Andro Irwing, alias Myller, in Wyliehoill ('*past fra'*'); Mathow Thorbrand, thair ('*past fra'*'); Williame T., thair ('*past fra'*'); James Grahame, in Qubytestanehill ('*past fra'*'); Thomas Manekstoun, in Midge-bray ('*past fra'*'); David M., thair ('*past fra'*'); Symone Hall, thair ('*past fra'*'); Johnne Corrie, in Preiftbutts; Gawin Smyth, thair; Thomas Johnnstoun, callit *Geordeis Thome*, thair; Johnne Kennydie of Hallaithes ('*past fra'*')

Dilaitit of the Foirceing and schamefull abuseing of Jonet Crambie, dochter to vmq<sup>le</sup> George Crambie, burges of Bruntieland, and Jonet Broune, hir mother ; committit within the dwelling-houfe of Alexander Anderfone in Bruntieland, vpone the xxvj day of Marche last.

PERSEWARIS.

Jonet Brown, as mother to the said Jonet Crambie ; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>. PRELOCOUTOURIS in defence, Mr Thomas Nicolfoun, Mr Vmplira Blindschell, Mr Johnne Ruffell.

It is allegit be the pannell and thair prelocoutouris, that na proces can b grantit in this matter, nather can thai (be) put to the knowlege of ane Assyse for the cryme lybellit ; becaus the said Jonet Crambie, speciall pairtie perfewar, to quhome the allegit cryme is done, is nocht present to perfew thame for the samyn.—It is answert be my lord Aduocat, that the allegiance aught to b repellit, in respect that the mother is present, and is reddie to perfew, quha is sufficient ; or ony of the kyn and freindis to perfew, with concurrence of his Maiesteis Aduocat.—It is replyt be the pannell, that the mother is only for her (awin) intereis ; quha can nocht perfew thame for the allegit cryme, t pairtie allegit offendit being on lyfe.—It is answert, that the allegiance aucht to be repellit, in respect of the former answer.

The pannell defyres the mother to be solemnelie suorne, vpone the verritie of the Dittay, befor thai cum to thair defense.—The mother refusies to geve her aith vpone the Dittay, as it is qualifeit, in respect scho was nocht present ; bot declairis that hir dochter past saif and haill furth of hir hous ; and come bak agane to hir hous schamefullie abuset, &c. ; quha than repoitit to hir that scho was forcet be the pannell, in maner specifeit in the Dittay.—The pannell takis instrumentis, that the mother refusing to sweir ; and proteftis for remeid of law, for thair schamefull sclander.

THE JUSTICE Ordanis the pannell to find caution for thair compeirance the thrid day of the nixt Justice-air of the scherefdom quhairin thai duell,<sup>1</sup> or soner, vpone xv dayis wairning, to vnderly the law for the samyn, vnder the pane of I<sup>m</sup> merkis for ilk ane of thame.—Mr Johnne Elphinstoun, indueller in Leith, become fouertie for the said Andro, vnder the pane of I<sup>m</sup> merkis. Andro Wat-fone, bailzie and burges of Bruntieland, become fouertie for the said Mr David, vnder the said pane.

### Slaughter.

JUN. 20.—JAMES STEWART, sone to vmq<sup>le</sup> Johnne Stewart of Kilpatrik.

Dilaitit of the cryme following, viz. sforamekill as, he haifing consauet ane deidlie ffeid, rancour, and malice aganis Andro Cuninghame in Belliemichell, in

<sup>1</sup> Forfar and Edinburgh.

Arrane, in the moneth of Majj laft, come bodin in feir of weir,<sup>1</sup> with ane fuord and vther wappones, *inuafue*, to the faidis Landis of Belliemichell, of purpois to haif darnet<sup>2</sup> himfelf in the brome,<sup>3</sup> neir to the faid Androis hous, thair to haif murthouret him: In his cuming to the quhilk brome, being efpyit be ane . . . Jerveife, fervand to the faid Andro, quha was addreffing him felf in to the faid Androis hous, to geve him adverteifment of the faid James being thair; the faid James followit the faid . . . Jerveife, and befoir he could cum to his maifteris hous, ouertuik him, and with ane fuord ftrak him in the bellie, and flew him thairwith.

The pannell confeffes the Slauchter of . . . Jerveis; and offeris to fatisfie the pairtie and the Kingis Maieftie for the famyn, feing nane perfewis him bot his Maieftieis Aduocat, for his hienes intreis.—The Aduocat takis instrumentis of the pannellis confeffion of the cryme.

VERDICT. The Affyfe, be the mouth of Mr Donald Campbell, chancellor, all in ane voce, in refpect of the faid James Judiciall Confeffion, ffind and declairit the faid James to be flyet, culpable, and convict of the Slauchter of the faid vmq<sup>16</sup> . . . Jerveis.—SENTENCE. To be tane to the Caftle-hill of Edinburge, and thair his heid to be ftrukin frome his body; and his haill guidis and geir to be efcheit, &c.

### Theft.

Jul. 2.—GILBERT ELLOTE, callit *Gib the Galzart*.<sup>4</sup>

Dilaitit of the thiftious fleilling of ane purfe fra Johnne Airmefrang, callit of the Holme, vnder filence and clud of nycht, within the duelling hous of Alexander Young in Selkirk, in the moneth of Majj laft, be taking the faid purfe, with ffourtie pundis being thairin, furth of the faid Johnne Airmefrangis breikis, in maift thiftious maner; and drinking of ten merkis of the money that was thairin; and abtracting the reft of the ffourtie pund, vnto the tyme the famyn was challanget vpone him, and reftoirit bak agane thaireftir to the faid Johnne Airmefrang, awner thairof.

The pannell declairit that he nawayis ftaw<sup>5</sup> the purfe, in maner fpecifeit in the Dittay; bot allanerlie, that he being in Alexander Youngeis hous, in Selkirk, ryfeing in the moirning, ffind the purfe vpone the flure of the chalmer; quhilk he retenit, and fpendit of the money that was thairin ten merkis allanerlie,<sup>6</sup> in recompance to the faiffer;<sup>7</sup> and reftoirit the faid purfe, with the reft of the money

<sup>1</sup> Furnished in warlike manner.

<sup>2</sup> Concealed; hidden.

<sup>3</sup> Broom; *planta genista*.

<sup>4</sup> 'William Johnstone of Wamphray, called the *Galliard*, was a noted freebooter. His *nom de guerre* seems to have been derived from the dance called the *Galliard*. The word is still used in Scotland to express an active, gay, dissipated character.'—*Border Minstrelsy*, i. 230. It is right, however, to inform the reader, that this *sobriquet* was very prevalent on the Border.

<sup>6</sup> Only.

<sup>7</sup> Salvage money, and for restoring what was lost.

<sup>5</sup> Stole.

being thairin, to the said Johnne Airmstrang, sa fone as he vnderstuid the samyn pertenit to him; affirmeing, that the said Johnne Airmestrang wald nawayis infist aganis him for Thift.—The Aduocat answers, that his Declaratioun maid can nocht be respectit; bot he sould be put to ane Assyse, in respect of his depositioun maid be him, in presens of the Justice, confessing the steilling of the purse and money thairintill, in maner specifeit in the Dittay.

The Justice Ordanis him to pas to ane Assyse, nochtwithstanding of his former allegiance and Declaratioun maid be him thairintill.

VERDICT. The Assyse, be the mouth of Johnne Scott of Sundelishoip, chamberler,<sup>1</sup> for the maist pairt, stand, pronuncet, and declairit the said Gilbert to be ffylet, culpable, and convict of the away-taking furth of Alexander Youngis hous in Selkirk, of the said Johnne Airmestrang his purse, with fourtie pundis being thairintill; quhilk purse was delyuerit bak agane to the said Johnne, and haild fowme aboue specifeit, except ten merkis thair of allanerlie: And Clanges him of the steilling of the samyn.—SENTENCE. To be SCURGET throw the burgh of Edinburgh; and also to be actit to be Banischet furth of this realme, and neuer to be fund agane within the samyn, without his Maiesteis Licence, vnder the pane of deid, but fauour.

The said Gilbert actit himself to depairt furth of this realme, within xx dayis eftir the dait heirof; and nevir to be fund agane within the samyn, without his hienes Licence, vnder the pane of deid.

### Murder.

Jul. 8.—JOHNE MENZEIS and Andro Menzeis, brether to Williame Menzeis of Castelhill; Raulff Dalzell at the mylne of Durisdeer, James Barbour in Colymme, Hectour M<sup>c</sup>Quhynzie in Thornehill, Jonet M<sup>c</sup>Rone, spous to Johnne Williamfoun in Dufdeer, Johnne Williamfoun hir spous for his intreis, Marioun M<sup>c</sup>Rone, sister to the said Jonet.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of Patrik Douglas, sone to Hew Douglas of Balliebught; committit the fyftene day of Marche last, at the gavill of the said Johnne Williamfounes hous, in Dufdeer, in his ganging furth of the toun of Dufdeer to the place of Moirtoun.

PERSEWAR, Hew Douglas of Belliebucht, Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTORIS in defence, Mr Thomas Nicolfoun, Mr Lueis Stewart, James King.

THE Justice, with consent of my Lord Aduocat, continewis this matter to the thrid day of the next Justice-air of the Scheresdome of Dumfreis, or soner vpone fyftene dayis wairning; and ordanis the pannell to find Cautioun for thair re-entrie to that effect.—The Laird of Dalzell, elder, and Williame Menzeis of

<sup>1</sup> The remainder are merchants and burgesses of Edinburgh.



Castelhill, become pleges for Johnne and Andro Menzeis—and Robert Douglas of Cafchogill for the entrie of Hectour M<sup>c</sup>Quhynzie.

### Slaughter—Demembration.

[THE Case which follows, affords one among numerous other instances, of the unhappy consequences resulting from the deadly feuds, which occurred almost daily; and strongly points out their prevalence in Scotland, to a very lamentable extent. *Sir James Balfour*, in his *Annales*,<sup>1</sup> states, that ‘*the Young Laird of Culmalindie-Bruce*, in Perththyre, killed *Tofchoe Laird of Minewaird*, sifter sone to *Sir James Campbell of Lawers*, in the toune of Perth. *Culmalindy*, the committer of the slaughter, fled.’ But *Fleming*, in his MS. *Diary or Chronicle*,<sup>2</sup> gives a much more minute detail of this affair, in the following passage, extracted from the Original MS. :—‘*Vpon* Midfomer-day, the xx of Junij, 1618 yeiris, at twa efternoon, (*Dauid*) *Tofchoch of Monivaird younger* slaine in the South-gait of Perth be *Lourence Bruce younger of Culmalindeis*, his brother, and diuers thair affociates. The twa that was with *Monyvaird*, the ane deidlie hurt, bot deit not; the vther, his richt hand clene strukin fra him. This done in a moment of time. All the committeris thair of eschewit out of the towne, befor any of the townis-men hard of ony fuche thing.’]

Jul. 29.—PETER BLAIR, brother-germane to Andro Blair of Gairdrum.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq<sup>le</sup> Dauid Tofcheoche, 3ounger of Monyvaird; and Demembring of Dauid Malloche, his seruand, of his richt hand; committit within the burgh of Perth, vpone the xliiij day of Junij last.<sup>3</sup>

The said Andro (as cautioner for his brother) nocht compeirand nor enterand the said Peter, the Justice ordanit him to be in ane amerceament and vnlaw, viz. tua hundreth merkis: Lyk as, the said Peter was decernit, for his nocht compeirance, to be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

### Slaughter—Demembration.

Jul. 29.—LAWRENCE BRUCE, appeirand of Culmalundie; Alexander Bruce, his brother; Williame Oliphant of Gask; Laurence Oliphant his brother; Alexander Fleming of Monefs; Williame Douglas of Annatroche; Johnne New, fervand to my Lord Oliphant; Donald Paterfone, fervand to the Maister of Oliphant, and George Tyrie, messinger in Perth.

Dilaitit of airt and pairt of the above slaughter, &c.

Eduard Tofcheoche, elder of Monyvaird, as ffather o vmq<sup>le</sup> Dauid Tofcheoche, 3ounger of Monyvaird, produced the Letters deulie execute and indorfate vpoun Peter Blair, brother-germane to Andro Blair of Gairdrum; be vertew quhairof the saidis Laurence, &c. ar denuncet rebellis and put to the horne, for nocht

<sup>1</sup> Orig. MS. Adv. Library.

<sup>2</sup> Orig. MS. preserved in Adv. Library.

<sup>3</sup> See Dec. 4,

1618, Nov. 17, 1619, Mar. 12, 1623.



finding of caution for thair compeirance this day and place, in the hour of caus, to haif vnderlyne the law, &c. Vpoun the productioun of the quhilkis Letteris, the said Eduard, with Archibald Campbell, brother to the Laird of Laweris, askit instrumentis; and Protestit for releif of George Bifchope of Orkney, cautioner.

### Slaughter.

Jul. 29.—ALEXANDER HERVIE in Innerrowrie.

Dilaitit of airt and pairt of the Slauchter of vinq<sup>le</sup> George Robertfone, serwand for the tyme to Patrik Con of Auchry; committit within the duelling hous of Thomas Chalmer in Turray, in anno 1599 yeiris, be streking him in the bellie with ane knyfe, quhairof he deceift.

#### PERSEWAR.

Alexander Soure, as brother on the mother syde, and serwand for the present to the Laird of Skeane.

PRELOCUTORIS in defence.

Frances Erle of Errole, The Erle of Rothes, The Laird of Balquhane, (Johnne Leslie,) Mr Thomas Nicolfoune, Aduocat.

The persewar, with Mr Andro Skene, productet Hoirning aganis the pannell, quhairby he is denuncet vpone the xxv of Julij instant, for nocht finding of caution to compeir this day to vnderly the law for the said cryme; and thairupoun askit instrumentis, and protestit for his cautioneris relief, in respect na report was maid to the officer, of the finding of ony caution, quhairby ane Assyse mycht haif bene summond.—The pannell takis instrumentis of his entrie, and protestis for his cautioneris releiff: And as to the Hoirning productet, allegis the samyn is null, in respect caution was fund be him for his compeirance lang befoir his denunciatioun, viz. vpone the xxij day of Julij of befoir: And as concerning the Slauchter lybellit, he offeris him self to the tryell of the Law for the samyn, as altogidder innocent thair of, disaffenting to all maner of continuatioun; and thairupoun askit instrumentis.

THE JUSTICE continewis this dyet to the secund of December nixtocum; and Ordanis the pannell to find caution for his entrie that day, vnder the panes contenit in the Actis of Parliament.

The pannell, for obedience of the Justice ordinance, ffand Jonne Leslie, ffear of Balquhane, cautionne for his compeirance befoir the Justice or his deputis, the saidis day and place.—The said Alexander Hervie being suorne, maid fayth that he dred<sup>1</sup> bodellie harme of Alexander Soure (Sovre), insafar as he had affirmet, in prefens of dyuerse famous<sup>2</sup> perfones, that ‘ gif he gat nocht his intent befoir the Justice, that he fould wair<sup>3</sup> his mother sone vpone him also !’ And thair-

<sup>1</sup> Dreaded; feared.      <sup>2</sup> Persons of good fame and credibility.      <sup>3</sup> Literally, expend; i.e. that he would hazard his own life in his endeavour to be revenged of him.

foir, defyret Lauborris of him.—The said Alexander Soure declairit he had na cautionne, becaus he was bot ane puir man; and offerit *cautionem juratoriam*.<sup>1</sup>

THE JUSTICE Ordanit him ather to find caution and lauborris for the indemnitie of the pannell, vnder the pane of ij<sup>c</sup> merkis, or ellis to be tane to waird, to remane thairin quhill caution war fund.

Compeirit Mr Andro Skeane, and become fouertie and lauborris for the said Alexander Soure, that the said Alexander Hervie fall be harmeles and skaythles of him in his persone, landis, and guidis; and nawayis to be molestit or trubillit be him thairin, nor be na vtheris of his causing, &c. vnder the pane of tua hundreth merkis.

(Jul. 30.)—Alexander Gourlay of Southane, in Fyfe, become plege, fouertie, and lauborris for Alexander Sowre, &c. Mr Andro Skeane relieved.

(Dec. 2.)—THE JUSTICE, in respect nane of the Assyse compeiris, continewis all tryell in this matter to the thrid day of the nixt Justice-air of the Scherefdome of Aberdene, &c.—Johnne Leslie, fear of Balquhane, become fouertie and lauborris for the said Alexander Hervie, that the said Alexander Sowre fall be harmeles and skaithles of him, &c. vnder the pane of foure hundreth merkis.

### Stealing of a Purse.

Jul. 30.—JOHNE BROUNE.

Dilaitit of the steilling of ane purse, with xxij li. being thairin, in Carnewath mercat, vpone Mydsomer-day last, quhilk pertenit to James Walker, cordiner in Lynlythgow; and he being schortlie thaireftir challenget, made restitution of the said purse and money bak agane to the said James.

VERDICT. Convict of the steilling of the said purse.—SENTENCE. To be Scurget throw the burgh of Edinburgh, and Brunt<sup>2</sup> vpone the cheik: And to be Banisheit his Maiesteis haill dominiones, speciallie this his kingdome of Scotland; nevir to be fund agane within the samyn, vnder the pane of deid, but<sup>3</sup> fauour.

### Forging of an infamous Pasquil against the Scottish Nation, &c.

[THE Case of MR THOMAS ROSS forms one of a series of sanguinary and barbarously vindictive acts of KING JAMES VI, which, unquestionably, must leave an indelible stain on his memory and character, as a despotic and cruel tyrant. It has already been frequently shown, in the course of this work, that whenever there occurred the slightest attack on his personal dignity, or any speech, lampoon, or other writing, at all infringing on his kingly prerogative, &c. his Majesty was relentless in the severity of the punishment, which he never failed to cause be inflicted on the luckless offender. As so many shocking Cases of this description have already been given in the present Collection, it is enough, without fatiguing the reader with any recapitulation, barely to refer him, among other cases of a

<sup>1</sup> Juratory caution.

<sup>2</sup> Burnt; branded.

<sup>3</sup> Without.

similar nature, to the Trials of *Diksoun*,<sup>1</sup> Aug. 3, 1569; *Tennent*,<sup>2</sup> Oct. 10, 1600; *Cornuall*, Apr. 25, 1601; and *Fleming*,<sup>3</sup> May 17, 1615; which are the leading instances of the insane and blood-thirsty spirit above alluded to.

With regard to the *facts* attending the case of Mr Thomas Ross, there seems to be no reason for doubting that they occurred almost exactly as they are narrated in the abstract of the Dittay, which has been preserved in the Books of Adjournal. In case, however, that this example should prove *infectious*, the Record informs us, that the offensive papers were 'geviu vp agane to my lord Aduocat,'<sup>4</sup> to be destroyed—'as nocht worthie to remane in ane Register, to offend the eiris or eiris of the posteritie!' Every search has been made in the *Denmylne Collection* of MSS., and other Collections in the Advocates' Library, the Warrants of the Privy Council of Scotland, and other similar sources, but no trace can now be had of the *Theses* and *Annexa*, which must have proved very interesting and curious at this distance of time.

In order that the reader may have an opportunity of judging for himself, the Editor has made every enquiry in his power, for the purpose of elucidating this disgraceful and sanguinary page of the personal history of 'the British Solomon.' *Sir James Balfour*<sup>5</sup> gives the following account of this extraordinary tragedy. "THE 20 of August, this zeire, Mr Thomas Rosse, a brother of the Houffe of *Cragie*, in *Perthshire*, was sentenced by the Justice-Generall to losse his head,<sup>6</sup> at *Edinbrughe*; and thereafter, the same head to be affixed one the jayle—for proposinge certane villanous and opprobrious Theses, in defamations of his auen native countrey and countreyneyn, and affixing them on a Church-dore, in *Oxford*, before fermon, one a Tuedday; offering them to be publickly dispute, and himselue (miserable wretche!) to defend them. This sentence was put in executione within 2 dayes thereafter."<sup>7</sup>—Another authority<sup>8</sup> narrates the proceeding thus. "MR THOMAS ROSS, Minister at *Cargill*, having been convicted by an Assize, at *Edinburgh*, of writing, at *Oxford*, in England, against the Scots Nation, was executed at *Edinburgh*.<sup>9</sup> His right hand was first stricken off; thereafter, he was beheaded, quartered, and put upon the Ports. He was of the Houffe of *Craigie*, being a son of John Ross, Laird of *Craigie*, and went to Court. He wrote very unnaturally, and whereof he was not wife, against the Scots Nation. He was conveyed to Scotland in a ship. Mr Thomas Ross was insane, and his infirmity was pled in his defence. He affixed to the door of St Mary's Church, in *Oxford*, a Latin Thesis, in which were ten propositions; wherein he attempted to prove, that the English ought not to allow so many of the Scots to remain among them. The King was ridiculously incensed, and instead of confining him, as one in his condition needed to be, he sent him to Scotland, along with strict orders that he should suffer death."

It seems very singular, when all circumstances are considered, that so remarkable an occurrence has been entirely passed over in silence by *Spotswood* and *Calderwood*, in their Church Histories.

There cannot be a doubt that Mr Thomas Ross was a man of an ancient, influential, and highly respectable Family; and the Editor believes, that having embraced Episcopacy, he had gone to prosecute his studies in *Oxford*. It would appear, from the preceding notices, that Ross had previously

<sup>1</sup> See Vol. I. 385.

<sup>2</sup> *Ibid.* II. 332.

<sup>3</sup> *Ibid.* II. 349.

<sup>4</sup> *Ibid.* III. 359.

<sup>5</sup> *Oliphant of Newton.*

<sup>6</sup> *Annales*, MS. Adv. Library.—and II. 70, *Edin.* 1824.

<sup>7</sup> "In September 1618, Mr Thomas Ros, sone to the Lard of Cragie, wes, for vretting, at Oxford, in Ingland, aganis the Scottis nation, being send to Scotland be schip, convict be ane Assyse, his richt hand first stricken off, thairretir beheadit."—MS. Adv. Library.

<sup>8</sup> An obvious oversight of *Sir James Balfour*, who had probably noted down the day of his intended execution—omitting to rectify the date, after the King's Warrant had been received.

<sup>9</sup> *The Rev. James Scott's* transcript of the *Diary* or *Chronicle* of John Mercer, who was appointed Town-Clerk of Perth, Oct. 6, 1623, and lived to a great age. Orig. in Adv. Library. "The Editor has the pleasure of notifying, that this interesting *Diary* is preparing for publication by his friend James Maidment, Esquire, as his contribution to the *Maitland Club*, the Members of which have chiefly directed their attention to the printing of Historical works illustrative of Scottish affairs."

<sup>10</sup> "2 Sep. 1618. MR THOMAS ROSS, Minister at Cargill, went to Court; and thair, for sum infamous writings, and railing aganis the Scottis Nation, werie onnaturalle, being on of the sones of the Hous of Cragie; quhairfor he wes not wyse. He wes headit in Edinbrughe, quhairterit, and putt wpon the Ports."—*Fleming's* (Mercer's) *Chron.* MS. Adv. Library.

been *Minister of Cargill*; and as he is so designed in these accounts, it is likely that he had not been deprived of his living before the period of his execution. The conduct of KING JAMES in the whole of this matter, and his barbarous treatment of *Ross*, become altogether inexplicable, when it is considered, that at this very time, he was struggling to force Episcopacy upon the people of Scotland, as the permanent and established Religion of the country. In such circumstances, it seems strange indeed that he should have so rancorously pursued so zealous a convert to the forms and tenets of the Church of England, at the precise time that that person (a *Minister*, too, of the Kirk of Scotland) was doing every thing in his power to qualify himself for effectually pleading and maintaining the establishment of Episcopacy—a measure so near James's heart. *Ross*, however, had, for the indulgence of some mad and absurd frolic, written the Pasquil or Thesis in question, and affixed it to the Church-door of *St Mary's, Oxford*, as was then usual at all the great Universities in Europe, where public disputations were often held.<sup>1</sup> It was pleaded by the unfortunate man, that he had done so in a fit of *insanity*, which seems to have been credited by his contemporaries;—but all these circumstances combined, could not induce the King to save his life; on the contrary, they only inflamed his rage the more against poor *Ross*.

The only thing which can be urged in palliation of the rigorous sentence, which the King insisted on being put in execution, is, that at the time when KING JAMES succeeded to the English Throne, and for a long time after, the Scotch were peculiarly unpopular in England, and such swarms of needy adventurers had travelled southward, that not only were the greatest jealousy and hatred manifested on the part of the English, but it actually became necessary that a legislative enactment should be made, to prevent bloodshed and scenes of violence throughout the country. As remarkable instances of the rancorous feelings which existed against the Scotch, a curious passage may be cited from *Calderwood*,<sup>2</sup> which forcibly illustrates the state of the public mind, in England, upon this subject.—‘THE SCOTISHMEN lying at Court were in danger of their lives, be realone of the great malice of the English conceived against them. *Sir John Ramfay's* brother smote the *Lord Montgomeries* brother on the face, with a rod, for a lie given him at a Horse-race. There were present about an hundredth Scottish-men, all in danger to be massacred, if the English had not been stayed by a Counsellor. *James Maxwell*, one of the Gentlemen of the King's Chamber, pulled an Englishman's eare till it bleade. Oure country-men durst not repair foe frequently to the Exchange or Comedies as they did before. The *Lord of Kinlosse* was in great danger at a Comedie, but was convoyed secretly away be an aged gentleman, who was weill acquent with his father. This lybell was affixed in open places,—

‘THE SCOTS DOE WHIPPE OUR NOBLEMEN WITH RODS—THEY KILL OUR FENCERS TRATROUSLY UNDER TRUST.’

‘The *Lord Sanquhar* indeid hired two Scottishmen to kill ane English fencer, who, fix or seaven years before, had putt furth his eye at fencing! They killed him in an Innes, whilles he was putting the cupe to his head. To content the English, the King consented that *Sanquhar* should be *hanged*. For the greater contempt of our Nobility, he was hanged among a number of Theeves!’

It is barely possible that the King may have discovered certain indications at Court, which, in a manner, forced him to sacrifice *Ross*, for the purpose of checking in the bud any future attempts at

<sup>1</sup> It may be esteemed worthy of remark here, that a shadow of this ancient custom is still observable at the Scotch Bar, where, previous to the inauguration of each candidate for admission into the body of the Faculty of Advocates, a Thesis, with its *Annexa*, is publicly notified on the walls of the Parliament-House—and especially at the outer-door of that Hall. It intimates that a public disputation, “*Disputatio Juridica*,” is to be held on a certain day, under the auspices of the Dean of Faculty; and the subject-matter of the Thesis is thus notified. Originally, the candidate had stoutly to maintain his ground against all comers, in the Latin tongue. It is almost unnecessary to add, that this *Disputatio Juridica* has now degenerated into a piece of empty form; in point of fact, it is “elegantly understood”—as no disputation whatever takes place, excepting that which is apt to arise with the printer and book-binder, who are the only parties at all benefited by this edifying solemnity. It is high time that such an useless waste of money should be prevented—and the sum at present bestowed in this way appropriated to the support of the splendid Library under the charge of the Faculty.

<sup>2</sup> *Church History*, Adv. Library, MS. ad ann. 1612.

fomenting these national jealousies. This, however, is merely matter of conjecture, and the only plausible apology which can be adduced for the perpetration of so tyrannical an act.

A very extraordinary instance of the same insane rage upon the part of the King, we learn from a rare Poem, entitled, a 'Counter-buffe to Lyfymachus, Junior, calling himself a Jesuite;' quarto, 1640, pp. 16; where the fate of STERCOVIUS, a Pole, is alluded to. That stranger had unhappily appeared in Scotland in the dress of his native country, which attracted the attention of the idle, and brought down upon him the derision and abuse of the populace.

' Hither he came, clad all in antique fort,  
Where seen in streets the subject of a sport,  
He soon became to childish gazers, who  
With shrieks and clamours lift him to and fro,  
Till forced he was with shame and speed to pack him,  
And to his feet and loathsome cabin take him !'

Nettled at such rude and inhospitable treatment, he published 'a Legend of Reproaches' against the Scottish Nation, shortly after his return home; which, having reached the ears of his 'most sacred Majesty,' he procured the arrest and execution of the hapless STERCOVIUS ! This out-herods Herod, with a vengeance ! The death of this Pole was accomplished at an expense to the King of no less a sum than six hundred pounds sterling—an immense sum in those days. The instrument whom JAMES employed was one Mr Patrik Gordon,<sup>2</sup> a subject of Scotland, then resident in Poland. With a dexterity for which the sapient James was celebrated, he attempted to extort the price of this innocent man's blood from the *Royal Burghs of Scotland* ! It is believed, however, that he was foiled in that attempt, by the Privy Council declaring themselves incompetent judges of the matter.<sup>3</sup>

In a very curious Collection, privately printed at Edinburgh, 1828, 'A Third Book of Scotish Pasquils,'<sup>4</sup> the cases of *Ross* and *Stercovius* are particularly noticed; and a copious extract from the 'Counter-buffe' is there given. That singular Poem introduces *Ross's* story thus—which is enough for our present purpose.

. . . . ' A Scot of ancient race,  
A scholler, too, as thou art, lived a space  
In England's Court; and for some private hate,  
A Pasquill did against his country wreat,  
As thou hast done in fouler sort; more full  
Of vild aspersions from thy phrantick skull !  
Well, then, King James of lasting memorie, who  
Could not brook that any calumnie  
Should be asperst upon his native land—  
After some tryall there, he gave command  
The Lybeller should home go, and sustaine  
Of doome unpartiall laws th' unpitied paine.  
And here being tryed, judged, and adjudged, they fand  
That he should lose his head and faultie hand;  
Which straight was done, in public view—and so  
I thinke the matter with thyself will go !'

THE FAMILY OF ROSS OF CRAIGIE, near Perth, were probably a branch of the Family of the ancient *Earls of Ross*, and were reckoned among the most respectable Families in the shire. Many

<sup>1</sup> A copy is in the valuable Collection of David Laing, Esquire.

<sup>2</sup> See Decree of Lords of Privy Council, in *Charter-room of the City of Edinburgh*.

<sup>3</sup> Prefatory Notice, xii.

<sup>4</sup> Probably the author of the 'History of the Valiant Bruce,' in heroic verse. Dorn, 1615; quarto.

The two preceding 'Books' bear date, 1827, and 1828.



particulars concerning them are to be found in History so early as the reign of Robert Bruce, and in the records of the Religious Houses at Perth, to which they were benefactors. *Nisbet*, in the Appendix to his second Volume,<sup>1</sup> gives a list of some of the distinguished Families in the Kingdom to whom they were allied.<sup>2</sup>

It cannot be disguised, that however honourably born this family may have been, various members of it figured in Books of Adjournal, and others of them suffered the last punishment of the Law, for their crimes. JOHN ROISE of Craigie, James and William Roise, his brothers, John Roise, servant to vmq<sup>le</sup> James Roise in Maitlandis, Lancelot Moncrief, servant to the Laird of Craigy, were, along with William Lord Ruthven, Henry Lord Methven, and others, brought to the bar of the Court of Justiciary, Nov. 12, 1571, for Oppression, Hamesucken, Convocation of the Lieges to the number of two hundred armed persons, besieging the Place of Dupplin, &c.<sup>3</sup> This appears to have proceeded entirely from one of those deadly Feuds which were unhappily so common in Scotland at that time. Their antagonist was Laurence Lord Oliphant. But the most atrocious instance which the Editor can at present recollect, occurs in *Fleming's Chronicle*,<sup>4</sup> under date Apr. 8, 1608; where it is recounted, that 'PATRIK EVIOT, brother-german to the Laird of Balhousie, wes murtherit in Blelok be his wife, JONET ROSS, quha wes air to the Lairdship of Craigie and Kynfawnes, both. He wes schote with ane gun in his bed, sleiping, be James M<sup>c</sup>Nair. Thairefter, they wer both taikin and execute—and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 of Majj, 1608. The heid and arme putt wp on the Castell-Gawill-Port.' It will be recollected how narrow an escape *Patrick Eviot*, the husband of *Jonet Ross*, had previously made, when he was attacked by Sir Henry Lindsay of Carreston.<sup>5</sup>

After the death of JONET ROSS, the heiress of Craigie, (who seems to have wished to transfer, by marriage, her large estates to her blood-stained paramour, *James M<sup>c</sup>Nair*,) her uncle, *Robert Ross*, succeeded to the Estate of Craigie. The Laird of Balhousie at this time was *Colin Eviot*. The Reverend Mr Scott informs us, that "*Patrick*, his brother, had suffered trouble and loss by a sentence of Parliament, for the friendship he had expressed to the Earl of Gowrie, in 1600. The *Eviots* had been proprietors of the lands of Balhousie and Muirton, near Perth, for more than three hundred years. They were great benefactors to the Religious Houses, especially to the Black Friars' Monastery, at Perth; and some of the younger sons of the Family were in Clerical Orders. *Colin Eviot* was succeeded by his son *Patrick*, who, before 1618, had sold the lands of Balhousie to *John Matthew*, and was himself designed *Patrick Eviot* of Muirton. He was married, and had children."

The reader's indulgence is requested for the minuteness and prolixity of this Notice; which, however, has proceeded from the Editor's anxiety to throw all the light in his power on so extraordinary a Trial.]

Aug. 20.—MR THOMAS ROISE, sone to vmq<sup>le</sup> Johnne Roise of Craigie.

Dilaitit of the devillische and detestable sforgeing, fienzeing, blasphemous vuttering, and by writ publictlie expofeing, of ane villaneous, infamous, and devillische Writt, all writtin with his awin hand, concerninge ane PASQUEILL or THESE; togidder with ten feuerall abhominable ARTICLES or APPENDICES, confirmeing the samyn—that all SCOTTISMEN aucht to be schote<sup>s</sup> furth of THE COURT OF ENGLAND, excepting his gracious MAJESTIE, his sone, and ane verrie few vtheris, and that the INGLISCHMEN ar michtillie blindet, fylet, and disflaet,

<sup>1</sup> *Nisbet's Heraldry*, App. to Vol. II., p. 23. <sup>2</sup> See MS. Transcript of *Mercer's Chronicle*, before quoted, and noticed by the Reverend Mr Scott, Adv. Library. <sup>3</sup> See this Collection, Vol. I., p. 25. <sup>4</sup> Advocates' Library, MS. <sup>5</sup> See this Collection, Vol. II., p. 409; Feb. 1, 1601.

<sup>6</sup> Ejected; thrust out by violence.

(althocht quik-sichtit vtherwayis,) that thay sould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scoureingis of people to radge and dominire within thair boundis and intrallis, &c.

My lord Aduocat product the said Mr Thomas Roife Dittay, togidder with ane directioun of the Counsell, vnder forme of Act, ordaning him to persue the said Mr Thomas for the crymes thairin contenit.

*DITTAY against Mr Thomas Roife.*

MR THOMAS ROISE, sone to vmq<sup>ls</sup> *Johne Roife of Cragie*, 3e ar indytit and accuset, FORSAMEKILL AS, albeit it be expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, alswell maid be his Maiestie as be his hienes progenitouris, of worthie memorie; speciallie, be the 43 Act of the secund Parliament of King James the first, intitulat, 'that Liefing-makeris tynes thair lyfe and guidis:' And siclyk, be ane Act maid be King James the secund, the 100 Act, contenit in the auld prentit Actis of Parliament, the foirsaid Act is ratifeit in all pointis, and Ordanit to be put in executioun in all tyme cuming; be the whilk, it is statute, 'that Leasing-makeris fall tyne lyfe and guidis to the King, and be at his Will:' As lykwayis, be the 134 Act of the aucht Parliament, haldin be his Maiestie, our darrest souerane, him self, and his hienes Estaittis, in the moneth of Maij, 1584; and in the tent Parliament, haldin also be his Maiestie and his Estaitis, the tent of December, 1585, *articulo primo*, intitulat, 'Authouris of sklanderous speiches or writtis salbe pwnieischet to the deathe.' Quhilkis Actis ar ratifeit and approvin in his Maiesteis fourtene Parliament, haldin the aucht of Junij, 1594: And be dyuerse vtheris Actis, alswell maid be his Maiesteis self as his Maiesteis progenitouris of renowned memorie, that all Liefing-makeris and telleris of thame, quhilk may ingender discord betuix the Kingis Maiestie and his people, quhair euir thay may be gottin, fall be chal-langet be thame that power hes, and tyne thair lyfe and guidis to the King; and that nane of his subiectis, of quhatfumeuir functioun, degrie, or qualitie, fall presume or tak vpone hand, privatlie or publictlie, in Sermones, declamationes, or familiar conferences, to vtter ony fals, sklanderous, or vntrew speiches, to the disdayne, reproche, or contempte of his Maiestie, his Counsell, and proceid-ingis; or to the dishonour, hurt, or preiudice of his hienes, his parentis, or progenitouris; or to meddle in the effairis of his hienes and his estait, steiring vp his hienes subiectis to mislyking, seditioun, or vnquyetnes; and that nane presume or tak vpone hand, publictlie to declame, or privatlie to speik or wryte ony purpois of reproche or sklander of his Maiesteis persone, estait, or gouernament; quhairby ony mislyking may be movet aganis his hienes and his nobilitie, and loveing subiectis, in tyme cuming; vnder the pane of death, to be inflictit vpone thame with all rigour: As the saidis Actis of Parliament in thame selfis

proportis. NOCHTWITHSTANDING quhairof, it is of verritie, that ye, the said *Mr Thomas*, in the moneth of Julij lastbypast, contrair to the tennour of the saidis Actis of Parliament, hes falllie, sklanderuslie, calumniousslie, dispytfullie, and devillischlie, within the toun of *Oxford*, in *ENGLAND*, sforget, ssenzzeit, and blasphemousslie vtterit, and be writt exposet publictlie to be red and defendit be yow, (as ye affirme by your devillische writt,) within THE VNIUERSITIES OF *OXFORD*, *CAMBRIDGE*, *PARIS*, and vtheris places mentionet in that villaneous, infamous, and devillische Writt; all writtin with your awin hand, in Latine, ane Propositoun or These, contening ten seuerall abhominable articles and (appendices), confirmeing the samyn, that all SCOTTISMEN aucht to be schote furth of the *Court of ENGLAND*, (excepteing his gracious MAIESTIE, his sone, and ane verrie few vtheris,) and that the *INGLISCHMEN* ar nichtilie blind, fylet, and dissaut (althocht quik-sichtit vtherways) that thai sould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scoureingis of people to rage and dominire within thair boundis and intrallis. To the quhilk Propositoun, ye haiff sett down and subioynet ten seuerall fals reasones, leasngis, and vntreuthis, for confermeing your devillische propositioun. (Quhilkis ten reasones ar repeatit in this place as ane pairt of your Dittay, bot purpoisslie omittit and left out heirof, as nocht worthie to remane in ane Register, to offend the earis or eyis of the posteritie.<sup>1</sup>) The quhilk blasphemous, iniurious, sklanderous, and devillische propositioun, and ten reasones, as ye terme thame, subioynet be yow thairto, for confirmatioun thairof, all writtin with your awin hand, ar fals and manifest leasngis and vntreuthis; and war affixt be yow (maist impudentlie, as ane liar and defamear of your countrie and natioun, nocht worthie to haif inioyit the naturall air thairof) vpone the *Marie-Kirk-dur* of the said VNIUERSITIE OF *OXFORD*, vpone ane Twisday, being ane preiching-day, in the said moneth of Julij last, as the people war dissolueing and skailling fra the sermone, and as *Doctour Goduene, Vice-Chancellour of the Vniuersitie of OXFORD*, was cuming out of the Kirk; to the intent the samyn mycht be publictlie red and disperfit amangist his Maiesteis subiectis of *ENGLAND*: Off plane purpois and intention n thairby to haif steirit thame vp to the crewall, barbarous, and vnmercifull murdering, massacring, and assasine of the hail SCOTTIS people, alswell noble men and counsalouris as vtheris of the SCOTTIS NATIOUN quhatsumeuir, his Maiesteis guid subiectis and servandis, attendantis vpone and about HIS MAIESTEIS royall persone in Court; quhilk could nocht haif bene accomplischt without the extreme danger and perrell of HIS MAIESTEIS sacreid persone, his gracious QUENE, and of THE PRINCES hienes. In the doing quhairof, ye haif

<sup>1</sup> (Marked on the margin,) 'Thir Thesis, with the argumentis or reasones subioynet pairto, ar gevin vp agane to my lord Aduocat.'

fforget, maid, and writtin innumerable leasngis, ffalfe, fklanderous, and vntrew speiches and wrytingis, quhilk mycht haif ingenderit discoird betuix his Maiestie and his guid subiectis; to the disdane, reproche, and contempt of his Maiestie and his noble progenitouris and thair proceedingis, and of your natie countrie, nocht worthie to haif the name of ane borne subiect thairin; and thairby, hes medlit with his hienes effairis, estait, and gouvernement, maist ffallie, barbaruslie, and vnnaturalle; contravening thairthrow (ye being ane SCOTTISMAN, albeit vnworthie) the tennour of the Lawis and Actis of Parliament thairof, and incurring deservetlie the panes and pwneischment aboue written, mentionet thairintill; quhilk aucht and fould, in maist exemplarie maner, be inflictit vpon yow, with all rigour; to the terroure and example of vtheris to attempt the lyk. Quhilk is mair nor nottoure, and ye can nocht deny.

MY LORD ADUOCAT productet the said Mr Thomas Rois Dittay, togidder with ane directioun of the Counsell, vnder forme of Act, Ordaning him to persue the said Mr Thomas for the crymes thairin contenit.

The said Mr Thomas, eftir reiding of the Dittay, and his accusatioun of the crymes mentionat thairintill, acknowleges and confesses the samyn crymes to be of veritie; declairing that THE THESIS productet war writtin be him furth of ane mad and distemperat humour, being *inops mentis* for the tyme; quhilkis he now, from his heart, repentis; craueing God, his Maiestie, and haill cuntrie people<sup>1</sup> pardoun for that his offence: And offeris him selfe in his Maiesteis will, being a gracious Prince, quhais Royall dispositioun, in all his proceedingis, hes ever inclyned rather to mercie, quhilk is the richt hand of God, nor<sup>2</sup> to the rigour of Justice, quhilk is his left hand: Desyreing thairfoir, in all humilitie, my lord Justice and Lordis of his Maiesteis Counfall present,<sup>3</sup> to interceid at his Maiesteis handis, for fauour in his behalff.

My lord Aduocat takis instrumentis of the pannel his Judiciall acknowledgement and Confessioun of the cryme contenit in his Dittay.

THE JUSTICE findis the Dittay relevant, and Ordanis the samyn to be put to the knawlege of ane Assyse of the persones summond to that effect.

ASSISA.

James Somerwell of Spittell,	Johnne Levinstoun of Hayneing,	James Hoppringile of Heriote
James Lvingstoun of Jeriswoid,	Robert Johnnstoun of Wamfray,	mylne,
Patrik Hunter of Hiltarvet,	Ja <sup>s</sup> Douglas, portioner of Lugtoun,	Robert Phillope, Schereff-clerk
Johnne Achiesoun, portioner of	Eduard Johnnestoun, elder, bur-	of Dumfreis,
Inuerefk,	ges of Edinburgh,	Mr James Ord,
George Redik, Shereff-depute of	Johnne Ker, portioner of Duding-	George Carnebie, burges of Ed <sup>r</sup> ,
Kirkcudbrycht,	stounne,	Hew Rois of Balnamukie.

Eftir sweiring of the Assyse, the said Mr Thomas of new agane, in thair

<sup>1</sup> Countrymen.

<sup>2</sup> Than.

<sup>3</sup> Sitting as Assessors. Their names are not recorded.

prefence and audience, confesses the wryting and affixing of the THESES and APPENDICES following thairupone; and that the THESES productet ar the samyn that was writtin and affixt be him: And as of befor, he offeris him self in his Maiesteis will for that offence.

My lord Aduocat takis instrumentis of the sweiring of the Assyse: and for verificatioun of the Dittay, produces the foirsaidis THESIS or PROPOSITIOUN, with the ten fals and vntrew ARGUMENTIS or REASONES following thairupone, all writtin with the said Mr Thomas awin hand. Repeittis the said Mr Thomas Judiciall Confessioun, first maid in prefens of the Justice, and thaireftir renewit be him in the said Assyse prefens and audience; and his becoming in his Maiesteis will, as guiltie and culpable of the saidis crymes: And lykwayis produces, for the said Assyse forder informatioun, the said Mr Thomas awin Depositiones maid and subscryuit be him at Edinburgh, the xj August instant, in prefens of his lordship, as his examinatur, nominat and appointit be the Lordis of his Maiesteis Secreit Counsell. And in respect thairof, and that the said Mr Thomas, eftir reiding of his Depositiones to him judicillie, in prefens of the Justice and Assyse, abydis thairat, and that thairby the saidis crymes ar clerlie verifeit and provin with sa manifest probabilities; in caice ony of thame acquit the pannell, (as he thinkis nane of thame will be sa voyde of knowlege or conscience sa to do,) Proteftis for wilful and manifest Errour, with all perrel of the Law that may follow thairupone.

VERDICT. The Assyse,<sup>1</sup> being ryplie and at lenth advyset thairwith, togidder with the villannous and infamous Pasqueill or Thefes, and damnable Appendices subioynet thairto; his Judiciall Confessioun and acknowledgeing thairof, and becoming in his Maiesteis will for the samyn, as altogidder giltie and culpable thairof; his subscryuit Depositiones, productet be our souerane lordis Aduocat, for cleiring and instructing of the said Dittay; togidder with the seuerall Actis of Parliament quhairvpone the said Dittay is foundit; thay all in ane voce, be the repourt and declaratioun of the said Johnne Levinstoun, chancellor, stand, pronuncet, and declarit the said Mr Thomas to be Giltie, culpable, and convict of the said devillische fforgeing and exposeing, be writt, of the said villannous and fals Thefes, and fals and damnable Appendices subioynet thairto; and affixing the samyn (thay being manifest levis and vntreuthes) vpone the said Kirk dur, in forme and maner specifeit in his Dittay; and of the samyn Dittay, and haill crymes contenit thairintill, and of contravening, thairthrow, the tennour of the saidis Actis of Parliament; quhairby he hes incurrit and fallin vnder the danger,

<sup>1</sup> Mr Alexander Hammiltoun of Kinglas; Raulf Ker, bailzie of Lander; Robert Moutray of Seyfeild, . . . . Allardice of Skadowie; Charles Cairnecrofe of Birkfneip; Johane Paterfone, Schereff-clerk of Fyfe; Johnne Haitlie in Sneip; David Ramfay in Pethheid of Lesuaid, . . . . Portious of Glenkirk, and Robert Creichtoun, brother to Innernytie; ilk ane of thame vlnawit in the pane of ane hundreth merkis, for thair nocht compeirance vpone the said Mr Thomas Assyse.



and within the compas of the panes and pwneischment mentionet thairintill, justlie merited be him.

THE JUSTICE, in regaird of his convictioun, Ordanit him to be tane bak to waird, and to be keipit in irnes, quhill his Maiestie by acquentit with his convictioun, and quhat exemplarie pwneischment fall be execute vpone him for his offence.

Sep. 10.—SENTENCE. The Justice, conforme to ane Warrant and directioun of his Maiestie, direct to my Lord of Bynning, his hienes Secreter,<sup>1</sup> be the mouth of Johnne Dow, dempfter of Court, Ordanit the said Mr Thomas to be tane to the Mercat-croce of Edinburgh, and thair, vpone ane scaffold, first his rycht hand to be strukin aff, and thairefter his heid to be strukin frome his body: And his heid to be thaireftir affixt and fet vpone ane irne prik vpone the *Nether-boll-Poirt*; and his said rycht hand to be also affixt vpone the *Wast-Poirt* of the said burgh of Edinburgh: And his haill moveable guidis and geir, &c. (gif he ony hes) to be escheit to his Maiesteis vse, as convict and culpable of the said haynous cryme.

CURIA JUSTICIARIE, &c. per M. Rob. Fairlie, *Justiciarium s. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij, specialiter constitut.*

### Mutilation.

Nov. 4.—WALTER SCOTT, sone to Johnne Scott in Newwark.

<sup>1</sup> The following extraordinary composition has fortunately been preserved among the *Denmylne MSS.*, Advocates' Library—but the King's 'Warrant and directioun' has probably been too pithy to have been filed by that obsequious courtier the 'Secreter,' even in his private Collection, as being considered too strong meat for posterity! Having the fear of his Majesty before his eyes, he perhaps felt that his own head and hand might be called on to answer for disobeying the strict injunctions given him.

MOST SACRED SOUERANE,

THE furious wretche MAISTER THOMAS ROS, wes, according to your MAIESTIES commandement, put to his tryall, and conuicted of the haynous crimes conteained in his diuelish Pasquil, produced for verificatioun of his guiltines, to the Asyffe. The Dome is delaied till your MA<sup>TIE</sup> be pleased to signifie your royall determination in it.

His malicious frenesie is so mixed with presumption of his owne wourth, as he thinkis the vse of his learning and eloquence necessar to the world; and that his passioun having furneished so much stuf, in so bad a pourpose, he is able, in ane subiect so wourthie and true as the commendation of your Royall guiftes of bodie and mynd, and most princelie actions, to kythe miracles in dew publeifing thair of! To this sence, he spak in judgement: And leauing to your MAIESTIES ener gracious clemencie, multiplied examples of diuine and humane Histories, to the commendatioun of the famous Princeis who had gracioullie pardoned heigh offences; adding examples of manie, who being transported be passion to madnes, had thairefter recouered thair setled judgement, and done great and wourthie materis; promising no les of him self.

Your MAIESTIES Adnoeat has wyselie considered, that the infame of his Dittay meritis not to be insert in the Register of the Adiornall. Alwayis I haue sent to James Douglas the copie of the proces, that when your MA<sup>TIE</sup> defyres to sie it, he may haue it reddie, and may concale it from all vthers. So expecting the signification of your MAIESTIES farder pleafour, anent this vnaturall and furious foole, I besek God long to preserue your MAIESTIE in perfection of all honour, happines, and contentment.

Your most sacred Maiesteis most humble, faithfull, and bund subiect and seruant,

ED<sup>S</sup>, 22 Aug. (1613.)

TO THE KINGIS most sacred MAIESTIE.

BINNING.

Dilaitit of airt and pairt of the hurting, wounding, and mutilatioun of Adame Dagleifche, sone and appeirand air to Johnne Dagleifche of Deuchar, of thre fingeris of his left hand; committit in the moneth of August, 1617 yeiris, at Muriefones-hill, befyde the burgh of Selkirk, vpone set purpois, prouisioun, and foirthocht felonie.

PERSEWARIS, Adame Dagleifche, Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr Thomas Nicolfone, Aduocat.

It is allegit be the pannell and his prelocutour, that this matter can nocht be put to ane Assyse; becaus, gif ony hurt or mutilatioun was gevin be him to the persewer, nocht granting the samyn, it was done in his awin defence; insafar as, vpon the sevint of August 1617, the pannell was set vpone be Adame Dagleifche, persewar, neir to the toun of Selkirk, and was crewallie hurt be him: ffor the quhilk, the said Adame, vpone the xxvj day of Marche 1618, being summond befor the Scheref of Selkirk and his deputis, to vnderly the Law for the hurting and wounding of the said Walter Scott, defender, in the heid, to the effusioun of his bluid in grit quantitie, was, be ane Assyse of xv sworne men, ffund gyltie, and convict of the bluid and bluid-wyte: And producet the Rolment of Court, for verifiatioun thairof, vnder the subscrption of Alexander Wilkiefoun, clerk of the said Schereff-Court. *Secundo*, the Dittay is nawayis relevant to pas to the knowlege of ane Assyse, becaus *mutilatio est tantum amputatio membri*; and thair is na member cuttit af, ffor the persewaris haill hand, and fingeris thairof, ar yit extant be oculour inspectioun; and he is able to move his hand and fingeris, and to grip thairwith.

It is anfuerit be the persewaris, that the allegeances foirsaidis aucht to be repellit, in respect of the summondis and Dittay product; with ane Testimoniall of the Chirurganes, subscryuit be the Deacone and thre of his bretherene, testiefeing the mutilatioun, togidder with the persewaris awin mutilat hand, mutilat in thre fingeris thairof schawin judiciallie to the Judge. And as to the Rolment of Court product, na respect could be had thairto, the samyn being altogidder null and repugnant to the lawis of this realme; be the quhilk, ane Sentence is gevin out in ane Criminall matter, the pairtie accused nocht compeirand, convictand him of ane cryme; quhairas, be the Law, (he nocht being present nor compeirand,) he aucht nocht to haif bene put to ane Assyse; bot the maist that could haif bene done be the Schereff in that Judicatorie, was allanerlie, to haif vnlawit him *in pena contumacie*: And albeit the Schereff and his depute wald geve out his or thair Testimoniall, that the said Adame Dagleifche, quha is mutilat, was the persewar, na respect could be had thairto, becaus that is na pairt of thair office: And thairfoir, na respect could be had to the Rolment of Court.

To the quhilkis, it is replyit be the pannell, that the Rolment of Court is sufficient to instruct his allegeance; becaus, quahatevir the pannell did, it was in

his awin defence, in respect of the forme of proceeding vsfet in the Scheref Court, quhilk is, to put the pairtie accuset to ane Assyse, albeit he be absent and compeiris nocht; always,<sup>1</sup> it is sufficient to instruct that pairt, that he is convict of the bluid and bluid-wyte, and was *contumax*,<sup>2</sup> and compeirit nocht; quhairpoun he tuik the cryme vpone him: And as for that pairt of the allegiance maid be the pannell, that the taking away of the finger is nocht *amputatio membri*, becaus the finger is nocht *membrum*, bot *pars membri*, as sayis BALDUS, Leg. *non sunt liberi*, ff. *de statu hominum*,—whois wordis ar, *Nota, digitus non dicitur membrum sed pars officialis membri; et sic amputans digitum non dicitur amputare membrum*: And BARTOL. Confilio 201, sayis, *Queritur numque digitus sit membrum? Respondetur quod non, sed potius pars siue officium membri; per Legem, non sunt liberi*, ff. *de statu hominum*.—*Tertio*, the perfewar is nocht mutilat in thais thre fingeris, becaus he is able to grip with thame and hald; and fa thay ar nocht vnprofitable.—*Laß*, thair can na payne of the body be inflictit, albeit the thre fingeris was mutilat, as is allegit; becaus na pane corporall can follow, feing na death followit; bot only ane arbitrarie and pecuniall payne, to be modifeit be the Judge.

It is anfuierit be the perfewaris, to that pairt of the allegiance proponit, that the cutting aff of ane finger is nocht mutilatioun, it is nocht pertinent to this purpois; becaus the perfewar compleinis that he is mutilat of thre fingeris, quhilk ar nocht cut aff, bot mutilat and maid vnhable, quhairby he hes nocht the full and rycht vse, nather of his thre fingeris, nor yit of that hand: And as for the mutilatioun it self, and verritie thair of, it is verifeit be oculour inspectioun, and be the Chirurges Testimoniall productet: And quhair it is allegit, that the Rolment of Court productet, is only vsfet bot to verifie that the perfewer is culpable of the bluid and bluid-wyte, repeitis the anfuier maid thairto of befoir, with this eik,<sup>3</sup> that the Schereff had na power to put him to ane Assyse, he nocht compeirand; fa that the Declaratioun maid be the Inqueist, aucht nawayis to be respectit: And as to the Schereff, he had nocht power to geve ony Declaratioun thairpoun; and the pairteis contumacie and absence is na cause to convict him of the bluid or bluid-wyte; and becaus of his absence, he could be na forder convict bot in payment of the vnlaw; sua that, in respect of the premisses, na respect aucht to be had to the Rolment of Court or ony pairt thair of: And albeit a pairtie be *contumax* and compeir nocht, that contumacie convictis him nocht of the cryme; vtherwayis, gif ane pairtie war *contumax*, it war nocht neidfull to put him to ane Assyse of new, quhilk war ane grit absurditie; feing, findrie persones being summoned to compeir befoir the Justice Generall and vtheris Judges in Criminall causses, thay purge thair contumacie, and offer thame selfis to ane tryell; and cowmonlie thay ar clanget be the Assyse; as was

<sup>1</sup> At all events.<sup>2</sup> Contumacious; showed contempt of Court by not appearing.<sup>3</sup> Addition.

fund in this Judgment, betuix *Cunninghame* and *Wylie*. And as to the Doctouris of the Law allegit, na respect aucht to be had thairto in this Judicatorie, in respect of the inviolable practique obseruet within this realme; quhairin, mutilatioun of ony pairt of ane mannis persone, be the quhilk he is frustrat of the rycht vse thairof, is put to ane Assyse determinatioun; the Justice advyfes and resolues vpon the pwneischment, be advyse of the Lordis of Secreit Counsell.

THE perfewar Restrictis this Lybell to the mutilatioun of the thre last fingers of his left hand allanerlie.

It is forder allegit be the pannell, that he can nocht be put to ane Assyse for the mutilatioun lybellit; in respect, gif ony hurt or mutilatioun be gevin to the perfewar, it was done be the perfewar him self, in drawing of his awin suord the tyme lybellit; quhilk he has dyuerse tymes confessit to Andro Scott Chirurgane, and vtheris; and desyres the perfewaris ayth to be tane thairupoun.

The perfewar, being solemnlie suorne vpon the last allegiance, anent the mutilatioun be him self with his awin suord; he, be his grit aith, denyit the samyn; and affirmet that he was mutilat be Walter Scott, defender, and na vther: Quhairupoun my lord Aduocat askit instrumentis.

THE JUSTICE findis the Dittay relevant; and remittis the samyn to the tryell of ane Assyse.

#### ASSISE.

Robert Trumble of Huttrilburne, Johnne Trumble of Howdene, James Kene, bailzie of Selkirk, James Pringill in Tynneis.<sup>1</sup>

The perfewar, be his grit ayth, swore the Dittay to be of verritie: Quhairupoun my lord Aduocat askit instrumentis. And in respect thairof, and of the Chirurganes Testimoniall producet, with the evidence of the mutilatioun, be schawing of the perfewaris mutilat fingeris, Protestis for Wilfull Errour, gif the Assyse acquit.—The pannell repeittis the allegiances maid be him of befor, now to the Assyse, speciallie, that pairt thairof, that the cryme was committit in his awin defence, and that he was perfewit be the perfewar, and is convict thairof, and of the bluid and bluid-wyte, as the Rolment of Court beiris.

VERDICT. The Assyse, be the mouth and declaratioun of James Wauch in Selkirk, chancellor, fand the said Walter Scott to be flylet, culpable, and convict of the mutilatioun of the said Adam of thre fingeris of his said left hand, in manner and at the tyme specifeit in the said Dittay.

THE JUSTICE, in respect of the former convictioun, Ordanit the pannell to find caution for his compeirance befor the Justice or his deputis, in the Tolbuth of Edinburgh, the ellevint day of November instant, to heir sic Dome and pwneischment to be inflictit vpon him for the said cryme, as fall be inioynet be

<sup>1</sup> The rest of the Assise were persons of no note.

the Lordis of Secreit Counfall: And that he onnawayis depairt furth of the burgh of Edinburgh, in the meane tyme; vnder the pane of fyve thowfeand merkis money.—George Scott of Castelfyde, Robert Scott of Hertwoidmyres, Walter Scott in Loquharret, and Williame Mitchelhill, burges of Selkirk, become cautioneris and fouerteis, &c.

Nov. 11.—CONTINUED to the xij day of Januar nixt.

(Jan. 13, 1619.)—THE JUSTICE, of consent of Adame Dalgleische, per-fewer, continewis the pronouncing of Dome, to the tent day of Februar nixtocum.

(Feb. 11.)—THE dyett DESERTIT, be directioun of the Thesaurer for the Kingis part; in respect the pairteis ar agreit be my Lord of Balcleuches Decreit gevin thairin, to quhome the matter was submittit.

### Slaughter.

Nov. 11.—GAWIN NISBET, fone to Robert Nisbet of Dalzell, and James Scott in Ardblairis.

Dilaitit of airt and pairt of the Slauchter of vinq<sup>le</sup> James Hammiltoun in Brigbrae; committit at ane Oifler-hous, callit the Woman-hill, in the moneth of . . . , 1617.

PERSEWAR, Robert Hammiltoun, as brother.

THE Justice, of consent of aither partie, continewis this dyet to the thrid day of the air (of Lanerk), or foner, vpone xv dayis wairning, &c.

[*Mr Alexander Coluile.*]

### Cutting and Carrying away of Growing Timber.

Nov. 18.—DAVID SPALDING of Effintullie, and Alexander Robertfone of Myddill Downie.

Dilaitit of airt and pairt of the cutting down of certane grit growand treyis, and away-taking thairof, furth of Johnne Erle of Mar his Forreftis and woidis, within the boundis of Braemar, Cromar, Strathdie, and Glengarie.

In respect of thair compeirance, offerit thame selffis to the tryell of the Law, as altogidder innocent thairof; and protestit for thair cautioneris releif; and that thai fould nocht be trubillit or charget for the saidis allegit crymes.

### Slaughter.

Nov. 18.—JAMES MYDDILTOUN, fone to Robert Myddiltoun, tailgeour, burges of Edinburgh.<sup>1</sup>

The samyn day compeirit personallie, in judgement, Robert Wynrahame, Herauld, and producet ane Supplicatioun, quhilk was gevin in to the Lordis of his Maiesteis Secreit Counfall, be James Myddiltoun, fone to Robert Myddiltoun,

<sup>1</sup> See Aug. 26, 1612, where the whole particulars of the Trial are inserted.



tailzeour burges of Edinburghe, anent the said James puting to libertie ; togidder with the saidis Lordis of Secreit Counsell thair Warrant and delyuerance on the bak thairof. Off the quhilk SUPPLICATIOUN and delyuerance the tennour followis.

MY LORDIS OF SECREIT COUNSELL, vnto your lordschipis humlie meanis and schawis I, your seruitor, *James Mydiltoun*, sone lauchfull to vmq<sup>le</sup> Robert Mydiltoun, tailzeour burges of Edr, That quhair, vpone occasioun of that vnhappie accident of the slaughter of vmq<sup>le</sup> *Clement Mauchane*, committit be me, I was takin, presentit to iustice, and convict for pe fame, and the dome of death was pronuncet aganis me accordinglie thairfoir : And pe pairtie, from tyme to tyme, thir fex zeiris bygane, haifing gevin eir to the offeris of Affythement,<sup>1</sup> quhilkis war by me and my freindis maid and offerit vnto thame; in end, by submissioun of pe matter vnto your lordschipis Sentence and Decreit, as gevin and pronuncet pairintill, quhairby I am decernit to be BANISCHET pe realmes of Scotland and Inghland, and ordanit never to returne agane within the fame, without Licence and consent of Sir Johnne Cokburne of Ormestoun, kny<sup>t</sup>, Justice clerk, and Mr James Mauchane, brother to the said vmq<sup>le</sup> Clement Mauchane, frst had and obtenit pairto, vnder the pane of deid, to be execute vpone me without fauour ; conforme to pe Sentence and dome alreddie gevin and pronuncet aganis me in jis matter. According quhairvnto, I am maist willing to act my self in pe buikis of Adiornall : In consideratioun quhairof, I humbly besek your lordschip to geve Warrant and command, heirby, to the Justice clerk and his deputis to tak me actit in the buikis of Adiornall, in maner and to the effect foirsaid, vnder pe pane aboue writtin : Quhairanent pir presentis fall be vnto pe Justice clerk and his deputis ane Warrant sufficient : And your lordschipis answere.

APUD ED<sup>a</sup>, xvij Nouembris, 1618, THE LORDIS Ordanis the Justice, Justice clerk, and his deputis, to appoint and set a Justice Court, and to tak jis supplicant actit in pe buikis of Adiornall, that he fall depairt furth of the realmes of Scotland and England, within pe space of ane moneth eftir pe dait heirof ; and returne (nocht) agane within jis realme, vnder the pane of deid : And he haifing actit him self, as said is, Ordanis pe said Justice to caus put him to libertie : And Ordanis this supplicant, that, during the tyme of his remaning within jis cuntrie, he hant<sup>2</sup> nocht Kirk nor mercat, and that he weir nocht a sword.

AL. CANCELL<sup>r</sup>. SANCTANDROIS. LAUDERDAILL. CARNAGY. J. PRYMROIS.

AND according to the said WARRANT, the said Robert Wynrahame defyret my Lord Justice to tak the said James Mydiltoun actit ; lyk as, the said James Mydiltoun, immediatlie thaireftir, being, be directioun of the Justice, brocht furth of waird be George Foulis, his Maiesteis Maister Cunzeour,<sup>2</sup> and ane of the present Bailleis of Edinburghe, and presentit vpone pannel, conforme to the foirsaid Supplicatioun and Warrant on the bak thairof, maist willinglie become actit, bund, and obleift, that he fall depairt and pass of the realmes of Scotland and Inghland, within the space of ane moneth, &c.<sup>4</sup> Quhairvnto my Lord Justice interponet his authoritie and Decreit : And in respect of the former Act, and for obedience of the said Warrant, Ordanis the said James Mydiltoun to be fred and

<sup>1</sup> A compensation or *solatium*, by way of fine, paid to the relations of the murdered party.  
<sup>2</sup> Haunt ; frequent.      <sup>3</sup> Coiner ; Master of the Mint. This officer (George Foulis of Ravelston)

was the son-in-law and successor of GEORGE BANNATYNE, the far-famed Compiler of the greatest body of Ancient Scottish Poetry now extant ; in honour of whom the Literary Association, termed THE BANNATYNE CLUB, assumed his name.      <sup>4</sup> As above narrated.

relevit furth of the said Tolbuth and waird of Edinburghe be the Proveist and bailleis of Edinburghe.

The said James Mydiltoun, *olim in carcere*, and now at libertie furth of waird, Ratifeis, approves, and affirmes the Band maid and subscryuit be him and his freindis, anent his Banisfchment, &c., and payment of the fowmes of money thairin contenit, &c.

### Slaughter.

Nov. 20.—PATRICK HEROUN of Kierochtrie.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Robert Gordoun of Bairn-airy; committit within the duelling hous of Andro M'Dowell, mercheand in Monygoft, in the moneth of September last.

PERSEWAR, Alexander Gordoun of Barnernie, eldest sone.

The pannell proteftis for his cautioneris releif; and offeris him felf to the tryell of the Law, for the said allegit cryme, quhair of he is altogidder innocent; difassenting to all maner of continuatioun.

THE Justice Continewis this dyet, of the perfeweris consent and defyre, to the thrid day of the nixt Justice-air of the fcherefdome quhair the pannell duellis, (Wigtoun,) or foner, vpone xv dayis warning. And ordanis caution to be ffund be him for his entrie to that effect, vnder the panes contenit in the Actis of Parliament: Quha fund Sir Patrick M'kie of Larg caution for his entrie, &c.

### Usurping King's Authority, by taking Captive and Detaining, &c.

Nov. 20.—THOMAS MELDRUM of Idene;<sup>1</sup> Walter Grant, his fervand; James Grant in Tilliebo; Johnne Roife, fervand to the said Thomas.

Dilaitit for taking and apprehending of Johnne Meldrum of Ordley captiue and priffoner, furth of his duelling houfe of Ordley, vpone the viij day of Maij, 1612 yeiris, vnder nycht; cayreit him to the said Thomas duelling hous of Idene, quhairin he was detenit, *in privato carcere*, be the fpace of foure dayis and foure nychtis; and thairfra, cayreit him to Sir Alexander Gordoun of Clwneis hous, quhair he was detenit, *in privato carcere*, the fpace of tua dayis and tua nychtis; and thairfra brocht him, as ane captiue, all the way to the burgh of Edinburghe, to the duelling hous of Alexander Watfone, quhairin he was detenit, *in privato carcere*, as ane priffoner, the fpace of xxiiij houris: Vfurpeand thairby his Maiefteis authoritie vpone thame, in taking and detening of the said Johnne, *in privato carcere*, but<sup>2</sup> Cominiffioun or authoritie, be the fpaces foirfaid.

PERSEWARIS, Johnne Meldrum of Ordley; Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, elder.

<sup>1</sup> See Jan. 9, 1618.

<sup>2</sup> Without.

It is allegit be the pannell, that na proces can be grantit at Johnne Meldrumis instance, becaus he is rebell and at his Maiesteis horne; and producet fyve feuerall Hoirningis for verifeing thair of.—My lord Aduocat declairis he infistis in the persute for the Kingis Maiesteis intreis aganis the pannell, quha had na power to tak and detene the said Johnne, in maner lybellit.

It is allegit be the pannell, that gif the Dittay war trew, (nocht grantand the samyn,) that thai did na wrang in taking and detening of the said Johnne Meldrum, becaus the tyme of his taking, he was rebell and at the horne; and repeittis the Hoirningis producet for instructing thair of: And as the pannell could nocht be callit for Slauchter of ane rebell at that tyme, far les can thai be persewit for his taking.—It is answert be my lord Aduocat, as persewer, that the exception aucht to be repellit; *first*, becaus he infistis vpon the hail lybell *coniunctim*, as ane cryme to infer the conclusioun thairin contenit, viz. taking and detening of Johnne Meldrum *in privato carcere*, as the lybell beiris: *Secundo*, adheirand to the first answert, geveand<sup>1</sup> the said Johnne had bene rebell, the pannell had na Warrant to tak or apprehend him, thay nor nane of thame being Magistrattis, haifand na Jurisdiction, power, nor commissioun; seing the pannell could nevir haif bene accuset for suffering a rebell to pas vp and down the cuntrie, nather warthay astrictit of the Law<sup>2</sup> to tak him, nather mycht thay tak him.

It is duplyit be the pannell, that the exceptioun standis relevant, nochtwithstanding of the answert, insofar as the Kingis Maiesteis rebell can haif na benifeit of his Maiesteis Lawis; and thairfor, as nocht being the Kingis frie leige, it was lauchfull to the pannell to tak him; and in the Law it is cleir, *quod capere Bannitum unicuique permittitur*, L. finali Cod. de Maleficiis et Machematicis; Baldus in Lege prima, Cod. de Summa Trinitate: And the resson of the Law is, *quia Bannitus habetur pro fugitivo; et fugitivum quilibet potest capere*; Bald. in Lege qui bonis, Cod. qui bonis cedere: And it was nevir practizet in this Judicatorie, that Hoirning being obiectit and producet, ather for hurting, slaying, or taking of ony man, proces was grantit. And it being now opponit, that the persone tane was the Kingis Rebell, the pairtie persewit was nevir, nor can nevir be put to the knowlege of ane Assyse. Lykas, it is allegit, that the Laird of Drumlangrig, being accuset for taking of Kirkmichell, was nocht put to ane Assyse. It is forder eikit to the allegiance, that the pannell had ane speciall intreis to tak him, becaus he was rebell and at the horne for nocht removeing fra his landis of Woidheid, quhilkis landis of Woidheid he violentlie possessit, and opprest the tennentis. Lyk as, the said Thomas Meldrum of Iden, finding the said Johnne Meldrum to be nyne or ten tymes his Maiesteis rebell, and haifing letteris of Captioun to tak and apprehend him, the said Johnne being

<sup>1</sup> Giving or granting, for the sake of argument.

<sup>2</sup> Bound by law.

ane fugitiue and ane howlat,<sup>1</sup> nocht appeirand in the day; and it being cum to the pannellis knowlege, the tyme lybellit, that he was cum, vnder silence of nycht, and enterit within the housis, the pannell, vpon suddantie, being adverteit by the spys, nocht haifing the occasioun<sup>2</sup> of ane melfinger, was foret of neceffitie, *propter periculum fuge*, to pas him self, with his awin domestik sermandis, and to sease vpon the said Johnne, of intentioun to exhibeit him to Justice, he being his Maiesteis rebell for causses Criminall, sic as for invading the *Guidman of Harthill, &c.*, as the Hoirningis beiris: Lyk as, with all convenient dilligence, the pannell brocht the said Johnne Meldrum to Edinburghe, of intentioun to exhibeit him to justice; and in the meane tyme, he being seast vpon and put in waird, at the instance of dyuerse perones, baith for dett, ryottis, and oppressiounes. Quhairvpon the pannell meanit him self<sup>3</sup> to the Lordis of Secreit Counsell; quha, be thair Warrant and directioun, vpon the xxj of Maij, 1612, Ordanit the said caution for obseruing his Maiesteis peace, and his personall compeirance, quhan euir he sould be chargit thairto, vnder the pane of V<sup>m</sup> (5000) merkis, as the Ordinance, heirwith producet, beiris. Sua that the pannell, being in *prosecutione proprie injurie*, for freithing<sup>4</sup> him self and his tennentis of ane manifest oppressour, *et quum latitabat tanquam fugitivus*, as said is, he was in *optima fide* to tak him; and nather the captor nor detentioun can be comptit criminall, becaus it is lauchfull, *cuiuslibet ex populo*, to tak ane notorious malefactor, and to exhibeit him to justice; and his detentioun is nocht *culpa*, becaus he was presentit to justice.

It is answert be my lord Aduocat to the first pairt of the Duply, that he repeatit his former answert; for albeit ane rebell may nather persew nor defend in judgement, that is na reasone quhairfoir everie privat man sould tak him at his awin hand, and detene him in his privat hous, as is set down in the lybell. Quhair the defender wald compair ane rebell *cum bannito*, nocht grantand to the Law allegit, quhilk makis na mentioun *de Bannito*, ffor *Bannitus* was properlie callit he quha transgressit aganis the Empyre or the Estait. As to the allegiance proponit aganis all the perseweris rebelliones, thair is nocht ane proponit for ane criminall cause persewit criminallie; and as to the hail ciuile Hoirningis, repeatit as ofbefoir. And quhair it is allegit, that he was rebell at the instance of Thomas Meldrum him self, ane of the pannell, for nocht removeing fra his landis of Woidheid, it is answert, that albeit he was pairtie aganis him, that gave him na autoritie to tak him at his awin hand, speciallie being duelling and remaning in his awin hous, and vpon his awin heritage of Ordley, and nawayis being fugitiue fra his Maiesteis lawis at that tyme. As to the Hoirning vsiet aganis him, at the instance of his Maiesteis Aduocat for the tyme, the Guidman of Hearthill

<sup>1</sup> Owl. Such persons were likewise often termed *night-hawks*.

<sup>3</sup> Made suit; complained.

<sup>4</sup> Freeing; ridding.

<sup>2</sup> Opportunity; convenience.

and his bairnis, is na Criminall Hoirning, becaufe it proceidis frome ane perfute agitat afor the Counsell; and ffordre, to purge that Hoirning, he was relaxt thairfra, lang ofbefoir, viz. in *anno* 1609. As to the Letteris of Captioun productet, na respect fould be had thairto, becaus thair is an executioun productet, quhairupoun I tak instrumentis, defyreing the haill blankis thairintill to be fcoirit; and allegis, that na respect fould be had thairto, becaus the Letteris of Captioun ar nocht direct to him, nor to nane of the perfones that concurrer with him in the taking of the faid Johnne Meldrum: Lyk as, na respect aucht to be had to the faidis Letteris of Captioun, becaus thair is na executioun productet. As to the Warrant of the Secreit Counsell, productet, the perfewar acceptis the famyn, and alledges that this Warrant, gevin vpone the xxj of Maij, 1612, could be na Warrant to the perfones on pannell, nor nane of thame, to haif tane him vpone the aucht day of Maij preceeding, and to haif keipit him *in privatis carceribus* to the faid xxj day, *quum carcer est meri imperij, et non competit privato*; and ane Ordiner Judge hes nocht power to keip ane perfone tane *in privato domo* attour<sup>1</sup> the fpace of xxiiij houris. Sua, infistand vpone the haill lybell coniunctlie, as is confaet, the haill argumentis proponit for the pannell aucht to be repellit.

It is forder exceptit be the pannell, that with the Hoirningis productet, and allegiances foundit vpone the rebellioun of the perfewar, the defender did na wrang to tak or detene the perfewar, for the reffones foirfaidis. And quhair it is allegit, that he mycht nocht detene him, *quia carcer est meri imperij*; ffirft, it is allegit, that quhan ane rebell is tane *ad hunc finem*, to present him to the Judge Ordiner, thair is na wrang done, quhilk is in this caice; as is decydit in the Law laitle allegit, *quod ait Pretor, Si debitorum* ff. Digest. *que in fraudem creditorum*: And thairfoir, feing the defender tuik the perfewer, being ane rebell, and detenit him quhill<sup>2</sup> he brocht him to the fait of Justice, and thair presentit him, thair can be na vfurpation of the Kingis authoritie: And as for the fpace of detentioun, it may be langer or fchorter, accoirding to the diftance of the place; as is cleir in Julius Clarus, L. quinta § finali, *fi captus, et aliquis potest illum detinere, et captum Judici presentare, etiam post septem dies*. And the fame Clarus fchawis, quhair it was practizet contra Dominum Joannem Stephanum, *qui furem septem dies detinuit, &c. sed cum compertum fuerit, quod Judici et officialis obtulerit, absolutus fuerit*.—Secundo, it is nocht capitall, bot the grittest pane that is inflictit is, *tot dies manere in carcere publico, quot illum in privato incluserit*: ffor albeit Lex vnica, Cod. *de privato carcere*, appointis it *penam maiestatis*, yit it is mendit be the nixt Constitution immediatlie thair-effir following, quhilk appointis the pane foirfaid. Ita Cujacius, &c.: And, gif neid beis, fall be provin be the confuetude of all Nationes; and gif *privati*

<sup>1</sup> More than; above.<sup>2</sup> Until



*carceres* (quhairin thay ar done be manifest vsurpation) ar nocht capital, *multo minus* can the pannell fall under ony corporall pwneischment, haifing tane ane manifest oppressour, and presenting him to Justice. *Last*, as to the Relaxation fra *Harthillis* Hoirning, it is null, becaus the Kingis Aduocat and the pairtie is thairintill ordanit to be summond, quhilk is nocht done.

My lord Aduocat, answeraund to the first part of the secund allegiance, sayis, that the persewer is formallie contrair to the pannell, and that the lybell contenis ane sufficient Criminall caus, to put the pannell to the knowlege of ane Assyse: And quhair it is allegit, that the pannell brocht the persewer and presentit him to ane Judge, defyes the pannell to condiscend vpon the name of the Judge to quhome he was presentit; ffor it is treuthe, that quhan he was brocht to Ed<sup>r</sup>, he brocht him to the calsay,<sup>1</sup> and than tuik instrumentis of his setting to libertie; and thairefter, certane of his creditouris, be vertew of Captioun, tuik him and pat him in waird. And quhan it is allegit that the taking of perfonis and keiping of thame in *privatis carceribus* is nocht capital, the direct contrair is of veritie; becaus the said cryme is nocht only capital, bot, be the rigour of the Law, is tressonable; as was decydit befor the Justice General aganis *the Erles of Huntlie and Craford*, ffor taking of *the Majster of Glames*. As to the practique of *the Laird of Drumlanrig*, in that caice it was alleget, for defence of *Drumlanrig*, that *Kirkmichell* was tane be vertew of Letteris of Captioun, direct to *the Schereff of Nidisdail*, and na Interlocutour was pronuncet in that cause, becaus the persewar past fra the persute thair of, *pro loco et tempore*. In respect quhairof, the lybell standis relevant; and, nochtwithstanding of the saidis allegiances maid be the pannell in the contrair, fould be put to the knowlege of ane Assyse.

THE JUSTICE continewis his Interlocutour to the thrid day of the nixt Justice-air of the scherefdome of Aberdene, or soner, vpon xv dayis wairning.—Patrik Meldrum ffeiar of Iden become souertie for the entrie of the saidis Thomas Meldrum of Iden, his father.

### Slaughter—Horse-stealing.

Nov. 20.—JOHNNE MELDRUM of Ordley.

Dilaitit of airt and part of the Slaughter of vmq<sup>le</sup> Cristian Watfone, spous to Alexander Bythe sumtyme in Scottistoun, in manner specifeit in the Letteris; committit in Marche 1614: And for airt and part of the Steilling of tua horfis fra Thomas Meldrum of Idene; committit in September, 1608.

PERSEWARIS, Alexander Bythe, as spous; Thomas Meldrum of Idene; Sir William Oliphant, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr Vmphra Blindschellis, (Advocate.)

<sup>1</sup> Causeway; the paved public streets within the gates.

THE JUSTICE continewis this dyet, for tryell of baith the crymes aboue written, to the thrid day of the nixt Justice-air of the Sherefdom of Abirdene, &c.—Mr Williame Levingstoune become fouertie, &c.

### Slaughter—Demembration.

Dec. 4.—WILLIAME STEWART, at the mylne of Dalcrove.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Dauid Toscheoche, younger of Monyvaird, and of airt and pairt of the Demembring of Dauid Malloche, his ferwand, of his rycht hand; and remanent crymes contenit in the Letteris; committit the 24 of Junij last, within the burgh of Perth.<sup>1</sup>

Compeirit Hew Campbell *excusatorio nomine* for *Annas Grahame Lady Monyvaird*, and producet the Letteris deulie execute and indorfate, togidder with ane Testimoniall, subscryuit be the said Annas, and be Mr Johnne Menteith Minister at Monzie, and Mr Dauid Drummond Minister at Creiff, testifeing the said Annas Grahame to be newlie delynerit of hir birth; and thairthrow, vnable to travell to the keiping of this dyet and perfute of the said Williame Stewart for the said cryme: And in respect thairof, protestit for releif of the Lairdis of Laweris and Inchebrakie, cautioneris for repoirting and perfute of the saidis Letteris.

THE JUSTICE continewis the dyet to the thrid day of the nixt Justice-air of the Scherefdom of Perth, or soner, vpone xv dayis wairning; and ordanis the pannell to find caution for his re-entrie. *Plegio, Waltero Stewart de Heildoun.*

PERSEWAR, Dauid Malloche, sumtyme fervand to vmq<sup>le</sup> Dauid Toscheoche.

(Feb. 25, 1620.)—THE persewar declaris, that at the tyme of the raising of the Letteris aganis the pannell, informatioun was gevin to him that the said W<sup>m</sup> Stewart was in companie with Laurence Bruce of Culmalundie, Alexander Flemyng of Moness, Alexander Bruce, and remanent perfonas thair complices, at the away-streking of his hand; bot fenfyne, he hes tryit<sup>2</sup> that he is altogidder innocent thairof, nather was he vpone the grund at the committing of that fact: In respect quhairof, he passis *simpliciter* fra the said Williame his perfute.

Continued to the air of Perth, tertio Itineris, or soner, vpone xv dayis wairning. Thomas Layng, indueller in Leyth, cautioner.

### Slaughter.

Dec. 9.—ROBERT CAMPBELL, sone to Colene Campbell, burges of Glesgow.

PERSEWARIS, Thomas Symfoun at the Waft-poit of Edinburghe, as brother to the defunct; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

<sup>1</sup> See this Collection, Jul. 29, 1618, and Nov. 17, 1619.

<sup>2</sup> Proved; ascertained.

The pannell takis instrumentis of his entrie, and offerris him selff to the tryell of the Law for the said allegit cryme; affirmeing him selff to be altogidder innocent thairof; and disassentis to all forder continuatioun, in respect that, to the keiping of that dyet, and cleiring of his innocencie of the allegit Slauchter aboue writtin, being out of the cuntrie this threttene moneth bygane, he being maid foirsene<sup>1</sup> thairof, be Letteris direct to him, and ressauit be him in *Spayne*, he hes cum furth of *Spayne*, and left his affairs thair vnperfyttit, haifing na vther errand to returne hame bot to cleir him selff of sic ane haynous imputatioun; quhairof he is innocent.

INTERLOCUTOR. The Justice continewis this matter, and all tryell to be tane thairintill, to the thrid day of the air (Renfrew), or soner, vpon xv dayis wairning; and Ordanis the pannell to find cautionn for his re-entrie to that effect, vnder the panes content in the Actis of Parliament: Dischargeing in the meane tyme all letteris to be direct aganis him or his cautioner, except he be resident within the cuntrie for the tyme, nocht vpon the poynt of his voyadge; nather that ony Letteris be direct in the tyme of wynter: And declaris, that in caice he be charged vpon the poynt of his voyadge, for his compeirance vpon a fyftene dayis thaireftir, in caice at the day of compeirance it be allegit be his cautioner that he could nocht guidlie enter him, becaus he was boun<sup>2</sup> to his voyadge furth of the cuntrie the tyme of the geving of the charge, respect and consideratioun fall be had to the said allegiance, the samyn being lauchfullie verifeit and provin to be of veritie: And last, the Justice Discharges the haill perones summoned vpon this Assyse fra all compeirance herein in tyme cuming, in respect this is the secund dyet keipit be thame, and nathing is done thairintill, &c.

[CURIA Jusficiarie f. d. n. Regis, tenta in pretorio de Edinburghe, per M. Patricium Sandis, Jusficiarium f. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij.]

### Slaughter.

Jan. 15, 1619.—ANDRO WAST, mafone burges of Dundie.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Alexander Tailzeour, his prenteis, be throwing ane four-futtit stule at his breist and heart, and geving him ane deidlie straik thairwith; committit within his awin duelling hous, in Dundie, in the moneth of Januar, 1611; quhairof he deceift, in Februar thaireftir, being cayreit fra Dundie to his fatheris hous in Elgyn, in ane horse-litter, in grit doulour and payne, quhair he deceifit of the said deidlie hurt.

PERSEWARIS, Johnne Tailzeour, mafone burges of Elgyn, as father; Sir W. Oliphant of Newtown, kny<sup>t</sup>

PRELOCUTOR in defence, Mr Alexander Peiblis.

It is allegit be the pannell, that the Dittay, as it is qualifeit, is nawayis relevant to pas to ane Assyse; becaus it is cleir, be the Dittay, that eftir the allegit straik gevin to the defunct with the stule lybellit, he travellit the space of fourfcoir myles frome Dundie to Elgyn; quha, eftir his coming to Elgyn, be the exces of travell, he contractit ane fever, quhairof he deceift.—It is anfuertit be my lord Advocat, that the allegiance aucht to be repellit, in respect of the Dittay beiring the defunct to haif ressauit ane deidlie straik, quhilk was the cause of his daithe.

<sup>1</sup> Acquainted.

<sup>2</sup> Prepared; furnished; equipped.

THE JUSTICE findis the Dittay relevant ; and Ordanis the samyn to be tryit be ane Affyse.

The Aduocat takis instrumentis of the sueiring of the Affyse ; and thaireftir declairit, that seing they ar all induelleris in Dundie, to quhome the treuth of this matter was best knawin ; and that the defunct ressaunt ane deidlie straik, quhairof he deceift, protestis for Wilfull Errour, gif thay acquit.—The pannell protestit in the contrair, affirmeing that the Defunct past hail and feir<sup>1</sup> furth of Dundie to Elgyn, and travellit lxxx myles thaireftir, vpon fute.

VERDICT. The Affyse, be the repoirt and declaratioun of Robert Moreife, merchand in Dundie, chancellor, fand, pronuncet, and declairit, all in ane voce, the said Andro Wast to be Clene, innocent, and acquit of the said crewall Slauchter.

### Slaughter—Proof in exculpation, by Witnesses, refused.

Jan. 15.—JAMES SCRYMGEOUR in Balquhadlie.

Dilaitit of airt and pairt of the Slauchter of vinq<sup>1e</sup> Johnne Eduard in Acharne, be streking him ane deidlie straik in the heid, in September 1617 ; quhairof he deceiftit in Januar thaireftir.

PERSEWARIS, Johnne Eduard, as sone ; David Eduard, as brother ; Sir W. Oliphant, kny<sup>t</sup>.

PRELOQUITOURIS for the pannell, Mr Thomas Hoip, Mr William Oliphant, younger.

It is allegit be the pannell and his prelocutouris, that the Dittay is nawayis relevant to pas to ane Affyse, nather in the distinct memberis nor *conjunctim* ; nather can ony Homicide be tryit or pwneift, except the samyn proceed vpon ffoirthocht fl felony. As to that member of the Dittay, beiring the defunct to haif bene best and dung with ane rung,<sup>2</sup> *non relevat* to infer ane cryme. *Secundo*, as to that article thair of, quhair the pannell baket his heid with ane quhinger,<sup>3</sup> (nocht granting the samyn,) it is na capitall cryme, bot ane ryote ; the tryell quhairof pertenis to the Counsell. *Tertio*, quhair it is allegit, that he was strukin to the grund, and hurt in his nobill pairtis, *non relevat*, vnles the persewar confiscend quhat intrallis or noble pairtis was brokin. *Quarto*, as to that point of the lybell, quhilk is the chiefest member, beiring, that be occasioun of the hail straikis preceeding, he dwynet and pynet away to the tyme of his daith, *nullo modo relevat*, vnles he say *positiue*, that he deceift be thais straikis ; *nam non dici potest prebere occasionem mortis, nisi sit causa mortis*.—It is anfuert be my lord Aduocat, that the allegiance foirsaid aucht to be repellit, in respect of the lybell beirand, that the defunct deceift of the straikis lybellit.

It is forder allegit be the pannell, that the Dittay, as it is mendit, is nawayis relevant ; becaus the preceeding qualificatioun can nocht be estemit *causam mortis*, except it war lybellit, that the defunct, immediatlie eftir the allegit straikis, be

<sup>1</sup> Whole and sound, or hearty.

<sup>2</sup> Basted and violently struck with a cudgel or heavy staff.

<sup>3</sup> Hacked or notched his head with a sort of hanger or short sword.

fell down in found<sup>1</sup> to the grund; or ellis, that be the straikis he contractit a deidlie diseafe and lay bedfast, ather immediatlie eftir the straikis to be the caus of a supervenient diseis; ffor be the cownoun consent of all Laweris, *vulnus non dicitur causa mortis, quando a die vulneris vsque ad vigesimum primum diem nulla supervenit febris vulnerato*. Panormitanus, ad Cap. *presbiterium, extra de Homicidium*. In the quihilk place, Panormitan and all the Canonists consentis, *quod hoc sit iudicium medicorum*; ffor if ony ffever had followit, gif he had convalescit thaireftir, the ffever falling out vpone the straik was na cause of deathe; *multo magis* in this caice, na fever following vpone the allegit straik gevin. In respect quahirof, the Dittay is nawayis relevant, *hoc autem maxime*, that in the Dittay it is confest, that the persone slane was threscoir ten yeiris of age, sa that it was nocht possible to him to ressaue deidlie woundis, and to leave in h ealth fa ang but<sup>2</sup> seiknes.

It is answert be the persewaris, that the allegiance aucht to be repellit, in respect of the Dittay beiring deidlie woundis, in maner qualiseit in the Dittay; and that he dwynet and continewit in grit pane to the tyme of his deceis.

It is duplyit be the pannell, that my lord Aduocattis reply is only in respect of the last member; and thairfoir the vther tua, as nocht relevant, shold be scoiret out of the Summondis.

My lord Aduocat declairis, he insistis vpone the Dittay *conjunctim*, as it is consauet.—The pannell allegit in the contrair, that it can nocht be conjoynet.—It is allegit *peremptorie* be the pannell, that it can nocht be affirmet that *Johanne Eduard* deit of the allegit straikis, in respect of the lybell, quihilk beiris, that he levit be the space of foure monethis (albeit, *in rei veritate*, he levit quhill a thre dayis befoir Fastrenisevin,<sup>3</sup> quihilk was the 18 of Februar): becaus *secundum sententiam omnium medicorum, nullus lethaliter vulneratus potest vivere ultra quadraginta dies*. Jul. Clarus ad § *Homicidium*, vbi subdit, *quod ita observat communis filius, et si vulneratus post illatum vulnus ambulaverit, non presumitur decessisse ex vulnere*. Lege vnica, Cod. de *Emendatione servorum*. Bartol. ad Legem finalem, ff. *ficarij*, particulo preterea extra de *Clerico percussore*. Pharmacius de *Homicidio*, Tit. 14, quest. 125, num. 46, vbi testatur de communi medicorum opinione, *Vulneratum qui ultra quadraginta dies vitum porrigit, non presumitur ex vulnere decessisse*. And be all thair consentis, gif the pairtie nocht onlie leave,<sup>4</sup> bot also gif he leave in healthe, without seiknes, and walk vp and doun in healthe, as ane haill man, the space of thre dayis, it is accoordit, that the wound can nocht be the cause of daithe: And the grund<sup>5</sup> of this is tane out of the law of Moyse, Exod. cap. 21, ver. 21. Off the quihilkis it is subsumet, nocht onlie that the defunct levit fourtie dayis, bot neir-hand foure tymes fourtie

<sup>1</sup> In a swoon or fainting fit.

<sup>2</sup> To live, in health, so long without sickness.

<sup>3</sup> Fasten's-eye;

the day before the commencement of Lent.

<sup>4</sup> Live; survive.

<sup>5</sup> Ground; warrant.



dayis, ffor he deit vpon the 16 or 17 of februar 1618: During the quhilk tyme, he was nocht onlie frie of feiknes, nor nevir lay bedfast, except in the ordiner tyme of rest, in the nycht; bot also, he walkit vp and down the cuntrie and parrochines about, as ane haill man, and nevir tuik bed quhill aucht dayis befor his deceis, at quhilk tyme he was tane with ane fever, quhairof baith he and his wyfe deceissit.—Nather can the accuser, quhilk is the defunctis sone, be hard to allege in the contrair; becaus, at Martimes thaireftir, he forcet his father out of his awin hous; and the particuleris of this exceptioun the pannell offeris to prove be Witnesses, quha are summond be the Lordis delyuerance: Quhilkis Letteris, proceeding vpon the said delyuerance, thay produce, and defyres that the Witnesses may be callit and admittit thairupone. *Last*, the lybell can nocht be sustenit *ad hunc effectum*, to pwneis the pannell to death, becaus *nullum Homicidium morte punitur, nisi homicidium dolosum et deliberatum sive ex feloniam; aut culpofum vel casuale non puniuntur ad mortem*. And for proving of this propofitioun, the pannell cites the third Parliament of King James the first, cap. 51, Quhair the Estaitis distinguisches betuix Slauchter of suddentie, and Slauchter of floirthocht fellonie; and declairis fellonie to be pwneist be death; bot the vther, that the pairtie skaithed fall follow, and the pairtie trespassand defend, according to the courfe of the auld Lawis of this cuntrie: And siclyk, in the 6 Parliament of King James the first, cap. 95, quhilk contenis the same distinctioun, and closes this article, that gif it be floirthocht fellonie, he fall die thairfoir. Vpon the quhilkis it is subfumet, that it was nevir lybellit, nor can be lybellit, that this Slauchter was committit vpon floirthocht fellonie; bot be the contrair it is trew, that quhateuir the pannell did, he did it as maister to Findlay Ramsay and vmq<sup>le</sup> Johnne Eduard, being baith his tennentis, *et sic dans operam rei licite*; in sa far as Johnne Eduard, being decernit in Court, in Junij 1617, of his awin consent to haif done wrang in teilling and sawing<sup>1</sup> of ane peice of land pertening to the said Finlay Ramsay; and be the Act of Court, the officer was ordanit to pas the tyme of schering, and scheir and leid the coirnes, as sawin vpon Finlay Ramsays grund; lyk as, the saidis coirnis war arreistit be the officer, vpon the sext of Junij 1617; and thaireftir, in the tyme of scheiring, the said officer haifing past to the grundis, and schorne the coirnes, and being leiding the samyn away, the said Johnne Edward cam maist prouddie and contemptuoufflie (his maister being vpon the grund), and defoiret the officer in his prefens; quhairupone the officer brak his wand:<sup>2</sup> Lyk as, the defunct being commandit be his maister to desist, he maist prouddie repynet contrair his Maisteis lawis; and the pannell being present, haifing ane littill stalf in his hand, strak the defunct thairwith vpon the heid, and did no forder; nochtwithstanding quhairof,

<sup>1</sup> Tilling or ploughing, and sowing.      <sup>2</sup> Broke his staff or wand of office, symbolical of his being deformed, as it was termed, i. e. violently and forcibly interrupted in the execution of his office.

the defunct prouddie cayreit away the coirnes to his awin zaird, walking foundlie vpone his feit, without ony appeirance of hurt. And for verifeing thair of, producet the deforcementis.

It is anfuwerit be the perfewaris, to the first allegiance, proponit *peremptorié*, the samyn aucht to be repellit, in respect of the Dittay, Lawis and practique vniuerfallie obseruit in this Judgment, and all vther Criminall Courtis within this realme, quhairin Dittayis ar evir fund relevant, and remitted to the knowlege of ane Inqueist, being lybellit and set down in maner as this Dittay is lybellit; and that the persone offendit deceisfit throw the hurtis and woundis gevin to him: And quhair it is meanit,<sup>1</sup> that he survivet efter the geting of the hurtis the space of fyve monethis, that pairt is nawayis relevant mair nor was the first; in respect that the Dittay beiris, that the defunct was hurt and woundit vpone the nynt of September 1617, and he decessit thair of vpone the aucht or nynt of Januar thaireftir, 1618; quhilk Dittay beiris lykwayis, that he dwynet continually fra the tyme of his hurting to the hour of his daith.—Quhair it is allegit, that WITNESSES aucht to be ressaunt vpone this allegiance, anfuweris, na Witnessses can be ressaunt in Criminall caussis, conforme to the Lawis of this realme, except in matteris of Tressone: And albeit Witnessses mycht be ressaunt, yit thay can nocht be ressaunt vnto the tyme the allegiance be first fund relevant; and gif it war fund relevant, thair aucht na Witnessses be ressaunt befor the Assyse, feing the hail poyntis confitis *in facto*, and the tryell thair of is remittit to the Assyse, quha becumis bayth tryeris and Witnessses thairin:<sup>2</sup> And as to the Lordis deliuerance grantit for summonding the Witnessses, it aucht nocht to be respectit, becaus it is privat, and grantit be the Lordis *parte non citata*. As to the last allegiance, beiring, that na man fould be pwneist to the daith, except it be done vpone ffoirthocht fellonie, the perfewer denyis that propositioun altogidder, in respect of the vniverfall practique of this realme; be the quhilk, all persones criminallie perfewit for Slauchter ar put to the knowlege of ane Inqueist, and pwneist to the daith; this lybell conteneand ane verrie relevant cause, qualifeit with all the circumstances necessar aganis the pannel, as committer of the Slauchter, with all circumstances of the Law requisite.

It is duplyit, that Witnessses may be examinat befor the Assyse, vpone the treuth of the exceptiounne peremptour; and being remittit be the Judge, with the lybell, to the Inqueist, thay may cognosce thairupoun, and vpone the Witnessses Depositiones, sa far as the samyn may geue thame licht concerning the fact: And be speciall Act of Parliament, maid in his Maiesteis xj Parliament,

<sup>1</sup> Represented. Literally, complained.

<sup>2</sup> For an elucidation of the ancient practice upon this point, reference is made to Mr Hume's valuable Commentaries on the Criminal Law of Scotland. The present case affords ample illustration of the doctrines held relative to the Law of Evidence, in matters Criminal, at the commencement of the Seventeenth Century.

cap. 90, it is statute, that all writtis, Witnesses, and other probatioun, fall be led and deduced befor the Assyse, and that for tryell of the treuthe, *quia probationes in criminalibus debent esse luce meridiana clariores*: Lyk as, Witnesses war admittit in the Criminall cause persewit be *Strauchane* aganis *Geillis Johnne-stoune*. And quhair it is affirmet, that the Warrant is purchest for summond-ing of Witnesses, *parte non citata*, it is nocht ane Warrant against justice, bot for fortherance of justice, and cleiring the treuthe. And as to the last, the samyn is foundit vpone tua Actis of Parliament, quhilk can nocht be derogat be ane contrair custome; lyk as, my lord Aduocat is nocht hable to schaw quhair this exceptioun, being proponit, was repellit.

INTERLOCUTOR of Relevancy.

THE JUSTICE REPELLIS the haill allegiance, in respect of the Dittay, and answaris maid be my lord Aduocat in fortificatioun thair of. And Ordanis the Dittay, quhilk is fund relevant, to pas to the knowlege of ane Assyse.

Quhairupoun my lord Aduocat askit instrumentis.

THE JUSTICE, in respect thair is nocht ane number of substantious perfonas, landit men, accoirding to the qualitie and rank of the defender, present, to pas vpone his Assyse, Continewis all forder tryell of this matter to the thrid day of the nixt Justice-air of the scherefdome quhair the defender duellis, or soner, vpone fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament; with this restrictioun, that na Letteris be direct furth in this matter befor the first day of Junij nixt.

Quhairvpone the said James Scrymgeour, defender, askit instrumentis; and quha, for obedience of the said Justice ordinance, stand Johne Scrymgeour of Ballanscho cautioner, to the effect, and vnder the panes foirlaid.

[*Mr Patrik Sandis, Justice-Depute.*]

**Slaughter committed at a Bridal.**

Jan. 29.—JOHNNE SWYNE, servand to the Laird of Randiesfurd.

Dilaitit of airt and pairt of the crewall Slauchter of vnr<sup>le</sup> Johnne M<sup>c</sup>cairtour, servand for the tyme to Jonet Mayne, wedow, in Menstrie, be streking him with ane durk in the bellie, quhair of he deceissit; committit at ane brydell,<sup>1</sup> in the evening eftir supper, within the sayd Jonet Maynes duelling-hous, vpone the xxij day of December last, being Tyfday befor Jule.<sup>2</sup>

PERSEWAR, Gilchryst M<sup>c</sup>cairtour in Buttergask, as father.

The pannell confessis the cryme, and cravis Godis mercie and pardoun for the samyn.

VERDICT. The Assyse, all in ane voce, stand, pronuncet, and declairit the said

<sup>1</sup> Bridal (*bride-ale*), wedding.

<sup>2</sup> Yule, or Christmas.

Johnne Swyne, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be efcheit, &c.

### Child-Murder.

Jan. 29.—BESSIE WEIR, servand to James Lowriestone in Over Gogar.

Dilaitit of the crewall and vnnaturall Murthour of hir awin infant bairne, borne and brocht furth be hir, in fornicatioun, to James Threipland in Biggar; committit vpon the xx day of Januar instant, about midnicht, within ane zaird lyand to the said James Lowriestones hous in Over Gogar, immediatlle eftir hir delyuerie thairof.

VERDICT. The Assyse, all in ane voce, be the mouth and declaration of Robert Wilkie in Rathobyres, chancellor, in respect of the said Bessie hir Judiciall Confessioun of the said cryme, ffind, pronuncet, and declairit her to be culpable and convict thairof.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair hir heid to be strukin frome hir body; and all hir guidis, gif scho ony hes, to be efcheit, &c.

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

### Slaughter.

Feb. 3.—HABBIE RAE in Moufwall, Pait M'keg, servitour to the Laird of Lag, and twenty others.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Johnne Carutheris, callit of Dormont; committit vpon the secund of Januar last, with schottis of hagbutis and pistolettis, within the dwelling-hous of Johnne Mundallis in Torthorrell.

PERSEWARIS.

Margaret Johnneftoun, as mother; Frances Carutheris, as brother; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>. PRELOCOUTOURIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.

Continued to the Justice-air of Dumfries, 'tertio Itineris, vel super premonitione xv dierum.'

### Slaughter.

Feb. 3.—JAMES DOUGLAS of Moufwall; Johnne and Williame Greir-fones, his servandis; Johnne Carleill, sone to Thomas C. in Bankis; Johnne Blak in Moufwall; and Habbie Dikfone, thair.

Dilaitit for the above Slaughter. These persons were all 'denuncet rebellis, and put to the horne, for nocht finding of cautoun for thair personall compeirance.'

(Jul. 21.)—CONTINUED to the air of Dumfries, *tertio Itineris*, &c. Johnne Lord Fleming, cautioner.

[*Mr Alexander Colvile of Blair, Justice-Depute.*]  
**Slaughter.**

Mar. 10.—MR THOMAS DOUGLAS, Minister at Balmirrienoche.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Thomas Creichtoun of Bodumeraig; committit betuix Balmirrienoche and Couper in Fyfe, vpone the xiiij day of Februar last, 1619.

THE Justice, in respect of the seiknes of Jeane Carmelie, the defunctis relict, quha canocht be present to concur in this persute, continewis this matter to the thrid day of the nixt Justice-air of the Scherefdome of Fyfe, or soner, vpone fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie; quha stand James Douglas of Moirtoun, portioner of Gogar, &c.

### **Treasonable Murder under trust, credit, and assurance.**

Apr. 2.—JOHNNIE MAXWELL of Garrarie, and George Maxwell, his sone.

Dilaitit of the crewall and odious Murthour under trust, credeit, and assurance, of vmq<sup>le</sup> Johnne McKie of Glasfhak; committit vpone the viij day of Julij 1618; in forme and maner specifit in the Dittay productet againt thame, viz.

*DITTAY againt Johnne Maxwell of Garrarie, and George Maxwell, his sone.*

FORSAMEKILL AS, in the ellevint Parliament baldin by our sowerane Lord and Estaittis of this kingdome, att the burgh of Ed<sup>r</sup>, the xxix day of Julij, 1587, cap. 51, it is statute and Ordanit, that the Murthour and Slauchter of quhatfumeir his Maiesteis legis, quhair the pairtie slane is vnder the trust, credeit, assurance, and power of the slayer, all sic Murthour and Slauchter to be committit efir the dait of the said Act, the samyn being lauchfullie tryed, and the persones dilaitit fund giltie thair of be ane Assyse, fall be Treffone; and being fund culpable, fall sforfalt lyfe, landis, and guidis; as in our said Act of Parliament at mair lenth is contenit. AND trew it is, that the said *Johnne Maxwell of Garrarie*, haifing, in his politique and craftie maner, vpone sic condiones of satisfacioun and recompence best knawin to him self, conquest and acquyrat fra the said vmq<sup>le</sup> *Johnne McKie of Glasfhak* his hail worldlie moyane<sup>1</sup> and estait; and thairby drawin him to his daylie companie and attendance, alswell within his hous of *the Garrarie*, as vther pairtis of the cuntrie quhair he maid his repair and residence, he, furth of his avaricouse and churlische dispositioun, lotheing and weireing<sup>2</sup> of the said *Johnne McKie* his companie, in the moneth of Julij, in the yeir of God I<sup>m</sup>.Vj<sup>o</sup>. and aughtene yeiris, to red and exoner him self of his cumpanie, devysit and concludit in his devillische heart, the pitifull<sup>3</sup> and treffonable Murthour of the said vmq<sup>le</sup> *Johnne McKie*, as followis; and finding the said vmq<sup>le</sup> *Johnne* to be alwayis nder his trust, credeit, assurance, and power; in sa far as, be the space of nyne monethis, or thairby, preceeding the tyme foirsaid of the said intendit Murthour, the said vmq<sup>le</sup> *Johnne* was for the maist pairt refoirting and making his daylie residence with him, at bed and buird, within his *Place of Garrarie*, sua that thairby na suspitioun of iniurie to be done be the said *Johnne Maxwell* towards the said *Johnne McKie* could be thocht vpone be him; the said *Johnne Maxwell*, for effectuating of his treffonable and devillische plott, vpone the xvij day of the said moneth of Julij, in the yeir of God foirsaid, knawing the tyme of the said vmq<sup>le</sup> *Johnne McKie* his dyet, in cuming to his *Hous of Garrarie*, vnder the silence and clud of nycht, accompaneit with the said *George Maxwell*, his sone, and vtheris thair complices, bodin<sup>4</sup> with fuordis and vtheris wapponis *inuafisv*, in the said vmq<sup>le</sup> *Johnne* his cuming to the said *Place of Garrarie*, pat violent handis in his persone, band baith his handis and

<sup>1</sup> Means.

<sup>2</sup> Getting fatigued or wearied.

<sup>3</sup> Piteous.

<sup>4</sup> Furnished; provided.



feitt, and thaireftir, in maist crewall and mercieles maner, playing the pairt of hangmen and burriowis,<sup>1</sup> with ane hair tedder,<sup>2</sup> strangillit and wirreit him to deid; and haifing, be that violent and crewall meane, bereft him of his lyfe, thay thaireftir cayreit him to ane peit moos or burne, callit the *Burne of Ranieftoun*, within ane half myle to the said *Hous of Garrarie*, quhairin they slang him: And sa, the said vmq<sup>o</sup> *Johnne McKie of Glasfak* was maist trefsonabillie and crewallie murtherit and slane be the said *Johnne Maxwell of Garrarie*, and *George Maxwell*, his sone, he then being vnder thair trust, credeit, assurance, and power, in maner befoir deducet; and thay, and aither of thame, ar air and pairt of the said trefsonabill and barbarous Murthour, committit vnder trust and credeit; vpon set purpois, prouisioun, precogitat malice, and foirthocht fellonie, in hie and manifest contempt of our souerane lordis authoritie and lawis, and expres aganis the tennour of the said Act of Parliament; incurring thairthrow the pane and pwneischment aboue writtin, expreftit thairintill, viz. as *Tratouris* and *Murthouraris* of the said vmq<sup>o</sup> *Johnne McKie*, vnder trust, to forsalt thair lyvis, landis, and guidis, to the terrour and example of vtheris to attempt the lyk heireftir.

PERSEWARIS, Niniane McKie, eldest sone to the defunct; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>,  
Aduocat to oure souerane lord.

PRELOCOUTOURIS in defence, Mr Alex. Peiblis, Mr Laur. McGill, Adame Cunninghame, Aduocattis.

The Aduocat producet his Maiesteis Warrant, daitit at New-mercato, the 13 of Januar, 1619, commanding him to insist in the pannellis persute, for the Murthour contenit in the Dittay: Quhilk Warrant his lordschip tuik vp agane.—My lord Aduocat declairis, that he is nocht preparit, at this tyme, to persew in this matter; and thairfoir desyret the samyn mycht be continewit to the sevint of July nixt.—The pannell, with thair prelocoutouris, altogidder disassentis to the said continuatioun, and offerit thame selfis instantlie reddie to abyde the tryell of the Law for the said cryme, as altogidder innocent thairof; and thairupoun askit instrumentis.

THE Justice, nochtwithstanding of the pannellis offer and declaratioun, continewis this dyet to the said sevint day of Julij nixt; and Ordanis the pannell to be tane bak to waird to the tolbutth of Edinburgh.

The pannell offeris cautioune for thair compeirance the said day; and allegit, in respect thairof, thay sould nocht pas to waird.

THE Justice Ordanit thame to geve in their Supplicatioun to the Counfall, be quhais Warrant and authoritie thai war committit, and to crave thair libertie and fredome furth thairof, vpon thair offer of cautioune to thair lordschipis, for thair entrie, the day foirsaid; and accoirding as the Counfall sould command, in that matter, it sould be obeyit.

PRELOCOUTOUR in defence, My Lord Maxwell.<sup>3</sup>

(Jul. 7.)—THE JUSTICE, be directioun of the Lordis of Secreit Counfall, and conforme to thair Lordschipis expres Warrant, continewis this dyet, and all tryell to be tane thairintill, to the xv day of December nixtocum: And Ordanis the pannell to find cautione for thair compeirance and re-entrie that day, to vnderly the law for the said Murthour, ather<sup>4</sup> of thame vnder the pane of thre

<sup>1</sup> Old Fr. *bourreau*, an executioner.  
Prelocutors.

<sup>2</sup> Each of them.

<sup>3</sup> A hair tether or halter.

<sup>4</sup> In addition to the above

Thowfeand merkis. Quha, for obedience of the said ordinance, ffind Eduard Maxuall of Hillis cautionoun.

In respect of the quhilk cautionoun fund be thame, the Justice ordanit the Provost and Bailles of Edinburgh to put them to libertie furth of thair waird, &c.

[ASSESSORES JUSTICIARIO, *Dominus Willielmus Levingstoun de Kilfith, et Dominus Georgius Erskin de Innerteill, Senatores Collegij Justicie.*]

PRELOCUTORIS in perfute, My Lord of Gairleis, The Laird of Larg-McKie.

PRELOCUTORIS in defence,<sup>1</sup> The Maister of Maxwell; The Guidman of Hillis; Edward Forrester, Commissar of Kirkcudbright; Johnne Young, notter.

(Dec. 15.)—THE pannell takis instrumentis of thair entrie; as also, that *my Lord of Gairleis* compeiris to persue thame of thair lyves; and protestis for thair cautioneris releif.—The persewaris product the Dittay, with the Letteris and Roll of Assyse; and protestis for thair cautioneris relief, and defyret proces.

The perones on pannell denyis the haill crymes content in the Dittay, and passis fra all disputatioun aganis the relevancie thair of; and offeris thame selfis to the tryell of ane honest and vnsuspectit Assyse.

#### ASSISA.

Johnne Dalrumple of Schalloche,	Johnne Maitland of Clonhie,	Andro Craufurd of Barquharrie,
Andro Bruce of Bofark,	Johnne Kirkpatrick of Bracho,	Dand Welsche of Colliestoun,
William Middlemeist, Constable	Gilbert Baird of Kilhinzie,	Walter Cant of Waft-mylne,
of Dumbartene,	George Logane of that Ilk,	James Birnie of Browbrie,
Duncane Hunter of Ballagane,	William Cunningham of Pol-	Malcolme Dalrumpill of Water-
William Creichtoun of the Hill,	quharne,	fyde.

It is allegit be the pannell, that *Johnne Dalrumple* can nocht pas vpon thair Assyse, becaus he is nocht ane landit man of that qualitie and rank quhilk sould be admittit to pas thairupoun; the said Johnne Maxwell of Garrarie being ane landit Gentilman, in the rank of ane Barroun, worth thre thowfeand merkis of zeirle rent, and aboue. *Secundo*, the said Johnne is vset and product be my Lord of Gairleis, ane of his persewaris, as ane Witoes befor the Counsell, and hes gevin his Deposition in this matter alreddie; and in respect thair of, can nocht be ane Assysour. *Tertio*, he is man, tennent, and servand to *Josiah Stewart*, quha hes assistit this perfute fra the first begynning thair of, and behavet him self as partie.—It is anfuert be my lord Advocat, that the allegiance aucht to be repellit, as altogidder irrelevant, the said *Johnne Dalrumple* being ane Gentilman of guid fame, and haifing sufficient moyane of his awin, quhairupoun he levis: And his Deposition maid be him as ane Witnes can nocht stay him to be ane Assysour: And as to that part, that he payis mail and deutie to *Josias Stewart*, wha is partie aganis thame, *non relevat*, becaus he is nocht ane persewar, nor compeiris nocht in this Judgement to persue, nather payis he ony deutie to him bot for his teyndis, quibilk teynd-deutie can naways stay him to pas vpon this Assyse.—It is allegit be the pannell, that, with the teynd-dentie, he is also subiect to the said *Josias* in daylie service.—The said *Johnne Dalrumple* being suorne, declaris he is no forder subiect to *Josias*, bot only in payment of his teynd.

THE Justice admittis *Johnne Dalrumple*, and Ordanis him to be purget of partial counfall; quha, being of new suorne, declarit he had gevin na partial counfall, in this matter, in fauouris of this persewar aganis the peronis on pannell;—quha was thairfor admittit.

It is allegit aganis *Walter Cant of Westmylne*, that he can nocht be admittit vpon this Assyse,

<sup>1</sup> In addition to the Prelocutors who are already noted, under date, April 2, and Jul. 7.

becaus he is nocht duelland within Galloway, nor the foure halfis thairabout, conforme to the Act of Parliament, in anno 1579.—It is anſuerit be my lord Aduocat, that the allegiance aucht to be repellit, becaus he is duelland within Scotland; and the Act of Parliament citet is only in matteris of Perambulation, for tryell of methis and marches, and is nocht extendit to the crymes of Slauchter and Mutilatioun, &c.—It is allegit, that he can nocht be admittit, becaus of the foirſaid Act of Parliament, for *ex argumento a paritate rationis*, gif the perſones of Inqueiſt, in matteris of Perambulation, man (*muſt*) be induelleris within the boundis of the Scheredom quhair the landis lyis, or foure halfis about, *multo magis*, in tryell of a Slauchter or Murthour committit, ſould the Affyſouris be induelleris within the boundis of the Scheredom quhair the fact was done, or four halfis about.—Anſueris, *Statuta ſunt ſtricti juris, et non admittent extenſionem*.

The lyk exception proponit aganis *Andro Bruce of Boſark*, quha duellis nocht within the Sheredome, or foure halfis about.—My lord Aduocat repeatit his former anſueris for *Andro Bruce*.

It is forder allegit that *Walter Kant* is man, tennent, and ſervand to *my Lord of Murray*, quha aſſiſtis this perſute; and thairfor, can nocht pas vpon this Affyſe. The ſaid Walter being ſuorne, gif he be man, tennent, or ſervand to the Erle of Murray? Declairis, he is ane of his Lordſchipis vaſſallis, and haldis his landis of him in ſfew.

THE Juſtice, nochtwithſtanding of the former allegiances maid aganis the ſaidis Walter and Andro, and that the ſaid Walter is ane ſfewar, Admittit thame vpon the Affyſe.

It is allegit aganis *Duncane Hunter of Ballagane*, that he can nocht pas vpon this Affyſe, becaus he is ane removeable tennent to the *Laird of Drumlangrig*, quha aſſiſtis this perſute, and is within degreis-defending to the *Lord of Gairleis*, perſewar. The *Laird of Ballagan* being ſuorne, declairit that he is *Drumlangrigis* vaſſall, and na removeable tennent; quhome the Juſtice, in that reſpect, admittit.

It is allegit aganis *Eduard Maxwell in Laroche*, that he can nocht pas vpon this Affyſe, becaus *non habet in bonis*, and is nocht worth the Kingis vnlaw. *Secundo*, thair is bluid and deidlie ſſeid ſtanding betwix the pannell and him vnreconceillit. *Tertio*, he is alreddie reſſauit wites, and hes deponit in this matter, being producet be *my Lord of Gairleis* to that effect.—Anſueris, becaus he hes alreddie deponit as ane Witneſs, he may the mair cleirly be admittit ane Affyſour.

THE Juſtice, in reſpect thair is na penurie of Affyſouris, Ordanis him to ſtand by.

*David Welſche of Collietoun* admittit, of conſent.

THE lord Aduocat, for verification of the Dittay, producet ane Teſtimoniall, ſubſcryuit be dyuerſe Gentilmen and vtheris, teſtifeing the forme of *Glaſſakis* binding, the tyme of his out-taking of the burne; and that he hes bene firſt ſtrangillit, befor his caſting thairin. As lykwayis, producet the pannellis Depoſitione, with the Depoſitiones of dyuerſe famous Witneſſes, reſſauit and examinat be the Lordis of Secreit Counſell, in that matter; and thairupoun alſo aſkit inſtrumentis; and proteſtis, in reſpect thair of, for Wilful Errour, gif the Affyſe acquit.—The pannell proteſtit in the contrair, gif thay convict thame of that deteſtable cryme; quhair of, vpon thair kneysis, with grit and ſoleme aithes, thay affirmet thame ſelfis to be altogidder innocent.

VERDICT. The Affyſe, for the maiſt pairt, be the mouth and declaratioun of William Cunninghame, chancellor, ſſand, pronuncet, and declairit the ſaidis *Johne Maxwell of Garrarie*, and *George Maxwell*, his lauchfull ſone, to be GILTIE, culpable, and convict of airt and pairt of the treſſonabill and barbarous

Murthour of the said vmq<sup>le</sup> *Johnne M'Kie of Glassak*, committit be thame in forme and maner specifeit in thair Dittay.

SENTENCE. The Justice, be the mouth of Andro M'cairtney, dempfter of Court, adiuget thame to be tane to the Mercat-Croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis: And all thair landis, heritages, tenementis, annualrentis, takis, steidingis, rowmes, possessiones, coirnis, cattell, inficht pleneiffing, guidis, and geir, to be fforfalt and escheit to our souerane lordis vsē, as culpable and convict of the said treffonable and detestable cryme: Quhilk was pronuncet for Dome.<sup>1</sup>

### Hurting and Wounding.

JUN. 2.—NORMOND ROBIESOUN, sone to Robert Robiefoun, mercheand burges of Sterling.

Dilaitit of airt and pairt of the Hurting and Wounding of Johnne Robene, sone naturall to Johnne Robene, notter, burges of Sterling, in the casting of him doun to the grund, and louping vpon his bak with the haill force of his body; and thairthrow breking of his bak-bone, and mutilating and making him impotent thairrof, he being ane young boy of nyne yeiris of age, or thairby; committit in the Valay of Sterling, in the moneth of September, 1617 yeiris.

PERSEWARIS, Johnne Robene and his father; Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOUR in defence, Mr Thomas Nicolfoun, elder, Aduocat.

THE Justice continewis this dyet to the thrid day of the air of the scherefdom of Sterling, or soner, to ane fyftene dayis wairning; and ordanis the pannell to find caution for his re-entrie. Robert Robiefoun, mercheand, his father, becomes cautioner.

### Slaughter.

JUL. 2.—JOHNE M'DOWELL of Freuche.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> Alexander M'kie of Balfeir.

PERSEWAR.

Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCUTOUR in defence.

Mr Thomas Hoip.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of

<sup>1</sup> Sir Johnne Dumbar of Mochrum, kny<sup>t</sup>; James Kennydie of Crugiltoun; Alex. Dumbar, appeirand of Mochrum; Hew Kenoydie of Areis; Adame Ahannay, burges of Wigtoun; Robert Maxwell of Barvannok; Vthreid Campbell of Areis; Johnne Carutheris of Wadfute; Harie Cunninghame of Kildonnane; Johnne Broune, younger of Carlatyre; George Gordoun of Barkeoche; Johnne M'dowell of Freuche; Patrik Ahannay of Kirkdail; Alex. M'culloche, appeirand of Netoun; Alex. Cunningham of Powtoun; Fergus Dumbar, burges of Stranraer; and Adame Lyndlay, burges of Quithorne, vnlawit, for thair nicht compeirance vpon the said Assyse; ilk ane of thame in the pane of ane hundred merkis.

the scherefdom quhair the pannell duellis, (Wigtoun,) or foner, vpone xv dayis wairning. Plegio, Pat M'dowall de Croches.

### Hurting and Wounding—Masterful Theft and Stouthreif.

Jul. 11.—JOHNNE MURRAY, sone to Thomas Murray, in the Stanehous of Geicht.

Dilaitit of the invading of Andro Meldrum of Rothiebirfbane, his maister, in cuming out the hie way betuix Kynrofschyre and the fferrie-fyde : Hurting and Wounding him, with ane fuord, in the heid and face, of purpois to haif flane him : And thaireftir, Steilling and away-taking, be way of maisterfull Thift and Stouth-reif, of his maisteris bonnet-caice, togidder with tua pair of silk schankis,<sup>1</sup> tua pair of silk gairtanes,<sup>2</sup> tua pair of roses<sup>3</sup> of taffitie, tua finall lynning schankis, thre bonnet mutches,<sup>4</sup> thre pair of handis,<sup>5</sup> fyve overlayeris,<sup>6</sup> ane peirlet lane<sup>7</sup> ruff, tua naipkynnis, ane kame-caife,<sup>8</sup> with ane brusche, with certane vther necessaris, being within the samyn, worth tua hundreth pundis ; by and attour<sup>9</sup> certane writtis and eidentis,<sup>10</sup> being also thairintill ; committit in the moneth of Maij last.

PERSEWARIS, Mr Andro Meldrum of Rothiebirfbane ; Sir Williame Oliphant of Newtone, kny<sup>t</sup>.

THE Justice, in respect thair is nocht ane sufficient number of Assyse compeirand, continewis this dyet to the xxj instantis : And Ordanis the pannell to be tane bak to waird, to the said day.

Andro Frazer of Staniewoid, William Keyth of Seatoun, James Seatoun, brother to the Laird of Mony, Mr Robert Elphingstoun, Tutour of Glak, Johnne Ogilvie, younger of Glaffall, and Alexander Frazer, indueller in Leyth, nocht compeirand on Assyse, the Justice ordanit ilk ane of thame to be vnlawit in the pane of ane hundreth merkis.

#### ASSISA.

Robert Frazer of Durres,  
James Cheane, in Elrig,  
Mr Robert Elphingstoun, Tntour  
of Glak,  
James Gairne of Blakfurd,  
Johnne Arbutnot of Carnegaw,

James Hervie of Elrig,  
Andro Hervie, his brother,  
James Keith of Craig,  
Mr James Stewart, Commislar  
of Dunkeld,  
Clement Ruffell, mercheand,

Nicoll Zule, mercheand,  
Johnne Penman, mercheand,  
Mathow Bailzie of Littlegill,  
Johnne Fairholme, mercheand,  
Thomas Broun, lokfmyth.

Jul. 21.—THE Aduocat takis instrumentis of the fweiring of the Assyse ; and producet the pannellis Depositiones, for verificatioun of the Dittay ; and protestis for Wilfull Errour, gif thay acquit, &c.

VERDICT. The Assyse, be the mouth of the said Mr Robert Elphingstoun,

<sup>1</sup> Silk stockings. <sup>2</sup> Garters. <sup>3</sup> Rosettes for the knees. <sup>4</sup> Caps. <sup>5</sup> Probably a sort of mittens or gloves. <sup>6</sup> A broad folding collar, falling over the shoulders and worn below the ruff, which was fastened about the neck. <sup>7</sup> A pearled lawn ruff ? <sup>8</sup> Comb-case. <sup>9</sup> Over and above. <sup>10</sup> Writings and Title-deeds.



chancellor, ffind, pronuncet, and declairit, all in ane voce, the said Johnne Murray, conforme to his awin Judiciall Confessioun and Depositiones productet, to be flylet, culpable, and convict of the haill crymes aboue expremitt.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be Hangit, quhill he be deid, and all his moveable guidis to be escheit, &c.

### **Taking the King's Free Liege—Famishing one of the Lieges to Death 'in privato carcere.'**

Nov. 10.—PATRICK COWIE, in Kincairdin; Johnne Dow, his servand; Johnne Anderfone, cordiner thair; Thomas Cowie, querriour thair; and David Miller, falter in Eister Kincairdin.

Dilaitit of the taking and keiping of vmq<sup>le</sup> Thomas Daudifoun, hynd and servand to Alexander Leask, in Porter, be the space of fyftene dayis, *in privato carcere*, within the said Patrik Coweis hous; and thairfra cayreing him to the pitt of Tullieallane, quhair, throw want of intertenement,<sup>1</sup> he flamifchet and deit of hunger; and remanent crymes contenit in the Letteris.

PERSEWARIS, Sir Williame Oliphant, kny<sup>t</sup>; Alexander Leask, as Maister.

The Justice continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome quhair the defenderis duellis, ('Clakmannane,') or soner, vpone xv dayis wairning: And Ordanis thame to find new cautioun, &c.; quha ffind Sir George Bruce of Carnok, kny<sup>t</sup>, personallie present, for thair re-entrie.

### **Mutilation and Demembration.**

Nov. 17.—WILLIAME OLIPHANT of Gask.

Dilaitit for airt and pairt of the Demembering of David Malloche, servand for the tyme to vmq<sup>le</sup> David Toscheoche of Monyvaird of his rycht hand.<sup>2</sup>

Compeirit Lawrence Oliphant of Coudie, and productet ane Warrant of the Lordis of Secreit Counfall, direct to my Lord Justice; quhair of the tennour followis.

#### **WARRANT of the Lordis of Secreit Counfall.**

JUSTICE, Justice clerk, and your deputtis. Forfamekill as the xvij day of November instant is appointit to Williame Oliphant of Gask, for his compeirance befor you, to vnderly the Lawis for the Mutilatioun and Dismembering of David Malloche: Nochtwithstanding, according to the Kingis Maiesteis expres Warrant, command, and directiouns in this matter, theae ar to command you to continew the said dyet to the tuentie fyve of Februar nixtocum; to the effect, in the meane tyme, the said Williame may tak some courfe for satisfactioun of his pairtie: And that you tak cautionn of the said Williame for his personall compeirance the said day, and dispense with him and his cautioner for his nocht compeirance at this dyet: Quhairanent thir presentis salbe your Warrant. At Ed<sup>b</sup>, the xvj day of November, 1619.

AL. CANCELL<sup>r</sup>. MAR. MELROIS. LAUDERDAILL.

THE Justice continewis the said dyet to the said xxv day of Februar nixtocum;

<sup>1</sup> Sustenance.

<sup>2</sup> See Jul. 29 and Dec. 4, 1618.

<sup>3</sup> Peter Oliphant of Rescolhie.

and Ordanis caution to be fund for the said Williame Oliphant his compeirance that day, &c.—Gilbert Adamesoun of Scoureing-burne become fouertie, &c.

(Feb. 25, 1620.)—COMPEIRIT Laurence Oliphant of Condie, and producet ane Warrant of the Lordis of Secreit Counsell, quhairof the tennour followis.

JUSTICE, Justice clerk, and your deputtis. Quhair as, the xxv day of Februar instant is appointit to Williame Oliphant of Gask, for his compeirance befor you, to vnderly the law for the slauchter of the Laird of Monyvaird, and mutilatioun and demembring of David Malloche, his servand, of his rycht hand,<sup>1</sup> and vtheris crymes specifeit in the Letteris raisit thairanent: Neuertheles, this is to command you to continew the said dyet to the nynt day of Junij nixtocum, vpoun new caution, conforme to the ordour: And that you dispens with the personall compeirance of the pairtie: Quhairanent thir presentis fall be your Warrant. At Halyrudhous, the xxiiiij of Februar, 1620.

AL. CANCELL<sup>r</sup>. MAR. MELROIS. LAUDERDAILL.

Sir Johnne Carmichell of Medowflat, Capitane of Craufurd, becomes fouertie, &c.

(Jun. 9, 1620.)—THE dyet deferted, by command of another Warrant, signed 'Al. Cancell<sup>r</sup>. Melrois.'

[If it were necessary still farther to prove the melancholy effects of the DEADLY FEUDS which raged in Scotland previous to the Eighteenth Century, perhaps few better illustrations could be adduced than what is contained in the present Case. The following affecting document is taken from the *Denmylne MSS.*, and requires no comment.]

LETTER, the Privy Council of Scotland to the King, relative to the DEADLY FEUD between the Lairdis of Culmalundie and Monyvaird.<sup>2</sup>

MOST SACRED SOUERANE,

WHEREAS your MAJESTIE was pleasit, tua yeiris syne, or thairby, to recommend vnto ws the satling and remoueing, by ane amicable forme and maner, the deadlie ffeade standing betuix THE LAIRDIS OF CULTMALUNDIE and MONYVAIRD and thair freindis,<sup>3</sup> vpoun occasioun of the slaughter of THE LAIRD OF MONYVAIRD; and to move the pairtie greueed to accept of suche OFFERIS as the offendaris might reafounable performe: We accordinglie wrote for sa mony of the freindis as we know to haif cheif interesse in that mater, and vfed the best meanes we could to haif brocht the same to some freindlie dresse; bot that dyet being caffin af, vpoun alledgeance that some of the speciall freindis wer omittit and not writtin for, we appointit a new dyet, and wrote for the whole freindis that wer gevin vp, who returnit thair answer to ws, in write, vnder thair handis, that thay could not medle in that mater, nor tak burdyne for *Monyvaird*, who is the principall pairtie haueand interesse, in respect of his minoritie. Whairupoun the mater defertit, and we could go no forder thairin. At this secund dyet *Culmalundie eldair* exhibit befor ws OFFERIS, in write, vnder his hand, maid to the pairtie, contening the fowme of ane Thowfand crownes for the Assythement of that Slaughter, with the Banishment of *Alexander Bruce his sone*, and *George Tyrie*, Messinger, who wer alledgeit to be the actuall slayaris of *Monyvaird*, during your MA<sup>ty</sup> plefour: And at that same tyme, we cauft him gif satisfactioun to *Duncane Campbell* and *David Malloche*, who wer deadlie hurte quhen *Monyvaird* was slayne, by payment making to thame of twa Thowfand pundis: Quhairupoun thay haif gevin ane discharge of thair interresse in that mater; as the same produceit befor ws beiris.

<sup>1</sup> The local saying,—

'AFF HANDS IS FAIR PLAY—DAVIE MALLOCH SAYS NAY!'

seems quaintly to allude to this incident.

<sup>2</sup> *Sir James Balfour's MS. Collections*, Adv. Lib.

<sup>3</sup> Blood-relations.

This ffeade has altogidder vndone *Auld Culmalundie*; for his eftait is exhaustit and wrackit, and he is become verie waik of his judgement and vnderftanding, by the greif that thir troubles hes broght vponn him; whilkis wer the occasioun of his wyffis deathe, and of the exyle and banifhement of his fones and freindis, now be the fpace of foure yeiris; in the quhilk exyle, tua of his freindis of goode rank and qualitie hes departit this lyffe.

This being the effect of our dealing in this buffynes, We haif bene intreated be the pairtie, humelie to preſent the fame to your Maieſteis confideratioun. And ſo continewung our vnceſſant prayeris vnto God for youre MA<sup>s</sup> long and happie reigne, We reſt,

YOUR MA<sup>s</sup> humbill and obedient ſubiectis and ſeruitouris,

AL CANCELL<sup>r</sup>. MAR. MELROS. GEORGE HAY.

HALIERUDHOUS, xxj of Marche, 1622.

TO THE KING his moſt ſacred and excellent MAIESTIE.

### **Taking Captive—Murder—Maſterful Theft and Stouthreif.**

Dec. 8.—DUNCANE CAMPBELL of Glenlyoun.

Dilaitit of airt and pairt of the violent Taking and Apprehending of vmq<sup>le</sup> Allane Mcrannald in Swynnart, cayreing and keiping him captiue and priſſoner ane nycht, within the ſaid Duncane his Place of Megernie:<sup>1</sup> And for Murdreifing him with durkis, vpon the morne eftir his taking, ane myle or thairby fra the ſaid Houſ: And be way of Maifterfull Thift and Stouth-reif, ſteilling and away-taking fra him of his purſe, with ane thowſeand pundis of gold and ſilver being thairintill; committed in anno 1601 yeiris.

PERSEWAR, Angus Mcrannald of Vlladill, as brother.

THE JUSTICE continewis this matter to the thrid day of the nixt Juſtice-air of the Sheref dome quhair the defender duellis, (Perth,) or ſoner, vpon xv dayis wairning.

Archibald Campbell of Glencarradell become cautioner for his re-entrie.

### **Murder.**

Dec. 8.—JOHNNE MOITT in Waſthouffis, aboue Newbottle.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of Beſſie Broun, his vmq<sup>le</sup> ſpous, be ſtreking hir in the heid, and wounding hir thairin with ane grit kent,<sup>2</sup> to the effuſioun of hir bluid; committit be him vpon ane Setterday, at evin, in the moneth of October laſt; quhairof ſcho deceiſit within tuelff houris thaireftir.

PERSEWER, Sir William Oliphant, kny<sup>t</sup>.

PRELOCUTOR in defence, Mr Alexander Cuming.

It is allegit be the pannell, that na proces can be led aganis him, vnles thair

<sup>1</sup> In Glenlyoun, Perthshire. In the preface to Douglas's Baronage, notice is taken of a very remarkable Red-book, (*an Leavar-diario*), written in the Celtic character, which was destroyed in the fire which consumed Miggerny Castle. It is there remarked, that 'some extracts from this book are in the hands of several Families in the Highlands.' See likewise, Prefatory Notice to HISTORY OF THE KENNEDIES, Edinburgh, 1830. 4to.

<sup>2</sup> Staff, or cudgel.

war ane pairtie informer to assist his Maiesteis aduocat, and to sueir the Dittay to the Assyse, the Dittay being ffund relevant to pas thairto ; and seing nane of the kyn and freindis of the woman flane compeiris to persew, or to informe his Maiesteis Aduocat in this persute, the Justice can nocht put him to ane Assyse. —It is answereit be my lord Aduocat, that the allegiance is impertinentlie proponit be the pannell ; and sayis, that albeit the freindis of the pairtie flane and he wald collude<sup>1</sup> togidder, yit, seing the Prince wantis ane subiect, be the fact committit, the Kingis Aduocat hes verrie guid intreis to persew, without ony informer : And thairfoir, nocht only sould the Dittay pas to ane Assyse, bot he, for committing of the ffact lybellit, sould be exemplarie pwneift for the samyn, being fund giltie thairof.

**VERDICT.** The Assyse, for the maist pairt, be the mouthe of Thomas Hog, in Eisthouffis, chancellor, ffand, pronuncet, and declairit the said Johnne Motte to be ffylet, culpable, and convict of the said Slauchter.—**SENTENCE.** To be tane to the Castellhill of Edinburghe, and thair his heid to be strukin frome his body ; and his hail guidis to be efcheit, &c.

### **Slaughter—Wearing and Shooting of Hagbuts and Pistolets.**

Dec. 22.—**JOHNE LYDDELL** of Halkerstoun.

Dilaitit of airt and part of the Slauchter of vmq<sup>le</sup> Johnne Bell, servand to Johnne Lord Borthuik ; committit vpone the landis of Hauch-heid, vpone the aucht of October last, quhair the said Johnne Lyddell, with ane charget hagbut in his hand, invaidit the said vmq<sup>le</sup> Johnne Bell for his slauchter, schote him in his lichting<sup>2</sup> af his horfe with tua bullettis, at the left pape, throw the heart ; and flew him with the said schote : And for contravening of the Actis of Parliament, in beiring and schuiting of hagbutis and pistolettis, &c.

The Justice, of consent of aither pairtie, continewis this matter to the nyntene of Januar nixt : And Ordanis the pannell to be returnet to Waird to the Tolbuth of Edinburghe, out of the quhilk he was tane.

**PERSEWARIS**, Barbara Levingstoun, the relict ; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, his Maiesteis Aduocat, for his hienes intreis.

**PRELOCUTORIS** in defence, James Lyddell, in Leyth ; Mr Johnne Cranstoun, Minister thair ; Mr Laurence McGill, and Mr David Prymrois, Aduocattis.

(Jan. 19, 1620.)—It is allegit be the pannell, that the Dittay in that point thairof, ‘airt and pairt,’ is nocht relevant, except the persewar condiscend vpone the names of the persones that war complices or associattis.—Answereis, aucht to be repellit, in respect of the Act of Parliament, sustenning airt and pairt to be

<sup>1</sup> Enter into collusion with each other, to defeat the ends of public justice.      <sup>2</sup> Alighting.

relevant aganis any persone accuset of ane cryme.—The pannell denyis the hail Dittay to be of verritie.

THE JUSTICE remittis the tryell thair of to the Assyse.

Barbara Levingstoun, relict, being solemlie sworne, declairit, that the Dittay is of verritie; and that scho hes just caus to persue the pannell for the Slauchter of hir husband. Quhairvpoun my lord Aduocat askit instrumentis, and Proteftis for Wilfull Errour aganis the Assyse, gif thay acquit: As also, tuik instrumentis of the production of the hagbut, quhairwith the said vmq<sup>le</sup> Johnne Bell was flane.

VERDICT. The Assyse, be pluraltie of voittis, ffand, pronuncet, and declairit the said Johnne Lyddell of Halkerstoun to be Clanget, innocent, and acquit of the said Dittay, and haill crymes aboue writtin mentionet thairintill.

In respect quhair of, the Justice ordanit him to be put to libertie furth of the said Tolbuth of Edinburghe, quhairin he was wairdit, and na langar to be detenit thairintill for the saidis crymes; he making satisfioun to the javellour<sup>1</sup> for his expensis.

### Slaughter.

Jan. 19, 1620.—ALEXANDER GRAHAME, sone to vmq<sup>le</sup> David Grahame, in Arduthie, and Johnne M'kane, sone to Williame M'kane, burges of Montroife.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Mr Alexander Keith, brother to Sir George Keith of Drumtochtie; committit be thame, in companie of Robert Grahame, brother to the said Alexander, vpone the Sandis of Montrois, vnder nycht, vpone the tent of December last.

PERSEWARIS, Sir George Keith of Drumtochtie, kny<sup>t</sup>, James Keith of Harvieftoun, Mr Williame Keith, brother to the defunct; and Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOURIS in defence, Mr Alexander Peiblis, Mr Roger Mowat, Aduocattis.

The persewaris producet Hoirning aganis Robert Grahame, sone to David Grahame of Arduthie.

The persones on pannell offerit thame selfis to the tryell of the Law, for the crymes contenit in the Summondis, quhair of thay declairit thame selfis to be innocent; disassenting *simpliciter* to all forder continuatioun.—My lord Aduocat declairis that this Slauchter was committit vnder nycht, quhair of as yit na certane licht of the pannellis guiltines thair of is brokin vp; and thairfoir, desyres thame to be put vnder cautioun, for thair re-entrie, vpone xv dayis wairning.

THE Justice continewis this dyet to the thrid day of the nixt Justice-air of the Scherefdome quhairin the pannell duellis, (Fcrfar,) or soner, to ane fyftene dayis wairning.

<sup>1</sup> Gadler; jailer. Old Fr. *javilleur*.



**Slaughter.**

Jan. 21.—**JOHNNE DUNCANE**, baxter<sup>1</sup> in Dudingstoun.

Dilaitit of the crewall Slauchter of vmq<sup>le</sup> Johnne Buchannan, baxter, indueller of the Cannongait; committit in the hie-way betuix Eifter and Wester Dudingstoun, vpon the saxt of Januar instant, be streking of the said Johnne Buchannan with ane knyfe, vnder the left pape; quhairof, within tuelf houris thair-eftir, he deceiffit.

PERSEWARIS, Margaret Robertfoun, the relict; Sir Williame Oliphant, kny<sup>t</sup>.

The pannell acknowleges the cryme, and craves God, his Maiestie, and the pairtie pardoun thairfoir.

**VERDICT.** The Assyse, all in ane voce, in respect of the pannellis Judiciall Confessioun maid be him, confessing the said cryme to be of verritie, ffand, pronuncet, and declairit the said Johnne Duncane to be ffylet, culpable, and convict, &c.—**SENTENCE.** To be tane to the Castell hill of Edinburgh, and thair his heid to be strukin from his body; and all his moveable guidis to be escheit to his hienes vse, as convict of the said cryme.

**Murder—Horse-stealing.**

Feb. 25.—**JAMES REOCHE.**

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of vmq<sup>le</sup> Alexander Sandiesone, servand to Hew Falconer of Innerlochtie; committit in September, vpon Michelmes Evin, in anno 1618, at the zett of Innerlochtie, in slaying the said James, and resisting him and his brother in the steiling and away-taking of the said Hew Falconeris horse furth thairof, be schuteing the said Alexander throw the body with ane pistolett.

PERSEWARIS, Hew Falconer of Innerlochtie, his maister; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

It is alleget be the pannell, that the allegit Slauchter was nocht committit be him; bot the defunct, being ravischeing ane woman, the pannellis brother being thair present, and he in companie with him, imployit thair help to preserve the woman and to set hir frie; for the quhilk, the defunct, haifing ane knyfe in his hand, invaidit the pannellis brother thairwith; quhairupoun the pannellis brother, for his awin saistie, drew ane pistolet frome his fyde, and schote the defunct thairwith; and sa, the fact being committit be his brother, the pannell can nocht be persewit thairfoir.—It is answert be my lord Aduocat, that the allegeance aucht to be repellit, in respect of the Dittay beiring him to be airt and pairt of the defunctis slauchter; and that the Slauchter was committit be thame in the steiling of ane horse fra the defunctis maister, haifing cum that eirand to the Hous, at that tyme of the nycht.

<sup>1</sup> Baker.

## ASSISA.

Mr James Stewart of Ladywall, Mr James Forbes of Haughtoun, Alex. Farquhar, tailzeour burges of  
 Walter Hay in Forresteris-fait, Johnne Roife, proveist of Nairne, Edinburgh,  
 Williame Douglas of Erlesmylne, Mr David Stewart, and Johnne Caddell, burges of  
 Alex<sup>r</sup> Brodie, chalmerlane of Patrik Weymes, servandis Edinburgh,  
 Kinloife, to the Earl of Murray, Alex. Home, burges thair,  
 David Dumber in Targes, Thomas Hunter, burges thair.

The Aduocat takis instrumentis of the fuering of the Assyse; and productet, for instructing the Dittay, the pannellis Depositionn, maid in presens of the Lordis of Secreit Counsell; and protestis for Wilfull Errour, gif thay acquit.

VERDICT. The Assyse, all in ane voce, stand the said James Reoche to be ffylet, culpable, and convict of airt and pairt of the Slauchter of the said vmq<sup>le</sup> Alexander, committit vnder nycht, in the steilling of the said Hewis horse.—

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and his haill guidis confiscat to his Maiesteis vse.

**Hamesucken—Slaughter.**

Mar. 8.—JOHNE ROGERSOUN, in Bratmurefland.

Dilaitit of the crewall Slauchter of vmq<sup>le</sup> Katharene Broun, spous to Hew Broun in Windiehillis,<sup>1</sup> be (by) cuming be (by) way of Hamesuckin to hir duelling hous in Windiehillis, in the moneth of Apryle 1613 yeiris, quhair scho was in fober maner for the tyne; and thair crewallie invaidit hir for hir slauchter, becaus scho had houndit hir dog at his scheip; tuik hir be the spaldis,<sup>2</sup> and violentlie slang hir over tua kyis<sup>3</sup> bakis; thaireftir threw hir sydis to ane tymber bed,<sup>4</sup> and thairby brak hir haill intrallis within hir; and thaireftir, with his feit and handis, crewallie punschet and strak hir vpon the bak, wambe,<sup>5</sup> and sydis, and brak hir heart-pypes thairwith; sua that thairby scho tuik bed, and keipit the bed the space of sax dayis, or thairby, continuallie vomeiting hir heart-bluid; and in the moneth of Maj thaireftir, scho deceiffit of the saidis hurtis; and sa, was crewallie and vnmerciefullie slane be the said Johnne Rogerfonne: And he is airt and pairt of the said slauchter; committit vpone set purpois, prouisioun, and forthochit felonie, as at lenth is contenit in the said Dittay.

PERSEWAR, Hew Broun in Windiehillis, as spous to the defunct.

PRELOCUTOURIS in defence, the Laird of Cloisburne; Adame Cunningham, Aduocat.

The pannell offeris him selff to the tryell of the law for the cryme foirsaid, quhairof he is altogidder innocent.

## ASSISA.

Johnne Padzeane, younger of Newtoun,

Thomas Wauchie, elder of Schawis,

Mr Alexander Flenyng, minister at Dalgarnok,

Thomas Wauche, his sone.<sup>6</sup>

<sup>1</sup> The crime is thus briefly described in another place,—<sup>4</sup> be geving hir dyuerse bauch, blae, and bludie straikis, in dyuerse pairtis of hir bodie. <sup>2</sup> Fr. *épaules*, shoulders. <sup>3</sup> Cows. <sup>4</sup> That is, dashed her with violence against or upon a wooden bedstead. <sup>5</sup> Belly. <sup>6</sup> The rest of the Assise are persons of no note.

**VERDICT.** The Affyse, all in ane voce, be the repoint and declaratioun of the said Mr Alexander Flemyng, chancellor, stand, pronuncet, and declarit the said Johnne Rogerfoun to be Clene, innocent, and acquit of airt and pairt of the slauchter, and haill circumstances thairof specifeit in his Dittay.

### **Forgery—Falsct—Counterfeiting a Subscription to a false Bond.**

Apr. 20.—**THOMAS DEMPSTER**, sumtyme of Muresk.

Dilaitit of airt and pairt of the falssefeing, sforgeing, and devyseing and counterfuteing of the subscription of ane falsse Band of Reuerfioun, &c. specifeit in his DITTAY following, viz.

**FORSAMEKILL AS**, albeit the said Thomas, be his birth, was ane gentilman borne, provydit, be vertew of his parentis and prediceffouris, to the successioun and richt of dyuerse landis, rowmes, and possessions; the quhillis, be his leud and godles misgovernment, ar maist schamefullie and vnworthiellie spendit and put away, to the impoverisching allweill of him selfe, as preiudice and disapointment of his posteritie: **3IT** the said Thomas, altogidder sensles of that his miserable cairage, nawayis being movet thairwith, bot rather resoluing to rwn heidlongis in all godles and cruiket courses, as a man fauld and gevin over to the practize of the samyn; amangis vtheris, his vnlanchfull and damnable proceedingis, a fourtene 3eir syne or pairby, he maist fallsie, fraudulentlie, and dissaitfullie plottit, devysit, forget, and drew vp ane falsse and counterfute **BAND**, conteneing the tennour of ane fals and simulat Reuerfioun, as gif the samyn had bene maid and subscryuit be unig<sup>le</sup> *Walter Barclay of Toweis*, quhais name and subscription was also fallsie counterfute be the said Thomas, with the Witnesse subscrpcionis insert thairintill; beirand in effect, that the said vmq<sup>le</sup> *Walter Barclay* confessit and grantit him to haif ressauit fra vmq<sup>le</sup> *James Dempster of Auchterles*, his father, ane Reuerfioun maid and subscryuit be vmq<sup>le</sup> *Patrick Barclay*, sumtyme of *Towie*, his father, in fauouris of vmq<sup>le</sup> *Johnne Erle of Buchan*, *Lord of Glendowachie*, subscryuit at the *Casle of Banff*, the first day of July 1547 3eiris, for redemeing and outquyteing fra the said vmq<sup>le</sup> *Patrick* and his airis, *Lairdis of Towie*, of the *Landis of Collane*, with the fischer-heaven and remanent pairtis, pendicles, and pertinentis of the samyn, lyand within the Lordschip of Glendowachie, and Sheresdome of Banff, vpone payment and delyuerance of ane hundreth angell-nobles gold and wecht; with ane nyntene 3eir Tak, eftir the Redemptioun, conteneing frie Office and iurisdiction of Bailzerie, with payment of thre-scoir merkis, as for the 3eirlie maill thair of allanerlie; And that be vertew of the foirsaid simulat Band, the said vmq<sup>le</sup> *Walter Barclay of Toweis* obleist him to delyner bak agane the samyn Reuerfioun to the said *James Dempster*, father to the said Thomas, at quhat tyme or how sone it sould happin him, and his airis, to be distreist or put at for delyuerie, or exhibitioun of the samyn, be the airis maill of the said vmq<sup>le</sup> *Erle of Buchan*, and vtheris haiffand richt thairto; and thairwith to pay to the said *James Dempster* and his airis, the sowe of ten thousand pundis of liquidat expensis, in caice of failzie: As the said Band, conteneing the tennour of the said fals Reuerfioun, with dyuerse vtheris clausseis at lenth set doun thairintill, all fallsie forget, devysit, and counterfute, first be the said Thomas, and thaireftir writtin over at his command and directioun be *Airthour Meldrum*, Scule-maister and Reidar at Kintor, and ante-daitit be him, at the said Thomas command, at Lambes last, daitit at Mure-ek, the first day of October 1585, be the space of threttie-four 3eiris of befor, in the self proportis. **LYK AS**, in ane actioun of Improbatioun intentit laillie befor the Lordis of Counsell and Seffioun, at the instance of *Sir Patrick Barclay*, now of *Towie elder*, and *Patrick Barclay younger* his sone, with concurrence of our souerane lordis Aduocat, for Improbatioun of the foirsaid Band and Reuerfioun, ingrossit thairintill, the saidis Lordis of Counsell and Seffioun, efter tryell tane be them in the premisses, hes stand and declarit be thair Decreit, gevin vpone

the secund day of Marche instant, conforme to the said *Thomas* awin Confessioun and Deposition, subscrivit be his awin hand, in thair hail Lordschippis prefens, that the foirsaid Band and Reuerfioun foirsaid, ingrossit thairintill, is fals and senzeit, fallie forget, fabricat, and deuyset be the said *Thomas*, and the said *Airthur Meldrum*, at his command and direction : And that the said *Airthur*, be his command and direction, counterfute the names and subscriptions of *Patrik Chalmer, Alexander Fraser, and Alexander Watfoun*, thre of the Witneses infert thairintill : And that the said *Thomas* him self counterfute, and pat to with his hand the name and subscription of the said vni<sup>o</sup> *Walter Barclay of Towie*, allegit maker of the said Band, with the names of *George Leslie, and James Innes*, uther tua Witneses infert thairintill : AND in respect thair of, the samyn Band was, be thair Lordschippis direction, in thair Lordschippis prefens, immediatlie cuttit, cancellit, and destroyit, and declairit to mak na fayeth in judgement, nor outwith, in tyme cuming : AND the said *Thomas*, for his former falsset, (was) also Ordanit be the saidis Lordis Decreit to be pwnseit in his persone and guidis, conforme to the lawis of this realme ; quhilk aucht and sould be execute vpon him with all rigour, to the terrour and example of vtheris to attempt the lyk. As the saidis Lordis Decreit, togidder with the said *Thomas*, his awin and the said *Airthur Meldrums* Depositiones, confessing cleirly the falsset aboue writtin, product be our said souerane lordis Aduocat with the Dittay aboue specifeit, for verificatioun thair of, at lenth beiris.

The pannell allegit, that in respect the falsse Reuerfioun quhairupoun he is accuset, was nevir vsed nor abiddin at be him, to the hurt of *the Laird of Towie* or ony vther, that thairfoir the Justice could nocht put him to ane Assyse.—It is answert be my Lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay, and of the Lordis Decreit, quhairupoun the samyn is foundit, finding the Reuerfioun to be falslie sforget be the pannell, and that *the Laird of Towie*'s subscription was falslie counterfute, and put thairto be the pannell ; and thairfoir Ordaning him to be pwnseit, conforme to the Lawis of this realme.

THE Justice Repellis the pannellis allegiance, in respect of the answert ; and Ordanis the Dittay to pass to ane Assyse.

## ASSISA.

George Logane of Bonytoun, elder,	James Halyburtoun, mercheand,	Archibald Law, goldsmyth,
William Lande, bailie of	Patrik Elis, younger, mercheand,	Harie Hoip, mercheand,
Dumbar,	Capitane Patrik Heiring,	George Hammiltoun, mercheand,
Malcolme Stevinfoun, Tutour of	Johnne Dougall, mercheand,	Eduard Johnnestoun, mercheand,
Hirdmestoun,	Johnne Schaw, mercheand,	William Crystiesoun, tailour,
Mitchell Ramsay of Forther,	Johnne Smyth, mercheand,	

VERDICT. The Assyse, be the repourt and declaratioun of the said Chancellor, all in ane voce, stand, pronuncet, and declairit the said *Thomas Dempster* to be ffylet, culpable, and convict of the hail falssettis set down in his Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body ; and all his moveable guidis and geir pertening to him to be escheit to his Maiesteis vse, &c.<sup>1</sup>

<sup>1</sup> The frequency of the crime of Forgery, during some years preceding the date of this Trial, seems to have induced the Public Prosecutor to make several severe examples. Not a few of the criminals were persons of considerable rank in society, who, by desperate courses, had been reduced to the worst shifts to procure the means of subsistence.

**Murder.**

Jun. 14.—ROBERT HODGE in Spitteltoun, and James Mitchell, myller at Dalmahoy mylne.

Dilaitit of airt and pairt of the Slauchter and Murthour of vmq<sup>le</sup> Patrik Mitchell, skynner; committit in Marche last or thairby, be streking him with kentis and flailis, in dyuerse pairtis of his body, and douking him in the mylneleid or dam of Dalmahoy-mylne; quhairof he within xxiiij houris deceffit.

PERSEWAR, Johnne Mitchell in Langfyde, as father.

PRELOCUTOURIS in defence, Mr Robert Lermonthe, The Laird of Dalmahoy.

THE Justice continewis this dyet to fryday nixt.

Jun. 16.—COMPEIRIT Johnne Mitchell, perfewar, and declairit that the perfonen on pannell ar altogidder innocent of the crymes contenit in the Letteris; and thairfoir he past *simpliciter* fra thair perfute, as innocent thairof.—The pannell takis instrumentis of the perfewaris Declaratioun, and passing *simpliciter* fra thair perfute; and nochtwithstanding thairof, offerit thame selfis to the tryell of the Law for the said allegit crymes, seing thair is ane sufficient number of honest men heir present, quha war summoned be the perfewar to pas on thair Assyse, and quha best knowis the verritie of that matter; and thairfoir, as of befoir, defyret my lord Justice that thai mycht be put to ane tryell, &c.

THE Justice, in respect of the perfewaris declaratioun and passing fra the pannellis perfute, Ordanis the dyet to desert; and na Letteris to be direct aganis thame, in this matter, in ony tyme cuming, at the instance of thir perfewaris.

**Murder committed under Trust and Friendship.**

Jun. 16.—HARIE GORDOUN of Haddo.

Dilaitit of the crewall Murthour and Slauchter of vmq<sup>le</sup> Johnne Johnnestoun, fervand and neir kynsman to the Laird of Caskieben, be schuiting him throw the body with ane double musket, charget with fyve bullettis, vnder trust and freindschip, at the dur of the said Hareis duelling-hous, the xxiiij of Marche last.

Robert Johnnestoun, in Corfhill, as father to vmq<sup>le</sup> Johnne, togidder with Sir Williame Oliphant, producet the Letteris, deulie execute and indorfate, &c.

THE Justice Ordanit Adame Gordoun of Boighoill, as cautionner, to be vnlawit for nocht entrie of the said Harie, in the pane of Tua hundreth merkis: And sicyk, that the said Harie be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

**Murder by Drowning, &c.**

Jun. 16.—DONALD NEILSONE of Affint, Neill Neilstone, his sone, and Neill M'Eane Allaster.



Dilaitit for taking vmq<sup>le</sup> Donald M<sup>c</sup>Allaister V<sup>c</sup>Eane V<sup>c</sup>Henrie, binding him hand and fute, and casting him in ane boit; and thaireftir cayreing him to ane craig<sup>1</sup> in the Sea of Clafneffe, in Affint, quhair the fie overflowing the said craig, he was pitiefullie<sup>2</sup> drownit and cayreit away to the grit Ocean-fie; and fa, crewallie Murthouret be thame.

Michael Anderfone, tailgeour in the Potter-raw, as cautioner, amerciated for nocht repoirting of the Letteres deulie execute and indorfate, and perfewing thair of, purchest at the instance of Johnne M<sup>c</sup>Angus V<sup>c</sup>Henrie, neir kynnifman of the said vmq<sup>le</sup> Donald, viz. 100 merkis for the said Neill M<sup>c</sup>Ean Allaister; and for the vther tua defenderis, ather of thame in tua hundreth merkis.

### Slaughter.

Jun. 20.—WILLIAME JOHNNESTOUN, elder of Kellobank; Williame Johnneftoun, younger, his sone; and Johnne Johnneftoun, also his sone.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Williame Johnneftoun of Kynnel-heid; committit in anno 1619.

PERSEWAR, Jeane Johnneftoun, as dochter.

ASSISTERIS of the perfute, Robert Johnneftoun, callit of Mossfope, Thomas Johnneftoun of Beirholme, James Johnneftoun of Erftchag.

PRELOCOUTOURIS in defence, Mr Thomas Nicolfone, elder, Mr Laurence M<sup>c</sup>gill (Advocates.)

The perfewaris passis *simpliciter* fra the pannellis perfute, for the crymes foirfaidis: Quhairvpone the pannell askit instrumentis.

Continued, ‘for the Kingis pairt,’ to the third day of the next Justice-air, or sooner, on xv days warning.

### Taking captife and prisoner—Oppression, &c.

Jul. 12.—WILLIAME GARIOCHE, sone to James Garioche of Kinstair, and Thomas Anderfone in Awfurd.

Dilaitit for being in companie with *Alexander Forbes*, sumtyme of *Toweis*, vpone the xxj day of Januar, 1620 last, bodin<sup>3</sup> with foure pistolettis and tua lang gwnes, fuordis, durkis, and vtheris wappones *invasiue*; and cuming airtie in the moirning, befor the brek of day, to the duelling-hous of George Garioche, in Tuliechetlie, sone-in-law to Johnne Bonar, in Tuliechetlie, quhair the said Johnne was, in sober and quyet maner, for the tyme, lying in his bed; and be plane force and violence entering within the said hous, pat violent handis in the persone of Barbara Forbes, ane servand thair of, drew hir to the ffyre, and in maist barbarous and crewall maner held hir aboue the samyn, thraitning to cast hir thairin,

<sup>1</sup> Craig, or rock.

<sup>2</sup> Piteously; lamentably.

<sup>3</sup> Furnished; provided.

and to burn hir quick,<sup>1</sup> gif scho reveillit nocht to thame quhair the said Johnne Bonar was : AND lykways, ffor the putting violent handis in the perfone of Robert Broun, ane vther ferving of the said hous, and halding ane drawin durk to his breift, thairtning to strek him thairwith, gif he also reveillit nocht to thame quhair the said Johnne Bonar was for the tyme : AND last, vponne knowlege gevin to the said Alexander Forbes of Toweis and his complices, that the said Johnne Bonar was in his bed within the said hous, ffor thair cuming to him to his bedsyde, and drawing him furth of his bed in maist violent maner, taking him captiue and prissoner, and cayreing him furth of the said hous be the space of tua myles, to the watter of Lochell, and douking<sup>2</sup> him dyuerse tymes thairin ; and thair compelling him to yeild to the furneissling to the said Alexander Forbes, and delyuering to him of ffyve hundreth merkis money ; and becaus of the said Johnne Bonar his refusall of performeing thaireffir of his promise, ffor cayreing him with thame, as ane captiue and prissoner, to the duelling-hous of Robert Merfar of Edindowie, and keiping him thairin, as ane captiue and prissoner, be the space of tua dayis and tua nichtis togidder : AND for beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament.

Compeirit personallie the said Williame Garioche and Thomas Anderfones, and maist willinglie offerit thame selfis to the tryell of the law, disassenting *simpliciter* to all maner of continuation : And thairfoir protestit for thair cautioneris (Mr Williame Forbes of Craigievar, and Alexander Hill, lister,<sup>3</sup> burges of Aberdene) releif.—Compeirit on the vther pairt, Johnne Forbes, elder of Brux, as procurator, speciallie constitute, for the said Johnne Bonar, persewar, and be vertew of ane Letter of procuratioun, subscryuit with his hand, of the dait the aucht day of July instant ; bearing, that the said Johnne, in regaird of his grit age and inhabilitie to travell to the keiping of this dyett, and that he vnderstuid the saidis Williame and Thomas, quha had fund cautione, war innocent of the haill crymes aboue writtin, Ordanit the said Johnne Forbes of Brux to pas *simpliciter* fra thair perfute, &c. Quhilk protestatioun the Justice admittit.

### House-breaking—Stouthfress—Theft.

Jul. 21.—PATRIK GRANT of Davachmoir ; Duncane Grant, in Wester Bunlody ; James M'allaster Vic Eane Oig, in Inchebroun ; Ewin Mcneill V'quyane, in Littill Clwne.

Dilaitit for breking of Johnne Grant of Glenmoriestoun his hous of Belmacaene, in Vrquhart ; breking vp of fourtene lokit kiftis<sup>4</sup> being thairin ; steilling and away-taking of certane guidis and geir being within the saidis kiftis, all pertening to the said Johnne Grant ; committit in Apryle, 1615 yeiris.

<sup>1</sup> Alive.

<sup>2</sup> Ducking.

<sup>3</sup> Dyer.

<sup>4</sup> Locked chests.

PERSEWAR, Johnne Grant of Glenmoriestoun.

The persewar passis *simpliciter* fra the perfute of the said Ewin ; and declairis him to be innocent thair of.

Continued to the thrid day of the nixt Justice-air of the scherefdom quhair thay duell, or foner, vpon xv dayis warning. Johnne Grant, appeirand of Ballindalloche, become fouertie, &c.

### **Taking captive—Oppression—Starving to death.**

Jul. 26.—ROBERT M'COULE, in Wester Kindrogine ; Robert Glas, thair ; and Johnne Bow y M'kerra Dowy, in Straloche.

Dilaitit for Ufurpatioun of our fouerane lordis autoritie, in taking of vnr<sup>le</sup> Allaster M'gilliemule, in Innerdrie, ane simple puir man, furth of the duelling hous of Johnne Roy M'gilliemule, vpon the landis of Bordland, within the scherefdom of Perth, binding him hand and fute, and cayreing him, as ane captiue and prissoner, with thame to the Castell of Blair, in Athole, and stryppit him naikit of his claithe, and thaireftir casting him in the pit of the said Castell, quhair, in the deid tyme of winter, viz. in December last, he sameischet with hunger and cald, eftir he had remanit foure dayis and foure nichtis thairintill : And thaireftir cayreing him out of the said pitt to ane gibbet (being deid) vpon the landis of Blair, quhair thay hang him vp as ane malefactor, but power or commissioun gevin to thame, or ony preceeding tryell tane of his guiltines of ony cryme.

THE Justice ordanit Johnne Fergusone of Belnacult, in Straloche, as cautioner and fouertie, to be vnlawit for nocht entrie of ilk ane of the saidis personis, in the pane of ane hundreth merkis : And siclyk, that thay fall be denuncet rebellis and put to the horne, and all thair moveabill guidis to be escheit, &c.

### **Hurting and Wounding—Demembration.**

Nov. 3.—JOHNE STEWART of Hulreid ; James Blaikwoid, his servand ; and Johnne Pollok, sone to Johnne Pollok, in Caldecoittis.

Dilaitit of airt and pairt of the crewall Hurting and Wounding of Johnne Allansone, sone to Andro Allansone, in Waterfute, in his heid, be geving to him of fevin bludie woundis thairintill, tua crewall woundis in his schoulderis and airmes : As also, of dismembring him of his thombe and thre fingeris of his left hand ; committit vpon the landis of Gorballis, pertening to Sir George Elphinstoun of Blythefwoid, kny<sup>t</sup>, in his cuming frome Glasgou to his fatheris hous, in Waterfute, in the moneth of Junij last ; vpon set purpois, prouisioun, and floir-thocht fellonie.

PERSEWAR, Johnne Allansone.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.

It is allegit be Mr Thomas Hoip, as prelocutour for Johnne Stewart of Hulreid, that the Dittay can nocht be put to ane Assyse aganis the said Johnne, nor his men, becaus per Legem, *si quis in rixa, &c.*; quhair ane persone, callit for ane cryme and is fugitiue thairfoir, the remanent persones, his allegit complices, enterand, can nocht be tryit be ane Assyse, or persewit for the samyn: As also, he takis instrumentis of that poynt of the Dittay, beirand the fact lybellit to be committit vpon foirthocht felonie. It is forder allegit be Mr Thomas, that the Dittay is nawayis relevant to pas to ane Assyse, for Dismembring, feing the persewar wantis nocht ane member, bot onlie his thombe and tua fingeris, *quia digitus non est membrum, sed tantum pars membri*.

Mr James Hammiltoun, as prelocutour for Johnne Pollok, takis instrumentis, that the persewar is willing to pas fra the said Johnne Pollokis persute *simpliciter*, as altogidder innocent of the cryme lybellit; and protestis, in caice he persew nocht Pollok, that the persewaris cautioneris be vnlawit: And thairfoir, in respect of Pollokis innocencie, he offeris him to the tryell of ane Assyse. Takis instrumentis also of the persewaris declaratioun, beirand that he nevir saw the said Johnne Stewart and remanent persones on pannell befoir his cuming to the grund of Gorballis, that day of his hurting thairupoun; as also, that Johnne Stewart said thease wordis at that tyme, 'It is ane mervellous matter we can nocht get James Pollok and Johnne Allansone red!'

THE Justice repellis the allegiances aboue writtin, concerning the Law allegit be Mr Thomas Hoip, and concerning the dismembring, in respect of the Dittay: And Ordanis the samyn to be put to ane Assyse.

VERDICT. The Assyse, all in ane voce, fand the saidis Johnne Stewart, James Blaikwood, and Johnne Pollok to be Cleane, innocent, and acquit, &c.

### Slaughter.

Nov. 17.—JAMES MURE, in Dalnahoy,<sup>1</sup> and Thomas Aikman, thair.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>10</sup> Johnne Weir, in Dalnahoy; committit with stanes, rungis,<sup>2</sup> and vtheris wappones *invasiue*, vpon the last day of September lastbypast, vpon set purpois, prouisioun, and foirthocht felony.

PERSEWARIS, Margaret Wynrahame, the relict; Thomas and William Weir, brether.

PRELOCUTOUR in defence (for Thomas Aikman), Mr Robert Lermonthe.

VERDICT. The Assyse, all in ane voce, fand the said *Thomas Aikman* to be Cleane, innocent, and acquit: And siclyk, that the said *James Mure* is Giltie, culpable, and convict of the said slaughter.—SENTENCE *against Mure*. To be tane to the Mercat croce of Edinburgh, and thair his heid to be strukin frome his body; and all his moveable guidis to be escheit, &c.

<sup>1</sup> See Jun. 14, 1620.

<sup>2</sup> Cudgels; staves.

**Slaughter.**

Dec. 1.—**JOHNE BROWN**, tailzeour, hantand<sup>1</sup> in Craufurdmure.

Dilaitit of airt and pairt of the crewall Slauchter of vmq<sup>le</sup> James Williamfone, in Glengeich ; committit the xxvj day of November lastbypast, within the duelling hous of Johnne Giblone, elder, in Craufurdtdoun, be hurting him with ane fuord in the heid, airmes, and vtheris pairtis of his body ; quhairof, vpone the morne thaireftir, being the xxvij day of November, at tuelf houris in the day, he deceiffit.

**PERSEWARIS**, Symone Williamfone, burges of Edinburghe, and Robert Williamfone, brethir to the defunct ; James Williamfone, brother-in-law ; Sir Williame Oliphant, kny<sup>t</sup>.

**ASSISA.**

Mathow Bailzie, of Littillgill,  
Mr James Bailzie, sone to Mathow,  
Johnne Makmath of Corfbank,

Thomas Johnnstoun of Beirholme,  
Williame Tailzeifeir of Herklaw,  
Johnne Vmphray in Glenmuklek.<sup>2</sup>

The said Robert Williamfone, brother to the defunct, fuoir the Dittay to be of verritie : Quhairvpoun my lord Aduocat askit instrumentis ; and protestit for Wilfull Erroure aganis the Assyse, gif thay acquit.

**VERDICT.** The Assyse, all in ane voce, be the declaratioun of the said Mathow Bailzie, chancellor, ffand the said Johnne Brown to be ffylet, culpable, and convict of airt and pairt of the said crewall Slauchter.—**SENTENCE.** To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin frome his body ; and all his moveabill guidis to be escheit, &c.

**Slaughter.**

Dec. 15.—**SIR JAMES MAXWALL** of Calderwoid, kny<sup>t</sup> ; Alexander Lyndfay of Dunrod ; Johnne Lyndfay, his brother naturall ; and James Maxwell, sone to Williame Maxwell of Newlandis.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Alexander Lekkies of that Ilk ; committit in September 1601 yeiris.

**PERSEWARIS**, Alexander Lekkies of that Ilk, as sone ; Adame Cuninghame of Markinsche, the spous of Euphame Maxwell, relict of the said vmq<sup>le</sup> Alexander, for his intreis ; Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our souerane lord.

**PRELOCUTOR** in defence, Mr Thomas Hoip, Aduocat.

The Justice, conforme to ane Warrand of the Secreit Counsall, direct to him, quhairof the tennour followis :

**JUSTICE**, Justice Clerk, and your deputis. Quhairas the fyftene day of December instant is appointit to Sir James Maxwell of Calderwoid, kyn<sup>t</sup>, W<sup>m</sup> Maxwell of Newlandis, James, J<sup>o</sup>, and James Maxwellis his sones, Alex<sup>r</sup> Lyndfay of Dunrod, and James Wauchope in pe Airdis, ffor pair compeirance befor you, to vnderly the lawis for the Slauchter of vmq<sup>le</sup> Alex<sup>r</sup> Lekkies of pat Ilk : Nochtwithstanding, for certane causis moving us, it is our will, and we Command you to continew pe said dyet, vntill the

<sup>1</sup> Dwelling, but having no fixed residence.

<sup>2</sup> The rest of no note.



fextene day of Januar, in the 3eir of God I<sup>m</sup>.Vj<sup>r</sup>. tuentie tua 3eiris : And that 3e tak new caution of thame, conforme to the orदour. Quhairant thir presentis fall be 3our Warrant. At Ed<sup>n</sup>, the tuelf day of December, 1620.

AL. CANCELL<sup>r</sup>. MAR. MELROIS. NITHSDAILL. LAUDERDAILL. CARNEGIE.

Continewis this dyet to the faid xvj day of Januar, in anno foirfaid.—Sir Alexander Hammiltoun of Innerweik, kny<sup>t</sup>, elder, and Alexander Levingftoun of Belftane, become pleges and fouerteis for the entrie of the saidis Sir James, &c.

(Jan. 16, 1622.)—SIR James Maxwell compeirit, and perfonallie product ane WARRANT of the Lordis of Secret Counfall, proceeding vpone ane Supplication gevin in by thair Lordschippis ; quhairof the tennour followis.

MY LORDIS OF SECRET COUNSALL, vnto 3our L. humlie meanis<sup>1</sup> and schawis, we 3our feruitouris, *Sir James Maxwell of Calderwoid*,<sup>2</sup> fone to vmq<sup>le</sup> *William Maxwell of Newlandis, Alex<sup>r</sup> Lyndsay of Dunsrode*, and Jo<sup>n</sup> *Lynajay*, his brother naturale, That quhair, the sextene day of Januare nixtocum is appointit to us for our compeirance befor his Maiesteis Justice, to vnderly the Law for the Slauchter of vmq<sup>le</sup> *Alex<sup>r</sup> Lekie of that ilk*, at the quhilk day the Justice intendis to proceed in this matter ; albeit it be of veritie, that be pe mediatioun and travellis of some weil affectit Noblemen, Barrones, and Gentilmen, commoun and indifferent<sup>3</sup> freindis to both us pairteis, who hes delt and travellit betuix us, for bringing of this vnhappie feid, whilk hes bene of so long continuance betuix our Houffis, to some termes of aggrement and reconciliatioun : Thay brocht pe matter to this poynt, that I, pe said *Sir James*, fall superceid and continew the prosecution and following out of pe actioun of Reduccion, quhilk I haif presentlie in dependance befor pe Lordis of Counfall and Sessioun, aganis pe said *Laird of Lekkie*, and that I fall suffer the same to rest and sleip<sup>4</sup> till pe said fextene day of Januar nixtocum ; and that the Criminal dyet foirfaid, appointit for our Tryell befor pe Justice, fall be continewit till Witfonday nixt ; to the effect, that in this meane tyme, forder travellis may be tane for bringing of the feid and querrell betuix us to ane more happie and finall conclusioun : AND with this appointment of freindis, bothe we pairteis, restit weale satisfeit and content. THAIRFOIR we besek 3our Lo. to geve command to pe Justice, Justice clerk, and pair deputies, to continew pe dyet foirfaid, appointit for our compeirance befor thame, to vnderly the Law for pe Slauchter, vnto pe said terme of Witfonday nixtocum ; and that pai dispenfe with our perfonall compeirance, and tak new caution for us, conforme to pe orदour : And to discharde thame of all proceeding aganis us in the mean tyme, and of thair offices in that pairt, quhill pe said terme of Witfonday : Whairant thir presentis fall be pair Warrant. And 3our Lordschippis anfuier. [*Followis the Lordis deliquerance.*] APUD Ed<sup>n</sup>, quarto Decembris, 1621, *fiat ut petitur*, to the xix day of Junij nixtocum : Becaus the *Erle of Mar*, being perfonallie present, testifit pe consent and appointment within writtin.

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

For obedience of the quhilk Warrant, the Justice continewis this dyet in the same forme, force, and effect, with all tryell of the pannell for the Slauchter aboue writtin, to the said xix day of Junij, &c.—Sir George Elphingftoun of Blytheswoid, kny<sup>t</sup>, became sonertie for the entrie of the said Laird of Calderwoid, &c.

(Jun. 19, 1622.)—THE Laird of Calderwoid product his Maiesteis Letter following :

<sup>1</sup> Complains.

<sup>2</sup> It is likely the following words are omitted in the record, through a clerical error : ' Kny<sup>t</sup>, James Maxwell,' sone, &c.

<sup>3</sup> Disinterested.

<sup>4</sup> When no proceeding takes place in suits before the Court of Session for *year and day*, the process is technically said to *fall asleep*, and is revived by a Summons of *Wakening*, &c.

JAMES R.

TRUSTIE and weilbelout, We greit ʒow weill. WHAIR AS, We be crediblie informet that *Sir James Maxwell of Calderwood, knyʒ*, and *Alexander Lindʒay of Dunrod*, with thear complices, ar summond, to vnderly our Lawis, for þe Slauchter of vmq<sup>le</sup> *Alexander Lecky of that Ilk*, alleadged committed be thame, We ar well pleased to grant vnto the said *Sir James* a Respitt for the same, during the space of certane monethis eftir the dait hierof: AND thairfoir haif thought goode, by these presentis, to will and requyre ʒow not to medle in any wyfe, nor to tak cognitioun of the said cause, till the fyft day of October nixt. Wherein We expect ʒowr conformitie to our pleafour. GEVIN at our Court of Grenewiche, the first of Junij, 1622.

THE Justice continewis, &c. *Sir Johnne Hammiltoun of Lettrik*, and *James Maxwell of Kirkconnell*, cautioneris, &c.

PRELOCUTORIS in defence, *Joseph Myller*, Advocat; *Archibald Hammiltoun*, Commissar of Lanark.

(Oct. 5, 1622.)—JOSEPH MYLLER productet tua feuerall Testimoniallis, the ane subscryuit be the Minister of Lanark, and dyuerse elderis of the Seffion of that Kirk; and the vther subscryvet be the Minister of Carlouk, and certane of the elderis of that Kirk, testifeing the deceife of *Sir James Maxwell of Calderwood, knyʒ*: And vpone the production thair of askit infrumentis.

The Laird of Dunrod presentit to the Justice ane LETTER of HIS MAIESTEIS, quhair of the tennour followis.

To oʳ trustie and weilbelout, oʳ Justice, Justice clerk, and pair deputeis whatsoeuer.

JAMES R.

Trustie and weilbelout, We greete ʒow well. Whairas, We haue bene pleased to write to oʳ Counsell, willing thame to employ their best meanes, for reconciliatioun of *Sir James Maxwell of Calderwood* and *Alexander Lekkie of that Ilk*: We haif lykways thoct by these presentis to will and requyre ʒow nocht to proceed in the criminal action intendit aganis the said *Sir James Maxwell* and his complices, for the Slauchter of vmq<sup>le</sup> *Alexander Lekkie of that Ilk*, till ʒe fall vnderstand by oʳ said Counsell that þai haif gevin vp all forder deilling in that matter. So, exspecting ʒoʳ conformitie to this oʳ plesʒ, we bid ʒou fare weill. GEVIN at Windesore, the seavinthe day of August, 1622.

Conforme to the quhilk direction of his Maiestie, the Justice deferris all proceeding aganis the pannell.

The said *Johnne Lyndsay* dissents to the said continuatioun, and affirmes him self to be innocent of the said Slauchter; and thairfoir offeris him self presentlie to the tryell of the Law for the samyn.—The Justice Ordanis him, with the remanent defenderis vpone pannell, to find caution. *James Lyndsay of Scheillis*, and *Alexander Levingstoun of Belstane*, become cautioneris, &c.

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

**Taking captive King's free lieges—Cruel oppression—Murder, &c.**

Feb. 7, 1621.—JAMES PARK in Cathkyn, and *George Park* in Wester

Gremlear, his brother.

Dilaitit of airt and pairt of the Taking of vmq<sup>le</sup> *William Knox*, in Cathkyn, furth of his duelling hous, vnder silence of nycht, and with cudgellis and rungis besting and dinging him in the breift, fydis, bak, and bellie; thairby breking

and bruseing his haill intrallis and nobill pairtis within him, setting thair feit betuix his leggis vpon his ball-cod,<sup>1</sup> and forcing thairby his stanes to loup vp in his liskis;<sup>2</sup> binding him thairefter with ane coird, or hair-tedder, to ane horle and ane sled,<sup>3</sup> and cayreing him with thame as ane captiue and prissoner to the toun of Hammiltoun: Off the quhilkis hurttis and dedlie woundis, he deceifit, in the moneth of Januar; the samyn being done to him in the moneth of October of befoir, in the yeir of God I<sup>m</sup>.V<sup>c</sup>.lxxxvj yeiris.

PERSEWARIS, Johnne Knox, as sone; Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOURIS in defence, Mr Tho<sup>s</sup> Hoip, Mr Ja<sup>s</sup> Hammiltoun, Mr Lueis Stewart, (Advocates.)

It is allegit be the pannell, that the Dittay contenis tua feuerall crymes; the first, for taking and apprehending of his Maiesteis frie lege but<sup>4</sup> Commiffioun, quhilk is tressonable; the vther cryme, for Murthour and Slauchter of him, in in maner lybellit. As to the first cryme, quhilk inferris the cryme of Tressone, *non relevat*, becaus, taking without imprissoning in *privato carcere*, and detening him thairin, *per spacium viginti quatuor horarum*, can nocht, be<sup>5</sup> the law, infer *penam privati carceris*. And as to the Murthour lybellit, *non relevat* to pas to ane Assyse, except it war condiscendit, at quhat tyme he contractit the deidlie feiknes, eftir the geving of the straikis quhairupoun daith followit, as is alleggit in the lybell. My lord Advocat conioynes the tua crymes lybellit, and concludes thairin only *penam capitis* to be inflictit vpon the committeris; and thairfoir desyres the Justice to put the haill lybell *coniunctim* to the knowlege of ane Assyse.—The persewar, Johnne Knox, declairis that he will nocht persew at this tyme, becaus the speciall persones that ar summoned, and best knawis the treuth of the pannellis giltines, ar nocht present: And thairfoir, desyres that the matter may continew to ane fyftene dayis wairning, and the pannell put vnder new caution.—The pannell dissents to the said continuatoun; and in respect, thair is ane sufficient number of Assyse present, all summoned be the persewar, offeris thame selffis to the tryell of the law for the haill crymes lybellit; quhairof thay declair thame selffis to be altogidder innocent: And protestis, in respect of thair former offer, that thay be nawayis trubillit or persewit for the saidis allegit crymes, in ony tyme cuming.

THE Justice continewis this matter to ane fyftene dayis wairning; and ordanis the pannell to find caution, &c. Williame Anderfone, portioner of Littil Govane, became cautioner, &c.

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

**Usurping King's authority—Taking captive, &c.**

Feb. 9.—RICHARD GRAHAME of Hospitalscheillis, and Robert Merfar, messinger in Abirdene.<sup>6</sup>

<sup>1</sup> Testes.

<sup>2</sup> Reins.

<sup>3</sup> Sledge, or cart without wheels.

<sup>4</sup> Without.

<sup>5</sup> By.

<sup>6</sup> Cautioners, 'George Erle of Marfchell, and James Garioche of Kinfair.'

Dilaitit for cuming to Patrik Farquhar, burges of Abirdene, his duelling-hous thair, and maist violentlie, but ordour of Law,<sup>1</sup> or concurrence of the Magiftratis of the said burgh, and without ony Commiffioun or vther Warrant, putting violent handis in the perfone of the said Patrik Farquhar, taking him furth of his said hous; and thairfra, cayreing him, as ane captiue and prifoner, to the said Richerd Grahames Hous of Overcraig: As also, for cayreing him to the prifone of Stanchyve, quhairin he was keipit be the fpace of tuentie dayis: LYK AS, he was keipit and detenit in the said Richerd Grahames Hous, *tanquam in privato carcere*, be the fpace of tuentie foure houris; vfurpeing thairby our fouerane lordis authoritie vpone thame: AND sic lyk, for tranfpoirting him to the duelling hous of Mr Williame Reid in Cowie, quhairin he was keipit in ftrait firmance the fpace of vther xxiiij houris: Vfurpeing thairby our fouerane lordis authoritie vpone thame.

PRELOCUTOURIS in defence, Mr James Oliphant, Mr Roger Mowat, Aduocattis.

The said Patrik Farquhar declairit, that the saidis Letteris war altogidder raifit but<sup>2</sup> his warrant, and by<sup>3</sup> his knowlege; and without ony informatioun gevin be him to our fouerane lordis Aduocat, or to the said James Keyth,<sup>4</sup> or ony vther thairintill: And thairfoir, he renuncet all actioun Criminal or Ciuile that he had or could allege aganis the said Richard and Robert, and past *fimpliciter* fra thair perfute, as altogidder frie and innocent thairrof.—My lord Aduocat declairis, that thair is collufioun and fecreit aggrement betuix Patrik Farquhar and the perfones on pannell; and defyres the pannell thairfoir to be put vnder new cautioun, for thair compeirance of new agane, vpone xv dayis warning, for his Maiefteis intereis allanerlie.—Johnne Grahame, indueller in Edinburgh, becomes cautioner to the above effect.

My lord Justice Ordanit na letteris to be direct furth aganis the pannell, at the instance of the said Patrik, for the crymes foirfaidis, in ony tyme cuming, in respect of his former declaratioun.

### Slaughter.

Feb. 23.—JOHNNE BELLENDEN, indueller in Edinburgh.

Dilaitit of airt and pairt of the Slaughter of vni<sup>q</sup><sup>le</sup> James Dalmahoy, burges of Edinburgh.

PERSEWARIS.

Agnes and Helene Dalmahoy, fisteris; Sir Johnne Dalmahoy of that Ilk, kyn<sup>t</sup>; Andro Ker of 3air.

PRELOCUTOURIS in defence, James Borthuik of Newbyres, Mr Laurence McGill.

THE JUSTICE, of consent of pairtie, continewis the dyet to the fevnt of Marche

<sup>1</sup> Without legal warrant.

<sup>2</sup> Without.

<sup>3</sup> Beside; past; without; contrary to.

<sup>4</sup> Of

Harviestoun, cautioner for producing the Letters duly executed against the pannell.

nixtocum. And ordanis the pannell to be tane bak to waird, thair to remane quhill the said day.

Mar. 7.—CONTINEWIS this matter to Fryday nixt, the nynt *instantis*.

Mar. 9.—THE persfewaris passis fra the persfute of the pannell, *pro loco et tempore*.

### Slaughter.

Mar. 30.—MR JAMES BAILZIE, sone to Mathow Bailzie of Littilgill.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> James Dalmahoy, merchand burges of Edinburgh.

PRELOCUTORIS in defence, Mathow Bailzie of Littilgill, Mr James Hammiltoun.

The saidis Mathow, and Mr James, declairit, that Mr James Bailzie, his sone, the tyme of the geving of the charge to him, for his compeirance, was and is as yit hevieilie diseasit with seiknes, that he is nocht able to travell to the keiping of this dyet, &c.

*Johnne Loverance*, Minister at Robertoun being solemplie suorne, declairit, that he is Minister at the Kirk of Robertoun, and within this thre dayis visseit Mr James Bailzie within the parochin, quhair he was lying bedfast, heavilie diseaset with seiknes, and nawayis of habilitie to travell, vpone horse or fute, to the keiping of this dyet; as he sould answer to the grit and Almychtie God. —*Johnne Dunsyre* in Robertoun, also suorne, is conforme to the said Johnne Loverance, Minister. —*Mungo Inglis* thair, lykwayis deiplye suorne, depones conforme to the Minister.

THE Justice ordanit caution of new agane to be fund for the said Mr James Bailzie, that he fall compeir the thrid day of the nixt Justice-air of Lanerk, or soner, vpone xv dayis. The said Mathow becomes cautioner.

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

### Murder under trust, credit, and assurance.

Apr. 13.—GEORGE ERLE OF CAITHNESS, and James Sinclair in Diran.

Dilaitit of airt and pairt of the crewall and tressonabill Murthour and Slaughter vnder trust, credit, and affurance of vmq<sup>le</sup> Thomas Lyndsay in Scraibster in Kaithnes; committit be thame and thair compliceis, in forme and maner specifeit in the Letteris.

Robert Monro of Aldie, Commisfar of Kaithnes, as brother on the mother fyde, to the said vmq<sup>le</sup> Thomas, produceit the Letteris deulie execute and indorfate vpone the said Erle and James Sinclair, be the quhilkis, thay and ather of thame ar denuncet rebellis and put to the horne, for nocht finding of caution, to haif compeirit befor the Justice or his deputis this day.

THE Justice, vpone the production of the saidis Letteris deulie execute,



indorlat, and regiftrat, adjudget the faid Erle and James Sinclair, in respect thair of, and of thair nocht compeirance perfonallie this day, to be ffugitiues fra his Maieftis lawis for the faid treffonabill Murthour, as culpable and fugitiue thairfoir.

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

**'Forcing'—Rapt.**

Jun. 27.—JAMES M<sup>c</sup>NACHT in Igifzaird, and Thomas Weir in Gairdingholme-fute.

Dilaitit of the fforcing of vmq<sup>le</sup> Jonet M<sup>c</sup>rone, fervand for the tyme to Thomas Weir in Gairdingholme-fute, and abufeing hir, in the moneth of November, 1620 yeiris, in sic foirt, that within tuentie dayis thaireftir fcho deceiffit.

PERSEWAR, Williame Campbell, coufing-germane to the defunct.

PRELOCUTORIS in defence, Mr Lueis Stewart, and Adame Cuninghame, (Advocates.)

The pannell defyres to vnderftand the perfewaris entreis to perfew; and that he declair how neir of kyn he is to Jonet M<sup>c</sup>rone.—The perfewar declairis he is coufing-germane to the faid vmq<sup>le</sup> Jonet, viz. fcho was his father-fifter dochter; and thairfoir hes guid intreis to perfew.—It is allegit be the pannell, that he can nocht be eftimat ane lauchfull perfewar, becaus the perfewaris father was the defunctis bastard-brother; and fa, of the Law, can nocht perfew, his father being bastard; the verritie quhairof referris to the perfewaris ayth: Quha declairit the allegiance to be of verritie.

THE JUSTICE, in respect thair was na lauchfull perfewar to infist in this perfute, Ordanis the dyet to defert.

The pannell takis instrumentis thairupoun, and affirmes that thai ar altogidder innocent of the crymes lybellit; and gif ane lauchfull perfewar, ather for the parteis or the Kingis entreis, war present, thay wald maift willinglie offer thame felffis to the tryell of the law for the faidis crymes; and difaffentit, *simpliciter*, fra ony continuatioun, without ony exceptioun to be proponit aganis ony lauchfull perfewar or perfones of Affyfe, being honest and vnfulpect perfones; protesting, in the meane tyme, for thair cautioneris relief, fund for thair compeirance this day.

**Slaughter.**

Jul. 19.—HENRIE BAIRD, at the Mylne of Mukard.

Dilaitit of the crewall Slaughter of vmq<sup>le</sup> Robert Huttone, duelland within the parochin of Mukard, befyde Caftell Campbell, be cafting of ane otter-ftalff, with ane tua-granet fork of irne at the end thair of, at the faid vmq<sup>le</sup> Robert, quhilk peirfit him in the bellie, quhairof he immediatlie thaireftir deceiffit; committit vpone the nynt of July instant, vpone fet purpois, prouiffoun, and ffoir-thocht ffellonie.

PERSEWAR, Johnne Huttone, at the Kirk of Mukard, as brother to the defunct.

The pannell confessis the fact, and craves God mercie.

VERDICT. The Assyse, all in ane voce, stand the said Henrie Baird, conforme to his awin Judiciall Confessioun, to be flyet, culpable, and convict of airt and pairt of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin fra his body; and all his moveable guidis to be efcheit, &c.

### Convocation of Lieges—Weiring of Hagbutis—Slaughter, &c.

Jul. 20.—WILLIAME DOUGLAS of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrene, his brother naturall; Robert Greir, younger of Lag; and others.<sup>1</sup>

Dilaitit for contravening his Maiesteis Actis of Parliament, in making of convocation of his hienes legis: AND beiring and weiring of hagbutis and pistolettis: AND for airt and pairt of the Slauchter of vmq<sup>le</sup> Thomas Coupland in Caschogill: AND demembring of Robert Douglas, sone to Sir Robert Douglas of Caschogill, kny<sup>t</sup>, of his left lug:<sup>2</sup> Committit in Maij lastwas, vpon the tuelf day thairof, at the Moss of Caschogill.

PERSEWARIS, Margaret Corbie, the relict; Williame, Robert, and Thomas Couplandis, as sones; and . . . Coupland, as dochter to the said vmq<sup>le</sup> Thomas; Sir Robert Douglas of Caschogill, kny<sup>t</sup>, as father to Robert Douglas, and maister to vmq<sup>le</sup> Thomas.

PRELOCOUTOURIS, Mr Thomas Hoip; Mr Thomas Nicolfone, younger; and James Dowie, wryter.

### Convocation of Lieges—Weiring of Hagbutis—Slaughter, &c.

Jul. 20.—SIR ROBERT DOUGLAS of Caschogill, kny<sup>t</sup>; Robert Douglas, his sone; Johnne Paterfone, in Caschogill; Thomas Paterfone, thair; Williame Coupland, thair; Hob Coupland, thair; Mathow Cowane, thair; and twenty-seven others.

Dilaitit for contravening of the Actis of Parliament, in making of convocation of his Maiesteis legis; beiring and weiring of hagbutis and pistolettis; and invading of the Laird of Drumlangrig, his brother, and remanent persewaris, with schottis of hagbutis and pistolettis; committit at the Moss of Knockconnie, pertening to David Douglas, heritour thairof, vpon the tuelf day of Maij last.

<sup>1</sup> The rest of the pannels were, 'Duncane Hunter of Ballagan; James Johnnstoun of Lochbous; James Johnnstoun, callit *Braikinsyde*, James Johnnstoun, callit *Croftheid*, James Douglas, and Robert Grahame, all four servandis to the said James of Lochebous; Archibald Douglas, servand to the Laird of Mouffell; Robert Creichtoun, sone to . . . Creichtoun of Craufurdton; Thomas Bell, sone to *Reidcloke*; James Douglas, callit in *Glenmeid*; Christie Airnestrang in Bigholme, his sone in law; Andro Hunter in Auchinbathe; James Douglas, Thomas Mairtene, Johnne Paterfone, callit *the fukler*, all servandis to the said Laird of Drumlangrig; Hob Hunter in Crarieknow; and Johnne Rig, messinger.'

<sup>2</sup> Ear.

PERSEWARIS, William Douglas of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrane; James Johnnstoun of Lochehous; Robert Dalzell, sone naturall to Sir Robert Dalzell of Eliok, kny<sup>t</sup>; Sir William Olibant of Newtown, kny<sup>t</sup>.

Ane WARRAND was producet to my lord Justice, quhair of the tennour followis.

JUSTICE, Justice Clerk, and 3onr deputis; fforamekill as the tuintie day of July instant is set and affixed for perfute of *William Douglas of Drumlangrig*, and certane his speciall freindis and kynmen befor 3ow, for pe slauchter of vmq<sup>le</sup> *Thomas Coupland*, with hagbuttis and pistolettis; as also, for perfute of *Sir Robert Douglas of Caschogill*, and certane his freindis and pairt-takeris, for making of convocation of his Maiesteis legis, and beiring, weiring, and schuiting of hagbutis and pistolettis, contrair his Maiesteis Actis of Parliament; as the Letteris, *hinc inde*, raifit be ather pairtie thairintill, beiris: AND because, be the mediatioun of freindis, the saidis actiones ar liklie to pak up and agrie, and that no forder truble be had amangis jame pairintill: It is pairfoir our will and plesour, that 3e continew the saidis dyettis to the thrid day of pe nixt Justice-air of the Scheredomie quhair pe saidis pairteis duellis, or foner, vpone fyftene dayis warning; dispenfand with thair nocht compeirance befor 3ow this day, and takand new cautionn for pe haill perfonis re-entrie content in the Letteris, to that effect, vnder the panes contenit in the Actis of Parliament. Qubairanent thir presentis fall be to 3ow ane sufficient Warrant. Subscriuit at Edinburgh, the xx day of July, 1621.

HAMMILTOUN. AL. CANCELL<sup>r</sup>. MAR. MELROS.

THE Justice continewis the saidis tua dyettis to the thrid day of the nixt Justice-air of the Scheredomie of Dumfreis, quhairin the haill perfonis duellis, or foner, vpone fyftene dayis.

Compeirit personallie . . . Douglas of Caveris, Scheriff of Teviedaill, and become fouertie for the said William Douglas of Drumlangrig: And siclyk, Johnne Willfone of Croglene, James Menzies of Enoche, and Malcolm Dalrum-pill of Enoche, fouerteis, conjunctlie and feuerallie, for Sir Robert Dalzell of Eliok, James Douglas of Mouffell, &c., that thay fall compeir, &c.—And on the vther pairt, compeirit Sir William Douglas, younger of Caschogill, kny<sup>t</sup>, and become plege and fouertie for his father, and haill remanent defenderis, &c.

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

**Slaughter—Wearing of Hagbuts and Pistolets, &c.**

Aug. 24.—CAPITANE JAMES JOHNNSTOUN of Thornik.

Dilaitit of the felloun and crewall Slauchter of vmq<sup>le</sup> William Johnnstoun, brother germane to Robert Johnnstoun of Wamfray: And for contravening of the Actis of Parliament, in beiring, weiring, and schuiting of hagbutis and pistolettis, and slaying the said vmq<sup>le</sup> William Johnnstoun thairwith; and remanent crymes contenit in the criminall Letteris.

THE Justice ordanit James Johnnstoun of Braikanfyde, cautioner for the said Capitane, to be vnlawit and amerciat, for nocht entrie of the said Capitane, in the pane of ffyve hundreth merkis: And siclyk, that the said Capitane James, for his nocht compeirance, fall be denuncet rebell, and put to the horne; and all his moveabill guidis to be escheit, &c.

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

### **Slaughter in Single Combat, or Duel, while in Foreign Service.**

[THE following Trial is one which possesses considerable interest and importance, as well from the light which it throws on the application of the LAWS OF DUELLING, in Scotland and in the Low Countries, as from the rank and situation of the parties implicated. *Captain Harry Bruce*, who had subsequently been employed to superintend the martial exercises of CHARLES, PRINCE OF WALES, afterwards the unfortunate KING CHARLES I, was rigorously pursued, by the vindictive and mercenary spirit of the relatives of *Captain John Hamilton*, in the Supreme Criminal Tribunal of Scotland, after he had long before been honourably acquitted by Court Martial in Flanders—under the impression, no doubt, that they would either extort a large sum of money from this new Court favourite, or procure his ruin or death. The DUEL or SINGLE COMBAT referred to in this case, and into which *Bruce* had been dragged by the rashness and insolence of his antagonist, had taken place no less than about *seventeen years* previous to those proceedings!]

The reader may here be referred to the Case of "*Capitan Johne Rig, Archeour of the Gaird of France,*" in a former part of this Collection, Vol. II., p. 382.]

NOV. 14.—CAPITANE HARIE BRUCE, seruitour to THE PRINCE his Hienes.

Dilaitit of airt and pairt of the Slaughter of vmq<sup>le</sup> Capitane Johnne Hammiltoun; committit in ane Singular Combat, in the Law Countreyis of fllanderis, in anno I<sup>m</sup>.Vj<sup>c</sup>. and fyve yeiris.

PERSEWARIS, Margaret Hammiltoun, as sifter; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>.

PRELOCOUTOUR in defence, Mr Robert Foullis.

The pannell productet ane WARRANT and command of the Lordis of Secreit Counfall, quhairof the tennour followis.

#### **ACT OF THE LORDS OF PRIVY COUNCIL.**

AT EDINBUR<sup>g</sup>, the threttene day of November, the 3<sup>e</sup>ir of God I<sup>m</sup>. sex hundreth twentie ane 3eiris. ANENT the Supplicatioun presentit to the Lordis of Secreit Counfall be *Capitane Harie Bruce*, seruitour to THE PRINCE HIS HIENES, makand mentioun, that quhair, the xiiij day of November instant is appointit vnto him, vpon the complent of *Margaret Hammiltoun*, as sifter, with the remanent kyn and freindis of vmq<sup>le</sup> *Capitane Johnne Hammiltoun*, for his compeirance befor the Justice or his deputis, in the Tolbuthe of Ed<sup>r</sup>, to vnderly the law for the Slaughter of þe said vmq<sup>le</sup> *Capitane Johnne Hammiltoun*, committit be the said *Capitane Harie*, in ane Singular Combat, in the Law Countreyis of fllanderis, some sevintene 3eiris ago; lyk as, the Justice intendis to proceed aganis him, in that matter, althocht it be of veritie, that gif respect be had to the nature and qualitie of the perfute, and to the circumstances of the Slaughter, quhan, quhair, and vpon quhat occasioun it fell out, it will be fund that the tryell thairof can no way be propper nor competent befor the said Justice, nor in no vther Judicatorie within this Kingdome; becaus the said Slaughter was committit outwith his Maiesteis dominiones, within the territoreis of the *Esstaitis of the Law Countreyis*, in ane Singular Combat, quhairvnto the said *Capitane Harie* was vrgeid and drawin by the grittest respectis of credeit and reputation quhairwith a Gentilman could be asfailzeid: AND howeur the said *Capitane Johnne Hammiltoun* and he be borne Scottisfmen, and in that respect obleist in all submissiue deuteis of allegiance to thair naturall Sovereane, zit the tyme of that vnhappie slaughter, and dyuerse 3eiris befor, thay war bothe in actuall seruice, and suorne *Officeris* to the saidis *Esstaitis*, and alls far subiect to thame and to thair Judgement and Jurisdiction, in all matteris, allsweill impoirting lyfe and death, as guidis and geir, as gif thay had

bene thair naturall-borne subiectis : And thair was no difference betuix thame and the natives of the cuntrie, in pointis of subiection to the saidis *Esfaitis* and pair lawis, the saidis *Esfaitis*, at that tyme, being pair fouerane Judges in all matteris, of quhatsumeur qualitie, occurring within thair boundis. AND twitcheing the matter it selff, the treuth is, as was clerlie verifeit befor the *Counfall of Weiris*<sup>1</sup> establisched be the saidis *Esfaitis*, for trying and censuring of matteris of this kynd, that the said *Capitane Harie* was dyuerse tymes challenget to the Combat be the said vmq<sup>le</sup> *Capitane Johnne Hammiltoun*, nochtwithstanding of the mony offeris maid be the said *Capitane Harie* to geve him all dew satisfacioun and resson, in the matter contravertit betuix thame, that, in respectiue termes of consideratioun, could be craved ; bot the moir the said *Capitane Harie* eschewit his Challenge, he was so much the moir earnest in following of the same, obiecting vnto the said *Capitane Harie* the reproche of cowardice, and protestiug to abuse him, in his private revenge, accordingle : And so, the said *Capitane Harie*, finding him selff interest and tuiched in so heigh a poynt of credeit and reputatioun, quhilk being anes lost, was never to be recoverit, bot wald cary with him to the grave ane infamous imputatioun, and an ignominious spott of vnworthie cowardice ; and haifing respect, pairwithall, to his birth and parentage, quhilk he was lothe to blisfche, in a matter of this kynd, and aboue all thingis, haveing euir befor his eis the equitie of his caus, with ane full and constant assurance, that God, who is pe trew sercheour of the heart, and vpon quhois devyne Prouidence the event of fuch duellis dependis, wald iustifie his pairt, in that uniust Challenge quhilk was revertit vpon him, he acceptit and vnderuik the Challenge, quhairin it plesit God to iustifie and cleir the equitie of his caus, by making the said vmq<sup>le</sup> *Capitane Johnne* to vnderly the dew desert of his error and raschenes : Quhairvpon, the said *Capitane Harie*, being callit befor the said *Counfall of Weir*, and the forme and circumstances of pe samyn being narowlie examined and ryped vp be thame, the qualitie of the said *Capitane Harie* and pe said vmq<sup>le</sup> *Capitane Johnne*, thair persones being fsworne and actual Officeris in the airmie, making thame subiect vnto the said *Counfall of Weir*, and punisheable be the lawis of that *Esfait* ; thay stand, that pe said *Capitane Harie* had done nothing vnsefameing the deutie of a souldiour, suppoirit with the testimonie of a good conscience : And pairfoir, restoit him to his place and charge, quhairin he serued with good credeit dyuerse zeiris pairfeutir. AND quhair as, he looked that this forme of tryell, vsed aganis him be the said *Counfall of Weir*, who wer only Judges to him in this caise, sould haif securit and warrantit him frome any new perfute, zit the sister and freindis<sup>2</sup> of the said vmq<sup>le</sup> *Capitane Johnne* callit him, for pe fame Slauchter, befor his Maiesteis Justice, in the fax hundreth and fyve zeir of God<sup>3</sup> quhairof informatioun being send vnto him frome hence, he maid his addreis to HIS MAIESTIE, acquentit his hienes with the perticuleris of this matter, and all that procedit pairin ; quho, eftir consideratioun pairof, nocht only vterit his discontentment that ony fuch matteris sould haif bene walknit heir, bot HIS MAIESTIE was gracioullie plesit to grant vnto the said *Capitane Harie* his Remission for that deid, and wrait a Letter vnto the Lordis of his Maiesteis *Previe Counfall* for discharginge the Justice to meddle in that matter : Quhilk Remission and Letter being delyuerit to the lait *Erle of Dumber*, and presentit vnto the saidis Lordis, as some of thame rememberis ; the sleuth and negligence of those who war trusted with the said *Capitane Harie* his effairis, sufferit his Letteris to perishe ; and the matter has euir restit and sleipit senfyne till now. AND quhairas this matter is alreddie tryed and censured by those whome it properlie concerned, humble thairfoir desyreing the saidis Lordis that thay wald geve command to the Justice, Justice clerk, and thair deputtis to desert the said dyet, and to desist and ceis fra all proceeding thairintill ; lykas, at mair lenth is content in the said Supplication. Quhilk being red, hard, and confidderit be the saidis Lordis, and thay being pairwith weill advyset, THE LORDIS OF SECREIT COUNSALL findis it verrie necclar and expedient, that pai vnderstand HIS MAIESTEIS Will and plesour in this matter, asoir thay gif ony snall sentence or

<sup>1</sup> Council of war ; court-martial.<sup>2</sup> Blood-relations.<sup>3</sup> Anno 1605 ; a mode of expression by no means infrequent in pleadings, &c., for the sake of brevity.



directionn thairanent : And thairfoir the saidis Lordis Ordanis and commandis his Maiesteis Justice, Justice clerk, and thair deputis, to continew the said dyet to the tuintie nynt day of Marche nixtocum, and to defist and ceis fra all forder proceeding pairin, quhill the said day ; takand new cautionn of this supplicant, for his compeirance to his tryell the said day, conforme to the ordour obseruet in fuche caices ; to the effect that in this meane tyme the saidis Lordis may haif convenient tyme and lafure to informe his MAIESTIE anent the estat of this matter ; and to attend his MAIESTEIS gracious Will and pleasour pairanent. For quibilk purpois the saidis Lordis Ordanis ane Missiue Letter to be writtin to his Maiestie.

EXTRACTUM de Libris Actorum secreti Consilij, f. d. n. Regis, per me Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

According to the quhilk ACT, and for obedience of the ordinance mentionet thairintill, the Justice continewis this dyet, with all tryell to be tane for the said cryme, to the said tuintie nynt day of Marche nixtocum.—Mr James Bruce, indueller in Edinburghe, becomes cautionner for his entry, &c.

(Mar. 29, 1622.)—COMPEIRIT Mr James Bruce, indueller in Edinburghe, as he that was cautionner for the said *Capitane Harie* his entrie, and producet

#### ACT OF SECREIT COUNSALL.

APUD HALYRUIDHOUS, xxvj die mensis Martij, anno dom. 1<sup>re</sup>. Vj<sup>te</sup>. xxij<sup>o</sup>. THE Lordis of Secreit Counfall, according to ane Warrant and directionn in writ, signed be THE KINGIS MA<sup>TIE</sup>, and this day presented vnto thame, Ordanis and Commandis the Justice, Justice clerk, and pair deputis to Defert þe dyet appointit to *Capitane Harie Bruce* for his compeirance befor thame, to vnderly the law for þe Slauchter of vmq<sup>le</sup> *Johne Hammiltoun*, and to defist and ceise frome all proceeding aganis him at this dyet. Quhairanent the Extract of þir presentis fall be vnto thame a Warrant. EXTRACTUM, &c.

JACOBUS PRYMROIS.

Followis also the tennour of HIS MAIESTEIS Letter and directionn to the Lordis of Secreit Counsell, anent the premisses.

JAMES R.

RICHT trustie and weilbelouit coufingis and counfalouris, and richt trustie and belonit counfalouris, We greit zow weill. We war pleased to wryte to zow about tuelf zeiris ago, concerning *Capitane Harie Bruce*, willing that no legall proceeding could be permitted to be vsed aganis him for þe Slauchter of vmq<sup>le</sup> *Jo<sup>n</sup> Hammiltoun*, in respect that þe samyn was committed out of oure dominiones ; AND now, being credible informed, that of late some haif gone about to reveive pat perfute, nochtwithstanding of our former commandement, We haif thought guid, by theis presentis, to will and requyre zow to discharge or Justice generall, Justice clerk, and pair depute, and all vyeris or Judges and officeris quhatfumeuir, to grant ony Summondis or proces against þe said *Capitane Harie* for þe foirsaid Slauchter, or in ony wayis presume to meddle or call him in questioun for þe samyn. And thus, most earnestlie recommending to zow special cair, We bid zow fairweill. GEVIN at o<sup>r</sup> manno<sup>r</sup> of Theobaldis, the xiiij of Marche, 1622.

According to the quhilk Act of Counfall and ordinance thairin contenit, the Justice DESERTIT THE DYET aboue writtin.

#### APPENDIX TO THE TRIAL OF CAPTAIN HARIE BRUCE.

[SEVERAL Cases have already occurred in the course of this Collection, illustrative of the state of the Law and practice, in Scotland, as to DUELLING, interchanging of CARTELS, and Slaughters committed in SINGLE COMBAT. The preceding Trial is one of much interest ; and the subject led the Editor to make some enquiries into various affairs of

honour, which had happened about the same period of this King's reign. Among others which have hitherto been noticed in this work, none appear to have excited greater interest than the quarrel between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY, which had nearly terminated in the most fatal manner. Although unconnected with the Case of *Captain Harie Bruce*, the following documents throw much light upon the opinions and practices of the Nobility and gentry in feuds and affairs of honour. It has been thought proper to preserve them in this place, as a memorial of transactions which tend to give a complexion and character to the spirit and genius of those times.]

I. LETTER from the Privy Council of Scotland to King James VI., relative to the CHALLENGE, &c. between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY.<sup>1</sup>

PLEAS YOUR MOST EXCELLENT AND SACRED MAJ<sup>ties</sup>,

As WE hope that your highnes hathe long since vnderstood of sum CHALLENGE OF COMBAT betuix the secound sone of THE LORD CRANSTOUN and SIR GEDEON MURRAY his sone, begun betuix the yowthes, vpon licht cawffis of verie small moment; and of the ordour taken be ws for preventing thame meiting, and calling of thame to there ansuer; and of the cowrse taken for there reconciliation, which was done in prefens of the hole COUNSALL, whereby all probabilitie of forder Challenging betuix the pairteis then, in appeirans, wes removed; so when, vpon priue informatioun maid to ws, sum fear was apprehendit of a new breache betuix the pairteis, by interchanging of CARTELLIS priuily betuix thame selfis, whowever we wald have bene forye that the foyleis of the childrene, or the hard event which followe suche accidentis, suld have empaired or diminishid the love and affection which heirtofore haith bene and doeth still continew betuix there parentis, (bothe of quhome haith the worthelie deserved, and have behaved thame selfis most dewtifullye and faithfulllye as thay have bene employed in your MA<sup>ties</sup> servis,) yit heirin we war so muche more iustlie moved to adverte to suche a noveltye, that efter a reconciliation once maid befor your MA<sup>ties</sup> COUNSELL, atter the keeping of your highnes peace suld be so lytle regairdit, or the ordour takin by ws for the obseruing therof so far contemned, as that any durst presume or attempt any new querrelling. Wherevpon both the fatheris wer charged to compeir, and bring with thame and exhibite there sones; which being accordinglie and dewtifullye obeyit by bothe of thame, efter a verie hard and exact tryall<sup>2</sup> takin, in regaird of the vnwillinges of aither<sup>3</sup> of the yowthes, vpon their first questioneing, to confesse what new maiter haid passed betuix thame; at last, it being found that THE LORD CRANSTOUNIS sone wes the Challenger, by a CARTELL, wrettin efter the reconciliation maid; we therupon committed him cloiste prisoner in the *Castle of Blaknes*. The other, whowever, being provoked, yit, in regaird he did obscure and conceale it, (being some presumption that he intendit to keip the meiting, and so to mak a breache of your MA<sup>ties</sup> peace,) wes adiudget to be committed in *Ed<sup>rd</sup> Castle*, in frie waerde, havinge haid fredome granted vnto him furth thairof within xlvij houis, and confyned within this Burgh and a myle about the same; where as, the said *Lord Cranstounis sone*, thir fourtene dayes past, haveing lyin cloiste prisoner in *Blaknes*, and in the mean whyle making suite often by Bill<sup>4</sup> to be releived, confessing, in most humble maner, his offence, and offering all satisfaccion that suld be joyneyd be ws, wes, by directioun, brocht from the place of his imprisonment by the *Lieutenant of your MA<sup>ties</sup> GAIRD*, and presented befor ws; where, in the presence of *Sir Gedeon Murray* and his sone, he did humblye, vpon his knies, craive pardoun of your MA<sup>ties</sup> for the offence done, and did intreat ws to be suitters for the same to your sacred highnes, on his behalf; haveing heirwithe confessed, also, the great wrong he haid done vnto your MA<sup>ties</sup> COUNSELL, in preswming to renew any Challenge efter reconciliation maid; and theirwith vttering most apparent signes of inward sorrow for offending of his so lovinge father, vnto whome he knew this his bypast behaviour wes so distastefull, as without any intercession he culd expect at his handes no favour. He then to the pairtie challenged, in pre-

<sup>1</sup> *Dennylne MSS.*, Advocates' Library, A. 2, 40.  
or 'Supplication' to the Lords of Privy Council.

<sup>2</sup> Enquiry; examination.

<sup>3</sup> Both.

<sup>4</sup> A Bill,

fence of bothe fathers, did there confes the wrong he haid done him, offering him what satisfactioun he wald demand; and did there protest, that howevir, in his yowthfull folye, he haid ascryed the last reconciliatioun as a maister extorted by constraint or command of THE COUNSELL, that yit nottheles this his present aggriment wes of meire affectioun, whiche he intendit all bypast eyllit<sup>1</sup> abolished to continew heirefter.

There wes sum jealousye in this mater takin by SIR GEDEON, as that the LORD CRANSTOUN, whowevir not a direct vrger of his sone to this *Challenge*, haid nottheles intendit to tak some advantage, to the prejudice of the credite and honour of him and his sone; and by the speiches delyvered by SIR GEDEON in our prejudice, we did conceive no les: Bot yit, that this imprefsioun, not being cleirit, might tak no deiper roote, we then did questioun THE LORD CRANSTOUN theirow; who, in prefrence of SIR GEDEON, by his great oathe, vntrekyred, did protest that he wes so far from countenaunceing or allowing of his sones actioun and cariage in this busynes, as on the contrarye, these sevin yeiris past, no incident whatfoever that haid interveyned haid so muche greivit him; and that he did assure him self that SIR GEDEON wes no les in conscience perswadit, since he haid foirwarned him, immediatlie vpon his knowledge of the first *Challenge*; and vpon his sones departour the last tyme from him, suspecting the humour of the yowthe, and yit, vpon his conscience, nocht knowing of any thing intendit, did of new certifie SIR GEDEON of his feasis. Whiche declaratioun, being delivered with so great attestatiounes by one not muche accustomed to fweiriog, did not onely remove all scrupule and jealousye frame SIR GEDEON, as he then affirmed, but left none of the beholderis vnatisfyed, and fullie perswadit of that Noble-mannis innocencie. THE COUNSELL, haveing taken ane verye strict and exact tryall of all circumstanceis whiche might inferre any the least suspitioun of THE LORD CRANSTOUNIS allowance, airte, pairte, or connivence at his sonis actioun, in the examining wherof, the farder that we did drywe we still fand the father the more cleare of all imputatioun; and, in our judgement, SIR GEDEON is fullie perswadit theirow; lykas, in our prefrence he did profess no les. And howevir, that heivpon all pairteis, bothe eldar and younger, wer reconciled, yit, becaws of the offence done to your MATIE by JAMES CRANSTOUN, in pressing to renew any querrell, after aggriment ones maid in prefrence of COUNSELL, we have theirowpon adiudget the said *James Cranstoun*, that betuix and the first of October nixt, he fall depart your MATIES dominiones, and remaine furthe of the same, and naway returne bak, vntill that space, his sone of all suche libertye, wheirbye any furder harme might be feared. And becaws there wilbe a necessitie of provisioun to be maid by the father for the sones furneising, in his going beyond See, theirowe we have committed him prisoner in his father's owin keiping, vntill the tyme of his departiure; who is to refraine, endureing that space, his sone of all suche libertye, wheirbye any furder harme might be feared.

AND albeit the reconciliatioun and aggriment wes fullie maid, so as in our judgementis there did not remayne the least scrupule of any furder grudge amonges the pairteis, yit the noveltye of the raice, and the haime whiche the impunitie thairof might produce, if vpon this example, others who haif bene formerlye reconcilit, wald now preise to renew and revieue there olde querrellis, we culd nocht, in our dewtye to your MATIE, suffer this to go vn timerished; whiche moved vs, (however earnestlie and humblye entreated by SIR GEDEON MURRAY to recall our Sentence and determinatioun aganis the said *James Cranstoun*), nottheles, for ane exemplarie punisshment, and efferying<sup>2</sup> of others to commit<sup>3</sup> the lyk insolence, to continew our resolutioun takin in the maister for his BANISCHEING, as said is. As lykwayis, ather of the two fathers bund and obleist, not onely for these there sones, betuix whome this CHALLENGE hes past, bot for all others of there sones come to mannis aige, everie ane of thame vnder the payne of Ten Thowfand merkis, that thay fall keep your MATIES peace, that no CARTELLIS salbe sent by the one to the other; and that the pairtye vnto whome any salbe sent, fall

<sup>1</sup> Offence; from *oculus* and *ledere*. Danish, *overlast*, molestia, incommodum.

*effrayand*.

<sup>2</sup> A strange form of speech, then in use, to express 'from committing.'

<sup>3</sup> Affraying; terrifying. Fr.

immediatlie, with all possible diligence, acquent the Counsell with the CHALLENGE sent to him ; otherwayes the payne foirsaid to be incurrit. And hoipeing that nothing heirin is left vndone, whiche in sic a caise wes requisite, and fullie expecting your MA<sup>ties</sup> good allowance and favorable contruction of our proceedingis, wischeing thay may prove good mettall when thay come to the tryall of the trew tuitchestone, vnto whome we do most humblye pray for the continuance of all happines, We doe rest

Your faced Maiesteis most humble and obedyant subiectis and feruitouris,

AL.CANCELL<sup>r</sup>. DUMBAR. WIGTOWN. KILSAYTH. J.PRESTOUN. ALEX<sup>r</sup>HAY. S.T.HAMILTON.  
EDINBURGH, the tent of August, 1610.

TO THE KING, his most sacred and excellent MAIESTIE, &c.

## II. LETTER, *the Privy Council to the King.*<sup>1</sup>

MOST GRATIOUS AND SACRED SOUERANE,

We ressaunt your MAIESTEIS Letter, twicheing your MA<sup>ties</sup> censure<sup>2</sup> of that lait committit ryott be the ERLL of LOTHEANE, and adent the fyne whilk your MAIESTIE wold haif to be imposed vpon him for that caus ; whairin, as your MAIESTEIS most excellent and rair wisdome in the censureing of that mater so iuditiously, by the circomstanceis sett down in your MAIESTEIS Lettre, and the direction gevin be your MAIESTIE anent the pvnishcing thairof, is verye weele warrantit with infallible groundis of iustice and reason ; yitt, becaus suche heich fynes in ryottis of this qualitey hathe not bene vsuall to be imposed vpoun any personis heir, we wilbe bauld to intreate your MAIESTEIS fauour, for a mitigationoun of the fyne to Thrie Thouand merkis, whiche in all oure opiniois is anferable<sup>3</sup> to the qualitey of the offence committed. He is full prissoner, and fall so continew whill the pairtye in some measour ressaue satisfactioun. And howeur this ouerficht, by<sup>4</sup> all oure expectationis, hes fallen oute in his persone, we hoip that this your MAIESTEIS censure of him, will mak him moir consideratlie and respectiuelie to looke to his future cariage and behaviour.

AND whereas your MAIESTIE doeth mervell that no tryale hes bene tane be ws of the infolencie committit be the LORD of CRANSTONIS sones aganis the ERLE of LOTHEANE, it will pleis your MAIESTIE we did nevir heir of ony complaint in that mater, the pairtye being sileut, and no informatioun gevin be him thairin : Alwayes,<sup>5</sup> we haif causit demand of him, yf he will persew ? He hes promeist to gif informatioun to your MAIESTEIS Aduocat, and to furneis probatioun ; whairin we shall tak suche exact tryall, and accordingle inflicte such pvnishment as the course of iustice, in suche a caise, requireth. And so, praying God to blisse your Maiestie with all contentment and happynes, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and feruitouris,

AL.CANCELL<sup>r</sup>. ARGYLE. MONTROSE. GLENCAIRNE. BALFOUR. GLASGOW.

EDINBURGH, xv May, 1611.

TO THE KING, his most sacred and excellent MAIESTIE.

## ‘Forcing’—‘Desloiring’—Rape.

Dec. 5.—ANDRO WISCHERT of Mwretoun.

Dilaitit of the schamefull forcing and desloiring of Bessie Leslie, dochter naturall to George Leslie of AuldCraig, aganis hir will, scho being ane young virgane nocht past ellevin yeiris of age ; committit in maner and at the tyme specifeit in the Letteris.

PERSEWARIS, Bessie Leslie, George Leslie of AuldCraig.

PRELOCUTOURIS in defence, Mr Laurence Mc Gill, Mr Roger Mowat.

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

<sup>2</sup> Judgment.

<sup>3</sup> Commensurate ; corresponding to.

<sup>4</sup> Contrary

to ; against. <sup>5</sup> Nevertheless ; at all events.



The pannell offeris him felff to the tryell of the Law for the cryme contenit in the Letteris; quhairof, as he allegit, he is innocent; and disaffentis fra all maner of continuatioun: And protestis, in respect of his compeirance this day and place, to vnderly the law, and that thair is noch ane sufficient number of Assyse present, that na Letteris be direct aganis him in tyme cuming; speciallie, in respect this perfute is malicioufflie intendit aganis him, being ane man of thre scoir ten yeiris of age, at the instance of the said George Leslie of Auldcreig, quha compeiris noch this day to assist this perfute.

THE Justice ordanit the Assysouris, lauchfullie summoned and noch compeir-and, to be vnlawit.— . . . . Levingstoun of Donypace become caution for the said Andro his entrie, vpone xv dayis warning, &c.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in pretorio de Edinburgh, xx Marcij 1622, per Magistrum Alexandrum Coluile de Blair, Jusficiarium; necnon per Dominum Walterum Stewart de Mytlo, ballivum Regalitatis de Glesgou, virtute cujusdam deliberationis Dominorum Secreti Consilij.*]

ASSESSOURS TO THE JUSTICE, appointit be the Lordis of Secret Counfall:

James Archebischope of Glesgou,<sup>1</sup> Sir George Erskyne of Innerteill,<sup>2</sup> Mr Jo<sup>n</sup> Weymes of Craigtoun.<sup>3</sup>

**Witchcraft—Sorcery—Charming—Incantation—Soothsaying—Abusing the People.**

Mar. 20, 1622.—MARGARET WALLACE, spous of Johnne Dynning, merchand burges of Glesgou.

Dilaitit, accused, and perfewit of the feuerall articles and poyntis of Dittay following. DITTAY *against the pannel*,<sup>4</sup> Margaret Wallace.

FORSAMEKILL AS, albeit be the devyne law of Almychtie God, fet down in his sacred woird, speciallie in þe 20 chap. of *Leviticus*, and 18 chap. of *Deuteronomie*, aganis þe vfearis and practizaris of WITCHCRAFT, SORCERIE, CHARMING, and SOTHESAYING, and against the SEIKERIS *of help and resposnsis of thame*, thraitning and denunceing to þe committeris of sic devillisch practizes the pwneischment of daith. As also, be dyuerse Actis of Parliament, and Municipall lawis of this Kingdome, allweill publeist and fet furth be his Maieftie, in his awin tyme, as in the dayis of his maist noble progenitouris; namelie, be þe 73 Act of the Parliament, haldin be his hienes darrest moپر, Quene Marie, of

<sup>1</sup> James Law, formerly Bishop of Orkney. In the year 1615, he succeeded Archbishop Spottiswood, the well-known author of the Church History published in his name; and died in November, 1632.

<sup>2</sup> Lord Innerteill, one of the Ordinary Lords of Session.

<sup>3</sup> An Ordinary Lord of Session.

<sup>4</sup> This Dittay contains only the four Articles or points of which the Assise convicted this victim of superstition. The nature of the remaining points are clearly defined in the very interesting pleadings, which the Editor has carefully preserved at length, in consequence of their marking, in a striking manner, the prevailing opinions held by the most eminent Scottish lawyers, on the subject of Witchcraft, &c. The subject is so extraordinary, that it was thought advisable to print the pleas and arguments without curtailment.



worthie memorie, it is expreslie provydit, statute, and ordanit, that na maner of persone or persones, of quhatsumeuir estait, degrie, or condition thay be of, presume, nor tak vpone hand to vse any maner of *Witchcraft, Sorcerie, or Negromancie*, nor gif thame selfis furth to haif any sic craft or knowlege, thair-by abuiseing his hienes people and subiectis; and that na persone seik any help, respons, or consultatioun at ony sic vsearis or abusearis foirfaidis, vnder the pane of death, alswell to be execute vpone the vsear and abusear, as to the seiker of the respons or consultatioun; as in the saidis Lawis and Actis of Parliament at mair lenth is contenit. NOCHTWITHSTANDING quhairof, it is of verritie, that the said *Margaret Wallace*, schaiking of all feir of God, reuerence or regaird to our souerane lordis autoritie and lawis, haifing consaует ane deidlie haitrent and evill will aganis *Cuthbert Greg*, couper, burges of Glesgow, becaus of certane speiches vtterit be him aganis hir and vmq<sup>le</sup> *Cristiane Grahame*, ane notorious Witche, and laittlie execute for Sorcerie and Witchcraft, at Witsonday a thre zeir syne, or pairby, the said *Margaret Wallace*, furth of þe malice of hir heart, promiseit and avowit that scho sould mak the said *Cuthbert*, within few dayis pair-estir, nocht of habilitie to work or wyn to him self ane caik of breid; accoirding to the quhilk devillische promiseit and damnable vow, the said *Cuthbert* schortlie thairestir, be the said *Margaret* hir devillische Inchantment, Sorcerie, and Witchcraft practizet be hir vpone him, he was visseit and grevoullie trubillit with ane strange vnnaturall and vnknawin disseis, maist crewallie and lamentabillie tormentit with continuall sueiting, be the space of fyftene dayis togidder, and pairby was brocht to sic infirmitie and waiknes, nane expecting his lyfe, that he was nocht hable to steir or move himself: And the said *Margaret*, as ane Witche and Sorcerer, being suspectit as the onlayer and causer of the said grevous and heaveie disseis, was sent for by certane of þe said *Cuthbertis* freindis, and requeisit to cum and vizeit him; and estir mony malicious refusallis maid be hir, in end scho come to him; at quhais cuming, scho, to manifest hir skill for his help, tuik him be þe schaikill-bane<sup>1</sup> with the ane hand, and laid hir vther hand vpone his breist, and without ony word-speiking, saif only be moveing of hir lipis, past fra him at that instant; and vpone þe morne pairestir, returning bak agane to the said *Cuthbert*, scho tuik him be þe airme and bad him aryse, quha at that tyme, and fyftene dayis befor, was nocht abill to lift his legis without help; zit scho, haifing vrget him to ryse, and taking him be the hand, as said is, brocht him out of his bed, and pairestir led him but<sup>2</sup> the hous; quha, immediatlie pairestir, be hir Sorcerie and Charmeing practizet be hir, walkit vp and down þe fluir, without help or suppoirt of ony; and fra that tyme quiklie recoverit and convalescit of þe former

<sup>1</sup> Wrist.      <sup>2</sup> To another apartment. In small houses, consisting merely of a 'but' and a 'ben,' the 'but' is the outermost room or kitchen; the 'ben' is a better sort of apartment, where, upon great occasions, company is received. The master and mistress usually sleep in the 'ben' or inner room.

grevous diseais : Quhairin þe said *Margaret* hes committit manifest Sorcerie and Witchcraft, in laying on and taking af seiknessis, be hir devillische meanis, vsf and practizet be hir vpone the said *Cuthbert*, in maner foirsaid. AND siclyk, about foure 3eir syne, or pairby, the said *Margaret Wallace*, being within þe duelling hous of *Alexander Vallange*, mercheand burges of Glesgow, and haifing fallin in ane grit and suddane seiknes within þe said hous, scho incontinent pair-etter, as ane consulter and seiker of help and resposnsis of Witches and Sorceraris, instrumentis of the Devill pair maister, send for vmq<sup>le</sup> *Cristiane Grahame*, ane notorious Witche, and quha is laitlie convict and brunt for hir devillerie and Witchcraft, practizet aganis dyuerse his Maiesteis guid subiectis, in Glesgow and pairaboutis ; quhilk vmq<sup>le</sup> *Cristiane Grahame*, haifing cum to the said *Margaret* to þe said Hous, scho tuik þe said *Margaret* furth pairof to hir awin buith,<sup>1</sup> quhair, be the said *Cristiane* hir devillische charmes practizet vpone the said *Margaret*, the said *Margaret* was curet of hir former suddane seiknes. And þe said *Cristiane Grahame*, with the said *Margaret Wallace*, cuming togidder bak agane to the said hous, and at þe turnepek-fute pairof, meitting with *Margaret Vallange*, dochter to the said *Alexander*, thay, at þe leif ane or vther of thame, laid þe said crewall seiknes, be pair Sorcerie and Witchcraft, vpone the said *Margaret Vallange*, ane 3oung infant bairne, quha immediatlie pairestir, in grit suddantie, fell down to þe grund, the haill power of hir body being tane away frome hir ; and with pitiefull sereiches, schoutis, and cryis, lying in that horrible payne, nocht hable to arryse, was tane vp be *Margaret Montgomerie* hir moþer, spous to þe said *Alexander*, and brocht in be hir in hir airmes to þe hous, and pair remanit with continuall schouteing and crying, nocht being of habilitie to move or gang be þe space of xxiiij houris pairestir, quhill<sup>2</sup> þe said *Margaret Wallace*, vsfent for, come in to vizeit hir ; lyk as, þe said *Margaret*, as sone as scho luikit vpone þe said bairne, declairit that it was the suddane transe or diseis that scho had tane the day befoir, and pairfoir willit and desyret the bairnes mother to send for *Cristiane Grahame* to cure and releif hir pairof : And the said *Margaret Montgomerie* haifing absolutelie refuist fa to do, saying to hir, ‘ scho wad commit hir bairne to God, and nocht mell<sup>3</sup> with the Devill or ony of his instrumentis,’ the said *Margaret Wallace* maist blasphemousslie and devillischlie anfuert agane, that þe said ‘ *Cristiane Grahame* could do als mekill, in that eirand, in cureing of that diseais, as gif God him selff wald cum out of Hevin and cure hir—and albeit þe deid-straik<sup>4</sup> war laid on, scho could tak it af agane—and without hir help pair could be na remeid to the bairne !’ Lyk as, schortlie pairestir, without the motheris knowlege, the said *Cristiane Grahame* was brocht in be þe said *Margaret Wallace* to þe said bairne ; at

<sup>1</sup> Her husband's booth, or shop.<sup>2</sup> Until.<sup>3</sup> Fr. *mêler*.<sup>4</sup> Literally, death-blow.

quhais cuming, the said *Margaret* liftit vp þe bairnes heid, and the said *Cristiane* tuik hir be þe schaill-bane,<sup>1</sup> and brocht þe bairne furth of hir bed, quhair scho was lying bedfast in grit payne of befoir; and pairefter, setting hir down vpon ane stuile, with some croces and signes maid vpon hir, and be vttering of dyuerse woirdis, (nocht knawin quhat thay war,) restoirit hir to hir helth. Quhairin, the said *Margaret Wallace* hes planelie declairit hir selff to be ane oppin and manifest consulter with the said *Cristiane Grahame*, ane notorious Witch, and ane seiker of help and responsis off hir, in her devillisch airt; allweill for cureing of her selff, as in practizeing with her, be Sorcerie and Witchcraft, to þe cure and help of þe said *Alexander Vallange* bairne, in maner and forme aboue writtin: And þe said *Margaret Wallace* is airt and pairt of þe devillisch practizes abouewrittin, practizet be the said *Cristiane Grahame*, at the time and in maner foirsaid. To the taikin,<sup>2</sup> the said *Cristiane Grahame*, the day of hir accusatioun and persute, being þe xxvj day of October last, 1621, willinglie, of hir awin accord, in Judgement, befoir hir convictioun, the Assyse being incloset, affirmet, and with oppin speache declairit, that þe said *Margaret Wallace* was airt and pairt with hir in all hir wicket deidis; and ressauit fra hir sum cullourit filk and worfet, for practizeing of Witchcraft against sic persones to quhome þe said *Margaret* buir invy; and quhan willinglie scho wald nocht geve þe said *Margaret* sic materiallis, the said *Margaret*, as scho saw thame in þe said *Cristianes* handis, wald violentlie reif þame from hir: Lyk as, vpon the morne paireftir, scho being at þe staik befoir hir executioun, ratifeit and renewit the haill premisses to be of verritie. ITEM, a tua 3eir syne, or pairby, *Margaret Mure*, dochter to vmq<sup>le</sup> *Archibald Mure*, burges of Glesgow, being hevelie diseasit with ane strange and vncouth seiknes, and nocht liklie to haif recoverit pairof, the said *Margaret Wallace*, geving out hir selff to haif skill in þe cure of the said seiknes, scho come to the duelling-hous of *David Scheirar*, couper, burges of Glesgow, and pair finding *Marioun Mure*, his spous, soper-sister to the said *Margaret Mure*, lamenting and weiping for the said *Margaretis* seiknes, the said vmq<sup>le</sup> *Cristiane Grahame*, be þe said *Margaret Wallace* hir devyse and directioun, a littill paireftir, come to þe said hous; and þe said *Margaret Wallace*, being acquentit with þe caus of þe said *Mariones* greif, desyret þe said *Cristiane Grahame* to help þe bairne; quhais ansuer was to the said *Margaret Wallace*, that the said *Margaret Wallace* and scho behovet to go first to the place aggreit vpon betuix thame, quhilk place was knawin to þe said *Margaret* hir selff: According to the quhilk appointment, the said *Margaret Wallace*, with the said *Cristiane Grahame*, past, that same nycht, betuix ellevin and tuelf houris, vnder silence and clud of nycht, to the 3aird of *James Fynlay*, burges of Glesgow, quhair thay remanet the space

<sup>1</sup> Wrist.<sup>2</sup> In token, testimony, or proof whereof.

of ane hour togidder, practizeing Sorcerie and Witchcraft, for cuiring of þe said bairne, and taking the said seiknes af hir, be vnlauchfull meanis; lyk as, þat samyn nycht, the said seiknes wes tane af þe said bairne, and scho conualeffit þairof. To the taikin, the said *Margaret Wallace*, in hir going to þe 3aird þat nycht, tynt hir pantoun;<sup>1</sup> lyk as, þe said *Marioun Mure*, for þe foirsaid cuir, gaif to þe said *Margaret Wallace* and *Cristiane Grahame* ane guise,<sup>2</sup> with ane pynt of wyne, within aucht dayis paireftir. ITEM, a tua 3eir fyne, or pairby, ane discoird haifing fallin out betuix *Alexander Boig*, smyth in Gorballis, and þe said *Margaret Wallace* and *Johanne Dynning*, hir husband, about the bying of ane irne studie<sup>3</sup> to *Williame Weymes*, mercheand burges of Glesgow, ane complant was maid vpon him be þe said *Margaret* to *Sir George Elphingstoun of Blitheswoid, knyf*, his maister; and becaus scho ressaunt na amendis at þe said *Sir George* handis, becaus he tryt<sup>4</sup> hir complement to be vniust, and only maid vpon malice, the said *Margaret*, maist impudentlie, in presens of þe said *Sir George* and *his Lady, James Pollok*, and *George Thomefone*, his tennentis, oppinlie thraitnet and avowet to do to þe said *Alexander Boig* ane evil turne: ffor effectuating quhairof, scho, be hir Devillerie, Sorcerie, and Witchcraft, prepairit and practizet be hir, laid ane crewall and feirfull seiknes vpon . . . . . *Boig*, the said *Alexanderis* bairne, of foure 3eir auld, within few dayis paireftir; quhilk bairne, with continuall sueiting and vomeiting, deceffit within tua dayis thaireftir. AND last, þe said *Margaret Wallace* is, and hes bene thir aucht or nyne 3eir is bygane, ane cowmoun consuler with Witches, speciallic with the said *Cristiane Grahame, Katharene Blair*, and vther Witches and Sorceraris, and ane seiker of help and resposnsis of thame, aliweill for hir awin cure and releif of dyuerse seiknesses and diseassis quhairwith scho hes bene visseit, as for þe cure and help of hir freindis and acquentance in pair seiknesses and diseassis; as also, for þe overthrow and distructioun of dyuerse persones, men, wemen, and bairnes, be Sorcerie, Witchcraft, Charmeing, and Incantatioun, and vperis devillisch and vnlauchfull meanis, expresse prohibeit and forbidden be the Lawis of Almychtie God, and Municipall Lawis of this kingdome; thairby abuseing the people, and puting thame in grit dreddour<sup>5</sup> and feir of hir and of hir devillisch practizes, vset and practizet be hir aganis sic of our fouerane lordis peceable subiectes to quhome scho hes borne ony grudge, or vtterit ony malicious thaitnings. BE the committing of þe quhilkis perticular practizes aboue writtin, as also be the hanting, vseing, and frequenting of þe vnhappie socieatie and companie of þe said Witches and Sorceraris, instrumentis of the Devill, fauld and gevin over to him for committing of all maner of mischeif, and in assisting and

<sup>1</sup> Slipper. Fr. *pantoufle*.<sup>4</sup> Ascertained upon examination.<sup>2</sup> Goose.<sup>5</sup> Dread; terror.<sup>3</sup> Purchasing of a smith's stithy, or anvil.



taking pairt with thame in þe practize of all foirt of Witchcraft and Sorcerie, and in the feiking of help and responffis of thame, baith for cureing of vnnaturall and vnkawin feikneffes, and for þe malicious inflicting and laying on of dyuerfe feirfull and horrible feikneffes and difeaffis vpone dyuerfe perfones, for pair overthrow and distructioun, in maner foirfaid, the faid *Margaret Wallace* hes contravenit the tennour of þe faidis Lawis and Actis of Parliament, and incurrit the panes and pwneifchment of daith fet doun pairintill; quhilk aucht and fould be execute vpone hir, with all rigour, to þe terrour and example of vtheris heireftir.

PERSEWARIS, Sir Williame Oliphant of Newtown, kny<sup>t</sup>; Alexander Boig, fmyth in Gorbellis; Johnne Robertoun, querriour, burges of Glesgow, for thame felffis, and as informeris to his Maieftis Aduocat of the haill pointis of Dittay.

PRELOCUTORIS in defence, Johnne Dyrning, mercheand in (Glesgow); Mr Alexander Peiblis, Mr Robert Lermonth, Mr Thomas Nicolfone, younger, (Advocates.)

COMPEIRIT Sir Walter Stewart of Mynto, kny<sup>t</sup>, and productet ane delyuerance of the Lordis of Secreit Counfell; quhair of the tennour followis.

SUPPLICATIOUN *of Ludouik, Duik of Lennox.*

MY LORDIS OF SECREIT COUNSALL, vnto 3our Ll. humlie meanis and schawis I 3our feruitour, LOUDOUK DUIK OF LENNOX, lord and heritabill Bailzie of the Regalitie of Glesgow, and Sir Walter Stewart of Mynto, kny<sup>t</sup>, my depute of þe faid Bailserie: That quhair, þe tuentie day of Marche instant is appointit to Margaret Wallace to compeir befor the Justice, in the Tolbuth of Edr, to vnderly the law for sum poyntis of Witchcraft laid to hir charge: And quhair as, fcho duellis within þe boundis of my Regalitie, and fua is fubiect to me, my office and Jurifdictioun, 3it I will nocht conteft in that poynt, nor fand out aganis þe courfe tane be 3our Ll. for hir tryell; bot for the preferuatioun of þe liberteis and privileges of my office and Jurifdictioun, my humble delyre and Petitione vnto 3our Lo. is, that my faid depute may be admittit to fit with his Maieftis Justice in the tryell of the faid Margaret, and to judge pairn with him accordingle—and 3our Lo. anfuer.

[*Followis the Lordis delyuerance, vpone the bak of the foirfaid Supplicatioun.*]

APUD ED<sup>m</sup>, xix *Murcij*, I<sup>m</sup>. Vj<sup>e</sup>.xxij. FIAT ut petitur. AL. CANCELL<sup>r</sup>. MAR. MELROIS.

Vpone the production of the quhilk delyuerance, the faid Sir Walter askit instrumentis.

THE JUSTICE Ordanit the faid *Sir Walter* to fitt doun with him, with the remanent Affeffouris.

THE Dittay being red, and *the ffirft Article* thair of, concerning hir laying on of ane grevous feiknes vpone Cuthbert Greg, couper, burges of Glesgow, be Sorcerie and Witchcraft, and aff-taking of the faid feiknes be the lyk devillifche and vnlouchfull meanes; as the ffirft Article beiris; quhilk the pannell haillilie denyit.—It is thaireftir allegit be Mr Alexander Peiblis, as prelocutour for the pannell, that the Dittay and ffirft Article thair of can nawayis be put to the knowlege of ane Affyse; becaus it is nocht lybellit, nor fet doun in the Dittay, that the fact lybellit was done be the pannell, or the feiknes inflictit be hir. Nixt, it is nocht lybellit *quibus mediis, quibus modis, et quibus malis artibus*, the famyn was accomplifchet; becaus Witchcraft can nocht be accomplifchet as



Witchcraft, bot<sup>1</sup> be characteris, signes, croces, poyfonet watteris, poyfonet afches, poyfonet oyles, powderis, figures, pictouris, poyfonet herbis, ruittis, venenous oyles, woirdis, speiches, by incalling and invocation of the name of Sathan, quha, at the accomplieishment quhairof, hes promeift to geve his prefens to thame; without the quhilkis, or ony of thame, Witchcraft can nocht be accomplieſchet: Nather is it lybellit, that this fact and deid allegit is committit be the pannell, be ony of thir meanis: And ſa, that Article can nocht pas to ane Affyſe.—To the quhilk it is anfuerit be my lord Aduocat, that the allegeance aucht to be repellit, in reſpect of the lybell and haill poyntis thairrof, tane *conjunctim*; be the quhilk it is affirmet *poſitiuè*, that this ſeiknes was laid on be the pannell vpone *Cuthbert Greg*, be hir Sorcerie and Witchcraft; and he purget, and releuit, and reſtoirit to his helth be hir Sorcerie and Witchcraft: And ſa, the Dittay, as relevant in that poynt, ſould pas to ane Affyſe.

It is forder allegit be the pannell and hir prelocoutouris, that the woirdis ‘laying on and taking af’ ar altogidder generall, and can nocht pas to ane Affyſe, nevir condifcending in ſpeciall quhat was done; as is ſet down in the former definitionioun of Witchcraft.—To the quhilk it is anfuerit be the perſewaris, that thair is no neceſſitie to condifcend vpone the forme of the on-laying and aſtaking of ſeikneſſes, quhidder be woirdis, signes, croces, and vtherwayis, the perſewaris nawayis being previe thairto, nather can thai be vrget to condifcend thairupoun, ſeing the Witches, practizeris of that vnlauchfull and godles meane, ar beſt acquentit with the poyntis of thair awin craft: And thairfoir, it being lybellit, relevantlie, that, be hir Sorcerie and Witchcraft, the ſeiknes was baith laid on and tane af be hir, the ſamyn ſould pas to the knowlege of ane Affyſe, as relevant.

It is forder allegit be Mr Thomas Nicolſone, as prelocoutour for the pannell, that of the Law *multa indicia debilia nunquam faciunt indicium indubitatum, quia nunquam ea que natura ſunt dubia poſſunt facere rem indubitatum; ut multa integra vnum ſanum, multa non alba vnum album*. This is the opinioun of *Pharina cius*, and of *Debrio* in his 5 ſect. pag. 728; at the leiſt, except that thair war ane coherence and neceſſar ſubordinatioun of *illa multa indicia*. Bot ſa it is, in this poynt of dittay, thair is confuſet ſeuerall articles, quhilkis, *per ſe*, ar *indicia debilia*; and thair is na coherence amangis thame ſelfis, in ſa far as the promeiſſing to do him ane evill turne, and the ſubſequent ſeiknes, ar nawayis coherent, nather can the ane follow vpone the vther. *SECUNDO, circumſtantie indictionum ſine quibus ad inquisitionem non proceditur ſunt quis, quando, ubi, cum quibus, quomodo circumſtantia, quomodo eſt huic uſui, et quibus instrumentis factum eſſe dicatur, et ſint pulveres, vnguina determina mortuorum*. And quhair it appeiris to be allegit in the reply, that *de medijs non poteſt conſtare*, becaus

<sup>1</sup> Excepting; unless.

they are knawin only to the Witches and thair Maister, thair is heirin ane manifest equivocatioun, in sa far as be the determinatioun of the haille traiteris *de Veneficijs, hec duo sunt disperata signa media*; it is grantit *sine medijs*, confiding vpon *medijs*, a lybell may stand relevant; becaus *hec SATANA stragemata quibus ille naturaliter vtatur medijs sunt plerumque incognita*; bot of all necessitie, to the lybelling of ane deid of Witchcraft, *accedere oportet superflitionem vt dicatur vsurpasse res aliquas facta vel verba que sapiant incantationem vel dicatur nominatim exercuisse actum aliquem qui ex communi maleficiorum praxi ad malificium dirigitur*. This is DELRIO's opinioun, ceitting the haille treiteis *de Veneficijs*, in his thrid sect. pag. 711; et libro 5, sect. 16, pag. 774. And the premisses, sa authorizet be the haille learnet wryteris, ar of infallible verritie; for this reafone, becaus thair can be na deid of Witchcraft lybellit relevantlie, bot man<sup>1</sup> be sa lybellit, as it is possible, *per rerum naturam*, to the Assyse to cognosce thairupovn; bot it is subfumet, that except sum sensible actioun or signe, or vther thing be lybellit, it is impossible to the Assyse to cognosce thairupoun, *quia nihil est in anima quod non sit prius in sensu*.

The persewaris repeittis thair former ansuer, foundit vpon the haille memberis of the Dittay, tane *coniunctim*; quhilkis memberis coheris verrie pertinentlie—a promeis to inflict the seiknes, and laid on—the on-laying of the seiknes, be Inchantment, as the Dittay beiris—and the taking be the hand of the persone vizeit with the seiknes, and releifing him thair of be moveing of hir lipis, &c.: And as for the tryell of the Assyse, the deidis ar verrie publict and knawin; and referris the verritie thair of to the Depositiones of the Witneses alreddie tane, and to be tane in that matter, and to the Assyse awin knowlege.—The pannell adheris to thair former exceptioun, vncondiscending in speciall, *quibus modis, quibus medijs, et quibus malis artibus* to infer Witchcraft.

The pannell quarrellis that pairt of the lybell be the quhilk it is said, that scho inflicted the seiknes be Witchcraft, nocht condiscending quhat maner of Witchcraft was vsit for inflicting thair of. And quhair it is said, that the memberis coheris, becaus of a promeise and the effect following, the pannell oppones the authority of *Pharinatius*, confirmet be *Delrio*, in the 718 page of his 3 sect.; quhair it is said, *immo mine<sup>2</sup> delictum subsecutum inimicia non sufficiunt ad penam sortilegij; quia huiusmodi indicia sunt tantum remota*. As lykwayis, a stronger authoritie, pag. 717; quhair it is affirmet, and bakit with resson,<sup>3</sup> in thir termes, *mine subsecute damno—et si male fame sit minus indicium, sunt inferum ratio potest enim pars offensa alios habere inimicos qui hoc tegmine preter scelus perpetrarunt*: Nather is thair necessitie to affirme *alium fecisse*; becaus the possibilitie of ane instance aganis ane generall reule evinces the incertantie

<sup>1</sup> Must.<sup>2</sup> Threatening expressions.<sup>3</sup> Backed, seconded by argument.

thairof: *Additur, quod in criminalibus nunquam ex presumptionibus proceditur ad condemnationem, sed probationes debent esse luce meridiana clariores.* And as to the vther pairt, concerning the af-taking of the feiknes, thair is na deid lybellit bot ordinarie deidis of vizeiting a patient, be a freind or a phisition, to wit, graipping of the pulfes or chaikill-bane and breift, quhilk is the steiring of the spreittis-vitall, and is the ordiner behaiour vsiet and practizet be the visitouris of ony patient; and becaus that eftir thais ordiner remedeis the patient arraise, and that scho maid him to ryse, *est elenchus dilirij.* And forder, the pannellis former authorities man<sup>1</sup> be respectit, becaus thair is na contrair practeis productet.—My lord Aduocat repeitis his former anfuert.

THE *Secund Article of Dittay* being red, and the said Margaret being accuset thairby, viz. that vpone a discord fallin out betuix hir and *Johne Robertoun*, querriour, a thre yeir syne, scho thraitnet and avowit to be avengit vpone his fleische; quhairvpone a diseis was inflictit be hir vpone him, quhairin he yit continewis, and that be hir Sorcerie and Witchcraft practizet be hir vpone him.—It is allegit be the pannell, aganis the said secund Article of Dittay, that the samyn is nawayis relevant anent *Johne Robertoun*; being altogidder coincident with the former Article, and cayreing thairwith far les probabilitie nor<sup>2</sup> the former; ffor thair is na member thairof relevant to infer Witchcraft, for sa mekill thairof as consistis in fact, tuiching *Robertoun* his inhabilitie to work this thre yeir bygane, throw the inhabilitie of his feiknes, quhilk is manifest fals in the self: ffor it is evident, be oculer inspectioun, to luik to him presentlie at the bar, that he hes sufficient strenth of body to work: As also, it fall be verifeit, gif neid beis, that he, being an querriour of his craft,<sup>3</sup> hes wrocht, thir dyuerse yeiris bygane, to dyuerse persones, namelie, to *Sir George Elphinstoun of Bliheswoid*, *George Anderfone in Woidfyde*, and to the pannell, be wyning of stanes furth of the querrell;<sup>4</sup> and repeitis the former allegiance maid against the first Article. *Igitur, &c.*—To the quhilk it is anfuert be the persewaris, that the allegiance aucht to be repellit, in respect of the Dittay, quhilk is relevant in it self. And as to that point consistin *in facto*, the persewar referris the tryell thairof to the Witnesfes productet and to be productet, and to the persones of Assyse, quha aucht to cognosce vpone the haille poyntis of Dittay, consistin *in facto*.

It is forder allegit be Mr Thomas Nicolfone, that the said secund poynt of Dittay is altogidder irrelevant; becaus of the Law, *indictum minarum et damni subsequenti*, quhilk is the only substance of this point, and is nawayis relevant of the Law, *quoties delictum ex intervallo dicitur subsequentum*; bot sa it is, in this Dittay, it is lybellit, that the thraitning of *Johne Robertoun*, and the inflicting of the diseis, was within this yeir and this half, quhilk is *ex intervallo*; And

<sup>1</sup> Must.<sup>2</sup> Than.<sup>3</sup> To his trade.<sup>4</sup> Stone quarry.

quhair as, it appearis that this feiknes is inflicted immediatlie eftir ane vther thraitning maid to the wyfe of *Johnne Robertoun*, *nullo modo relevat*; becaus *et mine et damnum subsecutum faciunt indicium, oportet vt sit eadem persona cui mine et damnum dicuntur inferri*; sa that the thraitning to the wyfe, and inflicting feiknes vpon hir husband, is na relevant poynt. *Item, mine et damnum subsecutum nullum omnino faciunt indicium, nisi mine fuerint specificate, seu de eodem quod subsecutum est in specie*; ffor ane general thraitning to do ane evill turne, nocht condiscending vpon the speciall evill turne, can haif na coherence with ane speciall skaith following thairaftir, to mak it *venefice*; becaus *mine et damnum subsecutum ar comptit aliquale indicium maxime respectu predictionis*, as ane maner of suthesaying; and that can be comptit na suthesaying quhilk ony man could lykways foirtell by<sup>1</sup> ane Witche, viz. *predicere de genere et subsecutum esse speciem*.—My lord Aduocat adheris to his former ansuer.

THE *Thrid Article of Dittay*, anent ane discord that fell out betuix the pannell and *Jonet Harper*, and of ane thraitning and vow maid to mak the said *Jonet Harper* in a worfe cais nor<sup>2</sup> hir poysonet fvyne; and anent ane feirfull feiknes quhairin scho schortlie thaireftir fell be the pannellis Sorcerie, Incantation, and Witchcraft—It is allegit be the pannell and his prelocoutouris, that the thrid Article is nawayis relevant, nevir condiscending quhat maner of Incantment scho was bewitched with, and be quhat factis and deidis this was done, and quhat was vsed be the pannell for that effect.—It is ansuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay.

THE *ffourth Article of Dittay*, anent the pannell hir being within *Alexander Vallange* hous, quhair scho fell in ane grit and suddane feiknes; and hir sending for vmq<sup>16</sup> *Cristiane Grahame*, ane notorious Witche, and consulting with hir for hir relief of that feiknes; and eftir the said *Cristiane* hir cuming, of the pannellis passing out of the said *Alexander Vallange* hous to hir awin buith, with the said *Cristiane*, quhair scho was charmet and curet; and thaireftir the same feiknes, be devillerie and Witchcraft, cassin vpon *Alexander Vallange* bairne; and anent the said *Cristiane Grahame* hir cuming with the pannell to the bairne, and cureing hir, be taking af agane of the said feiknes; and for airt and pairt of the af-taking and on-laying of feiknes, and of af-taking the samyn agane af the said bairne with the said *Cristiane*; and consulting and practizeing of Witchcraft with hir for that effect, &c. The samyn being red, and the pannell indytit thairof—It is allegit be the pannell and hir prelocoutouris, aganis the said fourt Article, that the first pairt thairof is nawayis relevant, beiring that scho contractit ane suddane diseise, and for cureing thairof, send for *Cristiane Grahame*, ane notorious Witche, except it had bene exprellie lybellit, that the tyme the

<sup>1</sup> Besides; *forbye*; independent of.

<sup>2</sup> Than.

pannell fend for hir, scho was ane notorious Witche, of the pannellis knowlege, and that scho fend for hir as ane notorious Witche, *ad hunc effectum*, to cure hir of that diseis: And it is nocht lybellit nather, that quhan *Cristiane* come, the pannell consultit with hir as with ane Witche; ffor, it is supponit<sup>1</sup> that ane Notter<sup>2</sup> war hangit for ane fals Instrument, and he had gevin the excipient ane Seifing tuentie yeiris afoir, is that Seifing, gevin sa lang befoir, fals? Na mair can that be ane poynt of Dittay, the pannellis sending for *Cristiane Grahame*, except scho was knawin to hir at that tyme to be ane Witche. The secund member is nawayis relevant, beiring that scho curet the pannell in the buithe, for that makis ane contradictioun, that scho was deidlie diseaset quhan scho come, and thaireftir raife and past to the buithe, and thair was curet. The thrid member is nawayis relevant, beiring that the pannellis seiknes was cassin on the bairne, being lybellit that the samyn was done be the pannell, or be *Cristiane Grahame*, or be ane or vther of ws (thame). The fourt member is nawayis relevant, becaus it is confessit in the Dittay, that the pannell was curet in the buithe; and thaireftir come out of the buithe to the hous, and cuist it on the bairne: Gif the pannell was curet in the buith, quhair was the seiknes? *Hoc est impossibile*. As to the rest of the poyntis of that Article, that scho come doun to the hous, vsent for, quhair the bairne was; that can be na poynt of Witchcraft. That the pannell declairit it was the seiknes scho had, *non relevat*, except it had bene verifeit and tryt<sup>3</sup> that hir self had bene bewitchet. And as for that member thair of, desyreing to fend for *Cristiane Grahame* to help her, *non relevat* to infer Witchcraft, except scho had knawin the said *Cristiane* to be ane notorious Witche. As to the rest of that Article, quhilk the pannell alto-gidder denyis, vpon hir aith and conscience, quhan the judge demandis hir; and albeit it war grantit, yit it is na poynt of Witchcraft, bot rather Blasphemie, and blasphemous speiches, quhilk can nocht coheir with this lybell of Witchcraft; bot is content, quhan evir scho fall be tryt and fund gilty, to vnderly the pwneifchment of the lawis of the cuntrie. That poynt of the Dittay, that *Cristiane Grahame* come at the pannellis desyre and curet the bairne, is nocht relevant to infer the cryme of Witchcraft aganis the pannell, except the samyn had bene done at hir speciall command, *malis artibus et veneficis artibus*, for the hailling of hir. It is nocht lybellit that the samyn was done be the pannell, or at hir command, or be ony Sorcerie or Witchcraft vsed be hir for that effect: And as to *Cristiane Grahame*, quhat scho did, the pannell can nocht be pwneift thairfoir. And as to *Cristiane Grahames* pretendit Confessioun, quhilk is nocht productet, it can nocht be respectit, *quia est dicta socia dicti criminis*; nather is the samyn relevant, albeit it war trew, as it is nocht, ffor hir confessioun can nocht

<sup>1</sup> Supposed, or argued, for the sake of illustration.    <sup>2</sup> Notary public.    <sup>3</sup> Proved; established legally.



work aganis Margaret Wallace, *quia dicit se esse sociam dicti criminis; et dicente se sociam criminis non creditur, quia ex suo dicto est infamis et sic testimonium perhibere non potest; precipue, quia malefici, venefici qui ad sortilegos divinosque concurrunt nullatenus ad testimonium sunt admittendi.* And quhair as it may appeir, that in crimine venefici, vt in casu excepto, etiam infames admittuntur; hoc verum non est nisi cum duplici cautela, vna quod confessio infamis sit iurata non enim ei creditur nisi testi, et non testi nisi iurato: The secund cantell is, non fidem facit dictum socij nisi confirmatum sit in tormentis. Dammoderius, Tit. de Reprobatione.

The persewaris allegis, that the haill allegeances proponit aganis the ffourt Article aucht to be repellit, in respect of the Article and haill memberis thair of, tane *coniunctim*; and quh air it is allegit that the Article is nocht relevant, except it war affirmet that *Margaret Wallace* knew *Cristiane Grahame* to be ane Witche, that pairt aucht to be repellit, in respect of the expres woirdis of the Dittay, beiring, ‘ that the said *Margaret Wallace* affirmet that *Cristiane Grahame* had als grit knowlege as God him selff, and as gif God him selff wald cum out of Hevin and cure hir! Albeit the deid-ftraik war laid on, scho could tak it af agane!’ As to the argumentis proponit aganis that pairt of the Dittay foundit vpon the Depositiones of *Cristiane Grahame*, that pairt is verrie relevant, and the argument is only proponit aganis the probatioun; to the quhilkis argumentis sufficient answers fall be maid the tyme of the verificatioun of that poynt of the Dittay; at quhilk tyme, it fall be maid cleir, baith be Law and practique, that in matteris of Treffone and Witchcraft, and vtheris caices exceptit, weimen, *socij criminis*, and infame<sup>1</sup> persones ar admittit Witneffis.

The pannell, adheirand to hir former allegeance, affirmes that that member of the Article of Dittay is nawayis relevant, becaus scho is summond to answere to ane lybell of Witchcraft, and that pairt of the lybell inferrit be the persewaris repeiting thais odious and vnrehairfable speiches, as ane argument of the pannellis knowlege of *Grahame* to haif bene ane Witch, the samyn ar woirdis of Blasphemie: Quhilkis being plane Blasphemie, (nocht granting the speiking thair of,) scho is nocht haldin to answere to that pairt thair of, in this persute; nather dois the lybell conclude ony thing aganis the pannell, to infer hir to haif knowlege that *Cristiane Grahame* was ane Witche, (vnder proteflatioun, the pannell denyis thame altogidder to be of verritie, as of befor,) yit the samyn being bot woirdis, can nocht infer ane cryme of Witchcraft, it nocht being confessit be the pannell to be trew; nather can it furneise a Dittay of Witchcraft, quhairvpone scho may be accuset, nor repute nor estemit a Confessioun, nocht being maid iudiciallie, bot allegit spokin be ane wyfe to ane vther, vpone certane

<sup>1</sup> Persons declared, or considered, infamous by law.

altercationes arryfeing amangis thame. *Igitur, &c.* And to the anſuer *de ſociis criminum*, thair is na anſuer maid ſpeciallie to that pairt, quhair it is ſaid, *non creditur ſocij teſtimonio, niſi confirmatur tormentis*. As to ony Confeſſioun maid be *Grahame* eftir hir convictioun, *nihil operatur, et non relevat* to put the pannell to ane Aſſyſe thairfoir.

THE *ſyft Article of Dittay* being red, anent the cureing be Sorcerie and Witchcraft of *Margaret Mure*, dochter to *vmq<sup>le</sup> Archibald Mure*, of ane ſtrange and vnknawin diſeaſe, be taking of the ſaid ſeiknes of the ſaid bairne, be the help and aſſiſtance of *Criſtiane Grahame*, and conſulting with the ſaid *Criſtiane* thairanent, being a notorious Witche; the ſaid *Margaret Wallace*, with the ſaid *Criſtiane Grahame*, haifing paſt, vnder ſilence and clud of nycht, to the 3aird of *James Fyndlay*, burges of Glegſow, quhair thay abaid togidder the ſpace of ane hour, practizeing Sorcerie and Witchcraft for cureing the ſaid bairne, and taking the ſaid ſeiknes of hir; as at lenth is ſet down in the ſaid ſyft Article: And the ſaid *Margaret* being accuſet thairof—It is allegit be the ſaid *Margaret* and hir prelocutouris, that the ſaid *ſyft Article* is nawayis relevant, nor na pairt thairof; nevir condeſcending in ſpeciall quhat ſcho did, quhat Sorcerie or Inchantment ſcho vſet or applyit, or quhat was practizet be hir for taking of the ſeiknes of the bairne; nor yit condeſcending vpon the meanis of Sorcerie or Witchcraft, quhidder be ſignes, woirdis, croces, incantatioun, invocatioun of the Devillis name; without the quhilkis, Witchcraft can nocht be accompliſhet.—It is anſwerit be the perſewaris, that the allegiance aucht to be repellit, in reſpect of the article of Dittay, beirand the ſeiknes to be tane of the bairne be the pannellis Sorcerie and Witchcraft, practizet be hir and *Criſtiane Grahame*, for the bairnes help, and cure thairof be vnlauchfull meanis.

THE *Sext Article of Dittay* being red, and the ſaid *Margaret* accuſet thairof, viz. that ſcho, haifing conſauet ane deidlie haitrent aganis *Robert Mure*, mercheand burges of Glegſow, thraitnet him with mony outragious ſpeiches, ſaying to him, ‘Thow ſall gang hame to thy hous, and ſall bleid at thy noiſe ane quart of bluid, bot ſall nocht die quhill (*until*) thow ſend for me and aſk me forgiveness;’ quhairvpon ſchortlie thaireſtir, be the ſaid *Margaret* hir Sorcerie and Witchcraft practizet vpon him, he contractit ane grevous and ſuddane ſeiknes, quhairof he deceiſſit; quhilk is confeſſit in preſens of Witneſſes—It is allegit be the pannell and hir prelocutouris, aganis the *Sext Article*, that the ſamyn is nocht relevant, for the particular anſweris and argumentis maid to the hail Articles of beſoir, quhilk the pannell repeittis, and everie ane of thame, as ane ſufficient allegiance, *brevitatis cauſa*, to ſtay the ſamyn to pas to ane Aſſyſe: And as to hir pretendit Confeſſioun, maid in preſens of Witneſſes, can nocht be reſpectit, becaus *eſt Confeſſio extra-judicialis que non tenet conſitentem niſi in judicio ſuc-*

*tam* : And albeit it war grantit, as it is nocht, that scho maid ony sic Confessioun, scho may refeill<sup>1</sup> thairfra ; and sa is na relevant poynt to pas to ane Assyse ; quihilk is confirmet be the authoritie of SALICOTUS, L. finali, codice de *Probationibus* ; *probationem seu Confessionem sponte factam potest reus revocare, et confessus non est condemnandus nisi constet de corpore delicti, id est damnum datum esse malificium facinoris.* Libro I de Contraverfiis, cap. 28. *Item*, we haif ane expres text, Lege prima, § Divus, ff. de Questionibus ; *Confessiones reorum pro exploratis facinoribus haberi non oportere, et Confessio extrajudicialis non sufficit ad qualificationem delicti.* JULIUS CLARUS, Lib. 5, § finali, quest. 55, num. 2. *Immo Confessio facta coram Judice non sedente pro tribunali est tanquam facta privata et ex ea reus non potest condemnari.*

It is answert be the persewaris, that the saxt Article is verrie relevant, being tane *coniunctim*, becaus it contenis ane promeis to do the deid, the doing of the deid, and the confessioun thaireftir of the doing thairrof. And as to the Confessioun, that the samyn is maid extra-judiciallie of ane cryme committit, that extra-judiciall Confessioun is lauchfull and valid to condampne the pairtie quahaes confessit. Dammoderius, cap. 54, num. vltimo.—It is duplyit be the pannell, that the samyn is contrair to the text, and Dammoderius speikis na thing of ane extra-judiciall Confessioun ; and repeatit thair particular answert maid to the particular Articles of Dittay ofbefoir.—The persewar also repeatit the hail particular answert maid of befor.

THE *Sevint Article of Dittay* being red, and the pannell accuset thairby, that a flyve or sex yeir syne, scho being covenit befor the Sessioun of the Kirk of Glasgow, and accuset be *Mr Archibald Glen*, Minister at Carmunnok, for rayleing on the said vmq<sup>le</sup> *Robert Mure*, brother-in-law to the said *Mr Archibald*, and raleing on *Elspeth Arbuckle*, his mother, and for taking away of the said *Robert Mures* life be Sorcerie and Witchcraft ; and that the said *Margaret*, in revenge thairrof, schortlie thaireftir, be hir Sorcerie and Witchcraft, laid ane feirfull and vnkawin seiknes vpon the said *Mr Archibald*, quhairof, be continuall sueitting, he deceissit ; and sa, was airt and pairt of his daith ; quihilk scho hes confessit, sen syne, in presens of witnasses. It is allegit and answert be the pannell, *et supra*, againt the *sevint Article*, baith anent the fact and pretendit Confessioun lybellit, for thair is na thing qualifeit of Sorcerie, or Withcraft, or Inchantment, done to the said *Mr Archibald* : for the treuth is, that the man deceissit of ane consumption of his lichtis ;<sup>2</sup> nather is it lybellit that scho inflictit ony thing vpon him be signes, croces, inchantit herbis, oyles, claithes, or ony vther meanis.—The persewaris answert, that the said allegiance aucht to be repellit, in respect of the *sevint Article of Dittay*, relevant in the self, and answert maid of befor.

<sup>1</sup> Withdraw ; retract ; *resile*.<sup>2</sup> Lungs ; pulmonary consumption.

THE *Aucht Article* being red, and the pannell indytit, fforamekill as scho, haifing confauet ane deidlie haitrent aganis *Williame Mure*, flescheour, a fyve yeir fyne, for calling *Cristiane Grahame* ‘ane rank Witche,’ scho, in revenge thairof, come to the said *Williame*, vpon the Hie Streit of Glesgow, and in grit wraithe said to him, ‘Go thy wayis hame, bludie boutcher that thow art, thow fall nevir sie the calsay<sup>1</sup> agane, bot fall suddantie schute to deid in thy awin chyre!’<sup>2</sup> Accordiing to the quhilk thraitning be the said *Margaret* hir Sorcerie, Devillerie, and Incantatioun, ane seiknes was laid vpon the said *Williame*, and vpon the morne thaireftir, in his awin chyre, in grit suddantie deceffit: Quhilk scho hes confessit to be of verritie, in presens of Witnesfes; and sa is airt and pairt of his death.—It is allegit be the pannell aganis the *Aucht Article*, *ut supra*, with this eik,<sup>3</sup> that thair is nathing qualifeit thairin of Witchcraft done be hir to him, bot that scho gaif him evill woirdis, and be thais woirdis he deceffit. As to the pretendit Confessioun thairin contenit, anfuersis thairto *ut supra*.—My lord Aduocat repeittis the woirdis of the Dittay, and former anfuersis maid be him to the haill former poyntis thairof.

It is forder allegit be the pannell and hir prelocutouris to the *Nynt Article*, anent the bewitching of *Allane Speiris*, in maner thairin specifit, without offence of my lord Aduocat, that all thais Articles contenit in the Dittay ar meir<sup>4</sup> fabulous, resolveing only vpon ‘he said and scho said.’<sup>5</sup> And forder, oppones to his lordschip all the authoriteis foirlaidis; and na practiques in the contrar ar producet, bot ane naikit assertioun.—My lord Aduocat repeittis the Dittay, quhilk is verrie relevant, and als relevant a Dittay as ever was maid in Scotland, vpon sic a subiect; quhilk is nair relevant in everie article nor the Dittayis producet aganis *Barbara Naper*, *Eufame Mcalzeane*, and *Agnes Sampfone*, quha war put to ane Assyse, and convict, &c.<sup>6</sup>

The pannell addis forder, that *damnum infecutum ex longo intervallo* is nocht relevant; pag. 717, Lib. quinti, sectionis tertij Martij Dalrio.

THE *Tent Article of Dittay* being red, and the pannell thairby accuset, beiring that a tua yeir fyne, or thairby, ane discord falling out betuix hir and *Alexander Boig*, sinyth in Garboillis, about the bying<sup>7</sup> fra hir and *Johne Dymning*, hir husband, of ane irne studie to *Williame Wemyes*, scho thraitnet to do the said *Alexander* ane evill turne; ffor performeing quhairof, scho, be hir devillerie and Witchcraft practizet be hir, laid ane crewall seiknes vpon the said *Alexanderis* bairne, sa that, with continuall sueitting, within tua dayis the bairne deceffit, &c.—AND siclyk, the *Last Article of Dittay* being red, and scho also accuset thairof, beiring hir to haif bene thir aucht or nyne yeiris bygane ane cownoun

<sup>1</sup> Causeway, or street.

<sup>2</sup> Chair.

<sup>3</sup> Addition.

<sup>4</sup> Merely.

<sup>5</sup> Mere matter of idle hearsay, without foundation in truth, and not supported by legal evidence—‘says he’ and ‘says she.’

<sup>6</sup> See their Trials, in this Collection, Vol. II., pp. 230, 242, and 247.

<sup>7</sup> Purchasing.

confulter with Witches, speciallie with *Cristiane Grahame*, *Katharene Blair*, and vther Witches and Sorceraris, and ane feiker of help and responsses of thame, baith for distruction of dyuerse persones, men, women, and bairnes, be Sorcerie, Witchcraft, and Incantatioun, and vtheris devillische meanis, expresse forbidden be the Lawis of Almychtie God, and Municipall Lawis of this Kingdome; as also for cureing and help of hir self, in dyuerse feikneses, and of dyuerse hir freindis and acquaintance, &c.

It is allegit be the pannell and hir prelocutouris against the *Tent Article*, that the samyn is nawayis relevant, for the argumentis befor proponit, with this additioun, that in accomplisheing of Witchcraft, practizeing thair of, the maner, forme, and qualitie of Inchanting is necessarilie requyret, quhilk is nocht heir lybellit; nather that thair was ony Witchcraft vsit be the pannell be ony Article of the Dittay, and be woirdis, signes, croces, ruitis, herbis, poysons, or be inchantit pictouris, speiches, or be invocatioun of the Devillis name, without the quhilkis Witchcraft can nocht be accomplischet.—As to the *Last member of the Dittay*, it is sa generall, that it mereittis na ansuer. As to that poynt of the Dittay, anent consulting with *Cristiane Grahame* and *Katherine Blair*, that is altogidder generall and irrelevant, nocht condiscending vpon the tyme and place, *quando et ubi*, nor yit condiscending quhairvpon they consultit, quhidder vpon Witchcraft or vthirwayis; and that the pannell, the tyme of thair meiting, knew thame to be Witches, and consultit vpon Witchcraft with thame as Witches: And quhair as, scho helpit hir freindis, *non relevat*, nocht condiscending thair names, or quhair-with they war helpit. ITEM, it is ansuerit to that pairt of the Lybell, *per totum*, quhair it is said, that the pannell inflictit diseasis, be Inchantment, and Sorcerie, and Witchcraft, nocht condiscending quhat soirt of Inchantment or Sorcerie; *quia et inquisitio sit valida, oportet sit clara, certas delicti qualitates et circumstantias continens, de quibus posset Judex judicare*: Bot, *de incantamentis in genere nemo Judex potest judicare*: Ergo, the species of the Inchantment man<sup>1</sup> be expresst be sum signe or speciall deid; *et ratio est, quia ne per incertitudinem, generalitatem, et obscuritatem tollatur reo defensio*. DELRIO, Lib. 5, sect. 2, pag. 617. I argu, *a simili*, iff it war lybellit, that a man had burst out ane vther manis guttis with rolling over ane beist vpon him, *non relevat*, except ye say quhat beist, and sic ane beist as mycht haif done it; for ane mous could nocht haif done it! Ewin sua, it being only lybellit, it was done ‘be Inchantmentis.’ And gif thay war speciall, I wald contend, that thai war naturall meanis, and na Sorcerie. And thairfor, the generalitie is altogidder irrelevant, takand away my exceptioun; for gif thai war speciall, we mycht resson and dispute quhidder thay war Inchantmentis or no Inchantmentis.

<sup>1</sup> Must.



ITEM, *per totum* to the haill lybell, *non relevat* 'vncouth feiknes,' except it war in lyk maner qualifeit, quhat is vncouth;<sup>1</sup> ffor quhat can the Assyse cognosce quhat is vncouth or nocht vncouth, it nocht being condiscendit quhat is 'vncouth feiknes,' quhilk is to be judget be thame quhiddir it be vncouth or nocht? And for the fueiting, *nullo modo relevat*, for the proponer suat<sup>2</sup> in ane feiknes ane haill moneth, and fueitting is ane naturall purgatioun. *Igitur, &c.*

The Aduocat repeatit the haill Articles aboue writtin, quhilkis ar speciall in thame selffis.

THE JUSTICE and ASSESSOURIS continewis thair Interloquitour, vpon the haill allegiances aboue writtin, to the morne; and Ordanis the pannell to be tane bak agane to waird, in the mean tyme. The Assyse wairnet *apud Acta* to compeir agane the morne, the xxj *instantis*, in the hour of caus; ilk perfone vnder the pane of tua hundreth merkis.

#### INTERLOQUITOUR *of the Judges and Assessouris.*

Mar. 21.—THE JUDGES and Assessouris, be thair Sentence-Interloquitour,<sup>3</sup> Repellis the haill allegiances aboue writtin, in respect of the Dittay, and answers maid be his Maiesteis Aduocat, in fortification thairof. And as to *the last Article*, quhilk is generall, findis the samyn relevant, with ony ane of the ten Articles of Dittay, *et non per se*: And thairfoir, Ordanis the samyn to pas to ane Assyse, viz. the haill ten Articles of Dittay, as relevant; and the last general Article, with ony ane of the ten.

#### ASSISA.

Johnne Lawfoune, mercheand burgess of Glesgow,	Robert Bell, wrycht thair, James Mitchell, tailseour,	Airthour Gilmour, mercheand, James Fallis, mercheand,
Jo <sup>n</sup> Dikfoune, mercheand thair,	Patrik Bell, elder,	Johnne Boyd, mesoune,
Andro Fales, mercheand thair,	Williamme Anderfoune, cordiner,	Johnne Anderfoun, cordiner,
George Louk, mercheand thair,	Johnne Gilmour, mercheand,	Andro Ker, cordiner, burgesses of Glesgow.
Williamme Neilfoun, maltman thair,		

#### OBJECTIONS *against Assysers.*

It is allegit be the pannell aganis *Johnne Dikfoune*, that he can nocht be admittit vpon hir Assyse, becaus thair is inimitie and evill will betuix *Johnne Dynning*, the pannellis husband and him, vnreconcillit this ten yeir bygane: Lyk as, the said Johnne Dikfoune, being dyuerse tymes travellit with to be reconcillit with the said Johnne Dynning, refusit.—It is answert, the allegiance aucht to be repellit as nawayis relevant, becaus inimitie is na caus, except he say, that thair was bluid betuix thame.—It is forder allegit, that he can nocht be admittit, becaus he hes behanit him self as pairtie, and hes gevin partiall Counfall, in prejudice of the pannell; in fa far as scho, being tane be the Proveist, Bailleis, and Counfall of Glesgow, without ane Warrant, out of hir awin hous, was put in waird in the Castell be thame: In the quhilk taking and committing of hir to waird, the said Johnne Dikfoune wes ane speciall assister of the saidis Proveist and Bailleis.—It is answert be the perfewaris, that the allegiance meritis nocht ane answer, seing he did nothing but the dutie of ane honest citizen and burgess, to assist the Magistrat to apprehend a malefactor, being suspect of sic haynous crymes.—Johnne Dikfoune, being

<sup>1</sup> Strange; indescribable.

<sup>2</sup> Sweated.

<sup>3</sup> Interlocutory sentence, or judgment.

solemlie fuorne, and declairing that, to his knowlege, thair was never discord nor inimitie betuix Johnne Dynning and him, the Justice thairnpoun, and vpon his declaratioun that he had gevin na partial counfall in this cause, admittis him.

It is allegit aganis *Walter Sterling*, mercheand, that he can (nocht) be vpon this Affyse, becaus he is brother-in-law to vni<sup>q</sup><sup>l</sup> *Robert Mure*; thair being ane speciall poynt of Dittay fet doun aganis the pannell, for allegit iniurie done to Robert Mure.—Ansuerit, aucht to be repellit, becaus thair is na persute movet aganis the pannell be the kyn and freindis of Robert Mure, and thairfoir sould be admittit. —It is forder allegit, that *Walter Sterling*, brother-in-law to Robert Mure, can nocht be admittit, becaus ane Dittay being fet doun aganis me for ane wrang done to Robert Mure, ilk poynt of Dittay is fund relevant and ordanit to pas to ane Affyse; the said *Walter* can nocht be ane Affysour aganis me, being persewit vpon my life.—My lord Aduocat ansueris *ut supra*, that nochtwithstanding thairfoir he sould be admittit, except Robert Mure, or sum of his freindis, war ather persewaris or defenderis, or vpevearis of the Dittay, or Informeris to his Maiesteis Aduocat thairin.—THE JUSTICE Ordanis *Walter Sterling* to stand by; and to call ane vther.

It is allegit aganist *William Neilson*, elder, that he can nocht pas vpon this Affyse, becaus he is brother-in-law to *Johnne Nicoll*, wryter, quha hes behauit him self as partie, in geving informatioun of the Dittay, and is present at the bar assisting the persewaris in this persute.—Ansueris, the allegiance aucht to be repellit, becaus *Johnne Nicoll* is nocht a persewar, nor the Summond is nocht raifit at his instance.—*William Neilson*, being fuorne, and purget be his ayth of partial counfall, is admittit be the Justice.

*William Anderfone*, cordiner. It is allegit aganis him, that he can nocht be admittit vpon this Affyse, becaus the pannell, haifing skill in chirurgerie, fauld to him sum drogis, quihik he haifing post-pont the pannell in payment, scho thairfoir persewit him be ordour of Law thairfoir; quhairvpon ane inimitie fell out betuix thame, quihik is yet vnreconcilit.—The said *William*, be his grit (aith) being purget of partial counfall, is admittit.

#### VERIFICATIOUN of the perticuler poyntis of Dittay.

MY Lord Aduocat takis instrumentis of the fweiring of the Affyse; and, for verificatioun of the perticuler poyntis of Dittay following, vses and produces the probatioun and Witneses efter specifeit. And first, for Verificatioun of the *first Article (of Dittay)* anent *Cuthbert Greg*, produces *Charles Pollok* and *Margaret Dynning* as Witnesis, desyreing thair Depositiones to be tane.

*Charlis Pollok*, couper, burges of Glesgow, sworne judiciallie, and examinat in presens of the Judges, parteis, and Affysours, and purget of partial counfall, mareit, of the aige of threttie yeiris, declairis, that a thre year syne, or thairby, ane differ<sup>1</sup> being betuix *Cuthbert Greg* and *Cristiane Grahame*, for ane dog quihik *Cristiane* desyret fra him, and he refusit, ansuering to hir agane, ‘I rather ze and my hussie<sup>2</sup> baith (meaning be *Margaret Wallace*) war brunt or<sup>3</sup> ze get my dog!’ Quhairof *Margaret Wallace* getting knowlege, scho comes to *Cuthbert* and sayis to him, ‘ffals land-loupper loun that thow art, sayis thow that *Cristiane Grahame* and I fall be brunt for Witches? I vow to God I fall do to ze ane evill turne!’ And declairis, that, within foure or fyve dayis thairestir, the said *Cuthbert* fell seik. Being inquiryret, gif he hard hir say thair woirdis, ‘that he (*she*)

<sup>1</sup> Quarrel; difference; altercation.

<sup>2</sup> Cummer; gossip.

<sup>3</sup> Rather than.

fould mak *hir* (*him*), within few days, nocht of habilitie to wyn ane caik of breid ?' Denyis that he hard sic woirdis—bot only that scho fould 'do him ane evill turne.' Sayis, he saw *Cuthbert Greig*, the tyme of his feiknes, fueitting and brocheing<sup>1</sup> in ane vnconth feiknes, fairlie handillit, quhairby he was nocht able to gang ; bot knawis nocht how lang he swat, or abaid in that estait. Demandit, gif he saw Margaret Wallace cum in to Cuthbert, at ony time of his feiknes ? Declairis, he saw hir nocht within that hous ; and forder, knawis nocht anent that first Article of Dittay.

*Margaret Dynning*, the spous to Andro Lennox, fuorne and examinat vpone the first Article, concerning Cuthbert Greg, and desyret to tell the treuth, sa far as she knawis thairanent ; Depones, that the tyme of Cuthbertis feiknes, the deponer and Margaret Montgomerie, with Margaret Wallace, past all three togidder vp to Cuthbertis hous, to viffeit him, the tyme of his feiknes ; at thair in-cumming, declairis, scho saw Margaret Montgomerie, with Margaret Wallace, pass to his bed-fyde quhairin he lay, and that the said Margaret Wallace sat down with hir bak to him, the deponer hir self nocht being able to wyn ben the hous, becaus of the thrang of peopill in the hous, at that tyme : And forder knawis nocht.

For the *Second poynt of Dittay*, concerning *Johne Robertoun*, querriour, desyres the said Johnne Robertoun, as persewar, his ayth to be tane, and that poynt of Dittay to be fuorne be him, gif he has just caus to persew the pannell as giltie thairof ? Quha, being solemplic fuorne, declairit, that the said Margaret Wallace avovit 'to be avengit vpone his flesche !' And that schortlie thaireftir, conforme to the Dittay, the feiknes was laid vpone him ; and thairfoir, hes just caus to persew the said Margaret, for that poynt : And eikis<sup>2</sup> thairto, that sen the making of that vow be hir, he was nevir able to wyn him self fyve s. (shillings.) Quhairvpone my lord Aduocat askit instrumentis.

*Chairles Pollok* being product, and fuorne vpone the secund Article of Dittay, anent the said Johnne Robertoun, querriour ; declairis, he knawis na thing thairof, except allanerlie, that he saw him hevelie diseaft.

As to the *Thrid Article of Dittay*, referris the notorietye of the pannellis giltines thairof to the Assyse.

For verificatioun of the *ffourt Article*, my lord Aduocat product *Cristiane Grahames* Deposition, tane be my lord *Archebyschope of Glesgow*. As also, produces *Marioun Mitchell*, the spous of Johnne Hunter, and desyres hir to be examinat, and her Deposition to be writtin.

*Marioun Mitchell*, the spous of Johnne Hunter, tasker,<sup>3</sup> fuorne, and examinat

<sup>1</sup> Commonly pronounced *broiching* ; in the last stage of exhaustion, through profuse perspiration. The English word *sweltering* conveys something of the same meaning.

<sup>2</sup> Adds ; subjoins.

<sup>3</sup> Day-labourer.

vpone the ffourte Article of Dittay, in prefens of the Judges, Affysouris, and parteis, judicallie, Depones, that four yeir syne, or thairby, Margaret Wallace and Robert Stewart come to the duelling-hous of Alexander Vallange, in Gleggow, quhair the deponer was fervand for the tyme, and callit for ane choppin of aill; quhilk was brocht be ane boy to thame, namet James Symfone; and in drinking thair of, betuix Robert Stewart his taking the cope and offering it to Margaret Wallace, the said Margaret tuik ane suddene brafche of feiknes, vnknawin to the deponer quhat feiknes it was, quhairin the said Margaret was fa extremelie handillit, that scho was liklie to ryve hir self! Thaireftir scho cryis, 'Bring me hither my deir burd!'—And Margaret Montgomerie, the guid-wyfe of the hous, being present, anfueris hir, 'Quhilk deir burd wald ze haif? I beleif,' sayis scho, (thinking it had bene *Johne Dynning*, hir husband,) 'he is nocht at hame!' 'Na,' anfuerit Margaret Wallace, 'bring me *Cristiane Grahame*, my deir burd!' All this quhyle, Margaret Montgomerie was halding hir be the ane hand, and Cristiane Mcclauchlane be the vther. Thaireftir, at hir desyre, Robert Stewart past, and with grit dilligence brocht Cristiane Grahame to hir, at quhais suddane cuming, Margaret Montgomerie sayis to Robert, 'Jesuf saif ws! I beleif thou hes met her be the way!' And Cristiane Grahame anfuerit, 'flayth, he met me nocht, bot come and brocht me out of my awin chamer; and fra I hard that my burd was fa diseasit, I sped me hither!' Sayis, thaireftir, that Cristiane Grahame tuik Margaret Wallace be the schaikill-bane,<sup>3</sup> and kist hir; and in hir airmes cayreit hir down the stair, saying to hir, 'Nothing sould aill hir.' Eftir quhais outgoing, Margaret Vallange, dochter to the said Margaret Montgomerie, ane infant bairne of foure yeir auld, followit thame down the stair; and in the ganging out at the zet,<sup>3</sup> over the dur-threschold, scho fell down in a suddane and grevous payne, and grat vehementlie. Incontinent thaireftir, the said Margaret Wallace come bak agane, and declairit that the bairne was greting at the stair-fute; and desyret hir mother to bring her vp. And thaireftir, the bairnes mother cuming to hir and taking her vp, the bairne cryis, 'Mother, mother, ding me nocht, for thair is ane preyne<sup>4</sup> raschet throw my fute!' And the bairne, being brocht vp to the hous, grat continuallie all that nycht, and quhill<sup>5</sup> the morne at that same tyme of the day. The Deponer forder declairis, that scho and the bairnes father and mother sat vp all that nycht, and walkit<sup>6</sup> the bairne; and that vpon the morne thaireftir, the said Margaret Wallace come to visist the bairne, and desyret Margaret Montgomerie, hir mothir, to send for Cristiane Grahame, making all that tyme ane grit mone<sup>7</sup> for the bairnes feiknes: To quhome Margaret Montgomerie anfuerit, 'I haif nothing ado with Cristiane Grahame, and

<sup>1</sup> This attack was probably a hysterical affection, or rather a kind of convulsion fit.

<sup>2</sup> Wrist.

<sup>3</sup> Gate; wicket.

<sup>4</sup> Pin.

<sup>5</sup> Until.

<sup>6</sup> Watched.

<sup>7</sup> Moan; lamentation.

will nocht fend for hir! ffor gif God hes laid on that seiknes on my bairne, he will, at his awin plefour, tak it af agane! Sayis thairefter, that Margaret Wallace maid anfuier to hir, 'Gif 3e knew of Cristiane Grahame skill, and quhat scho can, 3e wald nocht refuse to fend for hir; for scho can do alse mekill as God in the Heavin!' Deponis forder, that schortlie thaireftir, Margaret Wallace, by<sup>1</sup> the said Margaret Montgomeris knowlege, brocht the said Cristiane Grahame in to the hous, the bairne being lying as ane deid stock in the bed, and haifing gevin over greting for the tyme; and at thair incoming, ane heip of grene webbis<sup>2</sup> being lying on the fluir, Margaret Wallace lap over the same, and cumis to the bairne, and takis hir vp out of hir bed, and settis hir on Cristiane Grahames knie; and declairis, that eftir the bairne had sittin ane schorte space vpon the said Cristianes knie, scho grew better, and eftir that mendit.

FOR verificatioun of *the ffyft poynt*, my lord Aduocat producet certane Depositiones tane befor *the Bischope of Glesgow*;<sup>3</sup> with ane vther Deposition tane befor *the Commissar of Glesgow*; as also, producet certane Depositiones tane be the said *Archebischope*, at command of the Secreit Counsall; and thairwith produces Andro Mure, chirurgane, as Witnes; desyring him to be suorne, and his Deposition to be writtin.

*Andro Mure*, chirurgane, mareit a sevintene yeir syne, of the age of xliij yeiris, suorne, and purget of partiall counsell; being inquiryet, quhat he knawis concerning the ffyft Article of Dittay, red in his audience? Depones, he knawis nothing of Margaret Mures seiknes specifeit in the said Article, except that he himself, cuming doun the Brig-gait,<sup>4</sup> he saw Cristiane Grahame cum furth of Marioun Mures hous; quha thaireftir come to the deponer, and desyret him to gang in to the said Marioun: And the deponer, at hir desyre, haifing past in to the hous, at his incuming ane roistit hen was sett doun on the buird;<sup>5</sup> and the deponer, with David Scheirar and the said Marioun Mure, sat doun at the buird togidder; and within ane schorte space thaireftir, Margaret Wallace come in to thame: Declairis, at Margaret Wallace incuming, ane guise<sup>6</sup> was sett doun on the buird: And the deponer, persaveing that sic intertenement wald draw him to charges, he payit his choppine of wyne and come his way, and left the rest of the cumpanie behind him. And forder knawis nocht.

FOR verificatioun of *the Saxt Article, Sevint, and Aucht Articles*, produces the Deposition of Alexander Montgomerie and vtheris, subscryuit be *my Lord of Glesgow*; togidder with ane Testimoniall of the Minister, testifeing Mr Alexander Montgomerie his seiknes, that he was nocht able to travell, without hazard

<sup>1</sup> Without; contrary to.  
Archbishop of Glasgow; who  
Bridge-gate of Glasgow.

<sup>2</sup> Webs of newly weaved, or unbleached, linen cloth.

<sup>3</sup> James Law,  
anno 1610.

<sup>4</sup> The  
<sup>5</sup> A roasted fowl was set upon the table.

<sup>6</sup> Goose.



of his lyfe: And referris the notoriety of the pannellis guiltines of the faidis Articles to the Affyfe.

FOR preveing of *the Nynt Article of Dittay*, produces Robert Dykes, Johnne Pincartoun, Thomas Wilkyne, and Johnne Thomefone, as Witneffes, defyreing thair Depositiones to be tane, for the Affyfe better informatioun.

*Robert Dykis*, maltman in Ruglen, mareit, fuorne and examinat, in prefens of the Judges, Affyfouris, and pairtie, in judgement, vpone the Nynt Article, to declair the veritie, and purget of partiall counsell, Depones, that at command of vmq<sup>le</sup> Allane Spens, the deponer come to Johnne Dynning, and defyret ane ficht of his elwand,<sup>1</sup> and, conforme to the Dittay, the elwand was brokin; and a fyftene dayis thaireftir, or thairby, the faid Allane Spens being in Glesgow, and fleing ane schoure,<sup>2</sup> come befor Johnne Dynningis buthe-dur,<sup>3</sup> quhair the deponer hard Margaret Wallace, Johnne Dynningis wife, fay thir woirdis to Allane, 'Away, deboifchet knave!' Depones, the faid Allane Spens fell feik; bot knawis nocht how fone eftir thais woirdis war fpokin this feiknes fell<sup>4</sup> to him. Declairis, he come in to him the tyme of his feiknes, and faw him hevelie difeasit with continuall fueitting.

*Thomas Wilkyne*, burges of Ruthirglene, mareit, fuorne in prefens of pairtie, Judges, and Affyfouris, in judgement, Depones, he knawis nocht Margaret Wallace, befor his cuming to Edinburgh. As to that Article of Dittay concerning Allane Spens feiknes, declairis, he was hevelie difeasit with ane fuddane and grevous feiknes, quhairof he deceiffit; bot knawis nocht quhat or quha war the caufaris thairof.

*Johnne Thomefone*, burges of Ruthirglene, mareit, and fuorne vpone the nynt Article of Dittay red to him in judgement, in prefens of the pairteis, Judges, and Affyfouris, is conforme to the faid Thomas Wilkyne.

*Johnne Pincartoun*, fuorne and demandit vpone the nynt Article, quhat he knawis thairintill? Depones, he was narrest dur nychtbour<sup>5</sup> to Allane Spens, and faw Johnne Dynningis elwand brokin, at quihik tyme the faid Johnne Dynning and Allane Spens war likelie to go by the earis for breking of the faid elwand. Declairis, that he hard Margaret Wallace, scho being prefent with hir husband, fay to him, 'Go your wayis joy, let him allane;' (meaning be Allane Spens,) 'I fall tak ane amendis thairof!' Sayis he knew that Allane Spens fell in ane heaveie difeas, bot knawis nocht quhat was the caus thairof.

FOR verificationn of *the Tent Article* of Dittay, my lord Aduocat vfes the aithe and declaratioun of *Alexander Boig* in Garboillis, perfewar thairof, and defyres that Article to be fuorne be him to the Affyfe, for thair better informa-

<sup>1</sup> Ell-wand, yard measure.

<sup>2</sup> For shelter from the shower.

<sup>3</sup> Shop door.

<sup>4</sup> Happened.

<sup>5</sup> Next-door neighbour.

tioun: Quha being suorne, declairit that he had juft caus to perfew the said Article, as is fet doun thairintill, aganis the pannell.

Produces also George Thomefoune and James Pollok, Witnesfes, defyreing thair Depositiones to be reffaut for preving of the said tent Article of Dittay.

*George Thomefoune*, duelland vnder Sir George Elphingstoun of Blitheswoid, kny<sup>t</sup>, suorne and examinat in judgement, Quhat he knawis anent the said tent Article of Dittay? Depones conforme thairto, that he hard Margaret Wallace and Alexander Boig flyteing with vther; and that scho said to him, in a grit rage and furie of mynd, that scho sould 'do to him ane evill turne,'—or sould 'gar get to him ane evill turne!' And within thre dayis thaireftir, the said Alexander his bairne fell seik, and deceisfit of sueititng and vther grevous panes.

*James Pollok*, gairdner to Sir George Elphingstoun, suorne and examinat vpone the said Article, Depones, he being working at the hedge within the 5aird, he hard Margaret Wallace and Alexander Boig flyteing togidder; and that in hir anger scho said to him, scho sould 'do to him ane evill turne!' And schortlie thaireftir, his bairne contractit ane seiknes, and deceisfit.

My lord Adnocat takis instrumentis of the Witnes judiciall declaratioun aboue writtin; quhilk he repeitis to the Assyse, with the vther Depositiones product be him.

THE JUSTICE and ASSESSOURIS continewis this dyet to the morne. The Assyse wairnit to be present the morne, at xj houris; ilk persone vnder the pane of iij<sup>e</sup> merkis.

*OBJECTIONS be the Pannell to hir pretendit CONFESSION, and haill  
Probatioun adduct.*

Mar. 22.—IT IS OBJECTIT be the pannell and hir prelocutouris aganis *hir pretendit Confessioun*, maid be hir befor the Lordis of Secreit Counsell, that the samyn can prove nathing of the haill Dittay, nor na pairt thairof. And as to that pairt of hir allegit Confessioun, quhair as scho confessit 'that scho was content, in caice it sould be provin that scho was in *Cuthbert Gregis* hous, to grant the haill Dittay!' Anfuers thairto, that is na Confessioun of the Dittay, nor of na pairt thairof; ffor the Dittay is fet doun upone Witchcraft, and that the pannell practizet Witchcraft vpone the persones contenit in the Dittay, be Sorcerie and Inchantment; scho hes nocht confessit the samyn be hir Deposition, nor na pairt thairof; sua that hir Deposition can be na probatioun of Witchcraft, nor of practizing thairof; bot only, that gif it fall be provin aganis hir, hir being in Gregis hous, quhilk scho hes denyit, scho hes thairin committit onlie a lie, and being perfewit and provin, is content to vnderly the pwneishment appointit aganis Leasing-makeris. *Secundo*, be the Confessioun contenit in hir

Deposition befoir the Counsell, fcho is only content, gif that hail Article be provin aganis hir, than to confes all the rest to be trew; bot albeit it be provin that fcho was in the hous, it is nocht confessit thairby that fcho was ane Witche. *Tertio*, it is nawayis provin be the Deposition productet, that fcho was within the hous, becaus thair is only ane woman productet as a Witnes to verifie the same. It is forder allegit, that thair can be na probatioun vpone that hir Confessioun maid befoir the Counsell, becaus the samyn is na poynt of Dittay.

It is anfuert be the persewaris, as to the obiectioun maid against the Deposition maid be the pannell befoir the Counsell, that obiectioun aucht nocht to be respectit, in respect of the Judicial Confessioun maid befoir the Lordis of Counsell, quhilk bindis hir; be the quhilk it is manifest, that fcho hes denyit the treuth, in respect of the probatioun led be dyuerse of the Witneses productet, verifeing hir to haif bene in Gregis hous the tyme of his seiknes, quhilk the persewaris referris to the Inqueistis knowlege and Witnes Deposition. And desyres it may be rememberit to the Assyse, quhat sentence was gevin aganis *Patrik Cheyne*, vpone the lyk Deposition.

It is forder allegit be the pannell, that the Deposition maid befoir my Lord of Glesgow, the samyn can mak na fayth, in respect his Lordschip had na warrant to that effect.—It is anfuert be the persewaris to that obiectioun, that the samyn aucht to be repellit, in respect of my Lord of Glesgowis Judicial Declaration maid be his Lordschip, that he had ane special Letter direct to him be the Lordis of Secreit Counsell, for taking of the saidis Depositiones, and of the article subioynet to hir Depositiones subscryuit be the Clerk of Counsell.

It is allegit be the pannell, that nather the first nor secund Deposition of *Cristiane Grahame* can be respectit: *ffirst*, becaus it is nather hir principall Deposition, nor Extract thairof; nocht the principall, becaus it is nocht subscryuit be hir, nocht the Extract, becaus nocht (subscryuit) be ane Clerk of Court: *Secundo*, can preve nothing, becaus it is maid, fcho nocht being suorne to that effect: *Tertio*, it is maid be the pairtie being absent aganis quhome it is deponit, quha, gif fcho had bene requyret, wald haif compeirit, and offerit to haif bene confrontit with hir; quha, gif fcho had bene confrontit, wald haif denyit the samyn: Lyk as, fcho cum of set purpos to the Tolbuth, befoir hir Convictioun, and offerit hir self to haif bene confrontit, quhilk was denyit. *Laß*, hir Deposition can work nothing aganis the pannell, being ane condampnet persone; and the Deposition aucht nawayis to be respectit, except it war instantlie verifeit be the proces, that befoir the making of the said Deposition, or the tyme of the making thairof, that the said Cristian Grahame had confessit the hail poyntis of Dittay than laid to hir charge: ffor as the woirdis ar consauet, thay ar spokin be compariesone, that eftir fcho had denyit the poyntis of Dittay laid to hir

charge, and declairit hir self to be altogidder innocent thairof, and the pannell being at that tyme ane honest woman, sua repute and haldin, scho sayis, ‘scho was als frie of Witchcraft as scho or ony vther in the toun!’ Forder, the Confessioun can nocht be respectit, becaus it is nocht maid befor ane Judge haifing power to tak her Confessioun, thair being na Commissioun product for taking of the said Confessioun. Nixt, the Deposition beiris nocht that scho was ony wayis interrogat or speirit<sup>1</sup> at, and is nocht maid in judgement, becaus the Assyse was than incloset, being than hir Judges. Last, it beiris nocht that this pannell was airt or pairt of ony Sorcerie, bot of sic deidis as scho did, and confessit to haif done: And referris to the Assyse, hir Confessioun, that scho was innocent of all. And as to the worsettis,<sup>2</sup> thay ar na pairt of Witchcraft, be reveing<sup>3</sup> or drawing thame furth of hir purse.

It is answert thairto be the persewaris, that the obiectiones maid aganis the tua Depositiones product is nawayis relevant, and is nocht to be respectit be the Assyse, becaus the samyn is subscriuit be *my Lord Archbischope of Glesgow*, as Lord of the Regalitie, and quha was present the hail tyme of Cristiane Grahames tryell, nocht onlie as Lord of the said Regalitie, bot also as being ane of the Lordis of his Maiesteis Previe Counfall; and thairby, be vertew of his office and authoritie, haifing sufficient power to tak cognitioun of quhatsumeur ryote or offence committit to ony of his Maiesteis subiectis, be quhatsumeur maner of way, within that pairt of his dyocie,<sup>4</sup> or ony pairt of the kingdome. *Igitur*, &c. —To the quhilk it is answert be the pannell, that the Deposition was nocht subscriuit be *my Lord of Kilsythe*, to quhome the Commissioun was grantit, bot is allanerlie subscriuit be the Proneist and Bailleis of Glesgow, quha ar pairteis: Lyk as presentlie, at the dyteing heiroy, Gabriell Cunninghame, standing at the bar, hes professit him selff to be a pairtie and informer to my lord Aduocat. Last, her Deposition can nocht be respectit, becaus scho alleges hir selff to be participant of the same cryme; and sa hir Deposition, of the Law, can mak na sayth, except scho had confessit scho had maid hir Deposition or Confessioun eftir tortour.

To the quhilk it is answert be the persewaris, that the saidis Depositiones ar subscriuit be the Proveist and Bailleis of Glasgow, quha war a pairt of the Commissioneris nominat and appointit to the tryell of the said Cristiane Grahame, as also subscriuit be vther tua men of grit credeit, viz. Mr Johnne Bell and Mr Robert Scott, Ministeris of Glasgow, quhais subscriptions ar sufficient to geve authoritie to the Depositiones, as evir has bene fund in this judgement, in all matteris of Witchcraft, and specialie, in the proces of *Euphame Macalzeane*, *Barbara Naper*, and *Agnes Sampson*. The last pairt aucht nocht to be

<sup>1</sup> Enquired.<sup>2</sup> The coloured worsted threads formerly noticed.<sup>3</sup> Stealing.<sup>4</sup> Diocese.

respectit, in respect *ſocij criminis* ar reſſauit and admittit in all crymes of Treſſone, Erracie,<sup>1</sup> and Witchcraft.

Quhairvnto the pannell and hir prelocutouris anſueris to thais tua memberis of my lord Aduocattis anſueris, that the tua Miniſteris befor quhome Criſtiane Grahame hir Depoſitioun was maid, that thai war honeſt men, it is nocht denyit; bot it followis nocht, becaus thay are honeſt men, thairfor thay had power to tak hir Depoſitioun, in ane matter concerning hir lyfe, without Commiſſioun. For anſuer to the proces allegit aganis *Euphame M'calzeane, Barbara Naper, &c.*, agreis thairto, in regaird thay war examinat be Mr James Carmichell, to quhome ſpeciall Commiſſioun was gevin for that effect. Laſt, it is declarit be the pannell, that evin in the cryme of Erracie or Leſe-maieſtie, a pairtner of ane cryme<sup>2</sup> is nocht to be credited without tortour; and repeittis the tortouring of *Sprote* in Treſſone, becaus he was partiner of the Treſſone.

It is objectit be the pannell and hir prelocutouris, aganis the Depoſitioun maid be *Margaret Grahame*, dochter to Criſtiane Grahame, befor the Commiſſar of Gleſgow, it can nocht be reſpectit; firſt, becaus it is not maid judiciallie, befor ane Judge haifing power to that effect: *Secundo*, befor ane Commiſſar, without ane Commiſſioun, quha had na power in matteris of Witchcraft, and vtheris concerning lyfe and daithe: *Tertio*, was nocht requyret Witnes befor ane Judge haifing Commiſſioun, nor ſworne to that effect: *Quarto*, hir Depoſitioun can nocht be reſpectit, in reſpect of hir age, ſcho nocht being paſt xvij<sup>3</sup> yeiris: *Quinto*, in all hir Depoſitiones, nevir a word deponet that ſcho knew Margaret Wallace to be ane Witche, or a practizer of Witchcraft; bot only that hir mother and ſcho paſt to the zaird togidder, tynt hir pantoun, quhilk was put one agane be Criſtiane Grahame, &c.: And quhair, it is affirmet in the Depoſitioun, that ſcho tuik ane ſchooe, and pat in ſum ſeidis thairin, that is nocht lybellit, and can nocht be reſpectit, becaus naithing followit thairupoun: *Laſt*, na Depoſitioun can be reſpectit at all, of ony perſone, as Witnes, bot only ſic as ar product in Judgement,<sup>4</sup> to the effect the pannell may object aganis thame, quhiddir thay may depone aganis hir or nocht. And thairfor, of all Law, it is inviolable obſeruēt, that na faith is gevin to Teſtimoniallis, bot as Witneſſes, in a matter of fourtie ſchillingis.

It is anſuerit be the perſewar, as to the allegiance and objectioun aganis *Margaret Grahame*, the ſamyn aucht to be repellit, it being tane befor ane Judge-Ordiner, judiciallie, viz. the Commiſſar of Gleſgow: And as to hir age, ſcho hes deponet ſcho is paſt xiiij yeiris, quhilk is reſſerit to the Aſſyſe knowlege; and that than ſcho mycht haif mareit lauchfullie, mekill mair to beir witneſſing in

<sup>1</sup> Heresy.<sup>2</sup> *Particeps criminis*.<sup>3</sup> *Sic*; xiiij?<sup>4</sup> This is the firſt time that this objection is recorded as having been ſtarted by the Counſel for the pannel.



obscure factis, sic as any thing concerning vni<sup>q</sup><sup>le</sup> Cristiane Grahame and Margaret Wallace, quahais companie scho refoirtit daylie. And forder, the persewar referis to the Assyse knowlege, quhat thay knaw of hir Depositione; and speciallie, gif it was grantit befor my Lord of Glesgow, the pannell hir self, and sum of the Inqueit: And forder, producet the dome and sentence of convictioun to the Assyse, quhair the Proveist and Bailles of Glesgow war Commisioneris appointit and set for tryell of Cristiane Grahame, and sa had power to ressaue Cristiane Grahames ayth, for haifing Commiffioun thairto.

It is anfuert be the pannell, as to that pairt of the anfuert anent Margaret Grahames age, the Depositione producet beiris na sic thing.—My lord Aduocat, for anfuert thairto, declairis, he produces ane vther Depositione of hiris of the same dait, beiring hir former age: Quhilk is referit to the Assyse.

Item, the pannell anfuert to that poynt, anent the production of Cristiane Grahames Sentence of Convictioun, that the pannell acceptis the same; and protestis that the persewaris repetitioun thairto, for instructing of the Assyse, anent that alledgeance proponit be the pannell, that Cristiane Grahames Depositione, beiring Margaret Wallace to be airt and pairt of all confest be hir to haif done, preves nawayis hir to be gilty of Witchcraft; becaus the convictioun producet, beiris hir to haif denyit all the poyntis of the lybell anent Witchcraft; and scho confesses that scho was pairt-taker of sic thingis as scho confesses hir self to haif done, it man (*myt*) be of na deidis impoiring Witchcraft.—The last objectioun proponit be the pannell is nocht to be respectit, in respect of Cristiane Grahames Confessioun and convictioun producet; quhairin scho is convict of tua poyntis, conforme to hir awin Confessioun, viz. the secund and fourt poyntis of Dittay quhairupone scho was indytit.—It is anfuert be the pannell, that the said convictioun proceedis vpone the admitting of the haill Articles thairto to the knowlege of ane Assyse, sua that the finding of hir gilty of any of the Articles is nocht the grund of the sentence of Convictioun; ffor thais tua Articles, a pairt quhairto scho is convict, was nocht relevant without the haill Articles had bene admittit; and forder, thir tua poyntis quhairto Grahame is convict, is na poynt of our Dittay.

It is objectit be the pannell aganis *Marioun Mures* Depositione, subseruyit be my Lord of Glesgow, the samyn can nocht be respectit, for the ressones foir-faidis; with this additioun, that gif the said Marioun Mure war now producet as Witnes at the bar, scho wald be repellit; for this resson, becaus be the Depositione it is confessit that scho is father-sister to the bairne quha is alleget to haif bene bewitchet or curet be the pannell, as being within degreis-defending to the said bairne mentionet in the Dittay. And forder, it is objectit, that scho had gevin partiall counfall in the caus, quhilk defens is tane fra us be production of

ane Testimoniall, and nocht hir selff. And repeittis all the rest of the objectiones aganis the vther Testimoniall.—The last objectioun aucht to be repellit, in respect of the Deposition of *Marioun Mure*, tane be my Lord of Glesgow, quha had Commiffioun of the Counsell, as he hes deponit, and is testifeit be James Prymrois, clerk of the Counsell. Lyk as, the samyn Deposition is subscryuit be the Laird of Mynto, and the Proveist and Bailleis of Glesgow, Commiffioneris for Tryell of the said Cristiane Grahame: And as to the objectioun, that scho was withiin degreis-defending to the bairne, it is anfuert directlie, that Commiffioun be the Counsell for hir examinatioun, the pannell being present, and nathing objectit be pannell in the contrair, is sufficient to elyd<sup>1</sup> that pairt of the said objectioun.

It is objectit be the pannell aganis the Deposition of *Mr Alexander Montgomerie* product, that the samyn can mak na fayth, it nocht being maid befor ane Judge, nor he fuorne to that effect; nor nane inquiryng sic thing of him: And speciallic, aucht to haif bene summond befor ane Judge-Ordiner, and to haif deponit judicallie; in respect that letteris war direct, summondng him to compeir befor the Justice in this judgement, and hes nocht compeirit, being summond to that effect; and speciallic, his Deposition could nocht haif bene ressaunt gif he had compeirit, becaus it wald haif bene objectit contrair him, that he and Margaret Montgomerie are brother-bairnes of the hous of Hefil-heid,<sup>2</sup> quhais dochter is allegit to haif bene witchet, be ane speciall poynt of Dittay gevin in aganis this pannell; and sa, his extra-judicial Confessioun out of all judgement, subscryuet be him without Witnes, could nocht be respectit.—To the quhilk the persewaris anfuert, that this last objectioun aucht to be repellit, in respect of the Testimoniall product, beiring Mr Alexander to be feik, subscryuit be ane Minister, quhilk excuises his absence: Quhilk Deposition is referrit to the tryell of the Assyse.

IN respect of the quhilkis Depositiones and Verificationes product to the perfonas of Inqueist, for thair forder informatioun of the pannellis giltines of the perticular poyntis of Dittay aboue written, Protestis for Wilfull Error aganis thame, gif thay acquit.

VERDICT. The Assyse, for the maist pairt, FYLES *Margaret Wallace* of the *first* Article of Dittay,<sup>3</sup> anent Cuthbert Greg, couper, and haill circumstances thair of: AND siclyk, all in ane voce, ffyles hir of the *fourth* poynt of Dittay, and haill circumstances mentionet thairintill, anent the consulting with vmq<sup>le</sup> Crif-

<sup>1</sup> Cut off, &c. Lat. *elidere*.

<sup>2</sup> The Montgomeries of Hazelhead, a respectable family in Ayrshire.

<sup>3</sup> The Articles of Dittay of which the pannell is found guilty, are rehearsed at length at the commencement of the Trial, being the only part of the Dittay preserved at full length in the Record. The remainder of the points are pretty largely recapitulated in the preceding arguments, which are of great importance, as they completely illustrate the state of the Law and practice on this extraordinary subject. More freedom of discussion was permitted in this Trial, than in any of the previous cases of a similar nature.

tiane Grahame, ane notorious Witche, for cureing of hir selff of ane suddane diseafe, be taking the samyn of hir, and laying it vpone Alexander Vallange bairne; and thaireftir cureing the said bairne of the said diseafe, in forme and maner specifeit in the Dittay: AND lykwayis, for the maist part,<sup>1</sup> ffyles hir of the *fyft* poynt, anent the cureing of Margaret Mure of the seiknes quhairwith scho was visseit, be Sorcerie and Withecraft, and consulting with Cristiane Grahame for that effect, in maner contenit in the said *fyft* Article: AND in lyk maner, all in ane voce, ffyles hir of the *tent* Article of Dittay, and haill circumstances thairrof, anent the seiknes laid vpone Alexander Boig his bairne, be Sorcerie and Withecraft, in maner specifeit in that Article: AND last, all in ane voce, ffyles hir of the generall poynt, as ane cownoun consulter with Witches, thir aucht or nyne yeiris, namelie with vmq<sup>e</sup> Cristiane Grahame, laillie convict and brunt for ane notorious Witche, and with Katharene Blair, and vther Witches, and seiken<sup>2</sup> of help and responsis of thame, alsweill for cureing of hir selff of dyuerse seiknesses, and cureing of hir freindis and acquentance, as for inflicting of dyuerse crewall diseissis vpone dyuerse perones to quhome scho buir ony haitrent; and distructionne of thame thairby, be devillrie, Incantatioun, and Withecraft, expresse forbidden be the Lawis of Almychtie God, and municipall Lawis of this realme. AND CLANGES hir of the haill remanent poyntis of Dittay, and crymes thairin contenit.<sup>3</sup>

SENTENCE. The Justice, be the mouth of James M'cairtour,<sup>4</sup> dempster of Court, Ordanit the said Margaret Wallace to be tane to the Castell-hill of Ed', and thair to be wirreit<sup>5</sup> at ane staik to the deid; and hir body thaireftir to be brunt in asches: And all hir moveabill guidis to be escheit, &c.

### Slaughter.

Mar. 27.—MR JOHNNE STEWART of Dowellie, and Thomas Stewart, his brother.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>e</sup> Johnne Low in Gairnetullie; committit vpone the xvij of Januar, 1614 yeiris.

PERSEWARIS, James Low, as brother; Andro Low, burges of Perth, neir kynfman; Sir W. Oliphant. PRELOCUTORIS in defence, Mr Lueis Stewart, Mr Robert Lermonth.

It is allegit that this matter can nocht pas to ane Assyse, in respect thai haif obtenit his Maiesteis Remissioun, vnder his hienes Greit Seil, quhilke thay vse and produce, daitit the xxiiij day of Marche, 1618 yeiris.—The Justice ordanis the pannell to find caution to satisfie the pairties; quha, togidder with James Soutter of the Mylnetoun of Fornocht, band and obleist thame, &c.

<sup>1</sup> 'By a plurality of voices,' as it was more recently expressed. *Lawsonne*, chancellor.

<sup>4</sup> Who appears for the first time in this office.

<sup>2</sup> Seeking.

<sup>3</sup> 'Johnne

<sup>5</sup> Strangled.

### Intercommuning with the MacGregors—Slaughter—Theft— Fire-raising, &c.

Apr. 23.—JOHNE MOIR M'EANE CHERE<sup>1</sup> CHAMRONE (Cameron), and Duncane (Moir) M'eane Chamrone, his brother.

Dilaitit of the crymes following, viz. The said *Johnne Moir*, ffor being in companie with vmq<sup>16</sup> Allaister M'Gregour of Glenstra, Johnne Dow M'Gregour, his brother, and vtheris thair kyn and freindis, togidder with the Clan-Chamrone and Clan-Anveroche, and vtheris brokin men and foirneris, to the number of ffoure hundreth perfonas, convocat in battell array, vpon the landis of *Glenfrune*,<sup>2</sup> pertening to the Laird of Lufe,<sup>3</sup> in ffebruar, 1603 yeiris; quhair vmquhile Alexander Colquhoun of Lufe, accompaneit with certane his freindis, war convenit, at that tyme, be vertew of oure fouverane lordis Commiffioun, to refist the faidis M'GREGOURIS cruell interpryfes and intentiones. AND for airt and pairt of the fleilling and away-taking of fex hundreth ky and oxin, aucht hundreth fcheip and gait, fourtene fcoir horfe and meiris, with the haille pleniffing, guidis and geir of the four-pund-land of Lufe, pertening to the inhabitantis thairrof. AND fielyk, the said *Duncane Moir M'eane Chamrone*, ffor being in companie with Robert Abroche,<sup>4</sup> Johnne Dow M'allaster,<sup>5</sup> and vtheris thair complices, ane aucht yeir fyne, or thairby,<sup>6</sup> at the Slauchter of vmq<sup>16</sup> James Menzies, brother to the Barrone of Comerie, and Burning of his hous;<sup>7</sup> and fa was airt and pairt of the said slauchter, and burning of the said hous. TO THE TAIKIN,<sup>8</sup> he hes confeffit that he paid thre hundreth merkis to the Barrone of Comerie and his freindis, in Affythement<sup>9</sup> of the Slauchter and Burning; as at lenth is contenit in the Dittay.<sup>10</sup>

PERSEWAR, Sir Williame Oliphant; Johnne Colquhoun, indueller in Leyth, as informer.

The perfonas on pannel, being enterit, declairit that nane of the freindis of the Barone of Comerie could perfew thame for the Slauchter of James Menzies; becaus thai had refflaut fatisfactioun for the Slauchter and Burning, fra Duncane. And the said Johnne Moir confeffit his being at the ffeild of Glenfrune, bot denyis that he did ony fkyath thairat.

<sup>1</sup> John 'the large,' the son of John of 'the mouse colour.' <sup>2</sup> See this Collection, II. 430, for an account of the Battle of Glenfruin, &c. <sup>3</sup> Luss, on the banks of Loch-Lomond. <sup>4</sup> McGregor. Named *Abroche* after his father Duncane, viz, 'of Lochaber.' <sup>5</sup> It appears from the Records of the Privy Council, that he was killed in February, 1611. <sup>6</sup> Robert Abroche received the Royal pardon, previous to December, 1612. <sup>7</sup> As the Menzieses were both interested and most zealously active in furthering the cruel persecutions directed against the Clan-Gregor, so they were particularly obnoxious to the vengeance of that Clan. <sup>8</sup> In testimony or *token* whereof.

<sup>9</sup> That compensation shall thee nought avail,  
Which erst necessity, not Justice gave;  
Howe'er in others it be held sustainable—  
But shall be quoted as sound proof of guilt,  
And practical confession of thy crime.

Anon.

<sup>10</sup> The Dittay is not preserved on record.

The Justice Ordanis the Dittay to pas to the knowlege of ane Assyse, &c.

ASSISA.

Johnne Naper of Kilmahew,  
Johnne Darleith of that Ilk,  
Johnne Danielstoun of Dal-  
quhorne,  
Mungo Buchannane in Tillie-  
chevin,

George Nicoll, cuik in Ed',  
James Mitchell in Chapeltoun,  
Johnne Williamfoun, thair,  
Williamme Gow in Drymmene,  
Robert Moriefoun, burges of  
Dumbartane,

Vmphra Colquhonne, indueller in  
the Cannogait,  
Williamme Buchannane, thair,  
Adame Clerk, litster in Edinburgh,  
Patrik Colquhoun, alias Cowane,  
tailzeour in Edinburgh,  
George Mitchel, staibler thair.

W<sup>m</sup> Buntene in Auchinsoule,

VERDICT. The Assyse, all in ane voce, ffand, pronuncet, and declairit the saidis Johnne and Duncane to be ffylet, culpable, and convict of the crymes *respectiue* aboue writtin.—SENTENCE. To be tane to the Castell-hill of Ed', and thair, thair heidis to be strukin fra thair bodeyis; and thair guidis to be escheit and inbrocht to his Maiesteis vse, &c.

### Suborning of Witnesses—Perjury.

Jun. 22.—ANDRO TRUMBLE in Belfches, Robert Ker in Bewlie, James Ȝoung in Belfches, and David Trumble in Luftruthir.

Dilaitit of Suborning of Witnesses, and for beiring of ffalse-witnesing.

My lord Aduocat producet the Dittay, with ane Warrand direct to the Justice be the Lordis of Sessiou, for putting the pannell to the tryell of ane Assyse, for the crymes spcifeit in thair Dittay.<sup>1</sup>

ASSISA.

Gilbert Ker of Lochtour, Williamme Ker of Lyntoun, Johnne Glendonyng of Drumrafche, George Kincaid, mercheand in Edinburgh, Mr Thomas Ker, sone to the Guidman of Yair.<sup>2</sup>

My lord Aduocat takis instrumentis of the sueiring of the Assyse; and for verificatioun of the Dittay, producet the Depositiones maid in presens of the Lordis of Sessiou, subscryuit be my Lord of Melrois,<sup>3</sup> *in presentia Dominorum*; And also, producet ane Decreit of the saidis Lordis, vnder the subscriptioun of Mr Thomas Hay, clerk, daitit the xxij of Junij instant, ffinding and declairing the said Andro Trumble to be a periured and ffals man, and ane corrupter and seducer of Witnesses to depone ffalslie; and also, ffinding the saidis Robert Ker, James Ȝoung, and David Trumble, Witnesses foirsaidis, seducet be the said Andro, to be in lyk maner perjuret and ffalse Witnesses; in respect, thay first declairit be thair foleme aithes, that thai war nawayis seducet, be the said Andro Trumble, to heir ffals witnes in his cause of Spuilzie, persewit be him aganis Williamme and Walter Mydilmestis; and thaireftir, being mair straitlie and narrowlie examinat, confessit the verritie of the said seductioun, and the ffalsset of thair Depositiones. And vpone the production thairof, askit instrumentis, and

<sup>1</sup> The Dittays are so extremely prolix and uninteresting, that it has not been deemed necessary to insert them here. <sup>2</sup> The rest burgeses. <sup>3</sup> Sir Thomas Hammilton of Binning, &c. afterwards Earl of Hadington, Lord President of the College of Justice, &c. one of the greatest men of his time.



proteffit for Wilfull Errour aganis the saidis perfones of Affyse, gif thay acquit ; speciallie, in respect of the pannellis offering thame in his Maiesteis will for the said crymes.

VERDICT. The Affyse, all in ane voce, be the repoint of Nicoll Edger, mercheand burges of Edinburghe, Chancellor, ffand, pronuncet, and declairit the saidis Andro, Robert, James and David, to be ffylet, culpable, and convict.—

SENTENCE. The saidis *Andro Trumble*, *Robert Ker*, and *James Young*, to be tane to the Castell-hill of Edinburghe, and thair to be Hangit quhill thai be deid ; and thair haill moveabill guidis to be escheit to his Maiesteis vfe.—And the said *David Trumble* to be tane to the Mercat-croce of Edinburghe, and thair his toung to be pearcet with ane hett boitkyn ; and thaireftir Banisfchet this realme, and nocht (thaireftir) to be fund thairintill, vnder the pane of deid.

*Assisours fined for being absent.*

SIR WILLIAME McDUGALL of M'cairstoun, Sir Johnne Scott of Newburgh, Raulf Ker, bailzie of Lauder, Sir Robert Scott of Thirlstane, Williame Johnnestoun of Lockerbie, Williame Borthuik, elder of Johnnstoun-burne, Sir Archibald Murray of Blakbarrony, Mr Johnne Home of Swanscheill, James Fairbairne of West Gordonne, Johnne Elphinstoun of Schank, Alexander Cranstoun of Moriestoun, Johnne Cranstoun of Thornydykis, Sir Robert Scott of Hayneing, David Vause of Blaufe, Williame Home of Hardeismyln, Williame Bennet, seruitour to the Erle of Roxburgh, Johnne Symontoun, younger, of that ilk, Gilbert Ellote of Stobis, Robert Logane, ffear of Bonnytoun, Mr Johnne Ker, clerk of Selkirk, Adame Gairdin, mercheand,—and twelve others, mercheands,—‘ ilk ane of thame, for thair nocht compeirance, to pas vpon the said Affyse, war vnlawit in the pane of ane hundreth merkis.’

### **Taking captiue—Scourging—Slaughter, &c.**

Jun. 26.—SIR WILLIAME KEYTH of Ludquhairne, kny<sup>t</sup>, and Hew Charteris, his servand.

Dilaitit for allegit airt and pairt of the Taking and Apprehending of Alexander Pedder, myller at the mylne of Feachfeild, vnder nycht, furth of his duelling hous, mother-naikit as he was borne ; and for cayreing him, as ane captiue and prissoner, to the Place of Feachfeild, and breking vp of the zettis and durris of the said place ; scourging him with fuord-beltis and horfe-brydillis vp and doun the hall thairof, to the effusioun of his bluid. AND fielyk, for allegit airt and pairt of the daith and Slaughter of vmq<sup>le</sup> Andro Frafer, ane young infant bairne, sone to Andro Frafer, younger of Mukallis : AND for contraveining the Actis of Parliament, in beiring and weiring of hagbutis and pistolettis PERSEWARIS, Andro Frafer, younger of Mukallis, as father ; Alexander Pedder, myller ; Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat to our souerane lord, for his hienes entreis.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Roger Mowat.

Compeirit the said Sir Williame and his servand, togidder with the said prelocutouris, and exponet and declairit, that thai war informet, Criminall Letteris

war direct out aganis thame, vpone threfcoir dayis wairning, at the instance of Andro Frazer, &c. chargeing thame and certane vtheris<sup>1</sup> to find caution for thair personall compeirance this day and place, in the hour of caus, to vnderly the law for the above allegit crymes: For obedience of the quhilk charge of Hoirning, and tryell of thair innocencie of the saidis allegit crymes, the said Sir Williame Keyth, and Hew Chairteris, compeirit and offerit thame selffis of the Law, as altogidder innocent thairof. And in respect na pairtie compeiris to insist in thair persute, being oft tymes callit to that effect, protestit for thair cautioneris relief, and that thai, na name of thame on nawayis fould be callit or persewit for the saidis allegit crymes, in ony tyme cuming; and thairupoun afkit instrumentis.

Johnne Forbes, eldest sone and appeirand air to Mr Duncane Forbes of Bannagask, as cautioner and fouertie, for repoirting the above Letteris, deulie execute and indorlate, and persute thairof, &c., vnlawit vnder the panes following, viz. vpone the said Sir Williame Keyth, and Nathaniell Keyth of Coklaw, ilk ane of thame vnder the pane of v<sup>c</sup> merkis; and vpone ilk ane of the remanent defenderis, in the pane of ane hundreth merkis.

### House-breaking—Theft.

Jul. 3.—ANDRO RUTHERFURD, sumtyme seruant to Mr James M<sup>c</sup>Gill of Cranstoun.

Dilaitit of airt and pairt of the breking of the said Mr James M<sup>c</sup>gillis Place of Cranstoun, and breking vp of ane kist,<sup>2</sup> within the Woman-hous<sup>3</sup> thairof, pertening to Malie Newlandis, and steilling xxx li. furth thairof; committit in Maij last.

The pannell offerit him selff in the Kingis Maiestie and the Laird of Cranstones will, for the said cryme: Quhairvpone, the Justice ordanit him, of his awin consent, to be Banischet the parochin of Cranstoun; and at na tyme heirefter to be fund thairintill, vnder the pane of deid. And ordanit him to find caution for his compeirance vpone fyftene dayis wairning, to vnderly the law for the said cryme, gif in ony tyme cuming he beis fund within the said parochin; quha fund Thomas Rutherford in Borthiuk-manes caution for that effect.

### Fire-raising—Slaughter.

Jul. 24.—DONALD M<sup>c</sup>ANGUS of Glengarie.

<sup>1</sup> There were 'Nathaniell Keyth of Coklaw, Williame Keyth, sone to Alex. Keyth of Bodome, Robert Marshell, Gilbert Wairdene, Gilbert Huchoun, and Alexander Forbes, all feruitouris to the said Sir Williame; Johnne Keyth, sone to Alex. Keyth, vnle to the said Sir Williame, George Keyth, callit *Caithnes*, George Johnne Dow M<sup>c</sup>farlane, Alexander Fordyce, and Thomas Murray, feruitouris to the said Nathaniell Keyth, vnle to the said Sir Williame.' <sup>2</sup> Chest. <sup>3</sup> Probably that part of the Offices of Cranstoun, where the female domestics resided.

Dilaitit of th treffonable Raifing of fyre, Burning of xxvij Houffes, with the inficht being thairin, pertening to Mr Johnne M<sup>c</sup>Kenzie, Archedeane of Rofs; and Slauchter of dyuerfe his tennentis.

PERSEWAR, Mr Johnne M<sup>c</sup>Kenzie, Archedene of Rofs.

The perfewar passis fra the pannellis persute *pro loco et tempore*, for the crymes contenit in the Letteris.

The pannell offeris him selff to the tryell of the law for the saidis crymes, as altogidder innocent; and disassentis to the said continuatioun. And for obedience of the Justice ordinance, stand Sir Donald Gorme of Slait, kny', personallie present, cautione for his entrie, to the effect foirlaid.

### Resetting of a Jesuit-Priest.

Aug. 6.—ANDRO HATHOWIE, burges of Glesgow, and Jonet Pollok, his spous.

Dilaitit of the treffonabill Receipt of George Mortimer, ane Jesuite Preist, &c.<sup>1</sup>

VERDICT. The Assyse, be pluralitie of voittis, be the repoint and declaratioun of George Moore of Powmadie, chancellor, stand the saidis Andro and Jonet to be fylet, culpable, and convict, &c.—SENTENCE. The Justice, conforme to ane Warrant of the Lordis of his Maiesteis Secretit Counfall, decernis and ordanis the saidis Andro and Jonet to be Banischet furth of this kingdome of Scotland, during all the dayis of thair lyftymes: And to be committit to waird, thairin to remane, quhill cautioun be fund to the Proveist and Bailleis of Glesgow, for obedience of the said dome, and thair nocht returning agane; vnder sic panes, as fall be set down be the saidis Proveist and Bailleis, in thair Act to be maid thairupoun.

[Mr Robert Fairlie, Justice-Depute.]

### Theft.

Sep. 20.—HENRIE KYNLOCHE, sumtyme post-maister, indueller in the Cannogait.

Dilaitit of the thiftious steilling of ane blak cloik, lynet throw with blak veluet, ane grograne taffitie cloik, lynet with figuret satene, and tua pair silk schankis, pertening to Alexander Lord of Kildrymmie, furth of his Place, at the bak of the Palice of Halyruidhous; committit in November 1621 lastbypast.

The pannell confessis the cryme specifreit in his Dittay, with all humilitie: Seing the guidis stowin ar restorit to the rychteous owner thairof, offeris him selff in the Kingis Maiestie and his hienes Counsellis will, for the said cryme.

WARRANT of the Lordis of Secretit Counfall.

APUD HALYRUDHOUS, *decimo quinto mensis Maij*, 1622. FORSAMEKILL AS Henrie Kinloche, sumtyme post-maister in the Cannogait, being tane and put in waird, within the Tolbuthe of the Canno-

<sup>1</sup> The Dittay, which is recorded at length, is similar to those already reported.

gait, quhairin he presertlie remanis, ffor certane poyntis of Thift committit be him : Off the quhilkis, necessair it is that he be tryed, and that some pwnieichment be inflictit vpon him, to the terrour of vtheris to offend in the lyk heireftir. Thairfor, the Lordis of Secreit Counfall Ordanis his Maiesteis Justice, Justice-clark, and thair deputis, to appoint ane Justice Court to be haldin in the Tolbuthe of Edinburge, at fuche ane day as thay fall think expedient ; and to caus the said Henrie to be exhibeit and producet befor thame ; and thair to accuse him of the said cryme of Thift, according to the particuler Dittay, that fall be gevin in aganis him. And Ordanis his Maiesteis Advocat to insit in the persute of him ; and gif the said Henrie fall confes the said cryme, and become in his Maiesteis will for the same, that than thay pronounce dome and sentence aganis him, ordaning him to be Banist for the realmes of Scotland and Ingland, and nevir to returne agane within the samyn during his lyfytyme, vnder the pane of deid.

Extractum, &amp;c.

JACOBUS PRYMOIS.

SENTENCE was pronounced in conformity to this Warrant.

### 'Rapt and Ravingh'—(Forcible Abduction)—Adultery.

[THE following brief notice of an ancient *Crim. con.* Case, affords a specimen of the mode in which affairs of gallantry were managed in the Western Islands and Highlands of Scotland. Sir LAUCHLAN M'FINGANE (MACKINNON) of Strathardill, having fallen in fancy with *Mary M'Connell* (*MacDonald*), the wife of *Ranald of Benbecula*, makes the best use of his winning arts, and carries off the lady, by violence, from her husband. It would appear, from the charge of Adultery being also preferred against this knight errant, that the consent of the lady had in all probability been previously obtained to the arrangement. *Ranald M'Allan V'Ean*, the injured husband, was brother to *Donald M'Allan M'Ean*, CAPTAIN OF CLANRANALD, and grandfather of *Donald MacDonald of Benbecula*, who became Captain of Clanranald, anno 1725. This gay and *captivating* deceiver, Sir Lauchlan, was one of several Hebridian Chiefs, who had been knighted by KING JAMES VI, in the latter part of his reign, to ensure their more ready acquiescence in the schemes so zealously projected by him, for the civilization of their semi-barbarous tribes. A Gift of his Escheat was granted by the King, Dec. 12, 1622.<sup>1</sup>

The Editor begs to refer the reader to the forthcoming work of Mr GREGORY, already alluded to, for more copious illustrations of matters connected with the Hebrides and West Highlands.]

Nov. 8.—SIR LAUCHLANE M'FINGANE of Strathardill, kny<sup>t</sup>.

Dilaitit of the Rapt and Raveifcheing of Marie M'conneill, sifter to Sir Donald M'conneill of Slait, and spouse to Rannald M'allane V'eane of Casteltwirrie ;<sup>2</sup> committing Adulterie with hir, and remanent crymes contenit in the Letteris.

James Logie, wryter, producet the Letteris deulie execute, indorsate, and registrat ; quhairby the said Sir Lauchlane is denuncet rebell, and put to the horne, for nocht finding of cautioun, to haif compeirit to haif vnderlyne the law.

### Slaughter.

Mar. 12, 1623.—WILLIAME OLIPHANT of Gask, and Alexander Fleming of Monnefs.<sup>3</sup>

Dilaitit of airt and pairt of the Slaughter of vmquhile David Toscheoch of Monyvaird.<sup>4</sup>

<sup>1</sup> See Record of the *Privy Seal* and *History of the Macdonalds*.  
Oliphant of Rescobie, and Johnne Erle of Wigtoun, cautioners for the pannels' entry.  
29, 1618, &c.

<sup>2</sup> Castletirrim.

<sup>3</sup> Peter  
<sup>4</sup> See Jul.

Compeirit Mr James Campbell, sone to the Laird of Laweris, for him selff, and in name and behalf of the remanent kyn and freindis<sup>1</sup> of the said vmq<sup>o</sup> David, and in name of Annas Grahame, Lady Monyvaird, and past fra the said Williame Oliphant of Gask his persute, *pro loco et tempore*.

Compeirit personallie, Mr Johnne Oliphant, as procuratour for Williame Oliphant of Gask, and producet ane Warrant and delyuerance of the Lordis of Secreit Counsall, commanding the Justice to desert the dyet appointit this day for the said Williame Oliphant ; quhair of the tennour followis.

WARRANT of the Secreit Counsell, concerning Williame Oliphant of Gask, for Monyvairdis Slauchter.

MY LORDIS OF SECREIT COUNSALL, vnto your ll.<sup>s</sup> humble meanis and schawis, I, your seruitour, Williame Oliphant of Gask: That quhair, I am charget to compeir befor his Maiesteis Justice, in the Tolbuth of Edinburghe, vpon pe xij day of Marche instant, to vnderly the Law for the Slauchter of vmq<sup>o</sup> David Tychboche of Monyvaird, and vtheris crymes specifeit in the Letteris raisid thair-upoun. Lyk as, pe Justice intendis to proceed aganis me in that matter, albeit it be of verritie that HIS MAIESTIE, being treulie informet of the forme and maner how that vnhappie Slauchter fell out, and how that dyuerse come to pe fray quho war bothe ignorant and innocent of the Slauchter, and wald haif bene lothe to haif bene actoris thairin, or to haif medlit thairwith ; HIS MAIESTIE was pair-upoun gracioussle pleisit, by his Letteris writtin and direct to your Lo., to recommend to your Lo. the settling of that feid<sup>2</sup> by some amicableill and freindlie dresse, and by making of suche Assythement<sup>3</sup> and satisfacioun, as convenientlie may be performed : AND in the meane tyme, it was his Maiesteis expres will, and special command, and direction vnto your ll., that all proces Criminall and Ciuill aganis me, for that caus, sculd rest and ceis, till some generall coursse war concludit vpon and tane in that matter : As his Maiesteis Letter, exhibeit vnto your ll. in the sex hundreth and nyntene zeir of God beiris. ACCORDING quhairvnto, your Lo. hes nocht onlie gevin Warrant to desert findrie dyettis, quhilis formerlie war appointit for my tryell in this matter, bot with that your ll. tooke verrie grit panes, in tua or thre seueral dyettis, to haif settled this feid, and caused wairne ane grit number of Monyvairdis speciaill freindis to that effect : And at pir dyettis your ll. causit satisfacioun to be maid to *Duncane Campbell* and *David Malloche*, who war bothe deidlie burte and woundit at the slauchter of Monyvaird, the on haiveing his hand cut aff, and pe vther being deidlie woundit in the heid ; bot anent pe satisfacioun for Monyvairdis Slauchter, whairin thair was verrie honorable Offeris maid ; the same was cassin af, be refone of *Young Monyvairdis* minoritie, his freindis in the mean tyme refusing to medle pairin, or to tak burding for him ; sua that pe nocht settling of this buffines proceedis nocht frome the default or vnwillingnes of the offenderis, quho in heart and affectionn wold do mair nor goodlie thay may in pat matter, bot frome the refusall of Monyvairdis freindis to deale thairin, during his minoritie. IN consideratioun quhairof, I man<sup>4</sup> maist humlie besek your ll. to geve command to pe Justice, Justice clerk, and pair deputtis to desert pe said dyet, and to desist and ceise fra all proceeding aganis me or my cautioneris pairintill ; discharging thame pair of, and of pair offices in that pairt, till some generall coursse be takin for pe final settling of that feid. And your ll. ansuer. (followis pe delyuerance on the bak pair of.)

APUD EDINBURGHE, 27 Marcij, 1623. FIAT ut petitur,

GEO. CANCELL<sup>5</sup>. MAR. MOIRTOUN. WIGTOUN. ROXBURGH. MELBOIS.  
LAUDERDAILL. R. COKBURNE. ALL. HAMMILTOUN. J. PRYMOIS.

THE Justice, for obedience of the said Warrant, and command thairin, Ordanit

<sup>1</sup> Blood-relations.    <sup>2</sup> Lordships.    <sup>3</sup> Feud.    <sup>4</sup> Compensation or *solatium* paid to the deceased's nearest of kin, on account of being deprived of their relation.    <sup>5</sup> Must.



the said dyet to DESERT aganis the said *William Oliphant*: AND of consent of the said Mr James Campbell, continewis the dyet aganis *Alexander Flemyng of Monnes*, to ane fyftene dayis wairning; and caution to be fund be him for his entrie to that effect.

Johnne Erle of Wigtoun of new becomes caution for the said Alexander, to enter him befor his Maiesteis Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdome quhair he duellis, (Perthe,) or soner, vpone xv dayis wairning, &c.

### Slaughter.

Jun. 4.—THOMAS GOWDIE, mercheand, burges of Dumfreis.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Harbert M'kie, younger, in Dumfreis; committit vpone the last day of December lastbypast; be geving to the said vmq<sup>le</sup> Harbert M'kie, at the Brig-end of Dumfreis, of ane grit and deidlie straik, with his fute, in the said vmq<sup>le</sup> Harbert his secreit pairtis; ane vther, at the left pape, vpone the heart; and ane thrid, on his left schoulder, quhairby his schoulder-bayne was strukin out of joynt: Off the quhillkis straikis he nevir convalesset, bot being instantlie borne hame to his hous, tuik bed; quhairin he lay bedfast, in grit dollour and payne, of the saidis hurtis, vnder the cure of chirurganes, be the space of tuentie dayis thaireftir; and, in end, vpone the xxvj of Januar thaireftir, now bypast, he deceisfit of the saidis hurtis and woundis.

#### PERSEWARIS.

Katharene Edger, relict;  
Agnes Maxwell, mother;  
Eduard and Johnne M'kie, his  
tua brether.

#### PRELOCUTOUR

for the persewaris.  
Johnne Maxwell of  
Conhaithe.

#### PRELOCUTOURIS

in defence.  
Mr Lueis Stewart,  
Mr Thomas Nicolfoun,  
younger, Advocattis.

The pannell, eftir reiding of the Dittay, to informe the Justice of the secreit proceedingis of thir persewaris, and how maliciousslie thai proceed aganis him, declairis, that thair was nevir querrell nor disoord betuix him and vmq<sup>le</sup> Harbert M'kie, for quhais slauchter he is wrangusslie and injustlie persewit; bot as the treuth is, ane contraverfie falling out betuix ane Thomas Craik and the pannell, in craveing of ane sowme of money addetit be Craik to him, and sum woirdis and dry cuffis<sup>1</sup> being gevin be ather of thame to vther, the Bailzie of the Regalitie of Lyncluden, viz. Johnne Maxwell, brother to Kirkconnell, within quhais Regalitie the contraverfie fell out, for putting the pairteis to quyetnes, commandit thame to waird, quhill caution war fund for keiping his Maiesteis peace; quhairvpone, the said vmq<sup>le</sup> Harbert M'kie, with ane number that assitit him, laid handis vpone the pannell, brocht him, with grit violence, to the Waird-

<sup>1</sup> Dry blows, i. e. upon which no blood had followed; fisty-cuffis.

hous, pat him in the stokis ; and becaus the buittis that was than vpone his legis wald nocht, convenientlie, be stowit and placet within the hoillis of the stokis, thai maist insolentlie strak him vpone his bak, dung doun the over<sup>1</sup> bar of the stokis, and dancet thairupoun with thair feit and kneis, as also vpone his breift and bellie, quhairthrow he was almost confoundit in that painful agony. And quhair, in the Dittay, it is allegit, that thair wes straikis gevin to the said vmq<sup>10</sup> Harbert, quhair of he deceissit ; the verritie thair of is, that ane yeir or thairby, of befoir, he being strukin in at the left pape be ane Ahannay, with ane durk, a sevin inches or thairby, with grit difficultie was than curet, bot never fullilie convalescit ; sua that the corruptioun<sup>2</sup> gadderin within the wound, raisit vpone him ane new fever, quhair of he deceissit ; as is sufficientlie knawin to the haill countrey. Lyk as, it was declairit be the said vmq<sup>10</sup> Harbert to dyuerse inhabitantis of the said burgh of Dumfreis, that, lang befoir that contraverfie of the pannellis, he was strukin in the secreit pairtis, quhilk he ever declairit would be his deid. And sa, the premisses being considderit, the said persute is maist wrangullie inventit, and vpone greid of geir to be obtenit of this pannell be thir schameles persewaris ; and, vnder coulour of justice, thay haif followit furth this persute aganis him, albeit the defunct him self, in presens of his chirurgane and vtheris, cleirly absoluit and fred the pannell of all persute done to him.—Quhilk being premitit,<sup>3</sup> for informatioun, it is allegit be the pannell and his prelocutouris, that this Dittay can nocht pas to ane Assyse, becaus the said vmq<sup>10</sup> Harbert M'kie, the persone allegit slane, the tyme lybellit of his slauchter, was rebell and at his Maiesteis horne, for ane criminall cause, viz. ffor nocht compeirance befoir his Maiesteis Commisioneris within the Tolbuthe of Jedburgh, vpone the tuentie sevint day of Apryle, I<sup>m</sup>.Vj<sup>c</sup>. and nyntene yeiris, in ane Justice court, haldin be thame the saidis day and place, to haif vnderlyne the law for beiring and weiring of hagbuttis and pistolettis, and contravening the Actis of Parliament maid thair-ant. And for verificatioun thair of, producet the Letteris of Hoirning, &c.

Continued to the thrid day of the nixt Justice-air of Dumfreis, &c.—The said Thomas Goudie, defender, be his aithe gevin, declairit that he dred<sup>4</sup> bodelie harme of the said Eduard M'kie, ane of his persewaris ; and thairfor desyret cautioun and lauborreis of him, conforme to the ordour, vnder sic pane as his lordschip shuld pleis modifie. Johnne Maxwell of Conhaithe become souertie, &c., vnder the pane of ffyve hundreth merkis money, *toties quoties*.

### **Slaughter of two MacFarlanes—Barbarous Torture and savage Murder of a Buchanan by some of the Clan MacFarlane.**

[In the whole range of the Criminal Records of this country, remarkable though they unquestion-

<sup>1</sup> Upper.

<sup>2</sup> Purulent or corrupted matter.

<sup>3</sup> Premised.

<sup>4</sup> Dreaded.

ably are, the Editor believes it would be difficult to point out a Case possessing incidents of such varied and frightful interest, as those brought forward, so prominently, in the following Trial. It is not his intention, in this place, to recapitulate the leading facts of the present truly horrible Case. He has not been able to throw much additional light upon the facts recorded in the Books of Adjournal from contemporary documents. All that he at present deems worthy of remark is, that *tradition* has preserved pretty accurate outlines of the general features of this 'Romance of real life' in the district where they occurred—an additional proof, were such requisite, of the fidelity with which historical and extraordinary events are handed down, from father to son, in THE HIGHLANDS OF SCOTLAND.

The only Paper which the Editor has discovered, illustrative of the other side of the question, is the 'SUPPLICATION,' preserved among the Warrants of PRIVY COUNCIL, which is appended to this Trial. That document is given here as an act of common fairness to the CLAN MACFARLANE. The reader is left to draw his own conclusions as to the relative demerits and guilt of the several parties.]

Jun. 6.—GEORGE BUCHANANE, in Gartincaber; Johnne B., his sone; Patrik B., sone to George B. of Archinar (Auchmar); Patrik M'wreift, his fervand; Johnne Beg Buchannane, in Ballindewar; Johnne B., his sone; Johnne Keir, in Gartnahinch;<sup>1</sup> Thomas Buchannane, in Drongie; and Archibald B., his brother.

Dilaitit of airt and pairt of the Slauchter of vmq<sup>le</sup> Duncane M'farlane, sone to Andro Moir M'farlane, in Voneffene; committit vpone the fast day of Apryle laft, within the town of Kippienoeche, in Drummoud, in the Lennox.

PERSEWARIS.	PRELOCUTORIS	PRELOCUTORIS
Robert and Thomas M'farlane, as brether;	for the persewaris.	for the pannell.
Sir William Oliphant, kny <sup>t</sup> .	The Young Laird of M'farlane; Mr David Prymrois.	Alexander Douglas of Maynes; Mr Robert Nairne.

Compeirit the said Robert M'farlane, &c., and product the criminal letteris, deulie execute and indorfate, vpone the haill perfones defenderis aboue writtin; and offerit thame selffis reddie to perfew the defenderis for the said cryme, and defyret proces.

The said Alexander Douglas of Maynes, cautioner for the entrie of the haill defenderis, with Mr Robert Nairne, Aduocat, product ane WARRANT and command to the Justice, proceeding vpone the following

SUPPLICATION, *gevin into the Lordis of Secreit Counsall, be the foirsaidis haill defenderis, and in their names.*

MY LORDIS OF SECREIT COUNSALL, vnto your Lo. humlie meanis and schawis WE, your feruitouris, PATRIK BUCHANNANE, appeirand of Auchmar; George Buchannane, in Gartincaber; Johnne Buchannane, his sone; Johnne Buchannane, in Ballindorne; Johnne Buchannane, his sone; Thomas Buchannane, sone to vmq<sup>le</sup> William Buchannane, in Blairneborg; Archibald Buchannane, his broper; Donald Keir, in Gartnahinch; and . . . M'caula, ferui-

<sup>1</sup> Perhaps for Gartranich, or Gartrahnich.

tour to the said Patrik Buchannane: THAT quhair, the saxt day of Junij instant is appointit vnto ws for our compeirance befor the Justice or his deputtis, in the Tolbuth of Edin<sup>r</sup>, to vnderly the law for the Slauchter of vmq<sup>le</sup> Duncane M<sup>r</sup>farlane, sone to vmq<sup>le</sup> Andro Moir M<sup>r</sup>farlane, in Kipnoche: Lyk as, the Justice intendis to proceid aganis ws in the said matter, althocht it be of verritie, that gif your ll. war informed of þe certane treuth of this bussines, how and vpone quhat grund and occasioun the Slauchter fell out, and quhat just caus of wraith and displeasour was gevin to vs thairin, we persuaid our selfis that your lo., in honnour and justice, wald nocht think this persute to mereit ony fauour: FOR the treuth is, that þe said vmq<sup>le</sup> *Andro Moir M<sup>r</sup>farlane*, quho, during the whole cours of his vnhappy lyfe, was knowin to be ane notorious thief and lymmer, haifing stowin sum goodis frome certane of his Maiesteis guid subiectis in THE LENNOX, some foure or fyve 3eiris since, or þairby; and þe said vmq<sup>le</sup> *Williame Buchannane*, out of his trew haitrent and detestation of siche thevische doings, haifing maid some inquerie, and having tane panes and travell to speir out and try the goodis, in end, he tryed the goodis to be stowin be the said vmq<sup>le</sup> *Andro Moir M<sup>r</sup>farlane*, who, by cours of Justice, was constrained to mak redres and satisfacioun for the same: AND the said vmq<sup>le</sup> *Andro*, haifing consauet ane deidlie haitrent and malice aganis þe said vmq<sup>le</sup> *Williame* for speirg<sup>1</sup> of thir goodis, he resolued, out of the pryde and malice of his wikked heart, to be revenged vpone him, eftir þe most detestable and crewall maner that the heart of him could devyse: And knowing that the Gentilman was accus-tomed at some tymes, for his recreatioun and pastyme, to go to þe hunting, in þe Mure about the Ducher, he maid chose and took hold of that occasioun to do his turne; and haueing, be some previe moyane, bene maid acquaintit with þe Gentilmannis dyet for his pastyme, he, accompaneit with his tuo sones, and sewin or aucht vtheris lawles lymmaris,<sup>2</sup> come to the said Mure, and lay at await for the Gentilman; and howsone he come þair, about aucht of þe cloke in þe moirning, without ony company bot foure hunting doggis, thay layed handis vpone him and band him fast, that he mycht not fleir; and haifing consultit amang thame selfis, eftir quhat forme and maner thay sould dispatche him, thay resolued, in end, that his presumption and malapertnes to speir out þe saidis goodis deserued ane extraordinier deathe, by torture; quhilk thay maid him to vnderly, the space of ten houris, in maner following, to wit: Thay band him fast to ane trie, at the said hour of aucht in the moirning; and everie hour thaireftir, till sax at nicht, quhilk maid vp ten houris, thay gaif him thre crewall straikis with ane durk, in siche partis of his body as war nocht to bring present daithe; and haifing this way maggillit him with threttie straikis, till þe full number of

<sup>1</sup> Enquiring; searching after.<sup>2</sup> Thieves; worthless characters.

ten houris war outrwn, thay than gaif him þe laft deidlie ſtraik, at the heart; quhairwith he fell deid to the ground! And haifing tirred<sup>1</sup> him naiked, becaus his towng was the inſtrument quhairby, as thay alleged, he offendit, in ſpeiring out of þe former ſtowin goodis, thay cuttit his throte, tooke his toung out of his heid, ſlew his foure dogis, cuttit ane of thair toungis out, and pat it in the Gentilman his mouthe; and pat his toung in the dogis mouthe: And nocht content heirwith, bot the forther to ſatisfie pair inhuman and barbarous crewaltie vpone the naked corporis, thay ſlitt vp his bellie, tooke out his whole intrallis, and pat thame in ane of the dogis belleis, eftir thay had opnit the dogis bellie and tane out his intrallis, quhilkis thay pat in þe Gentilmannis bellie: And ſo left him lyand naked, and the foure deid dogis aboue him; quhair he lay aboue the eard the ſpace of aucht dayis thaireftir, or<sup>2</sup> he was found: For the quhilk deteftabill butcherie and Murthour, thir lymmeris being callit to thair tryell, befor his Maieſteis Juſtice, thay tuik the cryme vpone thame, and paſt to the horne; quhairat the ſaid *Andro* remainit till þe hour of his deathe, and the reſt of his complices remanis pairat as zit: Aganis quhome your Lo. paſt ane ampill Commiſſioun, for þe perſute of thame with ffyre and ſuord. AND quhair as, this deteftable and moir than barbarous Murthour ſould haif bred, in the heart and conſcience of thois lymmeris, ſome remorſe and fealling of this ſyn, and ane abſtinance and forbearance frome all forder impietie, zit þe ſaid *Andro* continewit in his accuſtomet theviſche trade of Thift, Reaffe, and Oppreſſioun, and could nevir be reclaimed pairfra, till the hour of his deathe: AND, for his laſt Thift, he, a littill befor his deathe, ſlaw an ox fra me, the ſaid *George Buchannane*, and cayreid the ſamyn to ane Houſe in . . . .<sup>3</sup> quhair he and his wyfe hes thair ordiner reſett; and how ſone we vnderſtuid of the ſteilling of the ox, we followed the tred<sup>4</sup> directlie toward the ſaid houſe; and haifing ſend for the *Erle of Pearth*<sup>5</sup> his Officer, to aſſiſt ws in rypeing<sup>6</sup> of the Houſſes pairabout, the lymmar and his ſaid ſone, being in the Houſe foirſaid, and pair guiltie conſcience ſtanding vp aganis thame, as ane burreaw<sup>7</sup> to tak vengeance of thame, thay diſguiſet þame ſelfis in weamenis apparell, and preiſt<sup>8</sup> to flie away; whilk being perſaued be ws, and we thinking that thay keipit nocht þe ordiner paife of wemen, and zitt nawayis ſuſpecting that thay war the lymmaris, we followit, in a ſoft pace, to remark quhat courſe thay held; and the ſaid *Duncane Mcfarlane*, luiking over his ſchoulder, and ſeing ws follow, he turnes about, and preſentit ane lang hagbute at ws; quhilk being fyred, by the Prouidence of God, miſgaue: And with that, he and his father drew pair ſuordis, and come dryveand

<sup>1</sup> Violently ſtripped, by tearing off the clothes.    <sup>2</sup> Ere; before.    <sup>3</sup> Left blank.    <sup>4</sup> Tread; foot-marks—probably by means of the *sleuth-hound*, or blood-hound.    <sup>5</sup> As Lord of the Regality, whoſe Bailie would, upon application, grant warrant to ſearch, &c.    <sup>6</sup> Searching.    <sup>7</sup> Fr. *bourreau*, a hangman; an executioner.    <sup>8</sup> *Pressed*; made every effort.



vpone ws with all pair force ; and or evir we preift to perfew thame, thay gaif me, the said *George*, ane deidlie straik, whairat thay strak me deid<sup>1</sup> to the grund, and in the opinioun of the rest of my companie I was a deid man ; and thay hurt and woundit vther thre of ws : And sua, we finding no longer tyme, with suretie, to be beholdaris and sufferaris, we tuik ws to our just and lauchfull defence, quhairin the vnhappie lymmer was worthielie flane, and his sone, who vnhappielie was in companie with him, and who maid the first onfet with his hacquebut or eur we knew quhat he was, was lykwayis killed ; the fader being rebell and at the horne for pe Murthour foirsaid, and he and his quhole bairnis being pe most notorious lymmeris of that Clan. AND howeur it may be obietit, for pe pairt of pe young man, that he was nocht accessour to pe Murthour foirsaid, and that he sould nocht be pwneift for his fatheris deid, it is of treuth that continewallie sen pe fader was rebell for the Murthour foirsaid, the said Duncane, his sone, remanit and attendit vpone him, was airt and pairt with him in all his thevische and wicked deidis ; and in assisting and taking pairt with his fader aganis ws, in our just and lauchfull defence, was flane : At quhose lyke-walk, that nycht, the ox foirsaid, stowin be pe fader and pe sone, was flane and eittin.

THIS being the trew and simple discourfe of all that hes past in this buffines, We humblie present the samyn to your Lo. consideratioun, quhairby your Lo. may perlaue how mischantlie<sup>2</sup> and barbaruslie the innocent and hermeles Gentilman was mordreift and flane, and quhilk was pe ground and occasioun of the fuceiding slauchteris ; quhairin, becaus pair is grit appeirance of disorder to arryse, to the disturbance and brek of pe peace of pe countrey, seing THE CLAN-FARLANE gois about pair privat revenge, and our freindis [THE BUCHANANS] on pe vper pairt, will be cairfull of pair awin defence : We will humlie beseik your Lo. to tak siche course and ordour heiranent, as your Lo. sall think fittest for the peace of pe Countrey ; and we, for our pairtis, will be willing to vnderly quhateuir your Lo., in honnour and justice, sall preseryve to ws. And becaus this can nocht be done vpone the suddane, bot will requyre some tyme and lasour to be tane ordour with and satled ; We most humlie beseik your Lordschipis to geve command to pe Justice, Justice-Clerk, and pair deputis, to DESERT pe said dyet, and to desist and ceis fra all proceeding aganis ws thairin, or calling of our cautioneris for our entrie ; discharging thame pairof, and of pair offices in that pairt : Quhairanent pir presentis sall be pair Warrant.

AND your Lordschipis humlie I beseik.

*ORDINANCE of the Lordis of Secret Counsell, on the above Supplication.*

APUD *Halyrudhous, quinto Junij*, 1623. THE LORDIS Ordanis and commandis the Justice, Justice Clerk, and pair deputis, to continew the dyet within writtin to pe xiiij day of Junij instant :

<sup>1</sup> Insensible ; in a dead swoon.

<sup>2</sup> Old Fr. *meschamment*, wickedly.

And Ordanis thir complineris to mak OFFERIS to the pairtie, and to present the Offeris to pe **YOUNG LAIRD** of **McFARLANE**, yf he be in the toun, and to pe speciall freindis attending this dyet, quhome the saidis Lordis Ordanis to remane in this toun of Edinburghe till some ordour be tane for satling of the matter within writtin, and for the peace and quyettes of pe Countrey. And Ordanis the Justice to dispens with the personall compeirance of pe pairtie, vpone new caution, conforme to pe ordour.

GEO. CANCELL<sup>r</sup>, I. P. D.

And thairwith also producet OFFERIS, in writt, conforme to the Ordinance aboue writtin; quhilk was presentit be the *Young Laird of Buchannane* to the Justice, to be delyuerit to the *Young Laird of McFarlane*, also personallie present.

THE JUSTICE, for obedience of the Counfallis ordinance, Continewis the dyet to the xiiij *instantis*: And Ordanit the perfewaris to confidder vpone the Offeris in the meane tyme: And siclyk Ordanis caution to be fund for the haill defenderis re-entrie that day, vnder the panes contenit in the Actis of Parliament.

Mr David Prymrois protestit, that this Warrant, and Offeris presentit this day, nawayis prejudice the perfewaris of thair lauchfull persute, for the slauchter of thair freind and kinsman.

The Laird of Maynes become caution for re-entrie of the haill defenderis, containit in the Letteris, the day foirlaid, &c.

JUN. 14.—COMPEIRIT personallie, THE LAIRD OF **McFARLANE**, ELDER, as CHEIFF to the perfewaris, and desyret proces on the ane pairt; and on the vther pairt, Compeirit Alexander Douglas of Maynes, as cautioner for the defenderis entrie this day, and producet,

WARRANT of the Lordis of Secreit Counfall, &c.

MY Lordis of Secreit Counsell, vnto 3our Lordschipis humlie meanis<sup>2</sup> and schawis I, 3our seruitour, George Buchannane, appeirand of that Ilk: That quhair, for obedience of 3our Lordschipis ordinance, I, in name of my freindis quho war callit for the slauchter of vmq<sup>le</sup> Duncane McFarlane, haif maid Offeris to the pairtie; quhairin I haif offerit, that thay, or I, in pair names, fall submit thame felfis to pe **ERLES** of **MAR**, **MENTEITH**, **WIGTOUN**, and **LINLITHGOW**: As pe coppie of my Offeris, heirwith producet, beiris. Whairanent, as zitt, thay haif returnet no answr; sua that it appeiris my Offeris ar reiectit. And gif 3our Lordschipis fall nocht find thir Offeris to be sufficient, I, in pair names, offeris to caus thame submit all thair differences to 3our lordschipis, and to do thairin as 3our lordschipis fall think meitt. Heirfoir, I besek 3our ll. to confidder of thir Offeris, and to do thairin as 3our ll. fall think meit for pe peace of pe countrey. And becaus the matter can nocht be presentlie settled and put to ane poynt, that 3our lps. will geve a new Warrant to the Justice, Justice-clerk, and pair deputis, to continew pe dyet appointit to my freindis for pair tryell befoir thame, vnto suche resonabill day as 3our lps. pleifis. And 3our lps. answr.

APUD Halyrudhous, *duodecimo Junij*, 1623. THE LORDIS OF SECREIT COUNSALL Ordanis and Commandis the Justice, Justice-clerk, and pair deputis, to proceid and minister justice in pe matter within written, aganis *Johne Buchannane*, sone to *Johne Beg*, and *Archibald Buchannane*, sone to vmq<sup>le</sup> *William Dow*. And to Desert pe dyet for pe remanent persones charget to compeir to vnderly pe Law for pe Slauchter within writtin: Quhairanent jir presentis fall be vnto pe said Justice, Justice-clerk, and pair deputis, a sufficient Warrant.

GEO. CANCELL.

<sup>1</sup> In presentia dominorum (Secreti Consilij.)

<sup>2</sup> Complains; literally, means, or bemoans.

THE Justice Ordanis THE DYET TO DESERT vpon the haill defenderis inferit in the Letteris, except as above; and justice to be profecute and followit furth aganis thame, conforme to the ordour. And Ordanit the said Alexander Douglas, as cautioner forsaid, to be vnlawit for nocht entrie of the saidis Johnne and Archibald Buchannanes, in the pane of ane hundreth merkis for ather of thame. And siclyke, that the saidis Johnne and Archibald fall be denuncet our fouerane lordis rebellis, and put to the horne; and all thair moveable guidis to be escheit, &c.

#### APPENDIX TO THE PRECEDING TRIAL.

##### SUPPLICATION *by the Kin and Friends of vmquhile Duncane M<sup>ac</sup>Farlane to THE LORDS OF PRIVY COUNCIL.*<sup>1</sup>

MY LORDIS OF SECRET COUNSELL, vnto yo<sup>r</sup> lo<sup>ps</sup> humelie menis and schawis we, yo<sup>r</sup> seruitoris, the KIN and FREINDIS<sup>2</sup> of vmquhile DUNCANE M<sup>c</sup>FARLANE, sone to vmquhile *Andro M<sup>c</sup>Farlane*, in Kipnoche: THAT quhair, the said vmquhile *Duncane*, a young boy of the aige of xvj yeiris, or thairby, being most shamefullie and cruellie slayne be certane of THE NAME OF BUQUHANNANE, vponne sett purpos, prouissoun, and foirthocht fellounny; we, foirbearing to atone priue revenge, and in most submissiue obedience to HIS MAIESTIE and his Lawis, haueing resolued, be the ordinar counse of iustice, to follow out the tryall of that slaughter; we, for this effect, raised Letteris, and charged the Criminalis to thair tryall befor HIS MAIESTIS Justice, vpoun the fact of this instant: At the quhilk day, we, looking that the counse of iustice shuld haif place, conforme to the Lawis of the Kingdome, notwithstanding, it is trewth, that yo<sup>r</sup> lo<sup>ps</sup>, vpoun the sinister and wrong informatioun of the pairtie, concerning the slaughter of vmquhile WILLIAME DOW BUQUHANNANE, w<sup>ik</sup> thay aggregit<sup>3</sup> with fuche circumfstances, and after fuche a detestable maner, as might mak we, who ar innocent, to seame odious.

AND towcheing the occasiouns of the slaughter of the young boy and of his fader, and of the forme and maner thairof, grantit ane WARRANT for continewatioun of our dyet, till the xiiij of this instant; by the quhilk, not onlie we, bot the Gentlemen of the Cuntrie, who ar summoned vpoun the Affise, ar verie far preiudged and troublit, and the counse of iustice is interruptit and hinderit; and we persuede oure selfis that yo<sup>r</sup> lo<sup>ps</sup> in yo<sup>r</sup> awne honourable regaird and dispositioun to iustice, wald neur haue grantit fuche ane Warrant, yf yo<sup>r</sup> lo<sup>ps</sup> had bene treulie informed anent the slaughtair of the innocent and harmles young boy; for althocht we will not prease to extennat the slaughter of vmquhile *William Dow*, who, to our regret, wes mischeantlie<sup>4</sup> and vnworthelie slayne, yit we may treulie afferme vnto yo<sup>r</sup> lo<sup>ps</sup>, that anent the forme, maner, and circumfstances of the slaughter, as is punctuallie sett down in THE PETITION givin in to yo<sup>r</sup> lo<sup>ps</sup>; and anent the forme, maner, and occasiouns of the slaughter of the young boy and his fader, as is lykwayes sett down in the Petitioun, and q<sup>ik</sup> wes the ground whervpoun yo<sup>r</sup> lo<sup>ps</sup> wer moved to grant the said continewatioun, the pairty hes verie far ouerseue thame selfis, and past the boundis of modestie; and hes abused yo<sup>r</sup> lo<sup>ps</sup> with thair sinister and wrong informatioun; quhilk, yf thay be able to iustife and mak good, as thay haif sett down in the Petitioun, first, anent the maner of the slaughter of *William Dow*, and how that the slaughter of the boy proceedit vpoun occasioun of thair following of ane stollin ox, quhilk thay alledgeit in thair BILL<sup>5</sup> wes stollin be the said Andro, and eatin at his lykewalk;<sup>6</sup> and that the boy, assisting his fader, presentit ane hagbute, w<sup>ik</sup> misgaif, and thairefter concurring w<sup>ik</sup> his fader in persute of the *Buquhannanis* wes slayne;

<sup>1</sup> From the Original, preserved among the Warrants of Secret Council, General Register House, Edinburgh.

<sup>2</sup> Blood-relations.

<sup>3</sup> Aggravated.

<sup>4</sup> Wickedly; O. Fr. *meschantem. nt.*

<sup>5</sup> Bill of Supplication.

<sup>6</sup> See this Trial, p. 549.

we ar content, without forder ceremonie, to tak the pairtie be the hand,<sup>1</sup> and to rennce o<sup>r</sup> Criminally perfute againes thame : ffor the treuthe is, that thay come to the boyis house, quhairof he wes tennent to the *Erle of Perth*, vpoun sett purposis and provisioun ; and the boy, apprehending his danger, after he hard the shoute raised be thame, he fled for faultie of his lyffe ; whome thay followit ane lang way ; and haueing ouertane him, and he being thair prifoner, thay brocht him bak half ane myle, and in cauld bloode, cruellie and barbarouslie slew and manglit him, but<sup>2</sup> pitie or compassioun, with xvij deadlie woundis, with durkis ; and haueing cassin him on his bellie, quhair he lay deade vpoun the ground, thay, the forder to satisfie thair raige vpoun the poore corps,<sup>3</sup> cuttit his bak in tua with swerdis.

This is the simple trewth of the buffynes, w<sup>h</sup> we will stand to : And thairfor, we will humbly beseeke y<sup>r</sup> lo<sup>ps</sup> to caus thair Petitioun to be exhibite be the saidis personis befor yo<sup>r</sup> lo<sup>ps</sup>, to the intent the trewth of the circumstanceis of the slaughteris, as thay ar sett down in the said Petitioun, may be examined be yo<sup>r</sup> lo<sup>ps</sup>, and ordour tane thairin accordinglye. And seeing, we haif, in all modestie, and w<sup>th</sup> grite patience, as humble and deitiffull subiectis [to HIS MA<sup>TIES</sup>] socht the benefeit of his Lawis, We humely beseeke yo<sup>r</sup> lo<sup>ps</sup> that the same may be grantit vnto ws, and that no forder continewation be grantit to o<sup>r</sup> pairty : And yo<sup>r</sup> lo<sup>ps</sup> answ<sup>r</sup>.

DELIVERANCE by the Lords of Privy Council. [On the back of the foregoing Petition.]

APUD Halyrudhouse, decimo Junij, 1623. THE LORDIS Ordanis a Maiffer to pas and warne both the pairtyis, the *Barone of Achyll*, *David Drummond of Innermaith*, and *Mr Alex<sup>r</sup> Seatoun of Gargonnok*, to compeir befor the Lordis, vpoun Thursday nixt, to heir and sie ordour tane in the mater within-writin, as accordis.

GEO. CANCELL<sup>r</sup>.

### Usurpation of the King's authority—Taking captive, &c.

JUN. 18.—ALEXANDER GORDOUN, appeirand of Erlestoun, and James Gordoun, messinger.

Dilaitit of the Vsurpation of our fouerane lordis authoritie, in taking and apprehending of Johnne Glendoning of Drumrasche, and keiping him captiue and prifoner be the space of thre houris, in *privato carcere*, he being his Majesteis frie lege, and thai haifing na power nor commissioun for that effect ; committit in Februar, or thairby, last.

The perfewar passis *simpliciter* frae the pannellis perfute : Quhairvpoun thay askit instrumentis.

THE JUSTICE ordanis caution to be ffund be the said Alexander, for his entrie, vpoun xv dayis (wairning) for the Kingis pairt ; quha fund Vthreid M<sup>c</sup>-Dowell of Mondurk, fouertie, &c.

### Resetting of a stolen Purse, &c.

JUN. 18.—JOHNNE DOUGLAS in St Leonardis, and Agnes Mustard his spous.

Dilaitit of the Thiftious Resetting of ane stowin purse, with fyve hundreth pundis of gold ; and tua jewellis being thairin, worth thre thowseand pundis ; pertening to Sir Johnne Scott of Newburgh ; stowin fra him be Margaret Ahannay.

<sup>1</sup> To be reconciled. <sup>2</sup> Without. <sup>3</sup> By way of retaliation, no doubt, for the horrible butchery committed upon the person of *Buchanan*, before referred to. <sup>4</sup> Probably for *outher*, i. e. either party.

PERSEWARIS, Sir Johnne Scott of Newburgh, Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCUTOURIS in defence, The Laird of Maynes, Mr Laurence M<sup>c</sup>Gill, James King.

Eftir the reiding of the Dittay, and accusatioun of the pannell of the crymes thairin contenit; it was allegit be the pannell and thair prelocutouris, that the first pairt of the Dittay is nawayis relevant, anent the reffet of the stowin purfe and jewellis thairin; vnles the principall steiller war first callit, and ather convict and pwnest for the cryme, or ellis declarit fugitiue thairfoir: For, gif the principall steiller thairof, viz. Margaret Ahannay, war accuset in this judgement, for the said allegit cryme, it wald be allegit and verifeit be hir, that gif ony purfe was apprehendit or gottin be hir fra the persewar, that it was *precium pudicitie*, gevin be him to hir. And thairfoir, quhill first scho be callit, na proces.

THE JUSTICE, in respect na dilligence isvlet aganis the said Margaret Ahannay, Ordanis the pannell to find cautoun for thair re-entrie, vpoun xv dayis wairning: Quha fand James Douglas, portioner of Lugtoun, and Williame Douglas, hatmaker, burges of Edinburgh.<sup>1</sup>

### Slaughter.

Jun. 27.—COILL M<sup>c</sup>GILLESPIK M<sup>c</sup>DONALD in Collonfay, Archibald M<sup>c</sup>Donald, his sone, and four others, ‘servitouris to the said Coill.’

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq<sup>le</sup> Malcolme M<sup>c</sup>phie of Collonfay, Donald Oig M<sup>c</sup>phie, Dougall M<sup>c</sup>phie, Johnne M<sup>c</sup>quhirrie, and Ewir Bayne, alias Quhyte; committit in Februar last.

PERSEWARIS, Marie M<sup>c</sup>donald, the relict; Donald Oig M<sup>c</sup>phie, as sone; Katharene, Anne, and Fynwall M<sup>c</sup>phies, as dochteris to vmq<sup>le</sup> Malcolme; Murdoche M<sup>c</sup>phie in Ilay, as brother to vmq<sup>le</sup> Donald Oig, and Dougall M<sup>c</sup>phie, and as nerrest of kyn to vmq<sup>le</sup> Johnne and Ewir.

Johnne Quhyte, wryter, producet the Letteris duellie executed, &c. and protestit for releif of Archibald Campbelle, brother to the Laird of Caddell, cautioner for repoirting thairof.—Coll M<sup>c</sup>allaster, ffear of Dounskye, as cautioner for the said Coill, &c. vnlawit, for nocht entrie of ilk ane of the saidis persones, in the pane of ane hundreth merkis. And sicyk, the Justice Ordanis that the saidis Coill, &c. sall be denuncet our souerane lordis rebellis, and all thair moveabill guidis to be escheit, &c.

### Taking Captive and Strangling, &c.

Jul. 2.—JOHNNE GRANT of Glenmoreistoun, Finlay M<sup>c</sup>ean Roy in Invermoreistoun, and Alexander Dow M<sup>c</sup>ean Roy, his brother.

Dilaitit for Vfurpatioun of our souerane lordis autoritie, in taking of vmq<sup>le</sup> Donald M<sup>c</sup>findlay V<sup>n</sup>orofiche, mercheand, vpone the landis of Glenmoreistoun, binding his handis behind his bak, and cayreing him, as ane malefactour, to ane

<sup>1</sup> It is likely that this pursuit was abandoned. At least no farther notices occur in the Record.



woid neir to the landis of Glenmoreiftoun; quhair thay, as hangmen, hang him vp vpon ane trie of the said woid, and wirreit him to deid;<sup>1</sup> and thaireftir cuttit him doun, and, with thair durkis, gaif him dyuerse straikis in the breift and bellie, to the effuhouse of his bluid in grit quantitie; and thaireftir, cayreit him to ane burne-bra,<sup>2</sup> vnder the quhillk they bureit him, be casting the said bray vpon him; committit in the moneth of September, 1602 yeiris.

PERSEWARIS, Fynlay Vik-finlay V<sup>c</sup>norofyche, in Kintail, as brother; Sir Williame Oliphant of Newtown, kny<sup>t</sup>, Aduocat to our souerane lord.

James Logy, wryter, producet the Letteris, duellie execute, &c., and protestit for releif of Mr Alexander M<sup>c</sup>kenzie of Culcovie of his cautionrie.—Patrik Grant of Carroun, as cautioner for the pannell, Ordanit be the Justice to be in ane amerciament, for nocht entrie of the said Johnne Grant, in the vnlaw of V<sup>c</sup> merkis; and of ather of the saidis Fynlay and Duncane, in the pane of ane hundredth merkis.

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

### Slaughter.

Jul. 9.—JAMES STEWART, Stewart-depute of Menteith; Duncane Stewart, his brother-germane, and others.<sup>3</sup>

Dilaitit of the Slauchter of v<sup>m</sup>q<sup>le</sup> Robert M<sup>c</sup>phatrik Campbell, and v<sup>m</sup>q<sup>le</sup> Malcolme M<sup>c</sup>call; committit in Apryle last, vpon the landis of Dochallie, on Lochow-fyde.

INTRAN. *similiter.*

ALLASTER M<sup>c</sup>PHATRIK V<sup>c</sup>ALLASTER, in Balquhiddier; Robert Dow M<sup>c</sup>condochie V<sup>c</sup>James, thair; Duncane Oure Stewart M<sup>c</sup>inrie, thair; Archibald Stewart, thair; and Williame M<sup>c</sup>phatrik Stewart, thair.

Dilaittit for the crymes aboue writtin.

PERSEWAR, Patrik Campbell, in Kenderoche, brother to v<sup>m</sup>q<sup>le</sup> Robert.

The Laird of Keir takis instrumentis of the entrie of the fourtene on pannell (Stewarts), and protestis, in that respect, for his awin releif, as cautioner, &c.; and as to Duncane Stewart, declairis he hes fallin feik, fen his cuming to Edinburghe, and thairfoir could nocht compeir.—Sir Mungo Murray protestis for his releif, as cautioner for the others, ‘the ffyve men of Balquhiddier.’

THE JUSTICE, with consent of the persewar, continewis this matter to ane xv dayis warning; and Ordanis the pannell to find caution for thair entrie.—The Laird of Keir, and Sir Mungo Murray, of new become cautioneris.

<sup>1</sup> Strangled him to death. <sup>2</sup> Burn-brae, a sloping bank, along the foot of which a *burn* or rivulet runs. <sup>3</sup> Their names are, Alexander Stewart, *alias* M<sup>c</sup>ean, in Glenfinglas; Johnne, Archibald, and Andro Stewartis, his thre fones; Patrik Stewart of Stragartnay; Johnne Stewart, his brother; Robert Stewart, sone to Andro Stewart of Blairgarrie; Patrik M<sup>c</sup>Kyndlay Gill, in Glenfinglas; Walter M<sup>c</sup>eandowie, *alias* Stewart; Johnne M<sup>c</sup>intyre, feruitour to James Stewart; Gilliechreift Dewar, Duncane M<sup>c</sup>eane Vaill, and Donald Reoch, fervand to the said James Stewart.

My Lord of Murray, present, obleift him to Warrant and releif the Laird of Keir of his former cautionerie, &c.

### Breaking Gardens—Theft, &c.

Jul. 23.—JOHNE RATE, and Alexander Deane, cramer.<sup>1</sup>

Dilaitit for the breking of the yairdis<sup>2</sup> of Barnetoun, Piltoun, Barnebougall, Craikcruik, Cragyhall, Langhirdmestoun, Carlowrie, and Libbertoun, and dyuerse vtheris yairdis, within Eist and West Louthiane: Steilling and away-taking furth thairof, off dyuerse herbis, bie-skeppis,<sup>3</sup> fyboes,<sup>4</sup> plantis, kaill-seid, artechoifis,<sup>5</sup> distilled watteris, plaittis and trunſcheouris,<sup>6</sup> with ane tyn-ftoupe,<sup>7</sup> furth of the place of Langhirdmeiftoun; committit at dyuerse tymes, within this moneth bygane.

The perſones on pannell confeſſis the Dittay, and crymes thairin contenit.

VERDICT. Fand the ſaidis Johnne and Alexander, conforme to thair awin Judiciall Confeſſioun, to be flylet, culpable, and convict, &c.

THE Juſtice Ordanit thame to be tane bak to waird, thair to remane quhill he be advyſet with the Lordis of Secreit Counſall, anent the Dome to be pronuncet aganis thame, for the ſaidis crymes.

Jul. 25.—SENTENCE. The Juſtice Ordanit the ſaidis Johnne Rait and Alexander Deane to be tane to the Burrow-mure of Edinburghe, and thair to be Hangit quhill thay be deid; and thair hail moveable guidis to be eſcheit, &c.: And that by virtue of the following WARRANT of the Lordis of Secreit Counſall.

JUSTICE, Juſtice clark and your deputis. Sow ſall pronounce Sentence of daith againſt Johnne Rait and Alex<sup>r</sup> Deane, cramer, who was convict of befor in Muſſilburghe, for the breking of zairdis and ſteilling of ſindrie bie-skepſis furth of the ſame; and who, ſince thair apprehenſioun, haif of lait bene convict befor sow of the ſame crymes; committit be thame ſince thair laſt conviction and pwneifment following thairupoun. And that sow cauſe the Sentence of daith be execute vpon thame: Quhairanent theiſe preſentis ſall be vnto sow ane ſufficient Warrant. Gevin at Halyrudhous, the xxiiij day of July, 1623.

GEO. CANCELL<sup>r</sup>. GLENCARNE. NITHSDAILL. OLIPHANT. HAMILTON.

### Sorcery—Witchcraft.

Aug. 1.—THOMAS GREAVE.

Dilaitit of dyuerse poyntis of Sorcerie and Witchcraft following, viz.: For cureing of the perſones following, be Sorcerie and Witchcraft, to wit: ANE ſone of Archibald Arnote in the Wayne, of ane heavie and vncouth<sup>8</sup> ſeiknes: ANE ſone of Andro Geddis in Freuchie, alſo hevilie diſſeiſit: ANE bairne of Thomas Kilgoures in Falkland, viſſeit with ane grevous ſeiknes. ITEM, flor cureing, be

<sup>1</sup> Huxter; one who keeps a petty booth for the ſale of ſmall wares. <sup>2</sup> Gardens. <sup>3</sup> Bee-hives. <sup>4</sup> A young or ſmall ſort of onion. <sup>5</sup> Artichokes. <sup>6</sup> Trenchers. <sup>7</sup> Tin ſlagon. <sup>8</sup> Strange; unuſual; unaccountable.

Sorcerie and Witchcraft, and making of certane croces and finges,<sup>1</sup> off David Chalmer in Lethame, and be causeing wafche his fark<sup>2</sup> in ane South-rynnand watter, and thairefter putting it vpone him ; quhairby he reffaut his helthe. ITEM, ffor cureing of ane woman in Ingrie, befede Leslie, of ane grevous feiknes, be taking the feiknes af hir and puting it vpone ane kow ; quhilk kow thaireftir ran woid,<sup>4</sup> and deit. ITEM, ffor cureing off Alexander Laufones bairne, in Falkland, of grit feiknes, be Sorcerie, and making of certane signes, and vttering of dyuerse vnkawin woirdis. ITEM, ffor cureing of ane woman, duelland befede Margaret Douglas, of ane grit and panefull feiknes, be drawing hir nyne tymes bakward and fordward be the leg. ITEM, ffor cureing of Michael Glassies wyfe, in the Mylnes of Forthe, of ane grevous feiknes, be caussing brek ane hoill in the wall, vpone the North syde of the chymnay, and putting ane hesp<sup>4</sup> of yairne thre several tymes furth at the said hoill, and taking it bak at the dur ; and thaireftir, causeing the said Michaelis wyfe ix tymes pass throw the said hesp of yairne, and thairby to procure hir help. ITEM, ffor cureing, be devillerie and Witchcraft, of Williame Kirkis bairne, in Tulliebule, of the feiknes callit *Morbus caducus*,<sup>5</sup> be straiking bak the hair of his heid, taking ane lang claith, with certane vnguent and vther inchantit matter, furth of ane buist,<sup>6</sup> and rowing<sup>7</sup> the bairne nyne tymes within the said claith, vttering, at ilk tyme of the putting about of the claith, dyuerse wordes and croces and vther signes ; and be that meanis pat the bairne alleip ; and thairby, throw his devillerie and Witchcraft, curet the said bairne of the said feiknes. ITEM, vnderstanding that Johnne Fischer, in Achalanfckay, was heviellie diseait of a grevous and vnkawin fever, vpone aduerteisment gevin to him thairof, he causit bring the said Johnne Fischeris fark to him ; quhilk fark being brocht, the said Thomas, turning it over, cryit out at that instant, ‘ Allace ! the Witchcraft appointit for ane vther hes lichted vpone him ! ’ And, luiking at the breift of the fark, he tauld ‘ that the feiknes was nocht cum as zit to his heart.’ And eftir some croces and signes maid be the said Thomas vpone the fark, delyuerit the fark to Jonet Patoun, the said Johnne Fischeris mother, commanding hir, with all speid to ryn to him thairwith ; and declairit to hir that ‘ Gif scho come thairwith, befoir his heart was assaulted,’ he sould convalesce ; At quhais cuming to him with the said fark, the said Johnne hir sone was deid. ITEM, ffor practizeing of dyuerse poyntis of Sorcerie vpone Williame Beveridge, in Drumkippie, in Salen, and cureing him thairby of ane grevous feiknes, be causeing him pass throw ane hesp of yairne thre seuerall tymes ; and thairefter burning the said hesp of yairne in ane

<sup>1</sup> Crosses and signs.<sup>2</sup> Shirt.<sup>3</sup> Mad.<sup>4</sup> A hasp of yarn is equal to twelve ‘ cuts,’ or six ‘ heer.’ Each ‘ cut’ goes six score times round the reel.<sup>5</sup> Epilepsy, or the falling sickness.

Perhaps it may refer to consumption, ‘ decay’ or ‘ decline.’

<sup>6</sup> Out of a small box or chest.<sup>7</sup> Wrapping ; rolling.

grit fyre, quhilk turnet baillilie blew. ITEM, ffor cureing of Margaret Gibfones ky,<sup>1</sup> in Balgonie, be putting thame thryfe throw ane hеспе of yairne, and casting of certanechantit watter, chantit be him, athort<sup>2</sup> the byre; and thairby making thair milk to cum to thame agane, quhilk thay gaif noch ane moneth of befor.<sup>3</sup> ITEM, at Martimes, 1621, Elspeth Thomefone, sifter to Johnne Thomefone, portioner of Pitwar, being visseit with ane grevous seiknes, the said Thomas com to hir hous in Corachie, quhair, eftir sichtig and gripping of hir, he promiseit to cure hir thair of; and fo this effect callit for hir fark, and desyret tua of hir nerrest freindis<sup>4</sup> to go with him: Lykas, Johnne and Williame Thomefones, hir brether, being sent for, past with the said Thomas, in the nicht seasone, fra Corachie towardis Burley, be the space of tuelff myles; and inioynet the tua brethir noch to speik ane woird all the way; and quhat euir thay hard or saw, nawayis to be effrayed, saying to thame, 'it mycht be that thai wald heir grit rumbling, and sic vncouth and feirfull apparitiones, bot nothing sould annoy thame!' And at the ffurde be-eift Burley, in ane South-rynnng watter, he thair wusche the fark; during the tyme of the quhilk wasching of the fark, thair was ane grit noyse maid be sfoullis,<sup>5</sup> or the lyll beiftis,<sup>6</sup> that arraife and slichtered in the water. And cuming hame with the fark, pat the samyn vpone hir, and curet hir of hir seikens: And thairby committit manifest Sorcerie and Witchcraft. ITEM, ffor cureing of Williame Coufines wyfe, be Sorcerie and Witchcraft, be causing hir husband heit the couler of his pleuch, and cule the samyn in watter brocht from Haly Well of Hillfyde; and thaireftir, making certane coniurations, croces, and signes vpone the watter, causet hir drink thair of for hir helth; and thairby, be Sorcerie, curet hir of hir seiknes. ITEM, ffor cureing, be Sorcerie and Witchcraft, of James Mwdie, with his wyfe and childrene, of the fever; and namelie, in cureing of his wyfe, be causeing ane grit fyre to be put on, and ane hoill to be maid in the North syde of the hous,<sup>7</sup> and ane quik hen<sup>8</sup> to be put furth thairat, at thre feuerall tymes, and tane in at the hous-dur, widderschynnes;<sup>9</sup> and thaireftir, taking the hen and puting it vnder the seik womanis okstar,<sup>10</sup> or airme; and thairfra, cayreing it to the fyre, quhair it was haldin doun and brunt quik thairin; and be that devillisch maner, practizet be him, curet hir of hir seiknes: ffor the quhilk, the said Thomas ressanit xx lib. fra hir husband. AND last, ffor counoun Sorcerie and Witchcraft, practizet be him, and abusing the people thairby; expres aganis Godis devyne Law, and Actis of Parliament maid aganis Sorceraris.

VERDICT. The Assyse, being ryplie advyset thairwith, togidder with certane

<sup>1</sup> Kine; cattle.

<sup>2</sup> Athwart; across.

<sup>3</sup> Which they had not yielded for the space of a

month.

<sup>4</sup> Kinsmen; relations.

<sup>5</sup> Water-fowl.

<sup>6</sup> Little 'beasts'; *Scotticé*, for some

sort of small birds or fowls, such as snipes, &c.

<sup>7</sup> A hole to be made in the north wall of the

house.

<sup>8</sup> A live fowl.

<sup>9</sup> Backwards; contrary to the course of the sun.

<sup>10</sup> Arm-pit.

Depositiones producet be Mr Johnne Cowdoun, Minister at Kynrois, Mr Edmond Myles, Minister at Cleishe, Mr Robert Coluile, Minister at Cleishe, ffor verificatioun thairof; thay, be the declaratioun of Williame Dempstartoun, chancellor, stand, pronuncet, and declairit the said Thomas Greave to be ffylet, culpable, and convict of the haill poyntis of Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be Wirreit at ane staik, quhill he be deid; and his body thaireftir to be Brunt in asches, as culpable and convict of the saidis crymes of Sorcerie and Witchcraft.

### Offices of the Clerkship of Justiciary-general and Master of the Ceremonies, &c.

Nov. 28.—SIR ARCHIBALD NAPER of Merchinstoun, kny<sup>t</sup>, Thesaurer-depute to our souerane lord of this Kingdome, producet his Maiesteis Gift, grantit to him, vnder his hienes Previe seall, of the Offices of the CLERKSCHIP OF JUSTICIARIE-GERALL, and MAISTER OF THE CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther solemne Assembleis, quhair honourable ceremoneis ar accustomat and necessarie to be vsed, within the kingdome of Scotland; with all richtis, privileges, liberteis, feyis, casualteis, proffetis, and deuteis quhatfumeur, pertaining and belonging thairto; during all the dayis of the said Sir Archibaldis lyfytyme: Vacand in his Maiesteis handis, be dimissioun of Sir Johnne Cokburne of Ormestoun, kny<sup>t</sup>, last Justice Clerk, and Maister of the said Ceremoneis. Dated at Roystoun, the sext day of November, 1623.—Which Gift was ordanit to be insert in the Registeris of Adiornall, *ad futuram memoriam*.

### Commission of Justiciary,

IN FAVOUR OF SIR GEORGE ERSKINE OF INNERTEILL.

Jan. 23, 1624.—MY Lord of Innerteill, as Justice to our souerane Lord, producet his Maiesteis Commissioun of Justiciarie; and desyret the samyn to be insert in the Register of Adjournal, *ad futuram memoriam*.

JAMES R.

JAMES, by the grace of God, King of Grite Britane, France, and Ireland, defender of the ffaith: To all and findrie our leigis and subiectis whome it esseiris, to whose knowledge thir our Letteris fall come, greating. FORSAMEKILL AS, the place and Office of the JUSTICE of this our Kingdome is now voyde, and the administratioun of Justice, in matteris propper to that judgement, ceasses by the absence of those who formarlie suppliet that place: AND whear as, the frequent occasioun, daylie occurring within this our kingdome, requyres a present choise to be maid of some sufficient and qualifeit persone to exerce the said place and office: And We, vnderstanding the goode affectioun of our trustie and weilbelouit counsalour, *Sir George Erskine* of Innerteill, to do ws seruice, and that he is a persone of found and vpricht judgement, and vtherways accomplischet and furneist with giftis answerable to the

<sup>1</sup> From the peculiarity of this document, it has been thought right to preserve it entire, without abridgement.



dignitie of fuche ane employment : Thairfoir, We haif maid and constitute, and be the tennour heirof makis and constitutis, the said Sir George our JUSTICE, and geves to him the Office thairof, with all honnouris, digniteis, prevelegis, and prerogatives belonging thairto ; to be posselt, bruket, vsed, and exerceid be him als frelie and ample, in all respectis and conditiones, as ony vtheris his prediceffouris in the said Office formerlie bruket the same ; with power to him to seuise and hald Justice-Courts within the Tolbuith of our burghie of Edinburghe, and vtheris pairtis of our Kingdome, according as the necessitie of oure seruice schall requyre, and to proceid and minister justice in all and sindrie materis occurring in that judgment, and vpon all persones of quahatsomeuir qualitie, that fall be presentit in judgement befor him, to abyde thair tryell ; and according as thay fall be fund Guiltie or Innocent of the crymes to be obietit vnto thame, and to be laid to thair chairge, to caus justice be ministrat vpon thame, conforme to the lawis of our realme : Assyses neidfull, to this effect, vnder the vsuale and accustomed panes, to summond, wairne, choose, and caus be suorne ; and to creat officiaris and memberis of Court neidfull ; and all vther thingis neidfull towardis the executioun of this our Commissioun to do and vse, whiche laughfullie, in such caises, may be done ; ferme and stable balding, and for to hald all and quahatsomeuir thingis fall be laughfullie done heirin. CHARGEING heirfoir yow, all our said leiges and subiectis, to reuerence, acknowledge, and obey our said Justice, in all and everie thing tending to the executioun of this our Commissioun : As yow and everie ane of yow will answair to us vpon the contrair, at your perrell. This our Commissioun, dureing our will and pleafour, and ay and quhill we discharge the same, to indure. GEVIN vnder our signet, At Ed<sup>b</sup>, the tuintie day of Januare, and of our reigne the lvij and xxj yearis, 1624.

GEO. CANCELL<sup>r</sup>. MELROS. LAUDERDAILL. R. COKBURNE. KILSAYTH.  
W. OLIPHANT. A. HAY. AR. NAPER. J. HAMILTON.

[*Sir George Erskyne of Innerteill, knycht, Justice.*]

**Egyptians—Vagabonds—Sorners, &c.**

Jan. 23.—CAPITANE JOHNE FAA, Robert Faa, Samuel Faa, Johnne Faa younger, Andro Faa, Williame Faa, Robert Broun, Gawin Trotter, all Egiptianis, Vagaboundis, and commoun Thevis, &c.

Being enterit vpon pannell be the Magiftratis of Ed<sup>t</sup>, dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, of the cryme vnderwrittin, viz. FORSAMKILL AS, first, be Act of Secreit Counfall, maid in the moneth of Junij, or thairby, in the yeir of God 1603, and Proclamatioun following thairupoun, commanding and chargeing the Vagaboundis, Soirneris, and commoun Thevis, commonlie callit EGIPTIANES, to pas furth of this Kingdome, and to remane perpetuallie furth thairof, and nevir to returne agane within the samyn, vnder the pane of daithe ; quhilk Act of Secreit Counfall, and Proclamatioun following thairupoun, be the 13 Act of our souerane lordis 20 Parliament, haldin at Edinburgh vpon the 24 of Junij, the yeir of God 1609 yeiris, is ratifeit, approvin, and confirmet be his Maiestie and Estaitis of Parliament than convenit ; and the same Act ordanit to haif force and executioun, eftir the first day of August nixt thaireftir following, in the foirsaid yeir of God I<sup>m</sup>.Vj<sup>o</sup>. and nyne yeiris ; eftir the quhilk tyme, gif ony of the saidis Vagaboundis callit EGIP-

TIANES, alsweill wemen as men, fall be fund within this kingdome, or ony pairt thairof, it fall be leasum to all his Maiesteis goode subiectis, or ony of thame, to caus tak, apprehend, imprissone, and execute to death, the saidis Egiptianes, ather men or wemen, as commoun, notorious, and condempned Theves, by ane Assyse, only to be tryed<sup>1</sup> that thay ar callit, knawin, and repute and haldin Egiptians: In the quhilk caice, quhatsoever of the Assyse hapins to clange ony of the foir-faidis perfonas, Egiptianes, pannelled as said is, falbe persewit, handillit, and censuret as committeris of Wilfull Errour. As the saidis Actis of Secreit Counsall, Proclamatioun following thairupoun, and Act of Parliament aboue writtin, deulie publeift, in the self proportis. Nochtwithstanding quhairof, it is of verritie, that the foirnamet aucht perfonas impannelled, and ilk ane of thame, being Vagaboundis, Soirneris, cowmoun Thevis, callit, knawin, repute, and haldin EGIPTIANES, in plane contempt of his Maiesteis lawis and Actis of Parliament, hes prouddie repairit to this kingdome, remanit and abiddin within the samyn, and nawayis depairtit nor past furth thairof, sen the said first day of August, 1609 yeiris, appointit for thair away-passing; incurring thairthrow the pane and pwneischment aboue writtin, mentionet in the said Act of Parliament.

## ASSISA.

James Lokhart, elder of Lie, . . . . Leith of Hairthill, William Sydserff of Ruchelaw.<sup>2</sup>

VERDICT. The Assyse, for the maist pairt, be the declaratioun of the said James Lokhart of Lie, chancellor, ffind, pronuncet, and declairit the saidis perfonas (being all Vagaboundis, and repute and haldin for EGIPTIANIS) to be Giltie, culpable, and convict of contravening the tennour of the said Act of Parliament, &c.

THE JUSTICE continewis the pronunceation of Dome, vpon the former<sup>3</sup> convictioun, to the morne; that in the meane tyme he may advyse with the Lordis of Secreit Counsall thairanent: And ordanit the pannell to be tane bak to waird, in the meane tyme.

Jan. 24.—SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and thair hail moveabill guidis, gif thay ony haif, to be escheit to his Maiesteis vse, &c.<sup>4</sup>

## Egiptians—Sorners, &amp;c. (Females.)

Jan. 29.—HELENE FAA, the relict of vmq<sup>le</sup> Capitane Johnne Faa; Lucece Faa, spous to James Broun; Elspeth Faa, brether-dochter to the Capitane; Katharene Faa, relict of vmq<sup>le</sup> Eduard Faa;

<sup>1</sup> Proved; established.

<sup>2</sup> The remainder are burgesses of Edinburgh. James Hopper of Bourhouffis, the Laird of Coulter-Cuning, . . . . Ogilvie of Boyne, . . . . Maxwell of Cowhill, and six others, ('mercheandis,') are 'vnlawit 100 merkis ilk ane of thame.'

<sup>3</sup> Preceding.

<sup>4</sup> See the following article, Jan. 29, and Mar. 22, where the proceedings against their helpless widows are recorded.

Meriore Faa, spous to James Faa; Jeane Faa, the relict of vmq<sup>le</sup> Andro Faa; Helene Faa, the relict of vmq<sup>le</sup> Robert Campbell; Margaret Faa, dochter to vmq<sup>le</sup> Eduard Faa; Iffobell Faa, the relict of vmq<sup>le</sup> Robert Broun; Margaret Val-lantyne, relict of Johnne Wilfoun; Elspeth Faa, dochter to vmq<sup>le</sup> Henrie Faa.

Dilaitit for contravening the 13 Act of his Maieſteis tuentie Parliament, haldin at Edinburgh, the 24 of Junij, 1609 yeiris, maid aganis EGIPTIANIS, chargeing thame, alfweill wemen as men, to pas furth of this kingdome, and to remane perpetuallie furth thairrof; and nevir to be fundin within the ſamyn, eftir the firſt day of Auguſt thaireſtir, in the ſaid yeir of God 1609, vnder the pane of deid: And the foirnamet perſones, being all Theves, Vagaboundis, and Egiptianis, ſa repete and haldin, and tane as people of that vnhappy race and ſocietie, hes, be thair remaning within this kingdome eftir the tyme foirſaid, appointit for thair away-paſſing furth thairrof, contravenit the tennour of the ſaid Act of Parliament, and incurrit the pwneiſchment aboue writtin, mentionet thairintill.

VERDICT. Giltie, culpable, and convict of the contravening of the foirſaid Act of Parliament.—SENTENCE. To be tane to the place of thair execution, in ſome convenient pairt, and thair to be DROWNED quhill thay be deid; and all thair moveabill guidis, gif thay ony haif, to be conſiſcat to his Maieſteis uſe, &c.

(Mar. 22.)—THE above perſons, together with ALEXANDER FAA, ſone to Eduard Faa, JOHNNE FAA and FRANCIE FAA, ſones to vmq<sup>le</sup> Capitane Johnne Faa, and HARIE BROUN, brother to vmq<sup>le</sup> Robert Broun, being brocht furth of waird, and preſentit of new agane vpone pannell, as thay that war convict of EGIPTIANES, and the Dome of daith pronuncet aganis elleivin of thame, vpone the xxix day of Januar laſt, the execution quhairrof was ſuperceidit, be the Lordis of Secreit Counſallis Warrant and direction, vnto the tyme our ſouerane Lordis will and pleaſour war knawin thairanent.

#### HIS MAIESTEIS *Letter and Direction ſent to the Counſall.*

To our right truſtie and right weilbelouit counſalour, SIR GEORGE HAY of Kynſawnes, kny<sup>t</sup>, our Chancellor, and to our right truſtie and right weilbelouit conſinges and counſalouris, and vtheris our truſtie and weilbelouit counſalouris, THE ERLES, LORDIS, and vtheris of our PREVIE COUNSELL, in our kingdome of SCOTLAND.

JAMES R.

RIGHT truſtie and right weilbelouit counſalour, right truſtie and right weilbelouit couſens and counſalouris, and vtheris our truſtie and weilbelouit counſalouris, We greete yow well. We haue vnderſtood, by your Letter of the 29 of Januar laſt, that a number of theſe Theeves and counterfooted Vagabondis, commonlie callit EGIPTIANIS, being apprehendit be your direction, war thereſtir put to a Crimall tryell, and being lawfullie convicted, that eight of the men wer executed, and that the reſt, being either childrene and of leſſe-age, and wemen with chylde, or geving ſucke to childrene, ſe haue therfore committed thair perſones to priſſone, ſuperceiding the executione of the Sentence pronouncet

aganis thame, till yee should acquaynte ws, and know oure further pleasoure thairanent. In whiche regard, these are to certefie to yow, that as We allow well of the course taiken for executinge of the men, so now, in colde bloode, (these children and weemen haueing beene soe long kepte prisoneris,) and cheslie in respect of that which yee wryte to be the present estaite of most part of these weemen, We can not bot inclyne to pittie and compassion of them. WHEREFORE, as We ar willing that their lyues be spared, soe that nather thame selues, nor any others of that kynd may be thereby emboldned to presume vpon our clemencie, yee shall caus thame act them selues to depairt, with thair childrene, furth of that our kingdome, between and such a competent day as yee shall think fitting, for that effect, to preferue; vnder the payne of death, to be inflicted (without any forder proces or dome) vpon them, wherfoever they can be apprehendit within our said kingdome, efter the said day. AND for your putting them to libertie, (nochtwithstanding the Sentence pronounced against them,) vpon condition foirsaid, these shalbe vnto yow a Warrant sufficient. And soe We bid yow farewell. FROM our Honour of HAMPTON, the 13 of Merche, 1624.

THE JUSTICE, conforme to his Maiesteis Letter and directioun, causit the hail Egyptianian aboue writtin, presented vpon pannell, act thame felffis, lyk as thay and ilk ane of thame, of there awin frie motiue, and with the blessing of God to his Maiestie and Counfall, become actit and obleist to depairt and pas away with thair childrene furth of this realme; and nevir to be fund thairintill, eftir the tuintie-tua day of Apryle nixtocum, vnder the payne and pwneischment of daith, without ony forther proces or doome, to be inflicted but fauour<sup>1</sup> vpon them, quhairreir thay fall befund or apprehendit, within this kingdome, eftir the said day.

### Treasonable and Masterful Theft and Stouthreif.

Mar. 3.—[DAME MARGARET OGILVIE, COUNTESS OF MARSCHELL,<sup>2</sup>]

SIR ALEXANDER STRAUCHANE of Thornetoun, kny<sup>t</sup>, (hir spoufe,) and Mr Robert Strauchane, Doctour in Phisik.

Dilaitit of the Maisterfull Thift and Stouthreiff, sfurth of the Place of Benholme, pertening to vni<sup>q</sup> GEORGE ERLE MARSHALL, of certane his Lordschipis jouellis, siluer-plait, houshald-stuff, gold, siluer, eidentis, writtis, and vtheris guidis, at lenth expreffit in the criminall Letteris direct thairupoun, at the instance of our fowerane lordis Aduocat; committit in October 1622, a littill befor the said Erles deceife.<sup>3</sup>

PERSEWAR.

Sir Williame Oliphant, kny<sup>t</sup>.

PRELOCOUTOURIS in defence.

Mr Thomas Hoip, Mr Luis Stewart.

The persones enterit on pannell takes instrumentis of thair entrie, and protestis for releif of Sir George Afflek of Balmanno of his cautionerie. There was presented the following

### WARRANT of the Lordis of Secreit Counfall.

APUD ED<sup>8</sup>, *secundo die mensis Marcij*, 1624. THE Lordis of Secreit Counfall, ffor some special

<sup>1</sup> Without favour or mercy.

<sup>2</sup> Daughter of James, sixth Lord Ogilvy of Airlie. She was the second wife of George, fifth Earl Marischal. <sup>3</sup> He died at Dunottar Castle, Apr. 2, 1623, in the seventieth year of his age. He had studied at several foreign Universities, and was an accomplished and learned individual. Besides his Embassy, he had filled the high office of Lord High Commissioner to the Parliament of Scotland, by Commission under the Great Seal, Jun. 6, 1609.

considerationes moving thame, Ordanes and commandis the Justice, Justice-clerk, and thair deputis, to continew the dyet appointit to DAME MARGARET OGILVIE, COUNTES OF MARSCHELL, Sir Alexander Strauchane of Thornetoun, hir spous, and vtheris perfonis specifeit in the Criminall Letteris raisit pairnpoun, for pair compeirance befor þe Justice, vpon the thrid day of Marche instant, to vnderly the Law for the crymes of Thift and Stouth-reiff of the houshald stuff, insight pleniffing, siluer plait, and vtheris goodis pertening to the lait Erle of Merschell, and at lenth specifeit in the saidis criminall letteris raisit at þe instance of his Maiesteis Aduocat, vntill the secund day of Julij nixtocum; takand new caution of þe defenderis, for pair compeirance that day, conforme to the ordour. Quhairanent þe Extract of þis Act fall be vnto þe said Justice, Justice-clerk, and thair deputis, ane sufficient Warrant.

EXTRACTUM de *Libris Actorum Secreti Consilij, f. d. n. Regis, &c.* JACOBUS PRYMOIS.

Sir George Afflek of new becomes cautioner for the saidis Dame Margaret, &c., vnder the panes contenit in the Actis of Parliament.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

(Jul. 2.)—ANOTHER Warrant, dated ‘at Halyrudhous, the first day of July’—and signed by ‘Geo. Cancell’. Mar. Morton. Linlithgow. Melros. Lauderdale. Aw. Carnegie’—directs the case to be continued ‘vntill the xxvij of July instant, vpon new caution:’—‘And that yow dispens with the personall compeirance of the Lady Marschell and Doctour Strauchane.’

(Jul. 27.)—A THIRD Warrant, dated ‘at Halyrudhous, the xxij of July,’ and subscribed, ‘Geo. Cancell’. Mar. Melrois. Lauderdale. J. Kokburne. Kilsyth.’—David Levingstoun of Donypace becomes cautioner for their entry on the aucht day of December nixt.

(Dec. 8.)—No procedure is entered in the Record of this date.

[*Sir George Erskine of Innerteill, kny<sup>t</sup>, Justice.*]

**Treasonable and Masterful Theft, &c.**

Mar. 3.—JAMES KEITH of Benholme.

Dilaitit of airt and pairt of the tressonabill<sup>1</sup> and theftious steilling, be way of Maisterfull-thift and Stouth-reiff, in the moneth of October, 1622 yeiris, furth of the Place of Benholme, off ane grene coffer, pertening to vmq<sup>1e</sup> GEORGE ERLE MARSCHELL, with the jowellis and vtheris vnder writtin being thairintill, als pertening to his lordship, viz. of Portugall ducattis, and vtheris spaces<sup>2</sup> of foreigne gold, to the avail<sup>3</sup> of tuentie thowseand pundis, or thairby; threttie-sax duffane of gold buttones; ane ritche jowell, all set with dyamontis, quhilk the said vmq<sup>1e</sup> Erle ressaunt as ane gift gevin to him the tyme he was Ambassadour in Denmark, worth sex thowseand merkis; the Quene of Denmarkis pictour in gold, set about with ritche dyamontis, estimat to fyve thowseand merkis; ane jasp flane for

<sup>1</sup> *Treasonable*, as being committed by a landed Gentleman, in terms of an Act of Jac. VI.   <sup>2</sup> *Species*.   <sup>3</sup> *Worth; value*.



steming of bluid,<sup>1</sup> estimat to fyve hundreth French crownes; ane chenzie<sup>2</sup> of equall perle, quhairin was foure hundreth perles gritt and small; tua chenzeis of gold, of tuentie-foure vnce wecht; ane vther jowall of dyamontis set in gold, worth thre thoufeand merkis; ane grit pair of bracelettis, all sett with dyamondis, pryce thair of fyve hundreth crownes; the vther pair of gold bracelettis, at sex hundreth pundis the pair; ane turcas<sup>3</sup> ring, worth ten French crownes; ane dyamond set in ane ring, price xxviij French crownes; with ane number of vther small ringis, set with dyamondis and vtheris ritche stanes in gold, worth thre hundreth Frenche crownes; mair, sextene thoufeand merkis of siluer and gold, reddie cunzeit,<sup>4</sup> quhilk was within the said grene coffer; togidder with the hail Tapestrie, siluer-work, bedding, and vther guidis, geir, and pleniffing, being within the said Place, particulerlie specifeit and set down in the Criminal Letteris direct aganis the said James Keyth of Benholme and his complices.<sup>5</sup> AS ALSO, for airt and pairt of the thiftious steilling and away-taking, be way of maisterfull Thift and Stouthe-reiff, in the moneth and yeir of God foirlaid, furth of the said Place, of ane grit clothe bag, with the said vmq<sup>16</sup> Erle his hail evidendis<sup>6</sup> and writtis of his landis and leving of Benholme, and vtheris his landis and barroneis, being thairintill; and remanent capitall crymes contenit in the saidis Criminal Letteris, &c.

Andro Barclay of Vnthank, as cautioner, is decernit and ordanit to be in ane amerciament, viz. for nocht entrie of the said James Keyth, in the pane and vnlaw of ane thoufeand merkis: And siclyk, that the said James be denuncet our fouerane lordis rebell, and put to his hienes horne; and his hail moveabill guidis to be efcheit and inbrocht to his Maiesteis vse, as fugitiue fra his hienes lawis for the saidis crymes.

### Stealing Corn, &c.

Mar. 24.—HARIE MENTEITH of Panfteid; James and Williame, his tua fones; Andro Menteith, sone-naturall to the said Harie; Johnne Menteith, callit of Balderstoun; and fix others.

Dilaitit of the thiftious steilling and away-taking, furth of Thomas Kincaid of Wariestoun his barnes of Saltcoittis, in the Eist-Kerfe, lyand in the barrony

<sup>1</sup> Various virtues were anciently attributed to certain precious stones, such as the present, (*stemming* of blood,) as antidotes against poison, &c. The following curious entry occurs in the Books of the *Lord High Treasurer of Scotland*, Feb. 9, 1504.—<sup>2</sup> ITEM, to the said Williame [*Foular, potingary,*] for ANE BLUESTANE, and thre vnce vjir stuf, for THE QUEENE, for bleding of þe nefe; esfir ane R. (*recipe*) of *Maister Robert Schaw*, xxij l. <sup>3</sup> Chain, or string. <sup>4</sup> Turquois. <sup>5</sup> Ready coined.

<sup>6</sup> The above highly interesting detail shows, in a very striking point of view, the immense wealth which was accumulated and enjoyed by many of the Scottish Nobility at this period. Other portions of this Collection prove that considerable riches were possessed by some of the smaller Gentry, where such a display might not have been expected. <sup>7</sup> Title-deeds.

thairof, and scherefdome of Sterling, off threttie bollis of aittis, faxtene bollis of peis, and tuentie bollis beir, pertening to the said Thomas Kincaid.

The persewar productet our souerane lordis Letteris, be vertew quhairof the saidis perfonas, and ilk ane of thame, ar denuncet rebellis, and put to the horne, for nocht finding of cautioun to haif compeirit, &c.; and protestit for relief of Johnne Kincaid portioner of Gogar, his cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

### MURDER.

Jun. 5.—JAMES GALBRAITH, in Lekkies.

Dilaitit of the Murthour and Slauchter of vmq<sup>le</sup> James Broke in Kirkpatrick, his brother-in-law; committit vnder nycht, betuix Kirklistoun and Corstorphin, in thair cuming furth the hie-way togidder towardis Edinburgh, in the moneth of Apryle last, in the begynning thairof.

#### ASSISA.

James Tennent of Lynhous,

Johnne McFarlane of Arrochar,

James Burnet of Barnes,

Alexander Lokhart of Braidshaw.<sup>1</sup>

The pannell confessis, in prefens and audience of the Assyse, the Murthour and Slauchter contentit in his Dittay.

VERDICT. The Assyse being ryplie and at lenth advyset with the Dittay, togidder with the said James Galbraith his awin Confessioun maid in judgement, with his Deposition maid be him, vpon the thrid day of Junij instant, in prefens of the hail lordis of Counsell and Sessioun, confessing the Murthour aboue writtin, thay all in ane voce stand, pronuncet, and declairit the said James to be ffylet, culpable, and convict.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body; and his hail guidis and geir to be efcheit, &c.

### Theft—Slaughter—Fire-raising—Intercommuning with the MacGregors, &c.

Jul. 17.—JOHNE ROY MCFARLANE, sone to Andro of Gortane, and others.<sup>2</sup>

Dilaitit of the feuerall crymes of Thift and Slauchter following, viz. The said *Johnne Roy McFarlane*, ffor airt and pairt of the Slauchter of vmq<sup>le</sup> *William Mcclane* in Blairvak, fservand to vmq<sup>le</sup> *Duncane Mcfarlane* of Blairvak, for the tyme; committit vpon the thrid day of October lastbypast, 1623 yeiris: And

<sup>1</sup> The rest of the Assise were tradesmen. James Tennent, chancellor. <sup>2</sup> The remainder of the pannels were, 'Johnne Beg McEauise Mcfarlane (in Stukewa), Duncane McCorrie McEwin (McFarlane in Ardlowie), Johnne Mcinnair Mcfarlane in Garboyle, Thomas Moir Mcfarlane, (sone to Duncane Dow Mcfarlane in Morlagane,) Allaster Blair (in Brachairne), Johnne (Dow) Blair, his sone, Johnne Gar McGilliemichell, (seruitour to Robert Abroche McGregour,) Duncane Bayne Mccartnay, (fseruand to Robert Abroche Mcgregour.)'

fielyk, for airt and pairt of the tressonable Raifing of fyre, and Burning of the house of Abervrchill, pertening to vmq<sup>le</sup> Colene Campbell of Abervrchill, being in company with Johnne Dow M<sup>c</sup>Condochie Bayne, his maister, and vtheris his complices, at the said Burning; committit a ten yer fyne, or thairby. ITEM, the said *Johnne Beg M<sup>c</sup>Cauise M<sup>c</sup>farlane*, ffor the thiftious ressetting of ane blak kow, quhilk was stowin be Johnne Roy M<sup>c</sup>William M<sup>c</sup>farlane, furth of the landis of Balliemoir, fra Andro M<sup>c</sup>William M<sup>c</sup>farlane, in the moneth of December last: And fielyk, for airt and pairt of the steilling of tua ky furth of the landis of Clofwrak, pertening to Callum M<sup>c</sup>farlane, indueller thair: And alsé, for airt and pairt of the thiftious steilling, at the leift ressetting, of ane blak horse, stowin be Duncane M<sup>c</sup>corriche M<sup>c</sup>eane M<sup>c</sup>farlane, furth of the cuntrie of Argyle; committit in Marche last. ITEM, the said *Duncane M<sup>c</sup>corrie M<sup>c</sup>eane M<sup>c</sup>farlane*, ffor airt, pairt, and being in company with Johnne Roy M<sup>c</sup>William M<sup>c</sup>farlane, at the steilling of ane broun kow, a four yer fyne, or thairby: And for airt and pairt of the steilling of nyne lambes, pertening to Johnne M<sup>c</sup>corrie M<sup>c</sup>farlane and Patrik M<sup>c</sup>corrie M<sup>c</sup>farlane in Ardmulrig, furth of the Mure of Ben-Mourlig, in the moneth of Junij I<sup>m</sup>.Vj<sup>c</sup>.xxij yeiris: And also, for airt and pairt of the steilling of ane gait<sup>1</sup> furth of the landis of Glencroe, in the moneth of October, the yer of God I<sup>m</sup>.Vj<sup>c</sup>. tuentie tua yeiris: And in lyk maner, for airt and pairt of the steilling of ane blak horse out of Argyle, in the moneth of Merche lastbypast: And for thiftious steilling of ane scheip fra vmq<sup>le</sup> Malcolm M<sup>c</sup>farlane, in Inner-fnamet,<sup>2</sup> in the moneth of Julij, 1616 yeiris. ITEM, the said *Johnne M<sup>c</sup>Innair M<sup>c</sup>farlane*, ffor airt and pairt of the steilling of ane broun kow furth of the landis of Glencroe, furth of ane grit number of vther ky, in dryveing thame to the Mercat, to be fauld; committit a fevin yer fyne, or thairby: And ffor airt and pairt of the steilling of ane blak kow, a four yer fyne, furth of the saidis landis of Glencroe. ITEM, the said *Thomas Moir M<sup>c</sup>farlane*, sone to Duncane Dow, ffor airt and pairt of the steilling of fyve ky, pertening to George Maidlanes in Letter, and vtheris, the Laird of Kilfythes tennentis: And ffor airt and pairt of the steilling of nyne lambes, furth of Craigcoftane,<sup>3</sup> pertening to Patrik Glafs M<sup>c</sup>farlane thair, in the moneth of Junij, 1623 yeiris: And ffor airt and pairt of the thiftious ressetting of ane stowin kow, quhilk was stowin be Callum M<sup>c</sup>cauise in Clakbowie, fra Colene Campbell of Ardkinglas, in the moneth of November, 1622 yeiris: And ffor ane commoun soirner<sup>4</sup> and oppreffour, vpone dyuerse his Maiesteis subiectis: And for common Thift and Resset of thift. ITEM, the saidis *Allaster Blair* in Bracherie, and *Johnne Blair*, his sone, ffor airt and pairt of the steilling of foure ky, furth of the landis of Discher, in Menteith, a

<sup>1</sup> Goat.      <sup>2</sup> Inversnaid?

this property in anno 1705.

<sup>3</sup> Afterwards the residence of Rob Roy M<sup>c</sup>Gregor, who acquired this property in anno 1705.

<sup>4</sup> One who oppressively takes free quarters, &c. by violence.

fyve yeir fyne, or thairby, quhilk pertenit to . . . Logane, servand to the Laird of Auchinbrek. ITEM, the said *Allaster*, ffor the steilling of tua oxin fra the Laird of Buchannane, furth of the landis of Salloche, a fyve yeir fyne, or thairby. ITEM, the saidis *Allaster*, and *Johnne Dow Blair*, his sone, ffor the thiftious steilling of thre ky, furth of the landis of Drongie, pertening to Robert Campbell of Drongie, a foure yeir fyne, or thairby: And forder, for the thiftious recept<sup>1</sup> of tua stowin horse, stowin be the said Robert Abroche, furth of the North pairtis of this realme, a yeir fyne, or thairby. ITEM, the said *Allaster*, ffor the thiftious ressetting of ane grit quantitie of the guidis and geir rest, stowin, and away-tane furth of Balwill, be Robert Abroche, Johnne M'cairtour, Donald Darleith, and vtheris thair complices, quhilkis pertenit to Johnne Fallaiddail, bailzie of Dunbartane: And last, the said *Johnne Blair*, ffor steilling of ane kow, furth of the landis of Clofrak, pertening to Parlen M'neill, thair, a foure yeir fyne, or thairby. ITEM, the said *Johnne Gar M'gilliemichell*, ffor airt and pairt of the thiftious steilling, be way of Maisterfull Thift and Stouth-reiff, furth of Murray, in the North, fra dyuerse of the Inhabitantis thairrof, in the moneth of Julij last, of ffytie ffyve oxin and ky, with dyuerse horse, scheip, gait, inficht and pleniffing, quhilk war drewin<sup>2</sup> be the said Johnne Gar, and be Robert Abroche, his maister, and vtheris thair complices, to the Wast pairtis of this realme, quhair the samyn was fauld and disponsit vpon to thair vse: And siclyk, for ane commoun Soirner and Oppressour, in keeping daylie and nyctlie company with Robert Abroche M'gregour, and passing with him throw dyuerse pairtis of the cuntrie, soirning and committing oppressioun vpon dyuerse his Maisteis subiectis, inhabitantis thairintill; forceing and compelling thame to furneise meit, drink, and vther prouisioun, aganis thair will, and without payment of ony money for the same; in hie and manifest contempt of his Maisteis auctoritie and lawis. ITEM, the said *Duncane Bayne M'cartnay*, ffor ane commoun Soirner and Oppressour; specialie, for cuming to the duelling-hous of Neill M'claren in Innernandie, in the heid of Balquhiddel, in May last, and thair forcet and compellit him to furneise to the said Duncane, meit, drink, and vtheris necessaris; and becaus ane kid was refusit be the said Neill to be slane and cittan, at the said Duncanes desyre, the said Duncane thairupoun maist crewallie invalidit the said Neill for his slauchter, gaif him ane crewall and deidlie wound in the heid, to the effusioun of his bluid in grit quantitie; quha, be occasioun of the said straik, being irritat with rage and furie, with ane grit caber<sup>3</sup> in his hand, rynnand at the said Duncane in revenge thairrof, strak Donald M'Intyre (quha was ane redder<sup>4</sup>) in

<sup>1</sup> Reset.<sup>2</sup> Driven.<sup>3</sup> A large rafter, beam, or joist.<sup>4</sup> A peace-maker, who, in this instance, got the *redding-straik*, the proverbial recompense of those who, through their good nature, endeavour to separate angry combatants. The foregoing details afford a highly unfavourable picture of the state of society, in 'Rob Roy's country,' at the close of the reign of James VI.

the foirheid, and fellit and flew him thairwith; and fa, the said Duncane was airt and pairt of the Slauchter of the said vmq<sup>e</sup> Donald M<sup>c</sup>Intyre: ITEM, ffor cuming to the said Neill M<sup>c</sup>clarens hous, vnder nycht, and steilling furth thair of of his haill inficht pleniffing, guidis, and geir, to the avall of fourtie pundis money.

The foirnamet haill perfonas, dilaitit and accuset of the crymes *repective* above writtin, haifing denyit the samyn to be of verritie, war put be the Justice to the knowlege of the perfonas following.

## ASSISA.

Johnne M <sup>c</sup> farlane of Arrochar,	Duncane M <sup>c</sup> Innoyer in Gortane,	Parlane M <sup>c</sup> Corrie in Ardleifch,
James Garbraithe in Garbell,	Patrik Roy M <sup>c</sup> Innoyer,	Patrik M <sup>c</sup> farlane in Pullochre,
Dougall M <sup>c</sup> farlane in Tullichin-	Andro M <sup>c</sup> farlane in Drumfad,	Johnne Dow M <sup>c</sup> farlane,
taill,	Malcolme M <sup>c</sup> William in Downe,	Donald Dow M <sup>c</sup> farlane,
Thomas M <sup>c</sup> farlane,	Duncane M <sup>c</sup> farlane in Port-	Harie Dow, feruitour to Johnne
Johnne M <sup>c</sup> farlane in Kenmore,	Chapell,	Erll of Mar, &c.
Duncane M <sup>c</sup> farlane, thair,	Johnne M <sup>c</sup> Innoyer,	

**VERDICT.** The Assyse, all in ane voce, be the repoint and declaratioun of the said Andro M<sup>c</sup>farlane in Drumfad, chancellor, ffind the saidis perfonas on pannell, and ilk ane of thame, to be ffylet, culpable, and convict of the feuerall crymes above writtin.—**SENTENCE.** To be tane to the Burrow-mure of the burgh of Edinburgh, and thair to be Hangit quhill thay be deid; and all thair moveable guidis to be efcheit to his Maiefties vfe, as giltie of the saidis crymes.

**Sheep and Cattle Stealing, &c.**

Jul. 21.—ADIE VSCHER, borne in Birkinhauch, in Liddisdail, fervand to Robert Ellote of Reidheuche.

Dilaitit of airt and pairt of the steilling of sex ky (*cattle*) furth of Schewingscheill-Castell, pertening to Williame Heroun of Chipchefe, in the moneth of November last: ITEM, ffor airt and pairt of the steilling of sextene gaitis (*goats*) furth of Emmetiflauch, pertening to Will Charletoun of Emmetiflaugh; Will Vfcher, his sone, being in company with him at the steilling thair of; committit in September last: ITEM, ffor airt and pairt of the steilling of tua ky furth of Hafillyde, in Ingland, the ane blak, the vther broun, pertening to Williame Chairletoun of Hafillyde; committit be him and the said Will Vfcher, his sone, in October last: ITEM, ffor airt and pairt of the steilling of an yellow brandit ox, furth of the landis of Heifilefyde, in the said moneth of October last, pertening to the said Will Chairletoun; the said Will Vfcher, his sone, being in companie with him at the committing thair of: ITEM, ffor airt and pairt of the steilling of sextene gaittis furth of the landis of Leipieleifche, in October last; quhilk pertenit to Mathew Robfoun of Leipieleifche; the said Will, his sone, being with him at the steilling thair of: ITEM, ffor steilling and away-taking, about Hallowmes last, of tua fcheip



furth of Richartoun-fute, pertening to Archie Henderfoun, and Johnne Robie-foun, thair; committit be him and the said Will, his sone: ITEM, ffor airt and pairt of the steilling, furth of Burnemouth, of fyve scheip, pertening to Johnne Nixyne, thair; the said Will Vscher being at the steilling thair of: LAST, ffor airt and pairt of the steilling of fyve scheip, about St Thomas-Evin last, fra Johnne Ellote, callit *the Dod*, and Johnne Elliot, callit *the Gyde*: AND ffor commoun Thift and Resset of Thift.

PERSEWARIS, Mr (Willame) Heroun of Chipchefe, Will Chairletoun of Hifflesfyde, Sir Willame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat.

ASSISA.

The Laird of Riddell,	Ragnell (Reginald?) Bennell,	Johnne Govane of Cardrono,
Willame Middlemeft of Chappell,	The Laird of Mertoun,	James Douglas of Cowthroppill.
George Ker of Newhall,	Andro Ker of Brounlandis,	Patrik Cranftoun of Corfbie,
Andro Douglas of Priestoun,	W <sup>m</sup> Trumble of Phillopehauche,	Robert Edzer of Wodderlie,
Willame Bennet,	James Naymyth of Poffo,	Robert Lauder of that Ilk,

VERDICT. The Assyse, all in ane voce, in respect of the said Adie his Judiciall Confessioun of the crymes foirfaisdis to be of verritie, be the mouth of the said Laird of Riddell, chancellor, ffand, pronuncet, and declairit the said Adie Vscher to be flylet, culpable, and convict of the crymes foirfaisdis.—SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be Hangit quhill he be deid; and all his moveabill guidis to be efcheit, &c.

### Sheep and Cattle Stealing, &c.

Jul. 21.—WILL VSCHER, sone to the said Adie Vscher.

Being presentit vpone pannell, in prefens of my Lord Justice, Confessit him selff to be Giltie and culpable of the particular Thiftis contenit in his ffatheris convictioun: And offerit him selff in his Maiestie and Counfallis will for the samyn.—SENTENCE. The Justice, in regaird of the said Will Vscher his minoritie, nocht being past fastene yeiris of age, with advyse of the Lordis of Secreit Counfall, ordanit the said Will to be Baneisfet his Maiesteis hail dominions, and nocht to be ffund thairintill in any tyme cuming, without his Maiesteis Licence, vnder the pane of deid, &c.

[*Sir George Erskine of Innerteill, kny<sup>t</sup>, Justice.*]

### Murder under trust—Stouthricif—Piracy, &c.

Nov. 3.—JOHNNE BROUN, skipper in Brunteilland; Robert Broun, mariner, his sone, thair; Dauid Dowie, burges and awner thair; and Robert Duff, in South Quenis-fferrie.

Dilaitit and accuset of airt and pairt of the schamefull, crewall, and vnmercie-ful Murthour vnder trust of thre Spanische mercheand young men; and steilling

and appropriating to thame selfis, be way of Maisterfull Thift, Southe-reiff, and Peiracie, off the guidis and mercheandice being within thair schipis-boddome, pertening to the saidis Mercheandis ; committit a thre yeir syne, or thairby, in thair cuming fra the Poirt of S<sup>t</sup> Johnnes, in Spayne, to Callife, be casting the saidis thre Spanische Mercheandis over-burde, and thaireftir appropriating of thair guidis and mercheandice to thame selfis, and making money thairof, to thair awin vse.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny<sup>t</sup>, Aduocat.

*DITTAY agaisst the persons on pannell.*

JOHNE BROWN, skipper in Bruntieland, maister and owner of ane quarter of the schip vnderwritte, ROBERT BROWN, your sone, awner of ane vther quarter thairof ; DAVID DOWIE, mariner, burges of Bruntieland, awner of the half thairof ; and ROBERT DUFF, indueller and mariner in South Queniflerrie, Ye ar indytit and accuset, FORSAMETILL AS the traffique and commerce betuix mercheand and mercheand, in exporting of commoditeis frome ane cuntrie to ane vther, hes, in all weill-governet Kingdomes and Commoun welthis, bene estimat the ground and fundamentall caus, nocht only of grit welth and ritches to the inhabitantis, but also ane grit help and furtherance to intertene freindschip and correspondence betuix Princes ; quhairthrow mony loveabill Lawis, vpon guid advyse and deliberatioun, hes bene publeist and set furth be thame and thair estaitis, for advancement of thair tred, and reiking out of schipis and veschellis for the better vphald and continuance thairof ; and thairupoun, the art of Navigatioun, with the perfonis expert thairintill, alsweill for thair skill and dexteritie in fuilling, as fidelitie in that tred, be the faif conveying of the merchandis and passangeris, with thair merchandice and guidis, committit to thair trust, hes becum famous and of goode estimatioun throw the hail world : LYK AS, the failleris of this Kingdome, being, for thair skill and fidelitie in that tred, nothing inferiour to ony vther cuntrie, people, or natioun, haif commonlie, in regard thairof, bene sa respectit be strangeris in forayne pairtis, that thay, with thair schipis, hes bene preferrit in seruice to ony vther people quathamenir. Nochtwithstanding quhairof, it is of verritie, that ye and ilk ane of yow, schalking of all feir of the Omnipotent and Almychtie God, regaird to the ancient goode fame of this cuntrie and kingdome of Scotland, quhairof ye ar namet maist vnworthlie to be inhabitantis and natiue borne people ; as also, to the grit obloquy, schame and reproche, and oppiu discredeit of the hail failleris of this kingdome resoirting to forayne pairtis, prejudice and disapointing of all lauchfull commerce and tred with ony of the Mercheandis of the samyn, and imployment of the hail seafairing men with thair schipis and barkis in tyme cuming, a thre yeir syne or thairby, ye being in S<sup>t</sup> Johnnes, a Sie-point within the Kingdome and dominioun of Spayne, togidder with the schip callit . . . . ., quhairof ye, the said Johnne Brown, was maister and awner of ane quarter, and ye, the said David Dowie, awner of ane half, and ye, the said Robert Brown, awner of the fourt quarter ; and being fraucht be ane Gilzeane Thasktone, a Spanzaird, to pas fra the said Poirt of S<sup>t</sup> Johnnes to the Poirt of Caillife, with ane laiding of Walnuttis, chestanis,<sup>1</sup> and certane Spanische irne ; and accoirding thairto, haifing tane in the said laiding, togidder with thre Spanische young men, quha war directed be the said Mercheand to await vpon the discharge of the said Merchandice, and to make mony thairof at the said schipis arryvell at hir appointit Poirt aboue writtin,<sup>2</sup> ye, befor your cuming abuid of the said schip in S<sup>t</sup> Johnnes, plottit, contrivet, and devyset the crevall and barbarous Murthour of the saidis thre strangeris, and the appropriating to your selfis of the hail guidis and merchandice imput within the said schip ; and drew vp ane Band to that effect, quhairvnto ilk ane of yow, with the remanent equippage of the said schip put to your handis ; aad thaireftir, cuming all aboird, heaft vp sail, and past to the Sea : And being in the middis of Sea, far frae ony land, ye, vpon schamefull and damnable greid and covetousnes, vpon set

<sup>1</sup> Chestnuts.

<sup>2</sup> As supercargoes.

purpois, deliberatioun, and sfirthocht fellony, falschilie apprehending that the al-feing eie of the Almyctie did nocht luik down, nor wald bring to licht your maist horrible and detestable Murthour and Pirracie, ye being also secundit, aidit, and assittit be James Hall in Kirkculdbrycht, Johnne Gibfoun in the Erles-fierrie, James Carrane in Tradache, in Ireland, Robert Kincavill, cuik of the schip, with ane Irische boy, namet Thomas Cur; all of yow, being nyne in number, within schip-buird, ye maist crewallie and vnnaturalle, aganis the Lawis of Nationes, haifing the saidis thre strangeris in your power, and for the valauchfull acqyreing and appropriating to your felffis of the saidis guidis and merchandice, violentlie, and but<sup>1</sup> pitie or commileratioun, threw them all thre ouerbuird, ane eftir vther, in the raging seas; and thairby crewallie and vnmerciefullie, vnder trust, credeit, and assurance, Murdreift and bereft thame of thair naturall lyves; thay haifing na refudge nor bak-dur to eschew your crowthie: Quhilk being done, ye, in plane mokage,<sup>2</sup> and skorne of the Almyctie, as gif his deryne Maistie had approvin that your horrible fact, maid ane Prayer, and sang vp ane Psalm: And thaireftir, as Thevis and maisterfull Sea-robberis, divertit your curse fra Callise,<sup>3</sup> and past with your said schip and laiding thairof to Myddilburgh in Zeilland, quhair the saidis walnuttis and cheftanes war fauld and maid money of, be ane or vther of yow, in name and to the behuif of the haill company and equippage;<sup>4</sup> and the samyn money, thaireftir, was pairtit amangis yow: Lyk as, the irne was brocht hame to Brvntieland, quhair the samyn was fauld, for reddie money.—Committing thairby maist horrible Murthour and Slauchter vnder trust and credeit, the saidis thre strangeris being vnder your power and command, within your schip; and lykwayis Maisterfull Thift, Stontbe-reiff and Pirracie, in appropriating of thair guidis and merchandice to your felffis: Off the quhilkis, ye, and ilk ane of yow, ar and war speciall actouris, airt and pairt; and thairfoir, aucht and fould, in maist exemplarie maner, be pwnest, to the terrour of vtheris.

My lord Aduocat, eftir reiding of the Dittay, and the pannellis accusatioun of the saidis crymes, at length set down thairintill; and that in respect na obiectioun was maid be the pannell or ony vtheris in thair names, aganis the relevencie thairof, desyret my lord Justice to put the samyn to the tryell of ane Assyse of the persones summond to that effect.

My lord Aduocat takis instrumentis of the sweiring and admissioun of the Assyse, and that na obiectioun is maid aganis thame be the pannell. And for Verificatioun of the poyntis of Dittay and crymes thairin mentionet, product the Depositionn maid be the foure persones on pannell, viz. the said Johnne Broun, Robert Broun, and David Doweis Depositiones, maid be thame in prefens of the Laird of Bombie, the Commislar of Kirkculdbrycht, and the Bailles thairof, vpone the xxviij day of August last, confessing the Murthour and thiftious taking and appropriating of the guidis and merchandice to thame felffis. Togidder with the said Johnne Broun and David Doweis Depositionn, tane in prefence of the Erle of Melrois, vpone the xv of September last. Produces also the Depositiones of Robert Duff, tane in prefens of the said Erle of Melrois, on the vij day October last, beirand the said Johnne Broun, and David Dowie, to be casters of the first Mercheand overburd. Produces the pannellis haill Depositiones maid be thame in prefens of my Lord of Melrois, vpone the nynt day of October last. Togidder with the Depositionn of Robert Kincavill, cuik of the schip, and ane of

<sup>1</sup> Without.<sup>2</sup> Mockery.<sup>3</sup> Calais.<sup>4</sup> Crew.

the equippage thair of in that veadge,<sup>1</sup> tane in prefens of James Weymes of Bogy, Vice-Admirall at Kirkcaldie, vpon the 28 of Junij last. With the Deposition of the said Robert Duff, maid in prefens of my lord Aduocat him self, vpon the 27 of October last. And last, vses and produces the Declaration of Robert Meluill and Robert Cellok, vnder their hand-writt and mark put thairto, detecting and oppening vp the pannellis giltienes of the haill poyntis contenit in their Indytment. And vpon the production of the verifications aboue writtin, askit instrumentis: And protestit for Wilfull-Errour aganis the persones of Assyse, gif thay acquit the pannell of the detestable crymes aboue written.

VERDICT. The Assyse, all in ane voce, be the repoir and declaratioun of Stewin Philp, elder, mercheand in Dyfert, chancellor, stand, pronuncet, and declairit the haill foure persones on pannell to be Giltie, culpable, and convict of the crymes aboue specifedit.—SENTENCE. To be tane to the Mercat-Croce of Edinburgh, and thair to be Hangit vpon ane gibbet, quhill thay be deid: And thaireftir, thair heidis to be strukin fra thair bodeyis: And tua of them to be set vp vpon prikis of irne at *Leith*; and the vther tua to be sent to *Brunteil-land*, to be set vp vpon prikis thair: And thair haill moveabill guidis to be escheit to his Maiesteis vse.

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

### MURDER, &c.

Nov. 13.—HARIE LISTOUN, indueller in the bak of Plesance (of Edinburgh), callit the Bak-Raw.

Dilaitit, fforamekill as the said Harie, haifing, without ony iust caus, confanet ane deidlie haitrent and evill will against vmq<sup>le</sup> James Mayne, seruitour to Robirt Young, maltman, burges of Edinburghe, with ane settillit purpois and resolution to bareiff him of his lyffe, be on meine or vther; laitle, vpon the last day of August lastbypast, come in the twielicht, eftir setting of the sone, betuix fevin and aucht houris at evin or thairby, to the said Robert Young, his peise-land, besyde the Seanis,<sup>2</sup> near to the Burrow-mure of the said burgh, quhair the said vmq<sup>le</sup> James was in sober and quyet maner for the tyme, keiping his said maisteris peise, and vtheris his coirnes, than growand and standing stoukit<sup>3</sup> vpon the ground of the saidis landis; and thair, the said Harie, being bodin with ane grit rung or battone in his hand, and with knyves and vtheris invasiue wappones, first vpbraidit the said James Mayne with woirdis, alledging that he was ane commoun Theiff, and had stowin ane grit number of the said Harie his beanes and peise, growand neir to the said Robert Youngis land, and lyand contigue

<sup>1</sup> One of the crew in that voyage.

<sup>2</sup> Sciennes, so called from a religious house dedicated to St Katherine of Sienna, in the immediate vicinity of Edinburgh.

<sup>3</sup> Cut down and put up in stouks, ricks, or shocks.

thairto ; and thaireftir, becaus the faid James purget him felff of that calummie, and anfuert him, be woid, that he was als honeft as him felff ; the faid Harie, thairupoun, ran vpon the faid James, and rwfchet him (being ane aget man of threfcoir fourtene yeiris of age) to the grund, dang him in the heid, craig,<sup>1</sup> fchoulderis, and fydys with the faid battoun, lap vpon his breift and bellie with his feit and kneis, punchet him as alfo vpon the heart, and thairby brak and birfet his intrallis and noble pairtis ; in maift inſolent maner cuttit his cleithing in peices with knyves, and thaireftir harrellit and drew him be the heillis the ſpace of ane quarter of ane myle af the faidis landis, to ane laich volt in S<sup>t</sup> Geillie Grange, and imprifſonet him thairintill, *tanquam in privato carcere*, he being in the deid-thraw :<sup>2</sup> Lyk as, within thre houris efter his imputing within the faid volt, he deceiflit of the faidis ſtraikis : And the faid Harie, vnderſtanding of his daith, to ſuppres the Murthour of the faid pur man fra the warld, caufit him to be bureit ſecreitlie in the nycht, in ane obſcure place. And ſa, the faid vnc<sup>le</sup> James Mayne was ſchamefullie, crewallie, and barbaruſlie Murthouret, and thairefter ſecreitlie bureit, be the faid Harie and his complices ; and he is airt and pairt thairof ; committit vpon ſet purpois, prouiſioun, and foirthocht felony.

## PERSEWARIS.

Jonet Watſoun, the relict ; Euphame Cuninghame,  
ſiſter-dochter ;<sup>3</sup> Sir Williame Oliphant, knycht ;  
Robert Young, as maifter.

## PRELOCUTOURIS in defence.

The Laird of Innerleyth, The Laird of Lug-  
toun, Mr Lueis Stewart, and Mr Johnne  
Oliphant, Aduocatis.

It is allegit be the pannell, and be Mr Lueis Stewart, his prelocutour, eftir reiding of the Dittay, that the ſamyn is nawayis relevant to pas to the knowlege of ane Aſſyſe, as it is ſett down ; nawayis affirmeing thairin, that the pannell was the actuall committer of the ſlauchter lybellit ; and ſua, nocht concludand, *de homine occiſo*, the ſamyn can nocht pas to ane Aſſyſe.—It is anſuerit be my lord Aduocat, the allegiance aucht to be repellit, in reſpect of the Dittay beir- and *per expreſſum*, that the defunct reſſaut dyuerſe ſtraikis with ane battoun in the heid, and was punchet in the breift and bellie, and his hail noble pairtis brokin within him ; and be occaſioun thairof the defunct deceiflit ; quhilk was gevin to him be the pannell, and that he deceiflit off the ſamyn ſtraikis gevin to him be the pannell, the tyme lybellit.

It is allegit, that the Dittay contenis dyuerſe and ſeueral<sup>4</sup> memberis, ilk member thairof being ane cryme be the ſelff, viz. firſt, that the defunct was ſtruken with a battoun : 2. His claithis cuttit with knyves : 3. The defunct was harrellit be the heillis af the landis lybellit, to the Grange : 4. Was caſſin in ane laiche volt, *tanquam in privato carcere*, quhairin he was detenit captiue and priſſoner ; quhairin, it is affirmet, that the defunct deceiflit : Quhilkis, being ſeueral crymes,

<sup>1</sup> Throat ; neck<sup>2</sup> Half dead ; in the *throes*, or agonies, of death.<sup>3</sup> Niece.<sup>4</sup> Separate.



man (*must*) be discusst feuerallie. The Aduocat declairis that he conjoynes the haill crymes togidder, and devydis na pairt of the Dittay; and sayis, that the famyn is verrie relevant, as it is set doun, to pas to the knowlege of ane Assyse.

It is allegit be the pannell, that the famyn can nocht pas to ane Assyse, becaus he offeris him to prove, be sufficient Witneses present at the bar, that the said James Mayne deceissit be hanging himselff within ane laiche volt in the Grange, eftir he was committit thairin for steilling of certane beanis and peise, and eftir he had remanit thairin the space of tua or thre houris; quha was brocht thairto, frie of ony hurt or woundis, in ony pairt of his body.—It is anfuwerit, aucht to be repellit, in respect the allegiance consistit *in facto*; and gif ony probatioun be tane, it man be proponit to the Assyse, quha, for thair informatioun, may tak the Witneses declaratioun, gif thay fall think it expedient, or reject the famyn.<sup>1</sup>

THE JUSTICE Ordanis the Dittay to pas to the knowlege of ane Assyse: And the exceptioun proponit be the pannell, anent the defunctis putting handis in him selff, seing it consistis *in facto*, REMITTIS THE TRYELL THAIROF TO THE ASSYSE; AND THE PROBATIOUN TO BE VSET BEFOIR THAME.

#### ASSISA.

Mr Johnne Cant of the Grange,	Johnne Stevinsoun, maltman,	Robert Wilfoun, beltmaker,
Johnne Marfchell, burges of Edr,	Johnne Lowrie, maltman,	James Johnnefoun, maltman,
Adame Marfchell, maltman thair,	Adame Bar, tailzeour,	Frances Stevinsoun, chirurgane,
Johnne Campbell, stailber thair,	Robert Moubray, suordslipper,	Johnne Fluiker, chirurgane,
Johnne Bordland, lister,	Johnne Ahannay, baxter,	Johanne Clarkfoun, smyth.

It is allegit be the pannell aganis ffrances Stevinsoun and Johnne fluiker, chirurganes, that nather of thame can be admittit vpon this Assyse, becaus thay haif behavet thame selffis as pairteis, in passing, at the desyre of the persfwaris, and for guid deid gevin to thame, to the defunctis graiff, sevin dayis eftir his buriall, and taking him vp and sicthing the deid corpis, ffor ane pre-

<sup>1</sup> This Case is most important, as being the first on Record, where the Lord Advocate voluntarily admits of WITNESSES being examined before THE ASSISE, in relation to facts arising out of the assertions contained in the Dittay. The practice formerly was for the Advocate, as public prosecutor, previous to framing the Dittay, to examine the pannell and such witnesses as could be obtained, immediately after the commission of the crime, before the Lords of Privy Council, or a Commissioner; and the Declarations, Confessions, and other evidence so produced, were founded upon in Court. They were there held as conclusive, and not liable to be redargued by leading of fresh evidence at the time of the Trial. The want of attention to this circumstance, or rather the ignorance of the ancient mode of procedure in matters Criminal, would induce any one, at first sight, to form a very erroneous estimate of the policy, and more particularly of the administration of our Laws. The notion seems anciently to have been, that it was an act of flagrant contempt in a pannel to dispute the validity of the evidence led before so high a tribunal as that of the Privy Council, and probably in the face of his own repeated Confessions or Declarations, on being examined, previous to trial. The Justice, therefore, repelled any attempt on the part of Counsel for the pannel bringing forward Witnesses in proof of his innocence; until, at length, the voice of the country prevailed, and THE ASSISE WERE MADE JUDGES OF THE LAW AS WELL AS OF THE FACT. It is not a little singular to observe here, that one of the Assise (the very Justice of the Peace in the vault of whose house the alleged suicide took place, and who was afterwards chosen Chancellor of the Assise) is brought forward as the principal evidence, along with three of his servants!

cognitioun in fauouris of this perfewar, anent the tryell of this mater.—It is anſuerit be the Aduocat, the allegiance is nawayis relevant to ſtay thame to be admittit vpon this Affyſe; becaus, quatevir was done be thame in raiſeing and ſighting of the corpis, was done be command of the Bailles of Edinburghe.

*Robert Young*, perfewar, being ſuorne, gif he has juſt cauſe to perſew this Dittay as it is ſett down, declairit, that he has juſt cauſe to perſew, vpon this reaſone only, becaus he, haifing gottin knowlege of James Maynes daith, and cuming to the Grange to vnderſtand the forme thairof, and haifing ſeane the deid corpis, deſyret Mr Johnne Cant to keip him vnburit quhill the morne at nyne houris, that his wyfe and freindis (nicht) come to ſie him; quhill the ſaid Mr Johnne promeiſt ſould be done; and nochtwithſtanding thairof, he was bureit, be the pannellis ſervandis, lang befor ſex houris in the moirning: And thairfoir, in reſpect of his buriall, ſecretly, by<sup>1</sup> promeis, he had juſt cauſe to perſew the pannell, as giltye of the ſaid James Maynes daith.

The Aduocat takis instrumentis of the ſueiring of the Affyſe, and of the producioun of the defunctis claithe be the relict, all cuttit be the pannell, the tyme contenit in the Dittay: And proteſtis, in caice thay acquit, for Wilfull Errour.—The pannell proteſtis in<sup>2</sup> the contrair, gif thay flye; and that the Witneſſes may be tryit for proving that the only cauſe of the defunct his daith the proceidit fra his putting violent handis in his awin perſone, be his feirfull and crewall hanging him ſelf, and thairby deuoiring him ſelf to daith, within ane laich volt of the Grange, pertening to Mr Johnne Cant, ane of the Affyſe, eftir the pannell had apprehendit him in his peiſe, and tane him with tua grit wallat-full of ſcheillit beanis, ſtowin be him af his peiſe-rig, and brocht him to the ſaid Mr Johnne Cant, as Juſtice of Peace, to haif remanit with him vnto the tyme he had bene tryit and pwneift for the ſaid Thift. And for cleiring of the veritie of the foirſaid allegiance to the ſaid Affyſe, deſyret the Witneſſes following, all preſent at the bar, viz. the ſaid Mr Johnne Cant, ane of the Affyſe; Robert Stark, James Scott, and James Wallace, his thre ſervandis; James Borthuik, indueller in Edinburghe; James M<sup>c</sup>Corne, in the Seanis; Williame Mure, ſervand to Robert Young, ane of the perfewaris, and Johnne Girdwoid, alſo his ſervand, to be callit vpon and examinat be the ſaid Affyſouris, eftir thair incloſeing.<sup>3</sup>

**VERDICT.** The ſaidis perſones of Affyſe thaireftir remouet altogidder furth of Court to the Affyſe-houſe, quhair, be pluralitie of voittis, thay electit and chuifet the ſaid Mr Johnne Cant in chancellor: And thaireftir, the ſaidis haill

<sup>1</sup> Contrary to.

<sup>2</sup> This ſeems an extraordinary ſtep. The Aſſiſe, after they are enclosed in the Aſſiſe-house, call before them and examine the Witneſſes offered, without the direction of the Judge, or the interrogation of Counsel for either party.

WITNESSES being fuorne and examinat be thame, thay all, but<sup>1</sup> difcrepance, cleir-  
lie verifeit be thair declarationes, that the said James Mayne come vpon his feit,  
without ony hurt, as appeirit, in ony pairt of his body, to the Grange, a littill  
afor sex houris at evin, the day contenit in the Dittay, being brocht thairto be  
the pannell, for the caufe contenit in his exceptioun; and being put in the laich  
volt, at the defyre of the pannell, to be keipit thairin be the said Mr Johnne  
Cant, as Justice of Peace, vnto the tyme he war tryit, and that Robert Young,  
his master, war brocht to that effect; he, within tua houris thaireftir, the volt  
dur being lokit vpon him, was fund hingand in tua horfe girthes or coirdes,  
deid, and his mouth fameand;<sup>2</sup> and thairby, that he had devoiret<sup>3</sup> him selff. Eftir  
quhais tryell and examinatioun, the saidis personis of Assyse reffonit and voittit  
vpon the poyntis of the said Dittay, and being ryplie and at lenth advyset thair-  
with, togidder with the DEPOSITIONES aboue writtin, maid be the saidis WIT-  
NESSES, thay re-enterit agane in court, quhair thay all, in ane voce, be the repoint  
and declaratioun of the said Mr Johnne Cant, chancellor, ffand, pronuncet, and  
declairit the said Harie Liftoun to be Cleane, innocent, and acquit of the slauchter  
and murthour of the said James Mayne; and of airt and pairt thairof.

Quhairvpoun the said Harie Liftoun and his prelocutouris askit instrumentis.

### Incest.

Nov. 19.—JAFFRAY IRWING of Robgill.

Dilaitit of the filthie and detestable cryme of Incest; committit be him with  
Agnes Cairletoun, spous to vinq<sup>le</sup> George Irwing of Bonfchaw, his brotheris  
wyfe; quha buir to him, in that filthie copulatioun, thre fones, namet Frances,  
George, and Edward Irwingis, and ane dochter; quhilkis war all baptizet in  
Ingland; contrair the tennour of the Actis of Parliament.

My lord Aduocat takis instrumentis of the pannellis Confessioun; and pro-  
testis for Wilfull Errour, gif thay acquit.

VERDICT. The Assyse, all in ane voce, in respect of the said Jaffra his Judi-  
ciall Confessioun, ffand, pronuncet, and declairit, be the repoint and declaratioun  
of Raulff Ker, burges of Lauder, chancellor, the said Jaffra to be flylet, culpable,  
and convict of the said cryme of Incest, contenit in his Dittay.—SENTENCE.  
To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin  
from his body; and all his moveabill guidis to be escheit, &c.

<sup>1</sup> Without difference in their testimony.  
*devorare*.

<sup>2</sup> Foaming, or frothing.

<sup>3</sup> Destroyed. Lat.

## GENERAL APPENDIX.





## APPENDIX.

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\* \* SINCE the preceding Volumes were sent to Press, various important PAPERS having been discovered by the Editor, illustrative of facts narrated in the Trials, it has been thought proper to preserve a selection from them in this APPENDIX.

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### No. I.

#### PAPERS RELATIVE TO THE DEADLY FEUD BETWEEN THE EARLS OF EGLINTON AND GLENCAIRN, &c.

I. LETTER, *the King to the Privy Council*, 'for tryall of the authouris of the Conflict betuix Erle of Glencairne and the Majster of Wintoun, at St Johnefloun.'<sup>1</sup> *August 6, 1606.*

RIGHT truifie and welbelouit Cousins and Connfelloris, We greet zow well. The report of that broyle whiche did fall furth in THE TOUN OF PERTH, betuix THE ERLL OF GLENNCAIRNE and THE MAISTER OF WINTOUN, immediatlie befoir the last sessioun of Parliament keipit thair, did offend ws muche; speciallie, in respect of þe circumstances of þe tyme and place, quhen as, (beside the greit hazard in bringing many of THE NOBILITIE then present in the toun, to have enterit in blood with vperis, and thairby to haue revived that new mortified monstres of DEIDLIE FEED,) it was a reddie way to haue stayit the progres of þat sessioun of Parliament, to þe greit preiudice and hurt of þe Estait, and to þe hinderances of all our services thair. Quhairvpoun, We ar moved the moir earnestlie to desire the knowlege of þe beginning of þe misdemeanour, and quhairvpoun the famin proceedit, and whiche partie was first author thairof. And thairfoir, haue thoct meet, heirby, to will zow to tak particuler tryell befoir zow of þe first beginning of that truble, how the famin fell furth, and whiche of the tuo pairteis began the invasioun; and thairwith to try, whidder it was vpoun a precogitat or foir-thocht intentioun, or if þe same fell furth be mere accident, or *chaud melle*, vaintendit be ony of the tuo pairteis against the vper? And heirof, willing zow to certife ws, particularlie, of the whole treuth of that matter, in all the circumstances of the famin, oure plefour is, that, in the mein tyme, speciale directioun be gevin be zow to OUR JUSTICE GENERALL, HEICHE CONSTABLE, or thair deputies, or to ony vper Judges appointed by Commissioun to proceed criminallie in the tryall of that matter, to

<sup>1</sup> From MS. *Collection of State Papers*, by Sir Thomas Hamilton, afterwards Earl of Melrose and Haddington.

desert all dayis, and to suspend and continew all processeis intendit befor thame be any of these pairteis against vper, ay and quhill our forder plefour be signifeit vnto thame, efter We haue dewlie considered the tryall taikin be sow in that matter. And so We bid sow richt hairtlie fairwell. FROM our Manowt of GREINWICHE, pe 6 of August, 1606. [JAMES R.]

To our truftie and welbelouit coufins and counsellouris, THE ERLL OF DUMFERMLING, our Chancellour, and remanent Lordis and vperis of our COUNSALL OF ESTAIT, in oure kingdome of Scotland.

## II. LETTER, *the Privy Council to the King, as to Deadly Feud between the Earls of Eglinton and Glencairn, and Lord Sempill, &c.*<sup>1</sup> Aug. 27, 1606.

MOST SACRED SOUERANE,

ACCORDING to your hienes directioun, signified vnto vs by your MA<sup>TIES</sup> faithfull counsellour THE ERLL OF DUMBAR, we did call and conuene befor the Counfell the ERLLIS EGLINTOUN and GLENCAIRNE, and THE LORD SEMPILL, with a nwner of thair freindis, whome we knew to haue cheifest interes in the present FEED standing betuix thame, and efter that we had declairit vnto thame the greit paines and travellis whiche your sacred MAIESTIE took in your awin persone, for extinguischeing of the name and memorie of DEIDLIE FEEDIS, what good succces had followed vpoun your MAIESTIES travellis, in sum of the greittest FEEDIS of this kingdome, and how that your MA<sup>TIES</sup> had now recommendit vnto the COUNSELL the removing this FEED, whiche hes bene of so long continuance, and be reffoun of pe minoritie of THE ERLL OF EGLINTOUN could not whill now tak effect, we burdinit thame with a Submissioun, conforme to the Act of Parliament. The ERLL OF GLENCAIRNE pretendit that thair was a quarrell betuix him and EGLINTOUN, and that a Submissioun wes vnecessar; and, in end, he directlie refuist to submitt, becaus the Submissioun imported aganis him of the Slauchter of vinq<sup>le</sup> THE ERLL OF EGLINTOUN, which he wald never tak vpoun him; bot offeris him redy to tak tryall of the lawis for that Slauchter; whiche tryall, in his pairt, aucht to preceed the Submissioun. We rememberit him of ane Submissioun subscryvit be himself in this sam matter, agreeable, in evrie word, to that whiche wes now desirf when this matter wes laft in handis asoir THE COUNSELL, in Februar 1604. Bot he, standing vpoun his innocencie of that Slauchter, refuist to submitt. EGLINTOUN maid no refusall, bot pretending some excuse vpoun the schortnes of the warning, he only craved a continuatioun to be advist with his freindis, becaus this wes the first tyme that ever he wes chairgit in this matter, for his MAIESTIE; and THE LORD SEMPILL verrie frelie, for your MA<sup>TIES</sup> satisfactioun and obedience, without ony ceremonie, offerit to submitt. We have grauntit vnto EGLINTOUN, with his awin consent, the 20 day of November nixt, to be advyvit with his freindis, and to come prounydit in this matter. We have no assurance of THE ERLL OF GLENCAIRNES obedience, bot we hope that he will conforme himself to your MA<sup>TIES</sup> plefour: And THE LORD SEMPILL will be obedient.

We had lykwayis in hand the proces of GLASGOW, whairin we haue fund verrie greit infolence and ryatt committit be MYNTO and a number of the commonis of the toun; and hes committit the persones guiltie to waird within the burghes of Linlithgow, whill your MA<sup>TIES</sup> plefour be knawin.

This is all we haue done at this meiting, wherof we haue thocht meet to mak your sacred MA<sup>TIES</sup> acquainted; to the effect your hienes may give directioun thairin, as your MA<sup>TIES</sup> fall think good; which we fall prosecute and follow out. And sua, praying God to blis your sacred MAIESTIE with a long, happy, and prosperous reigne, We rest

Your Maties maist humble and obedient subiectis and servandis.<sup>2</sup>

LYNLITHGOW, 27 of August, 1606.

<sup>1</sup> From the same *MS. Coll.* as the preceding. *Hamilton*, in his transcript.

<sup>2</sup> The subscriptions have not been transcribed by *Sir Thomas*

## No. II.

## SOCIETIE AND COMPANIE OF THE BOYES.

LETTER *from the Privy Council to the Marquis of Huntly.*<sup>1</sup> Jan. 20, 1607.

LETTER our verry hairtty commendationis to your good lordships, We ar informed of a verry greit infolencye begyn and lyk to grow to a greiter heicht within the boundis of your ll. office be JOHNNE GORDOUN, *callit of Geyche*, . . . . FORBES of *Corfindue*, PATRIK M'INNEIR, and sum vperis, quho, having associat vnto thame feluis ane number of dobofchet and lawles lymmeris, calling thame feluis YE SOCIETIE AND COMPANY OF BOYES, thay haue most vnlauffullie and feditiouflie bund thame feluis in ane fellowfchip, with aithis, vowis, and protestationis of mutuall defence and perfute; and pat every one of pair quarrellis falbe comoun to all; and that the purpose and interpryse of ony one of thame falbe prosequuted, bakkit, and followed out, be the hale SOCIETIE, against all and quhatfumeuir, without respect of persons. Lykas, thir fame lymmaris keipis thame selfis togidder, committing oppin and avowed reiffis, heir-schippis, and vperis enormities, in all partis, quhair thay may be maisteris and commaunderis. QUHILK proud and detestable attempt, as it is odious to be hard of in a peceable estait, subiect to a PRINCE whome GOD hes airmit with power and force able to suppres the same; so the same caryes with it no lytill sclander and preiudice to your ll. honour and credit, that within your boundis, quhair your ll. may commaund, such ane handfull of lymmaris dar presume to attempt suche interpryses; and We ar certane pat the knowledge beirof being broght to HIS MA<sup>TIE</sup>, will mak his hienes wonderfullie till admeir your ll. long patience and connivance, in not apprehending, punisheing, and suppressing of thir lymmaris; and quhat constructionis may be maid heirvpoun to HIS MA<sup>TIE</sup> against your ll., we remitt to your ll. consideration. Alwayes,<sup>2</sup> we ar heirby to requseit and desire your ll. that, with all convenient speed, you tak ordour for apprehending of the saidis persones, and some vperis THE CHYFTANES of that laules SOCIETIE, and put thame heir befor THE COUNSELL; and that your ll. prosequute *with fyre and sword* the hail rest of thair followaris, and never leue of pe perfute of thame whill they be apprehendit, pvnish, and altogidder suppress; as you respect HIS MA<sup>TIES</sup> seruice, the peace of pe cuntry, and your awin credite, honour, and reputatioun, and as your ll. wald efchew that hard censure and construction which HIS MA<sup>TIE</sup> man<sup>3</sup> mak of your behaviour, in this point. Sua we commit you to God. FROM EDINBURGHE, pe 20 of Januar, 1607.

To our verry honourable good Lord, THE MARQUISE OF HUNTLY.<sup>4</sup>

## No. III.

TRIAL OF THE MURES OF AUCHINDRANE.<sup>5</sup>

LETTER, *the Earl of Cassillis to the King.*<sup>6</sup> Dec. 3, 1608.

MAIST SACRED SOVERANE,

It may pleis your gracious MA<sup>TIE</sup>, I haue taikin this bauldnes, vpon the farder tryall of the

<sup>1</sup> From *Haddington's MS. Coll.*

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

<sup>3</sup> Must.

<sup>4</sup> A Letter from the Privy Council, 9th Feb. 1608, directs him, by HIS MAJESTY'S command, between and Mar. 10 next, to prepare to depart out of the kingdom; and to give assurance for discharge of his offices, during his absence.

<sup>5</sup> See this

Collection, III. 124, &c.

<sup>6</sup> From *Dennyne MSS. Adv. Library.*

trechrous MURTHOURIS of my vnclē THE LAIRD OF CULZEAIN, and of the boy<sup>1</sup> quha careit the Lettir of his dyett, committit be THE LAIRD OF AUCHINDRAINE and his sonne; and now farder cleirit, be the greit paine and cayr of MY LORL CHANCELARE, quha hes broicht them to sik contrarietie in thair DEPOSITIONIS, that all indifferent men may be perfwadit off thair guyltines of bayth thais Marthouris. Nochtwithstanding quhairof, thai still continew in ane denyall. I wald maist humelie befeik 3our MAT<sup>IES</sup> that it micht be 3our MAT<sup>IES</sup> gracious plesoure to graunt ane WARRANT to THE CHANCELLER and COUNSALL OF SCOTLAND to PUTT thame to YE BUITTIS,<sup>2</sup> quhairthrow thai may be broicht to þe mair evident Confeßioun. So, maist hartlie vyßing 3our MAT<sup>IES</sup> lang prosperitie and happineß for euer, I remane,

3our MA. maist humbill feruant and subiect,

EDINBURCHE, the thrid of December, 1608.

CASSILLIS.

TO THE KING his maist excellent MAIESTIE.

#### No. IV.

#### PAPERS IN FARTHER ILLUSTRATION OF THE TRIAL OF MR THOMAS ROSS.

(See Vol. III., p. 445.)

[THE circumstances attending the Case of MR THOMAS ROSS are so very remarkable in their nature, that it was deemed proper to institute a still more rigorous search after the grounds and Warrants upon which his almost unexampled Trial was founded. After having carefully examined the Acts of the Privy Council, and many other authentic sources, the Editor has the satisfaction of having at length discovered the identical copy of his Trial, which had been transmitted to Court, for the information of KING JAMES VI. Besides the proceedings which have already been printed, it contains a translation of the offensive THESIS and ANNEXA, which, as has already been seen, were ordered to be taken up by the public prosecutor, and upon no account to enter the Records. Annexed to it are the DEPOSITIONS of the unhappy man, which, in expectation of a free pardon, he voluntarily emitted before the Privy Council of Scotland. The original draught of the KING's Letter to the Secret Council, to bring him to Trial and execution; and, in compliance with the King's known wish, their cruel recommendation, that ROSS should suffer an ignominious death, have also been obtained. These interesting documents were found in a Volume of *Sir James Balfour's* invaluable *MS. Collections*, in the Advocates' Library, which had accidentally been mislaid when the Editor conducted the former enquiry.

The reader has here the painful satisfaction of finding, that the conduct of KING JAMES and his COUNCILLORS was still more inexcusable than had at first been conjectured. It is now clearly proved, beyond the shadow of a doubt, that the PASQUILL, or THESIS in question, had not been *printed* or industriously *disseminated* by its unhappy author; but that it had merely been affixed on the door of the College,—that, *de facto*, no person had read it, excepting the Vice-Chancellor of Oxford, to whom it had been brought by a student,—that this student, instantly on the Thesis having been hung up, had only perused a few lines of the Paper, and brought it, without delay, to his superior,—and that, after the examination, confession, and imprisonment of ROSS, the Vice-Chancellor had transmitted the THESIS to Court, requesting instructions how the poor man should be disposed of.

<sup>1</sup> William Dalrymple.

<sup>2</sup> The torture of the boots. The younger Auchindrane was put to the torture, which he bore with remarkable fortitude.

That Ross was *insane*, as well as in the most abject poverty, there can now be no doubt. Altogether, indeed, his Case is one of the most pitiable on record.

It only remains to the Editor to state, that he is indebted to GEORGE SMYTHE, Esquire, Advocate, for the following authentic information, regarding THE FAMILY OF ROSS of Craigie, at and shortly previous to the period of Mr Thomas Ross's execution, Sep. 10, 1618. Such additional notices and evidence as have fallen under the Editor's observation are inserted in the foot-notes, along with the verifications of Mr Smythe's memoranda.

‘ I. JOHN ROSS OF CRAIGIE appears to have been the father of (1.) *John Ross* of Craigie. (2.) *James Ross* of Creytoun, who acquired certain lands at the East end of Forgundenny from Walter Oliphant of Newton, in Feb. 1539.<sup>1</sup> He married *Marjory Stewart*; by whom he left a daughter, *Janet*,<sup>2</sup> who married Patrick Lyndsay of Dowhill.<sup>3</sup> (3.) *Thomas Ross* of Maitlands, who was killed at the battle of Pinkie.<sup>4</sup> *Grissell Duncanson*, his relict, afterwards married Alexander Crichton of Forgound.<sup>5</sup> His son, *James*, was killed in an affray with the Oliphants, Nov. 12, 1571.<sup>6</sup>

‘ II. JOHN ROSS OF CRAIGIE was infest in the Lands of Hilton Malar, Sep. 17, 1539.<sup>7</sup> He was served Tutor-at-law to *Janet Ross*, his niece, Mar. 17, 1543.<sup>8</sup> He is mentioned by KNOX, in his History of the Reformation,<sup>9</sup> along with “the pensionars of the Prelates, Oliver Sinclair, and utheris, who were faithful to them in all things,” and informed them of all proceedings at Court. He married *Isobel Liddell*,<sup>10</sup> who had previously borne a number of children to Patrick Hepburn, Bishop of Moray, so notorious for his gallantries. He was killed at Pinkie, and left four sons and three daughters.<sup>11</sup> (1.) *Thomas*. (2.) *John*. (3.) *James*, who had a Charter of the Lands of Pitheveles to him and *Catharine McGie*, relict of umq<sup>12</sup> Alexander Menzies of that ilk, his spouse, Apr. 7, 1566.<sup>13</sup> He afterwards married *Janet Robertson*, relict of umq<sup>14</sup> Thomas Fowlis, burges of Perth.<sup>15</sup> He left no issue; for his brother, *John*, was served heir to him, Nov. 3, 1582.<sup>16</sup> (4.) *William*. (5.) *Barbara*. (6.) *Alison*. (7.) *Grissell*.

‘ III. THOMAS ROSS of Craigie married *Jean Hepburn*; by whom he had one daughter, *Margaret*,<sup>17</sup> who married John Seytoun, apparent of Lathrisk. *Jean Hepburn* was infest in the lands of Hilton Malar, in liferent. After the death of Thomas Ross, she married Peter Oliphant of Turings.<sup>16</sup>

‘ IV. JOHN ROSS of Craigie succeeded, as heir of entail, to the lands of Craigie, upon the death of Thomas. He married *Agnes Hepburn*; and had by her, (1.) *Patrick*, who married *Beatriz Charterhouse* (*Charteris*.) She was infest in the lands of Hilton Malar, in liferent, Apr. 9, 1575.<sup>17</sup> After his death, which took place before that of his father, his relict married Robert Leckie, apparent of Kypdaroch.<sup>18</sup> (2.) *Mr Robert Ross*,<sup>19</sup> who was infest in the estate of Craigie, and was designed “fiar of Craigie” before his father's death, which took place about 1601.<sup>20</sup> He married *Margaret Eviot*. He seems to have sold the lands of Craigie to Mr David Moncreif, son of William Moncreif of that ilk, before 1620. (3.) *Mr Thomas Ross*, the unfortunate subject of the preceding Trial. (4.) *Andrew*.<sup>21</sup>

<sup>1</sup> *Sheriff Records of Perthshire*, Jan. 12, 1573.

<sup>2</sup> May 20, 1588, *James Lindsay*, apparent of Dowhill, was served heir to *Janet Ros*, his mother, in a piece of land and orchard in the barony of Forgundennie; and fishing in the Water of Earn.—*Inquisit. Return*. Perth, (1055.) <sup>3</sup> *Sh. Rec.*, Jan. 12, 1573.

<sup>4</sup> *Ibid.* Apr. 22, 1573. <sup>5</sup> *Ibid.* Jan. 12, 1573. <sup>6</sup> See this Collection, I. 25. <sup>7</sup> *Sh. Rec.*, Nov. 3, 1591. <sup>8</sup> *Ibid.*

<sup>9</sup> Knox's Hist. of Ref., p. 28. <sup>10</sup> *Sh. Rec.*, Mar. 14, 1550. <sup>11</sup> *Ibid.* Jan. 5, 1549. <sup>12</sup> *Ibid.* Apr. 28, 1573.

<sup>13</sup> *Ibid.* Jun. 12, 1577. <sup>14</sup> *Ibid.* <sup>15</sup> She was returned heir to her father, in the lands of Mayler, lying within the barony of Craigie, Feb. 19, 1571.—*Inquisit. Return*. Perth, (36.) <sup>16</sup> *Sh. Rec.*, Jan. 15, 1574, and Apr. 20, 1575.

<sup>17</sup> Apr. 16, 1600, *Peter Oliphant of Turings*, having acquired an annual rent of 150 merks out of the Maynys of Malar, Barclay's hauch, &c., in the barony of Craigie, from *John Ros* of *Craigie*, and *Agnes Hepburn*, his spouse, under reversion of 1400 merks, with their joint consent, sells his right to Mr John Moncreif of Easter Moncreif, and Jane Spens, his spouse. This was confirmed by Charter under the Great Seal, Jun. 28, 1602.—*Reg. Mag. Sig.*, XL111., 262.

<sup>18</sup> It appears, by the Great Seal Register, that, on May 21, 1602, *Robert Ross* of *Craigie*, in consideration of the price of 4150 merks, sold to Christian Moncreif, eldest daughter of William Moncreif of that ilk, the Mill of Craigie, with the Mill-lands, and three quarters of the town of Craigie, lying in the Barony of Craigie and Sherifdom of Perth. This Charter of Sale was confirmed by King James VI, Jun. 28, 1602.—*Reg. Mag. Sig.*, XL111., 261. <sup>19</sup> *Sh. Rec.*, Oct. 13, 1598, and Jan 13, 1601.

<sup>20</sup> *Ibid.*, Oct. 9, 1591.



To these notices, the following additional information may be annexed.

V. MR ROBERT ROSS of Craigie, above mentioned, seems, from entries in the Kirk Session Records of Perth, to have been reduced to a state of the utmost poverty and destitution. Mr James Scott, in his Extracts from these Records, has the following melancholy entry :—‘ On the 21st of November, 1620, *Andrew Ross*, in name of *Mr Robert Ross*, *sometime of Craigie*, his brother, produced before the Session the said *Mr Robert’s* Supplication, showing his present misery, and divers diseases wherewith he is vexed, craving support. Three pounds were taken out of the Thesaurie and delivered to the said *Andrew*, to give this brother.’<sup>1</sup>

The Editor has not been fortunate enough to obtain any material information regarding the personal history of *Mr Thomas Ross*. From his own DEPOSITIONS,<sup>2</sup> however, it is abundantly clear, that he must have endured great privations while in England. In that document he actually asserts, in the most solemn manner, that he was driven, by his desperate circumstances, to adopt the unhappy step which ultimately proved the cause of his destruction, in the vain hope, that the wit and talent he had thus exhibited in so bad a cause, would not only plead his apology with the King and Court, but become the means of his future advancement. *Mr Scott* merely remarks, as in reference to this matter, that ‘ it appears, from a Supplication to the [Kirk] Session, a considerable time before, that *Mr Thomas Ross* had been a long time in the Prison of Edinburgh.’

In conclusion of the disagreeable subject, it is only necessary to add one other entry, from the Kirk Session Records of Perth. It is pleasant to remark, that that charitable body had all along acted in the kindest manner towards this truly unfortunate family; and farther, that they appear to have been actuated by the same pious feelings, in numerous other cases of a similarly distressing description.—‘ Jan. 9, 1621. Mr John Guthrie, Minister, reported, that he had given *thirty shillings*, which he had received from the Thesaurie, to *Andrew Ross*, to bear his expenses, when he passed to the visitation of [*his brother*] unquihil *Mr Thomas Ross*, before his execution.’<sup>3</sup>

The Editor has failed in tracing the period when *Ross* was admitted a Master of Arts, and at what University, although he was politely assisted in his enquiries by the REVEREND DR LEE, who gave him access to the Rolls of the Universities of St Andrews and Glasgow. He fears he has already encroached too much on the limits of this work, and now leaves the reader to draw his conclusions as to the usage and cruel fate of the unfortunate Mr Thomas Ross.]

### I. LETTER, the King to the Privy Council of Scotland, with instructions as to Mr Thomas Ross.<sup>4</sup> [*Sine data.*]

RIGHTIE trustie and righte welbeloued cofen and counsellour, and trustie and welbeloued counsellour, WEE greete yow well. WEE sende yow here enclosed, a LIBELLE, (written by a villanous caytiffe, or rather monster, of our owne contrie,) whiche, in time of Disputations at OXFORDE, was affixed vpon a gate of one of the Colleges, as THESEs to haue bene disputed: And a scholler, hauing taken doune and red the first six lines, (not daring to be confcious to him selfe of reading furdre of such purpos,) presentlie caried to the VICE CHANCELOUR; who, suspecting who mighte be the penner, sente for him; and hauing gotten his CONFESSION, that not onlie he was the author, but likewise, that he wolde maintayne all to be trew which he had sette doune therein, the Vice Chancellour discreetelie and dewtifullie committed him cloffe prifoner to the Caffe of Oxforde, and sente the Libelle to vs, that WEE mighte declare oure pleafour, bothe concerning it and the author. Whiche, his discreete cariage, hath, in our ingement, deferued to be, by a Letter of thankes frome our wholle COUNSELLE,

<sup>1</sup> Mr James Scott, Minister at Perth's Extracts from the Kirk Session Records of Perth, II., 8, &c. See this Appendix, p. 588, &c.

<sup>2</sup> Scott's Extracts from Kirk Session Records of Perth, II., 8.

<sup>4</sup> From the Original draught, preserved amongst the Denmylne Papers, Adv. Library. It is carefully corrected, and interlined in many places.

there acknowledged. WEE likewise fende yow the perfon of the man, to be censured by yow, willing yow firste to examine him, and thereafter aduise of the forme of punishment whiche yee fall thinke fitte to be inflicted vpon him. For, although by the Lawes of this our kingdome, it be not permitted for to vse extraordinarie punishmentes, yat hath it ener bene lawfulle for the KINGES there, to deuise and inflict punishmentes, according to the qualitie and nature of the offence, which in this particulare can be no lesse then Treason [1] For if no man make question but that the writing of an inuective<sup>1</sup> againste THE KING and his progenie is Treason, in the highest degree, and in our opinion it is a grevous faulte, (and WEE could more easilie forgine the writinge againste our selfe,) then<sup>2</sup> againste the wholle Nation from whence WEE ar sprunge. And if it wer a mater capitall in Germanie for STARCOIUS<sup>3</sup> (being a German, a mere stranger to Scotland, and one who, perchance, had bene hardlie vsed by some particulare perfon there) to haue written against that wholle Kingdome, how much more maste it be capitall to this fellow, who, being Scottes borne, hath so villanouslie, filthilie, yea, and fallsie, defamed his owne contrie, by writing in such forte againste his contriemen, the specialler of our seruantes, [and perswaded a course to be taken against them, which possiblie could not be performed, without manifest danger and manifest violence against our selfe,<sup>4</sup>] and so much the more is his offence greenous, as that, by the space of two monethes before, he continuallie vaunted that he wolde do such a feate. It is therefor our pleafour, that yee aduise vpon his punishment, and hauing resolved, that yee aduertise vs with all expedition. So fare yee well.

## II. LETTER, the Privy Council of Scotland to the King. Jul. 30, 1616.

MOST SACRED SOVERAINE,

We reassaue youre MAIESTEIS Letter, with the infamous LIBELL writtin be that wretched and unhappie fellow Rosse, and we imparted the same to youre MAIESTEIS COUNSELL; who, with all dew reuerence and most humble thankis, doe acknowledge youre MAIESTEIS singular cair and prudent directioun, alswell in this, as in all otheris thingis importing the credite and reputatioun of this youre MAIESTEIS Kingdome; and thay haif writtin thair awne thankis to *The Vice Chancelaire of Oxfoorde*, for his wyfe and kynd resolution and proceedingis, in that mater.

We haif aduised with THE LIBELL, and with the Lawis and Constitutionis of this Kingdome, maid aganis the writtaris and settaris oute of suche infamous Libellis; and we find the same to be capitall, and pveinable in the heighest degree. This fellow is not as yitt come heir; and becaus of the appoitcheing vacance,<sup>5</sup> and dissolueing of THE COUNSELL, we haif gevin directioun to THE MAGISTRATIS OF EDINBURGH, howsoone he fall aryve, to committ him cloise prisounair in thair *Irne-Houë*,<sup>6</sup> and to lay him in irnis; and vpon thair aduertisement, we fall conueene and examine him; and accordingly, we fall gif directioun for his tryall and conviction, and fall supercede the pronouncing of Doome, till we vnderstand youre MAIESTEIS forder pleafour, anent the forme of his pvnishment. Oure opinioun is that he salbe HANGED at the *Mercatt-Croce of Edinburghe*, and his heade affixt on one of the *Portis*. But in this we submitt oure selfis to your MAIESTEIS directioun; qubairunto we fall conforme our selfis. And so, praying God to blisse your MAIESTIE with a lang and happie reigne, we rest

Your Maiesteis most humble and obedyent subiectis and seruitours,

AL. CANCELL<sup>r</sup>. BINNING. S. W. OLIPHANT.

HALYRUDHOUS, penult July, 1616.

TO THE KING his most sacred and excellent MAIESTIE, &c.

<sup>1</sup> The original words had been 'such an execrable inuective.' <sup>2</sup> On the margin, 'that one should write against his own countrie.' <sup>3</sup> See the Introduction to *Ross's Trial*, III., p. 445, &c. <sup>4</sup> The words within brackets are added on the margin.

<sup>5</sup> 'Vacance'; vacation. <sup>6</sup> Their strong iron room, or 'cage,' as it was afterwards called, in which desperate criminals were confined previous to their execution.

### III. *Followis* THE THESE, with THE APPENDICES *adionet thairto, translated*.<sup>1</sup>

THAT all SCOTTISMEN aucht to be throwin furthe and expellit out of THE COURT OF ENGLAND, (excepting his gracious MAT<sup>tie</sup>, his sone, and few vtheris,) and that þe INGLISCHMEN ar nichtlielie blindit, deceavit, and fylet, albeit thay be vtherwayis ane Natioun full of eyis, and quick-sichtit, that sufferis fo vnprofittable and pernicious a multitude and pudle of raskallis to rage and bear dominion within thair entrallis and bowellis. Off quhilkis blasphemis (3e haif writtin) that 3e wald rander and follow out the maist iust reasones, by Godis grace, at ane vther occasioun, moir lairglie and accuratlie, bothe by profe and verfe. Bot now 3ow put furth 3our finger to schaw only the fontanes, and theafe in few number, be reffone 3e inlaikit lafer<sup>2</sup> and helpis to performe the samyn.

I. SANCT JEROME, AUGUSTIN, and STRABO wryttis, that SCOTTISMEN of auld war men-eitteris, or eatteris of menis fiesche; and trewlie, (as 3e beleve,) for as 3it the fiesche whilk the ancient Scottis swallowed slikis in the jawis and teith of the Courtiours, quhairby thay ar prouokit to fuche ane insatiable avarice and intollerable pryde.

II. JOSEPHUS wryttis, in his booke against Appion, that, in the tyme of Amenophis, King of Ægypt, thair raget and rauaget vp and down tua hundreth thousand lipperis in Ægypt, quha, by vnlauchfull meanis, and by mervellous craftines and subtilitie, emptied and pilleid<sup>3</sup> all þe substance and riches of Ægypt; whilk wald haif bene haillilte vndone, gif this vnhallowt menſie<sup>4</sup> had nocht, by the wisdom of the King and Nobillis, bene cassin out and expellit: Sua, peace and peace,<sup>5</sup> THE KING and COUNSALL OF ENGLAND sall be vndone, and go down, iff this companie or band that robbis Kingdones and landis be nocht sent bak to thair wounted feattis and stallis.

III. THE heaven leane ky<sup>6</sup> of Pharao confwmet and d'stroyit the fevin fatt and weil fed ky, and 3it war nocht satisfeit; and the fevin deaff and toome<sup>7</sup> earis of corne, blasted with the East wind, swallowed vp the fevin big and fatt eares, and war nocht filled: Swa, these Courtiours, by thair begynning, and offspring, and first estait, being most miserable, thay distroy, overturnes, and consumes ENGLAND, ane maist plentiefull cuntries; and ar nocht 3it filled with so grit and evill conquessit<sup>8</sup> riches, acquyret by the schipwrak of þe haill Kingdome of England.

IV. THAY quha, in þair south-heid,<sup>9</sup> war trwbillit with famine and hunger, can nocht, quhan thay ar cum to thair full growne aige, by no plentie, be satiat:<sup>10</sup> Sua, it befallis vnto these, quha of maist sklender begynning, by mad mirriement and sport of Fortoun, ar cayreid vp to the heichest top: 3ea, gif þair war gevin vnto his maist bountiefull and liberall MAIESTIE ane thousand philosophik stones, quhairby the haill Oceanus might be convertit in gold: 3itt, these wald nocht be filled, gif the Cantabrik or Biskay Sea of Spayne, war gevin vnto thame to drink; thay wald nocht suffer ane thristie bird to drink ane dropie thair of.

V. THAY spend more in þair gairtanes, and ribbens<sup>11</sup> in the latchettis of thair schooes, than þair fateris bestowis in þe intertenement of þair haill famelie. O quhat tymes ar these! O quhat maneris be these! O the infamy of the world and reproche of the earth! Now þair is mony Smerde Magiens, but thay vaunt thame selfis fa to be.

VI. THESE Scottis Courtiours (verrie few exceptit) haif the disloyaltie or vnfaithfulness of the Carthaginians; the menfworne aithes of the Phrygians or Trojanes; the luxurie of the Persians; the avarice of Mydas, King of Phygia; the crewaltie of the Ellēdonis, ane people of Sythia; (quhilk people singis at þair parentis funeralis, and drinkis in 3air skullis, and eatis þair fiesche mingled with vther beistis;) the prophantie of Epicurus; the deceat of Synon; mair wyld than a carian, a bettill, or clok vnder the wingis of ane Eagle; thay vse the spuilzeis<sup>12</sup> of Spartacus, (this Spartacus was a Thra-

<sup>1</sup> From the identical copy of the Dittay, which had been transmitted for THE KING's inspection, preserved among Sir James Balfour's MS. Collections, Adv. Library, Edinburgh.

<sup>2</sup> Wanted leisure.

<sup>3</sup> Pillaged; plundered.

<sup>4</sup> Train; company; gang.

<sup>5</sup> So, or in like manner, piece-meal.

<sup>6</sup> Seven lean kine.

<sup>7</sup> Empty.

<sup>8</sup> Ill-

gotten, or acquired.

<sup>9</sup> Youth; minority; less-age.

<sup>10</sup> Satiated.

<sup>11</sup> Garters and ribbands.

<sup>12</sup> Spoils.

cian fenser<sup>1</sup> quha with Chyfas and Oenomans brak out of the Fence-Scole of Lentulus, and drestitane army of servandis, and overcame Clodius Glaber his army, and spulzeit all Campania, and overthrew Lentulus army and Cassius troupes, bot was defeat by Crassus,) and the fearcenes of Virratus (the Portugall Lusitanus, quha frome pastor become ane hunter, and pairistir the chiftane of ane army, trublet the Romayne, and defeat thame in Spayne, and at lenth was slayne be treaffone, procureit be Cæpio), and the leasings of the Candians or Cretes.

VII. Vnto his schyneing and royall MATR, be vnturbet bealth and increse of glorie ! Bot God, frome the heavnes, persew these Courtiours with blak fyre and brimstone ! I shall, so long as I leave, for thair distruction, schaw my self Coriolanus, and nocht Themistocles ; that is to say, ane oppin ennymie, and nocht ane secreit freind.

VIII. O INGLISCHE ! Inglische ! The most expert and wyfest Natioun in weir,<sup>2</sup> the terror of the Spanjaird, triumphis over France and Guyene by so long a tyme, in quhat benumbnes or droufines ar ye fallin ? Ye, quha in weir and battell ar intometable,<sup>3</sup> now ye fall go donne quiklie by diffait, at vayne appeirances of imaginarie matteris, and by the tois of fals accusaris and delatouris, in quhome thair is nocht so muche favorines or witt as in the quhyte of ane egge ! Sit all the wealth and commodities of your most flurischeing kingdome, is cayreit away in boittis and crearis,<sup>4</sup> thiftioullie, to Scotland ; and incontinent, being helpit with your awin commoditeis, thay will vterlie trampill vnder fute your Natioun and countrie, and will cut your throtis with your awin suorde, befor ye be awar ! Quhat a patient Socrates will indure thease iniureis ! Quha may nocht snuff or smell gritter schortlie to follow ?

IX. YE have gottin out of Scotland ane most worthie PRINCE ; nocht ane thoufeand Kingis, counterfute Stage-playeris, quhytted tombeas !<sup>5</sup> Thair is hingand aboue your heidis, or lying vpon your schoulderis, ane moir hard servitude and scheepar captiuitie than over Natiounes quhilkis ar subdewid and overcum by weir ! For, eftir the Romanes had overthrawn, in weir, the Syrianis and the Ægip-tianes, thay gave thame to be governet be thair awin cuntriemen ! Thay exactit only tribute dew frome the vanquished ! Sall, thairfor, those barbarous people posses and enjoy the first places, in Courte, in Connsale, in Kirk, in Nobilitie, in Landis, offices, functiones, and giftis of Ingland ? Thair furlie, the libertie and glorie of England is evanished ! Now, England is baillyly<sup>6</sup> delynerit over in the bandis of Scottis Courtiouris, and the Judges haif enterit pair nekis vnder the yoke of theiffis ! O, the World is turned vp syde down ! We ar now overturned vnto the auld mafs and chaos of confu-sioun ! Lett sum revenge spring out of my bones, that may cheftize with fyre and suord the Scottis Court and her possessiours. Geve thankis, ye Scottis Courtiours, vnto my povertie, and nocht vnto the barrannes and penurie of my ingyne, gif I airme nocht all Ingland to cut your throtis. Bot the Lord preserve ever more his awin annoynted, both weilbelouit and electit !

X. REMOVE this stinking pompe, pudle, and trifles of the Scottis Court, and pride of this hautie, felkes,<sup>7</sup> and impotent commontie. Thane, fall thair be few in your boundis that fall be beggeris, nidie,<sup>8</sup> ragget—than, the treyis, gibbetis, and gallouffis of all the cuntrie fall nocht be laiden with the wecht of the hangit vp carcades !<sup>9</sup> The Scottisfmen, as loch-leitches, and wormes in coirnes, drinkis out the sap of your cuntrie, and soukis out your merche,<sup>10</sup> by inlaik quhairof so many ar led and drawin to thift and robbrie ! Those Courtiours draw out gritter welthe furth of your bowellis, by your knowlege,<sup>11</sup> than France, Germany, and Spayne, is able to affoord ; quhilkis guidis, whan thay ar thus pallet<sup>12</sup> away, quhat fall ye maisterfull and niedie cowmontie<sup>13</sup> of Ingland do or vndertak, bot to cast thame

<sup>1</sup> Fencer ; gladiator.

<sup>2</sup> War ; the art military.

<sup>3</sup> Indomitable.

<sup>4</sup> Boats and *crears*. Crears were

a sort of vessel much in use in the Western Islands, to which they appear to have been peculiar.

<sup>5</sup> Whited

sepulchres. <sup>6</sup> Wholly ; entirely.

<sup>7</sup> Weakly ; feeble, &c.

<sup>8</sup> Needy.

<sup>9</sup> Carcasses.

<sup>10</sup> Sucks

out your marrow.

<sup>11</sup> Without your knowledge ; secretly ; by stealth.

<sup>12</sup> Perhaps, for ' *pillet* ; pillaged ;

plundered. <sup>13</sup> Destitute and needy ; commonalty ; or common people.

selfis heidlong in ane golf,<sup>1</sup> quhill mycht leave<sup>2</sup> sufficientlie, without manis hearme, gif thofe howlattis and flymeis<sup>3</sup> war schote<sup>4</sup> away.

O, worthiest Inglichmen ! Wey the force and reafones of this my Counfall, quhairof I haif skairce recited the tent pairt ; and ge fall perfave that I am come to your cuntrey as ane helthfull starr, quhill thir Courtiours haif drowned with the sea wallis, as the Lycaonian Starr, or Vrsa Maior, to quhome it war ane villanie to have so drowned suche ane starr.

Bot we fall nocht all die to day vnrevendget !

#### IV. *Followis the tennour of THE DEPOSITIONES of Mr Thomas Roiss.*

AT EDINBURGH, the elleviat day of August, 1618. In prefens of Sir Williame Oliphant of Newtown, his Maiesteis Aduocat.

M<sup>R</sup> THOMAS ROISS, humblet on his kneis, and deiple suorne vpone his solempne oathe, sayis, that he will declair the treuthe in all and everie thing that fall be demandit of him. Demandit, yf *THE THESIS*, and *APPENDICES* pairof, product and schawin vnto him, and writtin on thre sydis of paper be his awin hand-writt ? Depones and grantis, that thay ar his awin hand-writt—and that na vther persone wrait ane word or Lettir pairof.

Demandit, quhat moved him to wryte them ? Depones, that he, being ane gentilman borne, depryved of all benifit that he micht expect of his fateris estait, and being reduct to the extreme point of miserie and povertie, and having ressaueit mony insupportable iniureis of his cuntrie men, at Courte ; he, being eschamed to beg, and dislanceing to steill, and having no meanis quairby to intertene<sup>5</sup> him self, finding no comforte nor releif of his contriemen at Courte, he pairfoir, being in dispair and mad, out of his dislempnat humour and frenysie, and fair aganis his heart, without any setled resolutionn, and without any purpois to do evill, bot to schaw the greif of his heart, and to move pitie and compassioun towardis him, wrait thir *THESES* ; thinking, that the wryting pairof, in this his mad humour and dispositioun, wald raper procure pitie nor<sup>6</sup> wraiche, at his *MATRES* handis ; and that God, peradventure, wald moue his *MATRES* heart, who is a prudent and wyse Prince, to think that the deponer was drevin, vpone plane miserie and necessitie, to wryte thame ; and pat pairfoir his *MATRES* wald pitie his distres and miserie, and help him : And he apprehendit that some weill-myndit Courtiours wald interceid for him, and schow his *MATRES* that he quho had done so weill vpone a evill subiect, wald do far better vpone a goode subiect, gif he war employed ; bot, yf it sould pleis God to move his *MATRES* to think vtherwayis of this matter, and to tak it in evill pairt, it behooved the deponer to abyde Godis will and the *KINGIS MATRES*.

Demandit, quhat he did with thir *THESES*, estir the wryting thairof ? Deponis, that he affixt thame on a dur of the Kirk, callit *ST MARIES KIRK*, at *OXFURDE*, vpone Twifday, being a preiching day, in the moneth of July last, immediatlie as the people war disfolueing frome the Sermon, and as *DOCTOR GODWENE*, *VICE-CHANCELOUR* of the *VNIUERSITIE* of *OXFURD*, was cuming out of the Kirk. And depones, that immediatlie estir pai war affixt, ane man, quhome the deponer knowis nocht, tooke thame doun, and cayreid thame to þe *Vice-Chancellour*. And grantis, that *THE THESES* now product and schowne vnto him ar þe same verrie Theses, and that same Paper quibilk he wrait and affixt, as said is.

Demandit, yf at any tyme afor þe wryting of *THE THESES* he was in conference with any persones pairnant ? Depones, that ane moneth afor the affixeing of *THE THESES*, he was in conference with þe *Vice-Chancellour* ; and regrated vnto him his hard estait and conditionn, and the vnthankfulness of his countrie men, the Courtiours, quho wer his gritt vnfreindis.<sup>7</sup> And he sebew the *Vice-Chancellour* that he had a purpois to go to France, and intreited him that he mycht haif a *viaticum*<sup>8</sup> to trans-

<sup>1</sup> Golf. <sup>2</sup> Who might live, &c.

<sup>3</sup> Owls and bats.

<sup>4</sup> Thrust ; driven.

<sup>5</sup> Support ; maintain.

<sup>6</sup> Than. <sup>7</sup> Enemies.

<sup>8</sup> In this sense, *viaticum* seems to have been a term employed to denote a charitable contribution raised by authority, within the Universities, for enabling poor students to undertake journeys to foreign parts, &c.



point him. Quhairvnto the Vice-Chancellour 3eildit. Bot the deponer being efchamed to go through the Colledges to collect the fame, he refiauit only foure or fyve pund Sterling, and fpendit it as he gat it; quhairas, gif he had refiauit all that wald haif beene gevin, in caice he had tane panes to go throuche the Colledges to haif collectit it; or yf he had gottin ony *viaticum* frome HIS MA<sup>TIE</sup>, he wald nocht haif writtin thir THESES, bot wold haif gone to France.

Grantis also, that he regraited the vnkynnd deilling of the Scottis Courtiouris towardis him, to Sir Harie Schaveill, Principall of Eittin Colledge, befyde Wyndfoir; bot denyis, vpon his gritt aithe, that he impaired his purpois to wryte THE THESES, outh<sup>er</sup> to the Vice-Chancellour or to him.

Demandit, be whole advyse he wrait thir THESES? Or, yf he had conference with ony perfone thairanent? Depones, vpon his grit oathe, that he had no advyse, counfall, nor information gevin to him in that matter; bot being at Greenwitche, a littill eftir he went to Oxford, he addrest him selff to one of THE KINGIS Chaplaines, quho is a heiche<sup>3</sup> tall man, and was walking in Grenewitche Hall for þe tyme. His name he knowis nocht. And he intreated the Chaplane to tell THE KINGIS MA<sup>TIE</sup>, that he was borne away; and that he had long waited on, without ony help or suppoirt; and that he was now drevin to grit povertie; and that he wald pray God for the weiffair of HIS MA<sup>TIE</sup> and his childrene—bot, for his cuntriemen, the Courtiouris, quha had bene so vnthankful vnto him, he fould rather be lyk Martius Coriolanus vnto tham, nor<sup>5</sup> Themistocles.

Grantis alsua, that afoir his passing to Oxford, he forgaderit with on Johnne Line, Scottifman, a taillour, duelland in Tiltler freit; and that he tauld him, that wer not for þe respect and reuerence that he cayreid to HIS MA<sup>TIE</sup>, he was halffingis myndit (yf he gat nocht some suppoirt to carye him to France) to sett vp some THESES, aither in Oxfurde or in France, aganist the Scottis Courtiours, and that it was goode for THE KING to send some of thame away. And the deponer desyret Johnne Line to acquent THE KINGIS MA<sup>TIE</sup> heirwith, be Petitioun; and he craved Johnne Lynes advyce, how he micht efchew the wryting of these THESES; bot Johnne Lyn had no advyce in the matter. And fayis, vpon his grit oathe, that he nevir reveillit forder of this matter to ony perfone, bot so far as he lies confest, concerning the Chaplane and Johnne Lyn. And denyis, vpon his oathe, that evir he gave out or disperlit ony coopeis of thir THESES.

Demandit, yf at ony tyme eftir he had meditat vpon the wryting of THE THESES, and afoir his affixing of the fame, he communicat the matter to ony perfones, or schew þe THESES vnto thame? Depones, that he only reveillit the matter to his oist<sup>4</sup> in Oxford, callit Johnne Ewing, taillour, and to his wyffe, in this maner, to wit, that he was going to wryte something quhairof the haill scollaris of Oxford wald schortlie get knowlege, and wald heir of it; thairfoir, let me be quyet a quhyll, and lett no man truble me. And this was xxiiij houres afoir þe affixing of the THESES.

Demandit, how it was knowne that he had writtin and affixt the THESES? Depones, that the Vice-Chancellour knew his hand-writt, and send for the deponer within a quarter of ane hour eftir the affixing of the fame, and askit of the deponer, 'Gif he had writtin thame?' Quhilk the deponer grantit. Quhairvpon the Vice-Chancellour fend him prifoner to the Castell of Oxfurde; quhair he was straitlie keptit ten dayis; till thre Scottifsmenne of the Gaird war fend to bringe him to Courte. Denyis that, during his abode in Oxfurde Castell, he had speiche with ony perfones anent this matter, bot<sup>5</sup> with his keipparis and vtheris prifioneris; quho askit of him, the cause quhairfoir he was wairdit? To quhome he anfuert, becaus he had writtin some littill thing aganis his cuntrie-men, the Courtiours, advyseing THE KING to send some of thame hame.

Depones, that quhen he come to Courte, he was putt in ane Inne, befyde Charing Croce, quhair he stayed thre nychtis and two dayis; and that he was examinat be the Duke of Lennox,<sup>6</sup> the Marquies

<sup>1</sup> Either.<sup>2</sup> High.<sup>3</sup> Than.<sup>4</sup> Host; landlord.<sup>5</sup> Unless; except.<sup>6</sup> Ludovick, second Duke of

Lennox, who had held some of the highest honours in Scotland. He was Great Chamberlain, Lord High Admiral, and Lord High Commissioner to the Parliament of Scotland, 1607. The Duke of Lennox was successively created Earl of Richmond, (Oct. 6, 1613,) Earl of Newcastle and Duke of Richmond, (May 17, 1623,) Master of the Household, first Gentleman of the King's Bedchamber, and one of the Knights Companions of the Order of the Garter. He died Feb. 16, 1624, *ætat* 50, without being survived by any of the issue of either of his three marriages.

of Hammiltoun,<sup>1</sup> the Vicoont Fentoun,<sup>2</sup> the Lord Hay,<sup>3</sup> and Sir Williame Alexander.<sup>4</sup> And pat pair-  
 efter he was convoyed to (a) schip of Prestoun, lyand at Southwark, be Mr Johnne Broun and Patrik  
 Logane, Scottisfmenne, and be ane Inglisbman of the Gaird. M. T. Ros,<sup>5</sup> with my hand.  
 T. W. OLIPHANT.

## No. V.

## DOCUMENTS RELATIVE TO THE 'EGYPTIANIS,' OR GIPSIES.

[IN many parts of the preceding Volumes, TRIALS have been inserted, from time to time, regarding the remarkable Asiatic people, commonly known in early times, in Scotland, by the name of EGYPTIANS. It seemed to the Editor to be desirable to afford to the enquiring reader some traces of their wanderings in Scotland, during the fifteenth and sixteenth centuries; and for that purpose, he has examined as many of the earlier Records as his opportunities have, at present, permitted.

It is sufficient, for the purposes of this Collection, to remind the reader, that, from whatever country that singular race took their origin, (which, though there be much room for difference of opinion on the general question, was assuredly Oriental,) and whatever the causes may have been which prompted their emigration, or occasioned their expulsion, from their native soil, this wandering people first made their appearance in Europe early in the fifteenth century. They succeeded, in spite of numerous decrees of expulsion and persecution, in making good their settlement in various kingdoms, and especially in the countries of Poland, Germany, Hungary, France, Spain, Italy, England, and Scotland. It is very remarkable, that, although they have now been resident in Christendom for nearly *four hundred years*, they have preserved themselves as a separate and peculiar race, in *all* the countries where they have sojourned; and have all along been characterised by their distinctive manners, customs, language, and superstitions, which have been kept almost pure and unimpaired, from the date of their first emigration. Indeed, few instances have occurred, in any country, where any considerable portion of them have steadily settled in towns, or followed any

<sup>1</sup> James, *second* Marquis of Hamilton, a great favourite of King James VI. He was created an English Peer, by the titles of Baron of Ennerdale, in Cumberland, and Earl of Cambridge, June 16, 1619; was a Gentleman of the Bedchamber, Steward of the Household, and Lord High Commissioner to the Scottish Parliament, 1621; and Knight of the Garter, Jul. 7, 1623. Died Mar. 2, 1624-5, *etate* 36.

<sup>2</sup> Alexander, Viscount of Fentoun, eldest son of Sir Thomas Erskine of Gogar, created Earl of Kellie, Mar. 12, 1619; and father of Thomas, *second* Earl of Kellie. Obiit, Feb. 1633.

<sup>3</sup> John, *eighth* Lord Hay of Yester, created *first* Earl of Tweeddale, Dec. 1, 1646. <sup>4</sup> Of Menstrie, the celebrated Peet, who obtained a Grant of Nova Scotia, in America, by Charter, Sep. 10, 1620. He was created Viscount of Stirling, &c., Sep. 4, 1630; and Earl of Stirling, Viscount of Canada, and Lord Alexander of Tullibody, June 14, 1623: and died at London, Feb. 1640, but was buried at Stirling, Apr. 12, 1641.

<sup>5</sup> Mr THOMAS ROSS, present Minister at *Cargill*, obtained a GIFT, under the Privy Seal, of THE VICARAGE OF CARGILL, with the fruits, rents, teinds, &c., and 'with the Manse and gleib thairof,' lying within the diocese of Dunkeld, and sheriffdom of Perth; 'during all the dayis of his lyfytyme.'—*Register of Presentations to Benefices*, Vol. III, Jul. 26, 1606.

sedentary or useful handicraft. On the contrary, they have literally wandered from place to place, seldom remaining above a few days in one spot, "living in tents," and subsisting by plunder or knavery.

In those kingdoms, where they have effected a steady footing, they have all along been distinguished by the name of *BOHEMIANS*, *GITANOS*, *ZINGARI* or *CINGARI*, *ZIGEUNERS*, *TZINGANYS*, *GIPSIES*, and *EGYPTIANS*.

As so much has been written regarding the origin and history of the Gipsies, by *Hoyland*, *Grellmann*, &c.<sup>1</sup> it is only necessary to premise these facts, in the briefest manner. The reader will find several very curious and interesting essays on the history of the Scottish Gipsies, written in a popular and entertaining form, in the two first volumes of *Blackwood's Magazine*, and also in the *Encyclopædias*. The Editor has just been informed, that a work is at present preparing for publication, which professes to embrace all that is known regarding the history of these wanderers, especially in the various districts of Scotland, which renders it still less necessary to enlarge in this place.

It may be remarked, that in the fifteenth century, *THE EGYPTIANS* uniformly, in the numerous countries to which they migrated, gave themselves out to be *Christian Pilgrims*—and their leaders assumed the titles of *KINGS*, *DUKES*, *COUNTS*, or *LORDS* of *LITTLE EGYPT*; from which country they always pretended they had been expelled by the *Saracens*, on account of their *RELIGION*. Certain it is, that at present they appear to profess *no religious belief whatever*, and they lead the most immoral lives, and herd together like hordes of savages, in a promiscuous state, wholly unknown to any other race now extant in Europe, living "without God and without hope in the world." With their characteristic cunning, it is likely that this assumption of the appearance of *Pilgrims* was only in accordance with the superstitious and prevailing customs of the times. Under this character they had the address to impose upon almost all the Sovereigns of Europe, and obtained passports and privileges from them; and even *THE POPE* himself was not protected from their artifices, by his boasted *infallibility*.

In examining the Books of the *Lord High Treasurer* of Scotland, the following entries occur. They are here laid before the reader, without further comment.

'Jul. 17, 1492. Item, to Peter Ker to passé to *THE KING*<sup>2</sup> to the Hwnthall,<sup>3</sup> to get the Letteris subscrivit to *THE KING* of ROWMAIS, iijj f.

'Jul. 19. Item, to *THE KING* of ROWMAIS messinger, at the Kingis command, xx li.

'Maij 2, 1501. Item, to *Peter the Moryene*,<sup>4</sup> quhen he passit his way to France, iij li. x f.

<sup>1</sup> *Hoyland's Survey of the Gipsies*—*Grellman. Hume on Crimes. Mackenzie's Obs. on the Statutes*, &c. See also *Acta Parl.*; *Burnet's Hist. of Reformation*, &c. <sup>2</sup> *JAMES IV.* <sup>3</sup> Of Glenfynlas, or Glenartnay, where the King was in use to resort at that season of the year. <sup>4</sup> It appears by other entries in the Records, that this person, and certain '*More laffes*,' were minstrels and servants to the Queen.

‘ Maij 10, 1502. Item, to THE ERLE OF GRECE, be the Kingis command, xiiij f.

‘ Jun. 28. Item, to ANE KNYCHT OF GRECE, be the Kingis commande, vij lib.

‘ Item, for ane ring of gold, set with ane dyamant, and tua rubyis, in maner of *fleur de lice*, iiij lib.

‘ Feb. 24, 1503. Item, in Drumfreise, to *Peter the Moriene*, ix f.

‘ Dec. 11, 1504. Item, quhen *the More las*<sup>1</sup> wes cristinit, giffin to put in the caudill, ix f.

‘ Apr. 22, 1505. Item, to THE EGYPTIANIS, be THE KINGIS command, vij lib.

‘ 1530. Item, to THE EGYPTIANIS that danfit before THE KING, in Halyrudhous, xl. f.’

These are the only early notices the Editor has hitherto met with, in that valuable Record. It is very probable, however, that some of them have no reference to Egyptians. A variety of other documents have been obtained from the Records of the Privy Seal, &c., which follow this brief and imperfect notice.]

I. LETTER from King James IV. to the King of Denmark, in favour of Anthony Gawin, Earl of Little Egypt, &c. Anno 1506.<sup>2</sup>

ILLUSTRUSSIEME, &c. ANTHONIUS GAWINO, EX PARVA EGYPTO COMES, et cætera ejus comitatus, gens afflictæ et miseranda, dum Christianam orbem peregrinationes studio Apostolicæ Sedis (ut refert) jussu, suorum more peregrinans fines nostri regni dudum advenerat, atque in fortis sue et miseriarum hujus populi, refugium, Nos pro humanitate imploraverat ut nostros limites sibi impune adire, res cunctas, et quam habet societatem libere circumagere liceret. Impetrat facile quæ postulat miserorum hominum dura fortuna. Ita aliquot menses bene et catholice, (sic accepimus,) hic versatus, ad te, REX et Avuncule, in DACIAM transitum parat. Sed Oceanum transmissurus nostras Literas exoravit, quibus celsitudinem tuam horum certiorum redderemus, simul et calamitatem ejus gentis Regiæ tuæ munificentia commendaremus. Ceterum errabundæ EGYPTI fata, moreque et genus eo tibi quam nobis credius notiora quo EGYPTUS tuo regno vicinior, et major hujusmodi hominum frequentia tuo diversatur imperio. Illustrissime, &c.

II. LETTER, under the Privy Seal, by King JAMES V. in favour of ‘Johnne Faw, Lord and Erle of Little Egypt.’<sup>3</sup> Feb. 15, 1540.

JAMES, be ye grace of God, King of Scottis: To oure Schereffis of Edinburghe, principall, and within the constabularie of Hadingtoun, Berwik, Roxburghe, Selkirk, Perth, Forfar, Fife, Clakmanane, Kinrofe, Kincardin, Abirdene, Banf, Elgin and Fores, Narne, Innernefe, Linlithq<sup>u</sup>, Peblis, Striviling, Lanark, Renfrew, Dunbertane, Air, Drumfreis, Bute, and Wigtown; Stewartis of Annanderdale, Kirkcudbrycht, Menteithe, and Stratherne; Baillies of Kile, Carrik, and Cunynghame; and paire deputis; Provestis, aldermen, and baillies of oure burrowis and cieteis of Edinburgh, Hadingtoun, Lawder, Jedburgh, Selkirk, Peblis, Perth, Forfar, Cowper, Sanctandros, Kincardin, Abirdene, Banf,

<sup>1</sup> Dec. 2, 1512, she is styled the ‘*QUEENIS blak madin*,’ and on Feb. 1612-13, ‘*Blak Elene*.’ And on Jul. 19, 1513, ‘*Blak Margarete*’ gets a payment of xlvij s. They do not appear to have been Egyptians, but Negroes. The notices, however, are so curious that they are given along with the rest. <sup>2</sup> *MS. Reg.* 13. B. 11. Taken from *Pinkerton’s* Hist. of Scotland, quarto, Lond. 1797, vol. ii. p. 444. <sup>3</sup> *Reg. Secr.* Sig. xiv., 59. A very unfaithful transcript of this document had formerly been published in the Appendix to *MacLaurin’s* Criminal Trials.

Elgin and Fores, Narne, Innernefe, Linlithg<sup>w</sup>, Striuling, Lanark, Glasg<sup>w</sup>, Ruthirglenne, Renfrew, Dunbertane, Air, Drumfreis, Wigtoun, Irwyne, Kirkcudbricht, Quhitterne; and to all v<sup>peris</sup> Sche-  
reffis, Stewartis, proveftis, aldermenne, and baillies within oure realme, greeting. FORSAMKILL as  
it is humlie menit and schewin to ws be oure louit, JOHNE FAW, LORD and ERLE OF LITILL EGIPT;  
That quhair he obtenit oure Lettres vnder oure grete feile, direct to 3ow, all and findry oure faidis  
Schereffis, stewartis, baillies, proueftis, aldermen, and baillies of burrois, and to all and findry v<sup>peris</sup>  
havand autorité within oure realme, to assit to him in executioun of justice vpoun his cumpany and  
folkis, conforme to pe lawis of EGIPT, and in puniffing of all pairm pat rebellis aganis him: NEUIR-  
PELES, as we ar informyt, SEBASTIANE LALOW, Egiptiane, ane of pe said Johnnis cumpany, with his  
complices and pairt-takaris vndir-writtin, pat is to say, ANTEANE DONEA, SATONA FANGO, NONA  
FINCO, PHILLIP HATFEYGGOW, TOWLA BAIL3OW, GRASTA NEYN, GELEYR BAIL3OW, BERNARD  
BEIGE, DEMER MATSKALLA, NOTFAW LAWLOWR, MARTYNE FEMINE, rebellis and conspiris aganis  
pe said JOHNE FAW, and hes removit pame alluterly out of his cumpany, and takin fra him diuerse  
sowmes of money, jowellis, clathis, and v<sup>peris</sup> gudis, to pe quantité of ane grete sowme of money, and  
on na wyse will pafs hame with him, howbeit he has biddin and remanit of lang tyme vpoun pame,  
and is bunding and oblist to bring hame with him all pame of his company pat ar on live, and ane testi-  
moniale of pame pat ar deid: And als, pe said JOHNE hes the said SEBASTIANIS Obligatioun, maid  
in Dunfermling, befor our Maister housfald, pat he and his cumpany fuld remane with him, and on na  
wyse depart fra him, as the samin beiris. In contrar pe tenour of pe quhilk, pe said SEBASTIANE, be  
sinister and wrang informatioun, fals relatioun, and circumvention of ws, hes purchest our writings,  
dischargeing him and pe remanent of pe personis aboue writtin, his complices and pairt-takaris of the  
said JOHNIS cumpany, and with his gudis takin be pame fra him, caussis certane our liegis assit to  
pame and pair opinionis, and to fortify and tak pair pairt aganis pe said JOHNE, pair lord and maister;  
sua pat he on na wyse can apprehend nor get pame to haue pame hame agane within paire awin cuntre,  
estir pe tenour of his said Band, to his hevry dampnage and skaithe, and in grete perell of tynfall of his  
heretage, and expres aganis justice. OUR WILL IS HEIRFOR, and we charge 3ow straitlie, and com-  
mandis, pat, incontynent pir our Letteres sene, 3e and ilk ane of 3ow, within pe boundis of 3our Offices,  
command and charge all our liegis pat nane of pairm tak vpounne hand to resset, assit, fortify, supplé,  
manteine, defend or tak pairt with pe said SEBASTIANE and his complices aboue writtin, for na  
buddis nor v<sup>per</sup> way, aganis the said JOHNE FAW, pair lord and maister; bot pat pai, and 3e, inlikwise  
tak and lay handis vpounne pame quhareuir pai may be apprehendit, and bring pairm to him to be pvnit  
for pair demeritis, conforme to his lawis: And help and fortify him to pvnis and do justice vpounne  
pame for pair trespassis: And to pat effect, len to him 3oure p<sup>re</sup>sonis, stokis, fetteris, and all v<sup>per</sup>  
thingis necessar pairto, as 3e and ilk ane of 3ow, and all v<sup>peris</sup> oure liegis, will ansuer to ws pairupounne,  
and vnder all hieft pane and charge pat estir may follow; swa pat pe said JOHNE have na caus of  
complaynt heirupounne in tyme cuning, nor to resort agane to ws to pat effect, nochtwithstanding any  
oure writings sinistery purchest, or to be purchest, be pe said SEBASTIANE, in pe contrar. AND ALS,  
charge all oure liegis, pat nane of pairm molest, vex, inquiet, or trouble pe said Johnne Faw and his  
company, in doing of pair lessull besynes, or v<sup>per</sup>wayis, within our realme, and in pair passing, remanyng,  
or away-ganging furth of pe samyne, vnder pe pane aboue writtin: And siclike, pat 3e command and  
charge all skippars, maisteris, and marinaris of all schippis within oure realme, at all Portis and Ha-  
vyrnis quhair pe said JOHNE and his cumpany salhappin to resort and cum, to resauie him and pame  
pairin, upounne pair expenses, for furing of pame furth of oure realme to pe partis bezond sey: As pai  
and ilk ane of pame siclike will ansuer to ws pairupounne, and undir pe pane forsaid. SUBSCRUIT with  
oure hand, and under oure Priue Seile, AT FALKLAND, pe fiveteine day of Februar, and of oure reigne  
the xxviiij 3eir.

*Subscript. per Regem.*

[JAMES R.]

<sup>1</sup> Reg. Sec. Sig. XIV. f. 59.—Vide also Apr. 25, 1553, and Apr. 8, 1554, Remission of Andro Faw, &c., for murder of Ninian Small.



III. *PRECEPT to the Earl and Lord of Little Egypt; granting power to him to hang and punish all Egyptians within the Kingdome of Scotland. Dated, May 26, 1540.*

PRECEPTEUM Litere JOHANNIS WANNE, filii et heredis quondam JOHANNIS FALL, MINORIS EGIPTI COMITIS ac DOMINI, et MAGISTRI EGIPTIORUM, infra REGNUM SCOTIE existent.—DAN. fibi potestatem predictos EGIPTIOS ad fibi obediend. et parend. plectere et punire, &c. APUD ST ANDROS, Maii 26, 1540.<sup>1</sup>

IV. *ACT of the Lords of Council, relative to JOHN FAW,<sup>2</sup> &c. Jun. 6, 1541.*

THE quhilk day, anentis the complaintis gevin in be JHONE FAW, and his brether, and SEBASTIANE LOWLAW, EGIPTIANIS, to THE KING'S Grace, ilkane pleinzeand vpon vther of diuerse faltis and iniuris: And that it is aggreit among thame to passe hame, and to haue the same decydit before THE DUKE OF EGYPT: The Lordis of Counsale, being avisit with the pointis of the saidis complaintis, and vnderstanding perfutle the gret thiftis and scathis done be the saidis EGIPTIANIS vpon our soverane lordis liegis, quhaireuer thai cum or resortis: ORDANIS Lettres to be direct to the Proveftis and Ballies of Edinburgh, Sanct Jhonstoun, Dundee, Monrofe, Aberdene, Sanct-androis, Elgin, Forreffe, and Inuernefe; and to the Schirefis of Edinburgh, Fif, Perth, Forfair, Kincardin, Aberdene, Elgyn, and Forefe, Banf, Crummarty, Inuernefe, and all vtheris Schirefis, stewartis, proveftis, and ballies, quhair it happinnis the saidis EGIPTIANIS to resort,—to command and charge thame, be oppin proclamatioun at the mercat croces of the heid Burgh of the Scherrefdomes, to depairt furth of this realme, with their wifis, barnis, and companeis, within xxx dayis efter thai be charget therto, vnder the pane of deid: Notwithstanding ony vtheris Lettres or privilegis grantit to thame be the Kingis grace: Becaus his Grace, with avife of the Lordis, hes dischargit the famin, for the causis foirfaids; with certificatioun, and<sup>3</sup> thai be fundin in this realme, the saidis xxx dayis being past, thai falbe tane and put to deid.

V. *RESPITE, granted to the Captain of the Egyptians and his three sons, for the Slaughter of Ninian Smail.<sup>4</sup>*

ANE RESPITT maid to ANDRO FAW, CAPITANE OF THE EGIPTIANIS, GEORGE FAW, ROBERT FAW, and ANTHONY FAW, his sons; for airt and pairt of the Slauchter of umquhile NINIANE SMAILL, fervand to John Lard, Smith; committit and done in the moneth of Marche, the yeir of God Im.Vc. liij yeiris, upon suddantie: and for all actioun and cryme that may follow thairpoun: And for the space of xix yeiris to indure. AT LYNLYTHGOW, the xxij day of March, 1553.

VI. *RESPITE to John Faw, and other Egyptians, for the above-mentioned Slaughter. Apr. 8, 1554.<sup>5</sup>*

ANE RESPITT maid to JOHNN FAW, EGIPTIANE, ANDRO GEORGE, NICHOLAH GEORGE, SEBASTIANE COLYM, GEORGE COLYM, and others EGIPTIANIS, now being within this realme; for arte and parte of the Slauchter of umquhile Niniane Small; committit within the toun of Lintoun—19 years. AT LYNLYTHGOW, Apr. 8, 1554.

VII. *ACT of Privy Council, 'anent some Egiptianis.' Nov. 10, 1636.<sup>6</sup>*

APUD ED<sup>a</sup>, 10 Novembris, 1636. FORSAMEIKLE AS SIR ARTHURE DOUGLAS of Quhittinghame haveing latelie tane and apprehendit some of the vagabound and counterfut thieves and limmars, callit EGIPTIANIS, be presentit and delyverit thame to the Shereff-principall of the shirefdome of Edinburgh, within the constabularie of Hadington, quhair they have remained this month, or thairby; And

<sup>1</sup> This short entry is all that occurs in *Reg. Secr. Sig.*, under the above date. <sup>2</sup> *Acta Dom. Con.*, XV., 155.  
<sup>3</sup> If; an. <sup>4</sup> *Reg. Secr. Sig.*, XXVII., 3. <sup>5</sup> *Reg. Secr. Sig.*, XXVII., 36. <sup>6</sup> *Reg. Secr. Concilii*.

qubairas, the keeping of thame longer within the said Tolboith, is troublesome and burdenable to the town of Hadington, and fosters the saids thieves in ane opinion of impunitie, to the incouraging of the rest of that infamous byke<sup>1</sup> of lawles limmars to continow in thair theivish trade: THAIRFOIR, the Lords of Secret Counsell ORDANS the Shireff of Hadinton or his deputs to pronunce DOOME and SENTENCE OF DEATH aganis so manie counterfoot Thieves as ar men, and aganis so manie of the weomen as wants children, ORDANING the men to be HANGIT, and the weomen to be DROWNED: and that suche of the weomen as hes children to be SCOURGIT throw the burgh of Hadinton and Brunt in the cheeke: And Ordanis and commandis the Proveft and Baillies of Hadinton to caus this doome be execute vpon the saidis persons accordinglie.

## No. VI.

## OFFICES OF THE CLERKSHIP OF JUSTICIARY-GENERAL AND MASTER OF THE CEREMONIES, &amp;c.

(See Vol. III., p. 558.)

[IN reference to the preceding entry in the Record, it may be interesting to insert the following singular Letter from Mr Alexander Colville, Justice-Depute, to Viscount Annan, which has been recovered from *Sir James Balfour's MS. Collections*, on account of its throwing some farther light on those important appointments; and besides, it is a curious document, and is highly characteristic of the parties concerned, and of the spirit of those times. It has also been thought proper to present to the reader a notice which occurs in the Books of Adjournal, containing the appointment of Sir George Elphinstoun of Blytheswood, knight, as Sir Archibald Napier's successor, in the first year of the reign of KING CHARLES I.]

I. LETTER,<sup>2</sup> *Mr Alexander Colville, Justice-Depute, to Viscount Annan.*<sup>3</sup>  
Dec. 20, 1622.

RIGHT HONORABLE,

YOUR Lo. shall be advertified that he who is presentlie JUSTICE CLERC, (*the Lard of Ormestoun*,) is so afflicted with extreame aage, blindnes, and vther infirmities, that he is altogether disinabled ather to walk abrod, or discharge his place; and by all appearance, is not long to surrive. And becawse it concernes me so neir, that seruis HIS MA<sup>TIES</sup> as Justice deput, to be veil or ewill yoked,<sup>4</sup> in cace it pleis God that I liwe, I haue aduentured thir few lynis, being confident of your lo. goodnes, that HIS MA<sup>TIES</sup>, by your lo. informationn, micht be the better prepared aganis the importunitie of vnfit futors<sup>5</sup> for that place (of Justice clerk), quhilk aucht nocht to be given to thois that fitt<sup>6</sup> it, bot to thois that

<sup>1</sup> Usually applied to denote a hive or nest of wasps, wild bees, or hornets.

<sup>2</sup> *Denmylne MSS.* Adv. Library.

<sup>3</sup> Sir JOHN MURRAY, a *protegée* of the Earl of Morton, and a distinguished favourite at Court, was successively Gentleman of the Bedchamber, and Master of the Horse, &c. to James VI. He acquired great wealth and estates; and was created VISCOUNT OF ANNAND, and Lord Murray of Lochmaben; and afterwards EARL OF ANNANDALE, Mar. 13, 1624-5. <sup>4</sup> Well or ill yoked; having a good or bad partner, or coadjutor. <sup>5</sup> Suitors; applicants. <sup>6</sup> Petition for.

ar vorthie of it. And as the lywis of men ar mor pretious then their goods, so lett the vorthines of him be respected, to quhome the lywis of men ar to be trusted; for if he quho is to be inclofed with Affyfors, (quha for the most ar rud and ignorant,) depending much vpon THE (Lord Justice) CLERC his informatioun; if he, I say, be not a found conscientious man, and frie of baifie bribrie, he may prove a pernicious instrument, and be the cawse that iniquitie may be committed; as wee haue zit in memorie, of on THOMAS SCOT of Abotishall, quho was Justice Clerk to KING JAMES THE FYFT, of happie memorie, quho being strukin with a terror of conscience, at the hour of his death, for his ewill cariage in that place, dyed in disperatioun, crying, 'I am damned! I am damned!' Zit among all vperis, young men, and men of great CLANNIS ar most dangerous for that place. Ceacing farther to falsche your lo. earis, and referring all to your lo. prudence; vithing, that, by a happie election of such ane Officiar, God may gett glorie, HIS MA<sup>TIE</sup> contentment, and the people securitie, by getting right quhen thair lywes shall be in question, and your lo. praife and thankis for being a good instrument. Thus, resting confident that your lo. will tak my boldnes in good part, I rest,

Your lo. affectioned and humble feruitour,

ED<sup>S</sup>, 20 Dec. 1622.

A. COLVILLE.

To the right honorable his speciall good lord, MY LORD VICOUNT OF ANNAN.

## II. EXTRACT from the Books of Adjournal, Dec. 2, 1625.

(Dec. 2, 1625.)—SIR GEORGE ELPHINSTOUN of Blythfwoid, kny<sup>t</sup>, ane of the Lordis of his Maiesteis Previe Counfall, producet ane Gift, grantit to him be our lait foverane lord, James the saxt, of most happie memorie, vnder his hienes Previe Seill, off THE OFFICES of 'CLERK of OUR JUSTICIARIE GENERALL, AND MAISTER of CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther soleme Assembles, quhair honourable Ceremoneis ar accustomed and necessar to be vsed, within this our said Kingdome of Scotland.—Quhilkis Offices ar now vacand in our handis and at our gift and dispositioun, be dimissioon maid thair of in our handis be SIR ARCHIBALD NAPER of Merchittoun, kny<sup>t</sup>, thesaurer deput of our said kingdome of Scotland.' Dated 'AT BISSANE, the nyne and tuentie day of August, the zeir of God 1624, and of our regnne the 58 and 22 zeiris.'

The said Sir George gaif his aithe *de fidei administratione* in the said Clerkship of Justiciarie, in prefence of the said Justice depute.

## No. VII.

### REMARKABLE EXAMINATIONS AND CONFESSIONS OF PERSONS ACCUSED OF WITCHCRAFT, SORCERY, &c.

[AMONG the circumstances which peculiarly characterize the earlier Criminal proceedings of SCOTLAND, as well as those of ENGLAND, FRANCE, and GERMANY, &c., none are more prominent than the unmitigated rigour with which the profession as well as the practice of Witchcraft, Sorcery, and Necromancy, were punished. The hecatombs of innocent victims, whose lives were sacrificed to satisfy the gloomy superstitions of Nations termed Christian and civilized, but

who, in reality, were only emerging from a state of semi-barbarism, sufficiently attest the justice of this observation.

After the period of the Reformation from Popery, the Legislators of those countries which had embraced the new Religion, seemed to vie with each other in the zeal which they manifested in 'rooting out from the land' every vestige of the professors of these 'works of darkness.' In Scotland, as the reader has already had sufficient opportunity of remarking, great exertions were made during the reign of KING JAMES VI, when hundreds of helpless creatures were destroyed, under form of law,—for those who were tried before THE HIGH COURT OF JUSTICIARY bore a very small proportion to the very great numbers who were tried and condemned by the LORDS OF REGALITIES, BARON BAILIES, and by the ROYAL COMMISSIONERS. A very striking fact, mentioned by *Baron Hume* in his valuable Commentaries,<sup>1</sup> may be here briefly noted, that 'no fewer than *fourteen* Commissions<sup>2</sup> for Trial of Witches were granted, for different quarters of the country, *in one sederunt*, of the 7th of November, 1661; which year seems to have been the most fertile period of this sort of accusation!' It is proper to remark, that such Commissioners had very ample powers granted to them; for their Commissions were expressly conceived for the examination and trial, &c. of so many persons, *nominatim*, and a large blank was commonly left for the insertion of such other persons as might be 'de-laited,' or accused, during their sittings. Besides this, their jurisdiction extended over considerable districts of country. As one unhappy creature was almost universally induced to accuse *several others* of the same crime for which he or she was to suffer, and as the evidence taken in one Trial was held to be conclusive in other cases, where the pannels were thus proved to be 'notour Witches,' it was competent for these Commissioners to try any number of persons, and to 'justify them to the death;' a practice which they were by no means slack of performing.

Many very painful Trials for Witchcraft, &c. have already been laid before the reader; but perhaps there cannot be adduced a more touching proof of the nefarious wickedness which must have been perpetrated in Scotland, during the reign of KING JAMES VI, than the following memorandum, which is preserved by *Thomas, Earl of Haddington*, (a noted instrument of the King in all cases, of whatever description,) in his Minutes of Privy Council proceedings.<sup>3</sup> He relates, under date December 1, 1608,—'THE ERLE OF MAR declairit to THE COUNSALL, that fume women wer tane in *Broichtoun*, as WITCHES; and being

<sup>1</sup> HUME on *Punishment for Crimes*, II., 559.

<sup>2</sup> Granted by the Lords of Privy Council.

<sup>3</sup> *Haddington MSS.*, A. 4, 22. Adv. Library. While *Sir Thomas Hamilton*, he held the great Offices of *Secretary of State*, *Lord Advocate*, *President of the College of Justice*, &c.; and in all of those stations forwarded his master's views with unremitting zeal and ability.

put to ane Assyfe,<sup>1</sup> and convict, albeit thay perseverit constant in thair denyell to the end, zit thay wer *BURNIT QUICK*,<sup>2</sup> *estir sic ane crewell maner, that sum of thame deit in despair, renunceand<sup>3</sup> and blasphemend; and vtheris, HALF BRUNT, brak out of the fyre, and wes cast in QUICK in it agane, quhill<sup>4</sup> thay wer brunt to be deid.*<sup>5</sup>

It is hardly necessary to remind the reader, that matters were no better in ENGLAND; where, as he must perfectly recollect, the most shocking atrocities were perpetrated, during the reigns of CHARLES I and CHARLES II, and also under the Puritans of OLIVER CROMWELL'S time. The infamous proceedings, publicly authorized, of HOPKINS *the Witch-finder*, and other worthless impostors, who pretended to be able, by certain cruel means practised by them, to detect real and counterfeit Witches, are also well known, and are highly calculated to bring discredit on the judicial proceedings of any country. Upon the evidence of these wretches, added to that of the ignorant and superstitious peasantry, and of the equally superstitious Clergy of those times, the lives of hundreds were wantonly sacrificed, to satisfy their diseased appetite for the marvellous; while other misguided individuals, conscientiously no doubt, thought, that by acting thus, they were 'doing God service.'

SIR WALTER SCOTT having so largely discussed this extraordinary subject in his recent work on Demonology and Witchcraft,<sup>6</sup> it would be as presumptuous as it is unnecessary for the Editor to enter farther into the matter. In that curious and able work, the learned author, in his usual felicitous style, notices numerous Examinations and Confessions of persons accused of Witchcraft, in Scotland, in the sixteenth and seventeenth centuries. Of these, the most remarkable documents unquestionably are the Confessions of ISSOBELL GOWDIE and of JANET BREADHEAD; which, indeed, may safely be pronounced to be by far the most *unique* and wonderful, in the Records of this, and perhaps of any other country. The Editor has been induced, in compliance with the repeated desire of literary friends, contrary to his own private opinion, to annex to this work the CONFESSIONS of these unhappy women, and a few other similar EXAMINATIONS. Such declarations were commonly taken before Presbyteries, or certain Special Commissioners, who usually ranked among their number the leading Clergy of those districts where their hapless victims resided. The details of all such cases, and, in particular, those which are now annexed, are repulsive and shocking to every well-regulated mind; but, as recording the superstitions and crimes common at the period in question to all the civilized

<sup>1</sup> Before the Baron Bailie of the Regality of BROUGHTON, near Edinburgh; one of the most extensive jurisdictions, of that description, in Scotland. <sup>2</sup> ALIVE; i. e. without having been previously 'wirrit,' or strangled.

<sup>3</sup> Renouncing their baptism.

<sup>4</sup> Until.

<sup>5</sup> LETTERS on Demonology and Witchcraft, by Sir Walter Scott, Bart. Lond. 1830.



nations of Europe, they will by many be deemed, in some measure at least, of historical importance; although at same time, it must be confessed, they afford a lamentable exhibition of the human mind, at its lowest ebb of degradation.]

I. DEPOSITION of *John Kincaid (Witch-finder)*,<sup>1</sup> relative to the *Devil's mark found on Patrik Watſon and Manie Haliburton*.<sup>2</sup>

AT DIRTLOUN, 3. . . . . of . . . . . 3eiris. The quhilk day, in prefence of All(exan)der Levingtone of (Salt)coitis, James Borthuik, Chalmerlane of Dirlton, Johne Stalker, bailzie thair, James Foirman, Drem, Mr James Achefon, in North Beruik, and Williame Daliell, notar, PATRIK (WAT)SON, in Weſt Fentoun, and MENIE HALLYBURTON, his ſpous, bruided and long ſuſpect (of) Witchcraft, of thair awne fre-will, vncompellit, heiring that I, *Johne Kincaid*, vnder ſubſcryvand, wes in the toune of *Dirltone*, and had ſome ſkill and dexteritie in trying of THE *DIVELLIS marke*, in the perſonis of ſuch as wer ſuſpect to be WITCHES, came to the *Broadhall*, in the *Caſtell of Dirlton*, and deſyrit me, the ſaid *Jo. Kincaid*, to vſe my tryall of thame, as I had done on vtheris; whilk when I had done, I fand the *Divellis marke* vpon the bakfyde of þe ſaid PATRIK WATSON, a little vnder the point of his left ſhoulder, and vpon the left ſyde of the ſaid MENIE HALIBURTON hir neck, a little aboue hir left ſhoulder; whairof thay war not ſenſible, nether came furth pairoſ any bloode, efter I had tryed the ſamen als exactlie as euer I did any vthers. This I teſtifie to be of veritie, vpon my credite and conſcience. IN witness quhairof, I have ſubſcryvit thir preſentis with my hand, day and place foirſaid, befor thir witneſſis abou ſpecifeit.

(Sic ſubſcribitur.) J. K. ALEX. LEVINGTON, witneſs. JA. BORTHUIKE, witneſs.  
JOHNE STALKER, witneſs. JAMES FORMAN, witneſs. M. J.  
ACHESONE, witneſs. W. DALIELL, witneſs.

(Indorſed.) Teſtificat of J(ohne Kincaid,) finding the witches mark vpon Manie Haliburtonne.

II. CONFESSION of *Manie Haliburton*.<sup>4</sup>

AT DIRTLOUN, the 5. . . . . of . . . . . 1649. In prefence of Johne (Stalker) bailzie of Dirlton, James Levington, thair, Jo<sup>n</sup> . . . . . in Lawhill, thair, James Speir, Richard Fergusſon, Wa. Hanady, and Wa. Daliell. Compeirit MANIE HALLIBURTON, priſoner within the *Caſtell of Dirlton*, ſuſpect of the cryme of Witchcraft, dilaited guiltie be AGNES CLERKSON, lait ſufferrar for the ſaid cryme, as alſo be PATRIK WATSON, ſpous to the ſaid Menie, who lykevyſe ſufferit thairfor; and confeſſit, that auchtein yeir ſyne, or thairby, hir dochtir being ſeik, ſcho firſt ſent for *Patrik Cryſtiſone in Abirladie*, to cum and cure hir dochter, and he reuſiſing, went hirſelf for him, who reſused to cure hir; and within 8. . . . . dayis thairefter came the DEVILL, in likenes of a man, to hir hous, calling himſelf a philtion, and ſaid to hir, that he had goode ſalves (and namelie oylispek\*) whairwith he wold cure hir dochtir; and aggrieing with him for ſome of his ſalves, quhilk he gave hir, ſho gave him tuo Inglis ſhillings: He than departed, and promiſed to come agane within eight dayes, whilk accordingle he did; bot or<sup>5</sup> he went away the firſt tyme, ſhe gave him milk and breade; and *Patrik Watſone* coming in, he ſent for a pynt of Ale: Bot at the ſecond coming, he ſlayit all night, and vpon the morne airlie (*Patrik* being furth) in came the DIVELL and lay down with hir, (ſcho being 5it in bed), and had carnall copulatioun with hir, his nature being cold: He deſyreit hir to renounce Chriſt and hir baptiſme, and become his ſervand; quhilk ſcho did: And ſayes, that hir dochter had

<sup>1</sup> From Original, in General Register Houſe, Edinburgh.

<sup>2</sup> He is elſewhere deſigned 'the common prickier.'

<sup>3</sup> Obliterated in Orig.

<sup>4</sup> From Orig. Gen. Register Houſe.

<sup>5</sup> Obliterated.

<sup>6</sup> Left blank in Orig.

<sup>7</sup> Oil of ſpike or ſpikenard.

<sup>8</sup> Ere; before.

the wyte<sup>1</sup> of all hir wicid(nes);<sup>2</sup> wiffing sho had nevir bene borne.—THIS Deposition was renewed, in all the particulars, by the said *Manie*, in the forsaid place, on Sunday the first of Julij, 1649, before Alex<sup>r</sup> Levington of Saltcotts, James<sup>3</sup> . . . . ., Johne Stalker, . . . . ., W<sup>m</sup> Dalieil, and Mr Jo<sup>n</sup> Mc<sup>G</sup>Hill, minister at Dirltoun.

M. J. MAKGHILL, ALEX. LEVINGTON, witnes; J. BORTHUIK, JAMES LAUDER, JOHNE STALKER, W. DALIEL, WILLIAME DALIELL, WALTER MARSHALL.

Jul. 2, at HADINTOUN. Whilk day, THE PRESBITERIE, having red and considered the former DEPOSITIONS and CONFESSION of *Manie Haliburton*, find the samyne a sufficient ground for futing<sup>4</sup> the Judge competent to grant a Commiffion for trying and judging her according to Law.

J. STIRLING, Cl<sup>k</sup>.

### III. ACT OF PRIVY COUNCIL anent *Geillis Johnnstoun, suspected of the crime of Witchcraft*.<sup>5</sup>

ANENT our fouerane lordis Letteris, readit at the instanc of GELIS JOHNNSTOUN, relict of vmquhill Johnne Duncane in Muffilburgh, makand mentioun, That quhair some malicious perfonis, hir vnfreindis, haucing dilaitit her to THE PRESBITERIE OF DALKEITH, as a person suspect of WITCHCRAFT, the said Prisbiterie hes thairpone conuenit hir before thame, and hes haldin hir in proces before them, thir fevin oulkis<sup>6</sup> bigane; albeit it be of veritie, that the said complenair is ane honest woman, who hes leuit thir threttie yeiris in the toun of Muffilburgh, in gude fame, credeit, and reputatioun; and wes nevir suspected nor bruted<sup>7</sup> with ony fuche develifche and detestabill doings; and scho hes at all tymes presentit hir self before the said PRISBITERIE, quhan thay callit for her self to thair tryall-examinationis, and quhatfumeuir forme of procedoure thay pleast vse aganis hir: And althocht the cryme of Witchcraft be ane of the heich pointis of the Crowne, proper to be tryit before his Maiesteis Justice and his deputis, and quhairin the said PRISBITERIE can have no warrand, auctoritie, nor jurisdiction to cognosce or determine, neuirtheles, thay continewalie fache<sup>8</sup> the said complenair with citationis and summondis to compeir before thame, purpoissie, as appeiris, to bring hir fame, credite, and reputatioun in questioun, and to lay vpoun hir this foull and havier slander of sa detestable a cryme, quhairof scho is most innocent; and gif thay had ony presumptionis aganis the complenair of hir guiltynes of the said cryme, thay sould haue gevin informatioun thairof, outhir<sup>9</sup> to THE LORD OF REGALITIE quhair scho duellis, before quhome the said complenair hes fund caution to be answerable for this fame deid, quhanevir scho salbe callit; or then, to his heynes JUSTICE GENERALL and his deputis; and sould haue concurrit, be thair informatioun, to the persute of hir, and sould not haue vit fuche a preposterous forme of proceeding before thame selfis, quich can produce na kynd of sentence nor determinatioun. In respect quhairof, THE MINISTERIS of the said PRISBITERIE aucht and sould be dischargit of all proceeding aganis the said complenair, in the mater above writtin, for the causis foirsaidis. AND anent the charge gevin to Mr Andro Blakhall, Minister at Innerefk; Mr Patrik Turnour, Minister at Borthuik; Mr William Penman, Minister at Creichtoun; Nathaniell Harlaw, Minister at Ormestoun; Mr Alexander Ambroise, Minister at Newbotle; Mr Johne Nymbill, Minister at Cranstoun; and Mr George Ramfay, Minister at Lesswaid; all MINISTERIS of THE PRESBITERIE OF DALKEITH, being conuenit for the tyme within the Kirk of Dalkeith, to haue compeirit be ane or tua of thair number, sufficientlie instructit, for the rest, before THE LORDIS OF SECRIE COUNSALE, this present day, to haue hard and sene thame dischargit of all proceeding aganis the said complenair in the mater foirsaid, and of thair offeicis in that pairt: Lyke as, at mair lenth is contentin in the saidis Letteris, executiounis, and indorfationis thairof. QUHILKIS being callit, and the said persfear com-

<sup>1</sup> Blame.      <sup>2</sup> Wickedness.      <sup>3</sup> Obliterated.  
General Register House, Edinburgh.      <sup>6</sup> Weeks.

<sup>4</sup> Suiting; petitioning.      <sup>5</sup> *Acta Secreti Consilii*,  
<sup>7</sup> Reported.      <sup>8</sup> Trouble.      O. Fr. *fischer*.      <sup>9</sup> Either.

peirand, be William Duncane hir sone, and Mr George Ramfay, Moderatour of the Presbiterie of Dalkeith; Nathaniell Harlaw, Minister at Ormestoun; Mr Patrik Turnour, Minister at Borthuik; and Mr William Penman, Minister at Creichtoun; with some vtheris of the said Presbiterie being personallie present, the reasonis and allegationis of the pairteis present being hard and confiderit be the Lordis of Secrite Counsaile, and thay ryple aduifit thairwith, the Lordis of Secrite Counsaile DISCHARGEIS the *Ministeris of the said Presbiterie* of all proceeding aganis the said Gelis Johnnstoun, in the mater foirsaid, and of all thair officiis in that pairt; and REMITTIS the said Geillis to be persewit and tryit, outhir before the Justice-Generall and his deputis, or before the Lord of the Regalie of Dunfermling, as accordis of the Law; but<sup>1</sup> prejudice alwyse to the said *Presbiterie* to vse all ordinar and lauchfull meanis, quhairly thay may get tryall, be vtheris, of the said *Gelis Johnnstoun* hir practiceis and dealing in the said cryme of Witchcraft; and to gif informatioun thairof to the said Justice Generall and his deputis, or to the Lord of the Regalie of Dunfermling and his deputis, before quhome justice salbe ministrat, conforme to the lawis of this realme.

#### IV. CONFESSION of *Jonet Watfone*; and *Notices relative to Christiane Wilson* and *Jonet Paisloun*, all accused of Witchcraft, June 1661.<sup>2</sup>

JONET WATSONE confessed, that in Apryle last bypast, or thairby, schoe being at the buriell of the *Lady Dalhousie*,<sup>3</sup> ther was ane rix-dollar given to *Jean Bughane*, to be pairted among a certain number of poore folks, wherof schoe was one. And the said *Jean Bughane* did run away with the said money, so that schoe gott no pairt of it. And schoe come home to hir awne housie, being verrie grieved and angrie at it, withed to have a mendie of *Jean Bughane*. Vpone the which THE DEIVILL apeired vnto her, in the liknes of ane prettie boy, in grein clothes; and asked, 'What aild her? And what amende schoe wold have, he should give her.' And at that tyme THE DEIVILL gaive hir his markis; and went away from her in the liknes of ane blak doug:—And constantlie, for three dayis thairefter, ther was a great bee come to her; and vpon ane morning, when schoe was cheinging her schirt, it did sit down vpon her shoulder, (schoe being naked,) wher schoe had one of the markis.

As also, about the tyme of the last Baille-flyre night, schoe was at a Meitting in *Newtown-dein* with THE DEAVILL, who had grein clothes vpon him, and ane blak hatt vpon his head; wher schoe denyd Christ, and took her self to be the servant of THE DEIVILL. Wherfor schoe ackoweledged that schoe was, from her heart, forrowfull for the doeing of it. And likewise, he then gave her a new name, and called her 'WEILL-DANCING JENOT'—and promised her money at the nixt Meitting.

And also, that vpon ane vther night, THE DEIVILL was verrie heavie vpon her in her bed. As also, schoe confessed that *Bessie Moffit*, *Elspeth Grahame*, and *Jenot Miheljohn* come to her housie, and tooke her away to that Meating; when they all danced together: At which tyme, when schoe renounced her baptisme, THE DEIVILL laid his hand vpon her head, and had her 'give all ower to him that was vnder his hand,' and schoe did so. Quhilk haill premiffes schoe confessed, in presens of the vnder subfcryvers, without compulsione.

W. CALDERWOOD, (Minister of Dalkeith,) WILLIAM SCOTT, (Bailie of Dalkeith.)

AND. MACMILLONE, witnes. ROB<sup>t</sup> HARDIE, witnes. JOHNE FOORD, witnes.

HENRIE WILSONE, witnes. JA. CALDERWOOD, witnes. ALEX. A:D DICKSONES mark.

WILLIAM BRYSON, witnes. JA. VTERSIDE, witnes.

<sup>1</sup> Without. <sup>2</sup> Original in *MS. Coll. of Society of Antiquaries of Scotland*. This Proof was led under a Commission, June 6, 1661, 'direct be the KINGIS MAJESTIE, with consent of the Estaitis of Parliament,' to Sir William Murray of Newtown, Sir James Richardson of Smeiton, Patrick Scott of Langschaw, Major John Biggar of Woolmot, &c.; who examined a great variety of WITCHES. Their CONFESSIONS, however, are uninteresting and commonplace, with the exception of this and the other Extracts which follow. <sup>3</sup> LADY MARGARET CARNEGIE, daughter of David, Earl of Southesk, spouse of William, Lord Ramsay, created *Earl of Dalhousie*, June 29, 1633.

V. DEPOSITION *as to the Devil carrying off a Witch in a Whirlwind, &c.*

AT DALKEITH, the 10 of Junii, 1661.—THE quhilk day, WILLIAM SCOTT, Bailiffe, having ordaine some of the neighbours in the tounne of Dalkeith to be in redines, the morrow eftir, for guardinge of CHRISTIANE WILSONE, a Witch, to Nidrie, to be confronted their by ane vther Witche; and Johne Steivin, being one of the number ordained to be in redines, said to JENNOT COOKE,<sup>1</sup> that he wes 'goeing the morrow to convoy the said CHRISTIANE to Nidrie,' as aforesaid, and that he wold goe and mak his gun cleane, for that purpose; to the which Jennot answereid, 'Will not yow think it a sport, if THE DEVILL raise a whirrell of wind, and tak her away from among yow by the gette<sup>2</sup> the morrow!' And it fell out, that in passing a burne,<sup>3</sup> when they wer nigh Nidrie, their arose futchie a sudden tempest of wind, which was like to blow the compagnie off their foot—and it did blow the said Christiane Wilfone down in the water . . . <sup>4</sup>, so that for a long tyme they could not gett her vp againe—it being a faire and calme day, both befor and efter. WITNESSES, Johne Stevin, James Wilfone, candill maker, Thomas Richardfone, wright, Bessie Waker, Jonett Bruntoun, and James Blaikie, baxter.<sup>5</sup>

JOHNE STIWENE, witnes. James I. W. Wilfones mark.

VI. DEPOSITION *of John Kincaid, in Tranent, 'the comon pricker,' as to finding the Devil's mark on Jonet Paistoun.*

DALKEITH, 17 Junij, 1661.—THE quhilk day, JONET PAISTOUN, being dilaitit, as is aforesaid, THE MAGISTRAT and MINISTER caufed *Johne Kincaid*,<sup>6</sup> in Tranent, *the comon pricker*, to prik her—and found two marks upon hir, which he called THE DEVILL his markis, which apeared indeid to be so, for shoe did nather find the prein<sup>7</sup> when it was put into any of the said markis, nor did they blood when they were taken out again. And quhan shoe was asked, 'Quhair shoe thocht the preins wer put in?' Shoe pointed at a pairt of hir body distant from the place quhair the preins wer put in—they being preins of *thrie inches*, or pairabout, in lenth. Quhilk *Johne Kincaid* declairis upon his oath, and verifies by his subcription to be true. WITNESSES pairto, Mr W<sup>m</sup> Calderwood, Minister at Dalkeith, and Williame Scott, Bailie: Martin Stevinsone and Thomas Calderwood, Elders; Major Archibald Waddell, Johne Hunter, David Douglas.

I. K. W. CALDERWOOD, Minister. WILLIAME SCOTT, Bailie.

MARTIN STEVENSON, Elder. THOMAS CALDERWOOD, Elder.

VII. CONFESSIONS *of Issobell Gowdie, spous to John Gilbert, in Lochloy.*

## (1.) ISSOBELL GOWDIES FIRST CONFESSION.

AT AULDERNE,<sup>8</sup> the threttein day of Aprill, 1662 yeiris. IN PRESENCE OF MASTER HARIE FORBES, Minister of the Gospell at Aulderne; WILLIAM DALLAS of Cantrey, Shereffe deput of the shereffdom of Nairne; THOMAS DUNBAR of Graing; ALEXANDER BRODIE, Y<sup>r</sup> of Leathin; ALEXANDER DUNBAR of Boath; JAMES DUNBAR, appeirant therof; HENRIE HAY of Brightmanney; HEW HAY of Newtowne; WILLIAM DUNBAR of Clune; and DAVID SMITH, and JOHNE WEIR, in Aulderne; WITNESSES to THE CONFESSION efter specifcit, spokin furth of the mouth of ISSOBELL GOWDIE, *spous to Johne Gilbert, in Lochloy.*

THE quhilk day, in presence of me, JOHNE INNES, *Notar Publict*, and Witnesfes abownamet, all under subferywand, the said ISSOBELL GOWDIE, appeiring penitent for hir haynows sinnes of Witch-

<sup>1</sup> Another Confessing Witch.

<sup>2</sup> By the way.

<sup>3</sup> Rivulet.

<sup>4</sup> Obliterated—but it looks like '*streyme*.'

<sup>5</sup> Baker.

<sup>6</sup> The counterpart of the English *Mathew Hopkins*, the Witch-Finder, whose villainous impostures deprived many poor creatures of their wretched existence.

<sup>7</sup> A long pin, or bodkin, which this fellow used for pricking.

<sup>8</sup> A Parish and Burgh of Barony in the Shire of Nairne, on the Murray Frith.



craft, and that sho haid bein ower lang in that service; without ony compulſitoris,<sup>1</sup> proceedit in hir CONFESSIÖNE, in maner efter following, to wit. As I wes goeing betuix the townes<sup>2</sup> of *Drumdevin* and the *Headis*, I met with THE DIVELL, and ther covenanted, in a maner, with him; and I promeisit to meit him, in the night time, in the *Kirk of Alderne*; quhill I did. And the first thing I did ther that night, I denyed my baptisme, and did put the ony of my handis to the crowne of my head and the vther to the sole of my foot, and then renuncet all betuixt my two handis, ower to the *Divell*. He wes in the Readeris dask, and a blak book in his hand.<sup>3</sup> *Margret Brodie*, in *Alderne*, held me vp to the *Divell* to be baptisid be him; and he marked me in the shoulder, and fuked owt my blood at that mark, and spowet it in his hand, and, sprinkling it on my head, said, '*I baptise the, JANET, in my awin name!*' And within a quhill we all remooved. The nixt tym that I met with him wes in the *New Wardis of Inshoch*, and haid carnall compulſion and dealing with me. He wes a meikle, blak, roch<sup>4</sup> man, werie cold; and I found his nature als cold wthin me as spring-wall-water. Sontymes he haid buitis and sometyms shoes on his foot;<sup>5</sup> but still his foot ar forked and cloven. He vold be somtymes with ws lyk a dear, or a rae. *Johne Taylor* and *Janet Breadhead*, his vyff,<sup>6</sup> in *Belmaketh*, . . . *Douglas*, and I my self, met in the *Kirk-yaird of Nairne*, and ve raised an vnchristened child owt of its greaff; and at the end of *Breadleyis* corn-field-land, just opposit to the *Mile of Nairne*, we took the said child, with the nailis<sup>7</sup> of our fingeris and toes, pikles of all fortis of grain, and blaidis of keall,<sup>8</sup> and haked<sup>9</sup> thaim all verie small, mixed altogether; and did put a pairt therof among the muck-heapes<sup>10</sup> of *Breadleyes* landis, and therby took away the fruit of his cornes, &c.; and we pairted it among two of our COEVENS.<sup>11</sup> When we tak cornes at *Lambes*,<sup>12</sup> we tak bot about two sheaves, when the cornes ar full; or two stokis of keall, or therby, and that giwes ws the fruit of the corn-land, or keall-yaird, whair they grew:<sup>13</sup> And it may be, we will keip yt while *Yewll* or *Pace*,<sup>14</sup> and than devyd it amongit ws. Ther ar thretten perſones in my COVEN.<sup>15</sup>

The last tym that ovr COVEN met, we, and an vther COVEN, wer dauncing at the *Hill of Earlsfeet*; and befor that, betwixt *Moynes* and *Bowgholl*; and befor that we ves beyond the *Meikle-burne*; and the vther COVEN being at the *Downie-hillis*, we went from beyond the *Meikle-burne*, and went besyd them, to the howffis at the *Wood-end of Inshoch*; and within a qwhyll went hem to our howffis. Befor *Candimas*, we went be-east *Kinloffe*, and ther we yoked an plewge of paddokis.<sup>16</sup> THE DIVELL held the plewgh, and *Johne Younge* in *Mebeſlowne*, our Officer, did drywe the plewgh. Paddokis did draw the plewgh, as oxen; quickens wer fowmes,<sup>17</sup> a riglen's horne wes a cowter,<sup>18</sup> and an piece of an riglen's borne wes an fok. We went two feuerall tymes about; and all we of the COEVEN went still wp and downe with the plewgh, prayeing to THE DIVELL for the fruit of that land, and that thiftles and brieris might grow ther.

When we goe to any hous,<sup>19</sup> we tak meat and drink; and we fill wp the barrellis with ovr oven<sup>20</sup>

<sup>1</sup> Indicating, in the outset, that no TORTURE or compulsion had been resorted to, for the purpose of extorting Confession; but that she came forward, and voluntarily made her Declaration, bewailing her former offences. <sup>2</sup> Farmsteadings.

<sup>3</sup> It is a singular circumstance, that in almost all the CONFESSIONS of Witches, their initiation, and many of their meetings, are said to have taken place within CHURCHES, Churchyards, and consecrated ground; and a certain ritual, in imitation, or mockery, of the forms of the Church, is uniformly said to have been gone through.

<sup>4</sup> Rough; hairy; hirsute.

<sup>5</sup> Throughout this Confession, foot is used for feet. <sup>6</sup> See her Confession, which follows this, (No. VIII.) <sup>7</sup> Parings of the nails. In such incantations, the nails and joints, &c. of dead men were commonly made use of.

<sup>8</sup> Nail-blades; the leaves of colewort. <sup>9</sup> Hacked; chopped. <sup>10</sup> Dung-heaps; middens.

<sup>11</sup> Companies; Witches' Conventicles. Perhaps from Lat. *convenire*. The word *cove* is still in use (in the Gipsy, flash, or slang Vocabulary) as an associate, *clum*, or companion, &c.

<sup>12</sup> This symbolical mode of taking the fruit, crop, or produce of land, &c., is frequently alluded to in Witch-Trials. The soil apparently bore only straw and empty ears; but the real produce was, in due season, conveyed to the barns of the enchanter.

The milk of a dairy was taken by means of a hair tether, rope, or halter, passing under the door, and attached to one of the stalls where the cattle stood, &c. The Witch procured the entire produce by 'milking the tether.' Another method is afterwards recited in this CONFESSION.

<sup>14</sup> Until Christmas or Easter. <sup>15</sup> The number thirteen is still proverbially called 'the Devil's dozen,' in Scotland. <sup>16</sup> Yoked a plough of frogs.

<sup>17</sup> Dog-grass, or quick-grass, served for *sowmes* or *soams*; being the traces, chains, or iron links, by which, of old, the oxen were yoked to the plough. The *soyme* (*soyme*) was fastened by a hook to the *soule* or *sole* (swivel.) <sup>18</sup> The coulter of the plough was formed of the horn of a half-castrated ram, called a *riglen*; q. d. a *ridgyl-ram*.

<sup>19</sup> Enter by stealth. <sup>20</sup> Awin; own.



pith again; and we put boofomes<sup>1</sup> in our beds with our hufbandis, till ve return again to them. We wer in the *Earle of Murreyes*<sup>2</sup> hous in *Dernvay*, and ve gott anewgh ther, and did eat and drink of the best, and browght pairt with ws. We went in at the windowes. I haid a little horfe, and wold say, 'HORSE AND HATTOCK, IN THE DIVELLIS NAME!' <sup>3</sup> And than ve wold flie away, quhair ve wold, be ewin<sup>4</sup> as strawes wold flie upon an bie-way. We will flie lyk strawes quhan we pleas; wild-strawes and corne-strawes wilbe horfes to ws, and ve put thaim betwixt our foot, and say, 'HORSE AND HATTOCK, IN THE DIVELLIS nam!' An quhan any fies thes strawes in a whirlwind, and doe not fancitifie them felues,<sup>6</sup> we may shoot them dead at owr pleasour. Any that ar shot be vs, their fowell will goe to Hevin, bot ther bodie remains with ws, and will flie as horfis to ws, als small as strawes.<sup>7</sup>

I was in the *Downie-hillis*, and got meat ther from THE QUEIN OF FEARRIE, mor than I could eat. The *Quein of Fearrie* is brawlie clothed in whyt linens, and in whyt and browne cloathes, &c.; and THE KING OF FEARRIE is a braw man, weil favoured, and broad faced, &c.<sup>8</sup> Ther wes elf-bullis rowtting and skoylling wp and downe thair, and affrighted me.<sup>9</sup>

<sup>1</sup> Besoms; brooms. <sup>2</sup> Alexander Stewart, fourth Earl of Moray.

<sup>3</sup> The following remarkable circumstances were communicated to the ingenious John Aubrey, Esq., F.R.S., by one Stewart, a tutor in the family of JAMES, second LORD DUFFUS; from whose recital, Stewart states, he had it, and that his lordship had it from his father, Alexander, first Lord Duffus, who had, in like manner, heard the tradition from William Sutherland of Duffus, grandfather of James, Lord Duffus, who died about the year 1626. It closely corresponds with the particulars contained in the Depositions of Isobel Gowdie and Janet Breadhead, in reference to this branch of FAIRY SUPERSTITION. As Aubrey's work is now exceedingly scarce, little apology is required for quoting the interesting communication, which he has, fortunately, preserved at length:—

<sup>4</sup> As soon as I read your letter of May 24, (1694,) I called to mind a story which I heard long ago, concerning one of the LORD DUFFUS (in the shire of Murray) his predecessors; of whom it is reported that, upon a time, when he was walking abroad in the fields, near to his own house, he was suddenly carried away, and found the next day at Paris, in the FRENCH KING's cellar, with a silver cup in his hand. That, being brought into the KING's presence, and questioned by him, "Who he was?"—and "how he came thither?" He told his name, his country, and the place of his residence; and that on such a day of the month (which proved to be the day immediately preceding), being in the fields, he heard the noise of a whirlwind, and of voices crying "HORSE AND HATTOCK!" (this is the word which the FAIRIES are said to use when they remove from any place); whereupon he cried "HORSE AND HATTOCK!" also; and was immediately caught up and transported through the air, by the FAIRIES, to that place: Where, after he had drank heartily, he fell asleep, and before he awoke, the rest of the company were gone, and had left him in the posture wherein he was found. It is said THE KING gave him the cup which was found in his hand, and dismissed him.

<sup>5</sup> This story (if it could be sufficiently attested) would be a noble instance for your purpose; for which cause I was at some pains to enquire into the truth of it, and found the means to get the present Lord Duffus's opinion thereof; which shortly is, that there has been and is such a tradition; but he thinks it fabulous. This account of it his Lordship had from his father, who told him that he had it from his father, the present Lord's grandfather. There is yet an old silver cup in his lordship's possession still, which is called "THE FAIRY CUP,"—but has nothing engraven upon it except the arms of the Family.

<sup>6</sup> The gentleman by whose means I came to know the Lord Duffus's sentiment of the foregoing story, being tutor to his lordship's eldest son, told me another little passage of the same nature, whereof he was an eye-witness. He reports, that when he was a boy at school, in the town of FORRES, yet not so young but that he had years and capacity both to observe and remember that which fell out, he and his school-fellows were, upon a time, whipping their tops in the Churchyard, before the door of the Church. Though the day was calm, they heard a noise of a wind, and, at some distance, saw the small dust begin to arise and turn round; which motion continued advancing till it came to the place where they were: Whereupon they began to bless themselves. But one of their number (being, it seems, a little more bold and confident than his companions) said, "HORSE AND HATTOCK WITH MY TOP!" And immediately they saw the top lifted up from the ground, but could not see what way it was carried, by reason of a cloud of dust which was raised at the same time. They sought for the top all about the place where it was taken up, but in vain; and it was found afterwards in the Churchyard, on the other side of the Church. Mr Stewart (so is the gentleman called) declared to me that he had a perfect remembrance of this matter.—Aubrey's Miscellanies, p. 209.

<sup>7</sup> Like; even as; in like manner as. <sup>8</sup> And; if. <sup>9</sup> The children in the kirkyard of Forres (see the preceding Note on HORSE AND HATTOCK) appear to have been adepts in this branch of the Fairy creed; which was, no doubt, familiar to all classes of the peasantry of Scotland, as numerous traces of it are to be found in various districts, at the remotest distance from each other. <sup>10</sup> The above details are, perhaps, in all respects, the most extraordinary in the history of WITCHCRAFT of this or of any other country. Any comment would only weaken the effect of such very remarkable descriptions. <sup>11</sup> It is a thousand pities that the learned Examinators have so piously declined indulging the world with the detailed description of these illustrious personages. Under the singularly descriptive powers of Isobel Gowdie, much might have been learned of FAIRY-LAND and its Mythology. <sup>12</sup> It is evident that Isobel's gossiping had again been cut short here, as irrelevant. Not so the more objectionable parts of her Confession, which were obviously drawn out of her, and listened to with the utmost complacency by her reverend inquisitors.

When we tak away any cowes milk, we pull the tow, and twyn it and plaitt it in the wrong way, in *the Divellis* name; and we draw the tedder (sua maid) in betuixt the cowes hinder foot,<sup>1</sup> and owt betuixt the cowes forder foot, in *the Divellis* name; and therby tak with ws the kowes milk. We tak sheips milk ewin so. The way to tak or giev bak the milk again, is to cut that tedder. When we tak away the strenth of anie perfonas eall,<sup>2</sup> and givies it to an vther, we tak a litle quantitie owt of each barrell or stand of eall, and puts it in a stowp, in *the Divellis* nam; and, in his nam, with owr awin handis, puttis it amongt an vtheris eall, and givies her the strenth and substiance and heall of hir neighbouris eall. And to keip the eall from ws, that we haue no power of it, is to sanctifie it veill. We get all this power from *the Divell*; and when ve feik it from him, ve call him 'owr LORD'!

*Johne Taylor* and *Janet Breadhead*, his wyff, in Bellnakeith, *Bessie Wilfone*, in Aulderne, and *Margret Wilfone*, spows to *Donald Callam* in Aulderne, and I, maid an pictur of clay, to distroy the *Laird of Parkis* meall<sup>3</sup> children. *Johne Taylor* browght hom the clay, in his plaid newk;<sup>4</sup> his wyff brak it verie small, lyk meall,<sup>5</sup> and sifted it with a flew,<sup>6</sup> and powred in water among it, in *the Divellis* nam, and vrought it werie fore, lyk rye-bowt;<sup>7</sup> and maid of it a pictur of *the Lairdis* fones. It haid all the pairtis and merkis of a child, such as heid, eyes, nose, handis, foot, mowth, and litle lippes. It wanted no mark of a child; and the handis of it folded down by its sydes. It was lyk a pow,<sup>8</sup> or a flain gryce.<sup>9</sup> We laid the face of it to the fyre, till it strakned;<sup>10</sup> and a cleir fyre round about it, till it ves read lyk a cole.<sup>11</sup> After that, we wold rost it now and then; each other day<sup>12</sup> ther wold be an piece of it weill roften. *The Laird of Parkis* heall maill children by it ar to suffer, if it be not gotten and brokin, als weill as thes that ar borne and dead alreadie. It ves fill putt in and taken out of the fyre, in *the Divellis* name. It ves hung wp upon an knag. It is yet in *Johne Taylor's* hows, and it hes a cradle of clay about it. Onlie *Johne Taylor* and his wyff, *Janet Breadhead*, *Bessie* and *Margret Wilfones* in Aulderne, and *Margret Brodie*, thair, and I, wer onlie at the making of it. All the multitud of our number of WITCHES, of all the COEVENS, kent<sup>13</sup> all of it, at owr nixt meitting after it was maid. And *the Witches* yet that ar vntaken, haw thair awin poweris, and owr poweris quilkik we haid befor we wer takin, both.<sup>14</sup> Bot now I haw no power at all.

*Margret Kyllie*, in . . . . ., is on of the vther COVEN, *Messie Hirdall*, spous to *Alexander Rofs*, in Lohneid, is on of thaim; hir skin is fyrie. *Iffobell Nicoll*, in Lochley, is on of my COVEN. *Alexander Elder*, in Earleseat, and *Janet Finlay*, his spows, ar of my COEVENS. *Margret Hasbein*, in Moynes, is on; *Margrat Brodie*, in Aulderne, *Bessie* and *Margrat Wilfones*, thair, and *Jean Marten*, ther, and *Elfpet Nishie*, spows to *Johne Mathow*, ther, ar of my COVEN. The said *Jean Mairten* is MAIDEN<sup>15</sup> of owt COVEN. *Johne Young*, in Mebestowne, is OFFICER to owt COVEN.

*Elfpet Chisholme* and *Iffobell More*, in Aulderne, *Magie Brodie*, . . . . ., and I, went in to *Alexander Cumings* litt-bows,<sup>16</sup> in Aulderne. I went in, in the likenes of a kea,<sup>17</sup> the said *Elfpet Chisholm* wes in the shape of a catt. *Iffobell Mor* wes a hair, and *Magie Brodie* a catt, and . . . . .<sup>18</sup> We took a threid of each cullor of yairne that wes in the said *Alexander Cumings* litt-fatt,<sup>19</sup> and did cast thrie knots on each threid, in *the Divellis* name; and did put the thriedis in the fatt, wither-fones<sup>20</sup> abowt in the fatt, in *the Divellis* name; and thairby took the heall strenth of the fatt away,

<sup>1</sup> Feet.<sup>2</sup> Strong ale.<sup>3</sup> Male.<sup>4</sup> In the nook, or corner, of his plaid.<sup>5</sup> Pounded, or powdered

it, like meal. <sup>6</sup> To make the plaster fine, and free from earthy particles. <sup>7</sup> Probably a sort of stir-about, or hasty-pudding, made of rye-flour.

<sup>8</sup> In another Deposition it is thus expressed, 'lyk a pow or feadge.' A feadge was a sort of scone, or roll, of a pretty large size. Perhaps this term signifies, as large as the quantity of dough or paste necessary for making this kind of bread.

<sup>9</sup> A flayed sucking pig, after being scalded and scraped.

<sup>10</sup> Shirvelled with the heat.

<sup>11</sup> Red like a coal.

<sup>12</sup> Each alternate day.

<sup>13</sup> Knew.

<sup>14</sup> This is something new

in Witch stories, and lets in additional light on these charms.

<sup>15</sup> Each Coven appears to have had an OFFICER

for the men, and a MAIDEN for the women; but whether the province of these personages was to preside over them,

or to act as messengers, to call them together, does not seem so certain.

<sup>16</sup> Dye-house.

<sup>17</sup> Jackdaw.

<sup>18</sup> This and the preceding spaces are left blank in the Deposition.

<sup>19</sup> Dying-vat.

<sup>20</sup> Withershins, contrary

to the direction and ordinary course of the sun.

that it could litt nothing bot onlie blak, according to the culor of *the Divell*, in quhoes nam we took away the strenth of the rycht colouris that wes in the fatt!

ALL quhilkis of the premiffes, swa fpokin and willinglie Confest and declairit furth of the mowth of the said *Iffobell*, in all and be all things as is abow sett downe, I, the said *Johne Innes*, Notar Publict, haw writtine thir prefontis; and with the saidis Witnesses abow namet, in farder testimonie and witnessing of the premiffes to be of weritie, We haw subfcrywit the sament with our handis, day, yeir, and place aboue specifeit.

JOANNES INNES, Notarius Publicus.<sup>1</sup>

MR HARY FORBES, Minister at Auld Earn, Attestis.

W. DOLLAS of Cantray, Shereff-deput, Attestis.

A. BRODIE, witness to the said Confession.

HEN. ROSE, Minister at Nairne, Attestis the forsaid

HEW HAY of Newtown, Attestes.

Declaratione, as to the principal substantialis.

W. SUTHERLAND of Kintserie, Attestis these Confessionis.

GEORGE PHINNE, in Kirkmichael, Attestis.

Jo. WEIR, in Alderne, Attestis.

## (2.) ISSOBELL GOWDIES SECOND CONFESSION.

ATT ALDERNE, the third day of May, 1662 yeiris, abowt the howris of two or thrie in the efter-noone, or therby: IN prefence of MASTER HARIE FORBES, &c.<sup>2</sup>

THE quhilk day, in prefence of me, *Johne Innes*, Notar Publict, and Witnesses, all vnder-subfcrywand, the said ISSOBELL GOWDIE, professing repentance, &c.<sup>3</sup> Efter that tym ther vold meit bot fomytmes a COVEN, fomytmes mor, fomytmes les; bot a Grand Meitting vold be about the end of ilk Quarter. Ther is threttein perfonen<sup>4</sup> in ilk Coeven; and ilk on of vs has an SPRIT to wait wpon ws, quhan ve ples to call wpon him. I remember not all the Spritis names; bot thair is on called 'SWEIN;' quhilk waitis wpon the said Margret Wilfon in Alderne; he is still<sup>5</sup> clothed in grafs-grein; and the said Margret Wilfon hes an niknam called, 'PIKLE NEIREST THE WIND.' The nixt Sprit is called 'RORIE,' who waitis wpon Bessie Wilfone, in Alderne; he is still clothed in yellow; and hir nikname is 'THROW THE CORNE YAIRD,' [ . . . . . ].<sup>6</sup> The third Sprit is called 'THE RORING LYON,' who waitis wpon Iffobell Nicoll, in Lochlow; and [he is still clothed] in sea-grein; her nikname is 'BESSIE RULE.' The fourth Sprit is called 'MAK HECTOR,' qwho [waitis wpon Jean] Martein, dawghter to the said Marget Wilfon; he is a yowng-lyk Devill, clothed still in grafs-[green. Jean Martein is] MAIDEN to the Coven that I am of; and hir nikname is 'OVER THE DYKE WITH IT,' becaws THE DIVILL [always takis the] Maiden in his hand nix him, quhan ve daunce Gillatrypes;<sup>7</sup> and quhan he vold lowp from . . . . . he and the will fay, 'Ower the dyk with it!' The nam of the fyft Sprit is 'ROBERT THE [RULE,' and he is still clothed in] sadd-dun, and seimis to be a Comander of the rest of the Spritis; and he waittis wpon Margret Brodie, in Alderne. [The name of the fast Sprit] is called 'THEIFF OF HELL WAIT WPON HIR SELFE;' and he waitis also on the said Bessie Wilfon. The name of the sevinth [Sprit is called] 'THE READ REIVER;' and he is my owin Sprit, that waittis on my selfe, and is still clothed in blak. The aucht Sprit [is called] 'ROBERT THE JACKIS,' still clothed in dune, and seimes to be aiged. He is an glaiked gowked Spirit! The woman's [nikname] that he waitis on, is 'ABLE AND STOWT!'<sup>8</sup> The nynth Sprit is called 'LAING;' and the woman's nikname that he waitis wpon is 'BESSIE BAULD.'<sup>9</sup> The tenth Sprit is named 'THOMAS A FEARIE,' &c.<sup>10</sup>—Ther wilbe many vther Divellis, waiting wpon [our] MAISTER DIVELL; bot he is bigger and mor awfull than the rest of the Divellis, and they all reverence him. I will ken them all, on by on, from vtheris, quhan they appeir lyk a man.

<sup>1</sup> His Latin *docquet*, with his motto, '*Amor meus cruci fixus*. 1661,' are affixed. It is unnecessary to preserve this, as it is in common form. <sup>2</sup> As in preceding Deposition. <sup>3</sup> The same preamble is repeated, with the account of her baptism and carnal dealing, &c., in similar terms as in her preceding Confession. <sup>4</sup> The DEIL's dozen. <sup>5</sup> Ever; always. <sup>6</sup> This paper is unluckily very much mutilated at the ends of the lines; which mutilation commences here.

Where the sense can be made out, the words are conjecturally supplied, within brackets; if not, a small blank is left in this transcript. <sup>7</sup> Probably a dance then popular among the vulgar. <sup>8</sup> Viz. Bessie Hay. <sup>9</sup> Viz. Elspet Nishie. <sup>10</sup> Issobell, as usual, appears to have been stopped short here by her interrogators, when she touched on such matters.

Quhen we reafe the wind, we tak a rag of cloth, and weitts<sup>1</sup> it in water; and we tak a beetle<sup>2</sup> and knokis the rage<sup>3</sup> on a stane, and we say thryfe ower,

‘ I KNOK this ragg wpon this flane,  
To raise the wind, in THE DIVELLIS name;  
It fall not lye<sup>4</sup> vntill I please againe!’

[Whan] we wold lay the wind, we dry the ragg, and say (thryfe ower),

‘ We lay the wind in THE DIVELLIS name,  
[It fall not] ryfe quhill we (or I) lyk to reafe it againe!’

And if the wind will not lye instantlie [after we say this,] we call wpon ovr Spirit, and say to him,

‘ THIEFFE! THIEFFE! conjure the wind, and caws it to [lye . . . . .].’

We haw no power of rain, bot ve will reafe the wind quhan ve pleas.—He maid vs believ [. . . . .] that ther wes no GOD besyd him.

As for Elf-arrow-heidis, THE DIVELL shapen them with his awin hand, [and syne deliueris thame] to Elf-boyes, who whyttis and digitis<sup>5</sup> them with a sharp thing lyk a paking neidle; bot [quhan I wes in Elf-land?] I saw them whytting and dighting them. Quhan I wes in the Elfes howffis, they will haw werie . . . . . them whytting and dighting; and THE DIVELL giwes them to ws, each of ws so many, quhen . . . . . Thes that digitis thaim ar litle ones, hollow, and hofs-baked!<sup>6</sup> They speak gowftie<sup>7</sup> lyk. Quhen THE DIVELL giwes them to ws, he sayes,

‘ SHOOT thes in my name,  
And they fall not goe heall hame!’

And quhan ve shoot these arrowes (we say)—

‘ I SHOOT yon<sup>8</sup> man in THE DIVELLIS name,  
He fall nott win heall hame!  
And this falbe alflwa trw;  
Thair fall not be an bitt of him on lieiw!’<sup>9</sup>

We haw no bow to shoot with, but spang<sup>10</sup> them from of the naillis of our thowmbes. Som tymes we will misse; bot if thay twitch,<sup>11</sup> be it beast, or man, or woman, it will kill, tho’ they haid an jack<sup>12</sup> wpon them. Qwhen we goe in the shapen of an haire, we say thryfe ovr:

‘ I SALL goe intill ane haire,  
With sorrow, and sych, and meikle caire;  
And I fall goe in THE DIVELLIS nam,  
Ay whill I com hom [againe!]’

And instantlie we start in an hair. And when we wold be owt of that shapen, we vill say:

‘ HAIRE, [haire, God fend thé caire!]  
I am in an hairis liknes just now,  
Bot I falbe in a womanis liknes ewin [now.]’

When we vold goe in the liknes of an cat, we say thryfe ower,

‘ I SALL goe [in till ane catt,]  
[With sorrow, and sych, and a blak]shot!  
And I fall goe in THE DIVELLIS nam,  
Ay quhill I com hom againe!’

<sup>1</sup> Wet. <sup>2</sup> A piece of flatted wood, somewhat resembling a cricket-bat, which washerwomen use for knocking clothes, in cleansing them. <sup>3</sup> Rag. <sup>4</sup> Be allayed. <sup>5</sup> Shapes and trims them as a carpenter, with edged-tools. <sup>6</sup> Boss also signifies hollow, or empty. Perhaps this expresses that these Elves were diminutive and hump-backed creatures resembling the *trows* or *trolls* of FAIRY SUPERSTITION; whose propensities are uniformly described as being malignant, and hostile to mankind. <sup>7</sup> Roughly; crossly; gruffly. <sup>8</sup> Yonder. The preceding and following rhymes are probably *unique*, even in the history of TRIALS for WITCHCRAFT, and show, in a very forcible manner, the criminality of the bigoted, though learned and well-intentioned, individuals who dragged forward such wretches to public trial and an ignominious death. <sup>9</sup> On life; *alive*. <sup>10</sup> Jerk. <sup>11</sup> Touch. <sup>12</sup> A coat of mail; defensive armour.

And if ve [wold goe in ane *craw*, then] we fay thryfe ower :

‘ I *SALL* goe intill a *craw*,  
With forrow, and fych, and a blak [thraw !  
And I fall goe in the *Divellis* nam,]  
Ay quhill I com home again !’

And quhen ve vold be owt of thes shapes, we fay :

‘ *CATT*, *catt*, (or *craw*, *craw*,) [God] fend thé a blak fhott ! (or blak thraw !)  
I wes a *catt* (or *craw*) just now,  
Bot I falbe [in a woman’s liknes evin now.]

*Catt*, *catt*, (or *craw*, *craw*,) God fend the a blak fhott ! (or a blak thraw !)

Giff we, in the [shape of an *catt*, an *craw*, an] haire, or ony vther liknes, &c., go to any of our neighbouris howffis, being *Witches*, we will [fay,]

[‘ I (or we) *CONJURE* thé *Goe* with ws (or me) !’

And presentlie they becom as we ar, either *cats*, *hearis*, *crowes*, &c., and goe [with ws whither we wold. Quhan] we wold ryd,<sup>1</sup> we tak *windle-strawes*, or *been-flakes*,<sup>2</sup> and put them betwixt owr foot,<sup>3</sup> and fay thryfe,

‘ [HORSE] and *hattok*, *horfe* and *goe*,  
*Horfe* and *pellattis*, ho ! ho !’<sup>4</sup>

And immediatlíe we flie away whair [euir we wold] ; and leaft our hufbandis fould misf vs owt of owr beddis, we put in a boofom, or a thrie [leggit stoole beyde thame,] and fay thryfe ower,

‘ I *LAY* down this boofom (or stooil,) In *THE DIVELLIS* name,  
Let it not fleir . . . . . [Quhill I] com again !’

And immediatlíe it feimis a voman, beyfd owr hufbandis.

Ve can not turn in the lik<sup>5</sup>nes<sup>5</sup> of . . . . . Quhen my hufband fold beeff, I vfed to put a fwellowes feather in the hyd of the beaft, and [fay thryfe,]

‘ [I] *PUTT* owt this beeff in *THE DIVELLIS* nam,  
That meikle silver and good pryce com hame !’

I did ewin so [quheneuir I putt] furth either *horfe*, *noat*,<sup>6</sup> *vebs*,<sup>7</sup> or any vther thing to be fold, and fill<sup>8</sup> put in this feather, and said the [sámin wordis thryfe] ower, to caws the comodities sell weill, &c. . . . . thryfe ower,

Owr Lord to hunting he [is gone]  
. . . . . marble stoné,  
He fent vord to Saint Knitt . . . . .<sup>9</sup>

[Quhan we vold heall ony for, or brokin limb, we fay thryfe ower,]

. . . . .  
. . . . .

He pat the blood to the blood, Till all vp flood ;

The lith to the lith, Till all took with ;

Owr Ladie charmed hir deirlie Sone, With hir tooth and hir towngé,

And hir ten fingeris——

In the name of *THE FATHER*, *THE SON*, and *THE-HALIE GAIST* !<sup>10</sup>

<sup>1</sup> Ride.

<sup>2</sup> Bean-stalks.

<sup>3</sup> For feet.

<sup>4</sup> See Note to ‘ *Horse and hattock*,’ p. 604.

<sup>5</sup> There is

a tradition in *MORAYSHIRE*, that *Witches* could not appear in the shape of a dove or a lamb ; the one being emblematical of *THE HOLY SPIRIT*, the other being the emblem of the *AGNUS DEI*. Perhaps the hiatus might not improperly have been so supplied. <sup>6</sup> *Noll*, cattle. <sup>7</sup> Webs of cloth. <sup>8</sup> Uniformly ; constantly ; always. <sup>9</sup> After this

fragment, a considerable portion of the MS. is unfortunately torn off. It is probable that the two first lines of the next Charm are mutilated. <sup>10</sup> It has been often remarked by the Editor, in the course of the numerous *WITCH TRIALS* which occur in this Collection, that a great proportion of the charms, in use to be repeated by these unhappy

women, were actually paraphrases of portions of the *Mass-Book*—and in some cases, such as in the case of *ANNIE SAMSON*, there appears to have been used doggerel versions of *THE CREED*, &c. ! Others were taken from ancient popular rhymes and songs, such as the above fragment, ‘ *Owr Lord to hunting he is gone*,’ &c., which, unfortunately, is mutilated.



And this we say thryfe over, straiking<sup>1</sup> the for, and it becomes heall. 2<sup>d</sup>, For the BEAN-SHAW,<sup>2</sup> or pain in the heance,<sup>3</sup>—‘WEE ar heir thrie Maidens charming for the bean-straw; þe man of the Middle-earth, blew beaver, land-feaver, maneris of flooris, the Lord fleigged<sup>4</sup> the Feind with his holy candles and yeird foot stone!—Thair the fittis, and heir the is gon!—Let hir nevir com heir again!’—3<sup>d</sup>, For the FEAVERIS, we say thryfe over, ‘I FORBID the qwaking-feavers, the sea-feaveris, the land-feaveris, and all the feaveris that ewir God ordained, owt of the head, owt of the heart, owt of the bak, owt of the fydis, owt of the kneis, owt of the thieghes, fra the pointis of the fingeris to the nebes<sup>5</sup> of the toes; owt fall the feaveris goe, [fom] to the hill, fom to the hap, fom to the stone, fome to the stok. In Saint Peiteris nam, Saint Paullis nam, and all the Saintis of Hevin: In the nam of THE FATHER, THE SONE, and of THE HALIE GOST!’<sup>6</sup>—AND when we took the frwit of the filthes from [the] filtheris, we went to the shore, befor the boat wold com to it; and we wold say, on the shore-fyrd, thrie feuerall tymes ower,

‘THE filtheris ar gon to the sea,  
And they vill bring hom filthe to me;  
They will bring them hom intill the boat,  
Bot they fall get of thaim bot the finaller fort!’

So we either steall a fish, or buy a fish, or get a fish from them [for nowght,] an or ma.<sup>7</sup> And with that we haw all the fruit of the heall<sup>8</sup> fishes in the boat; and the fishes that the fishermen tham felues will haw, will be bot froath, &c.

The first woyag that ewer I went with the rest of owr COVENS was [to] Plewghlandis; and thair we shot an man betnixt the plewgh-filtis, and he presentlie fell to the ground, wpon his neife<sup>9</sup> and his mowth; and than THE DIVELL gaw me an arrow, and cawfed me shoot an voman in that feildis; quiblk I did, and the fell down dead.<sup>10</sup> In Winter 1660, quhen Mr Harie Forbes, Minister at Alderne, wes feik, we maid an bagg of the gallis, flesh, and guttis of toadis, pickles of bear,<sup>11</sup> pairingis of the naillis of fingeris and toes, the liewer of ane hair, and bittis of clowtis. We sleipit this all together, all night among watter, all haked<sup>12</sup> throw vther. And whan we did put it among the watter, SATAN wes with ws, and learned ws the wordis following, to say thryfe ower. They ar thus,

‘HE is lying in his bed,—he is lyeing feik and fair;  
Let him lye intill his bed two monethis and [thrie] dayes mair!  
2<sup>d</sup>, Let him lye intill his bed,—let him lye intill it feik and fore;  
Let him lyne untill his bed monthis two [and] thrie dayes mor!  
3<sup>d</sup>, He fall lye intill his bed, he fall lye in it feik and fore;  
He fall lye intill his bed [two monethis and] thrie dayes mor!’

Quhan we haid learned all thes wordis from THE DIVELL, as said is, we fell all down [wpon owr] kneis, with owr hear down ower owr showlderis and eyes, and owr handis lifted wp, and owr eyes

<sup>1</sup> Stroking; gently rubbing. <sup>2</sup> The *Boneshave* or *Boneshow*, signifies the *SCIATICA*. From an amusing, published specimen of the EXMOOR DIALECT, Devonshire, it appears, that the term is also known in England. The peasantry of that district use a singular *Charm* for its cure. ‘The patient must lie upon his back, on the bank of the river or brook of water, with a straight staff by his side, between him and the water; and must have the following words repeated over him, viz.

“Boneshave right—Boneshave straight—  
As the water runs by the stave—Good for Boneshave!”

They are not to be persuaded but that this ridiculous form of words seldom fails to give them a perfect cure.’ *Exmoor Scolding*. P. 8. Note. <sup>3</sup> Haunch. <sup>4</sup> Affrighted; terrified. <sup>5</sup> Nibs; extremities. <sup>6</sup> It appears very singular to us who live in the Nineteenth Century, that SATAN should have taught his servants to invoke the SAINTS, and even the HOLY TRINITY. The charms recited by his disciples are usually fragments of ancient Monkish rhymes; and most of them were such as many good Roman Catholics of the lower orders, even in these times, would not scruple to use, for the supposed cure of their bodily ailments. <sup>7</sup> One or more. <sup>8</sup> Whole. <sup>9</sup> Nose.

<sup>10</sup> Issobell previously explained, that these poaching excursions took place, when the Witches were careering in mid-air, mounted on windle-straws and bean-stalks, &c. The DEVIL usually made them pick up such of the Elf-arrows as fell short of or missed their mark. <sup>11</sup> Grains of barley, or bear. <sup>12</sup> Hacked; minced into small pieces.

[stedfastlie fixed wpon] THE DIVELL; and said the forsaids wordis thryfe ower to THE DIVELL, striktlie, against Maister Harie Forbes [his recowering from the said seiknes.] In the night tym we cam in to Mr Harie Forbes chalmere, quhair he lay, with owr handis all smeared [ . . . . . out] of the bagg to swing it wpon Mr Harie, quhair he wes seik in his bed; and in the day tym [ . . . . . ane of owr] nember, quho wes most familiar and intimat with him, to wring or swing the bagg [wpon the said Mr Harie, as we could] not prevail in the night tym against him; quhilke wes accordinglie done. Any of [ . . . . . ] comes in to your howffes, or ar fet to doo yow evill, they will look vncowth lyk, throw [ . . . . . ] hurle lyk, and thair clothes standing owt. The Maiden of owr Coven, Jean Mairten, wes [ . . . . . We] doe no great mater without owr Maiden.

And if a child be forspoken,<sup>1</sup> we tak the cradle [ . . . . . ] throw it thryfe,<sup>2</sup> and than a dowg<sup>3</sup> throw it; and then shakis the belt abow the fyre [ . . . . . and then cast it] downe on the ground, till a dowg or catt goe ower it, that the seiknes may com [ . . . . . wpon the dowg or] catt.

All quhilks wer fwa spokin furth of the mouth of the said ISSOBELL GOWDIE, &c.<sup>4</sup>

[Indorfed] ED<sup>s</sup>, 10 July, 1662. Considered and found relevant be THE JUSTICE DEPUTE.

‘Tak cair of this peaper. See the Justice deputis judgement of it. Show this to the Commissioneris.’

HAVEING read and considered THE CONFESSIONS of ISOBEL GOWDIE, within contened, as particularlie SATHAN, Renunciation of Baptism, with diverse malefices, I find that a Commission may be verie justlie pafs, for hir last Tryall. (Sic subscribiter) A. COLVILLE, (Justice-depute.)

### (3.) ISSOBELL GOWDIES THIRD CONFESSION.

AT AULDERNE, the fyften day of May, 1662 yeiris, In presence of Maister HARIE FORBES, Minister of the Gospell at Alderne, Mr HEW ROSSE, Minister at Nairn; JOHNE INNES of Edingeth; HEW HAY of Newtown; Mr ALEX DUNBAR, Schoolmaster and Session Clerk of Alderne; GEORGE PHINNEY, in Kirkmichaell; and Johne Weir, and Androw Easie in Alderne; and many vtheris, WITNESSIS to THE CONFESSION efter sett down, spoken furth of the mouth of ISSOBELL GOWDIE, spous to Johne Gilbert in Lochloy.

THE quhilke day, in presence of me, JOHNE INNES, Notar Publict, and Witnesse all vnder subscriywand, the said ISSOBELL GOWDIE, appeiring to be most penitent for hir abominable finnes of Witchcraft, most ingenwollie procedit in hir CONFESSION therof, in maner efter following; to witt. First, as I wes going betwix the townis of *Drumdevin* and the *Headis*, THE DIVELL met with me, and thair I covenanted with him, and promeisit to meit him, in the night tym, in the *Kirk of Alderne*; quhilke I did. He flood in the Readeris dask, and an blak book in his hand; quhair I cam befor him, and renuncet JESUS CHRIST and my baptisme; and all betuixt the soale of my foot and the crown of my head, I gaw frielie wp and ower to THE DIVELL. *Margaret Brodie*, in Alderne, held me wp to THE DIVELL, wntill he re-baptisid me, and marked me in the shoulder, and with his mouth sucked out my blood at that place, and spowted it in his hand, and sprinkling it wpon my head and face, he said, ‘I baptise ye, JANET, to my self, in my own nam!’ Within a whyll thereafter we all removed. And within few dayes he cam to me, in the *New Wardis of Inshoch*, and ther haid carnal copulation with me. He wes a werie meikle blak roch man. He will lye als bewie wpon ws, quhan he hes carnall dealling with ws, lyk an malt-secke. His memberis ar exceeding great and long; no mans memberis ar so long and bigg as they ar. He wold be amongst ws lyk a weath horse amongst mears. He wold lye with ws in presence of all the multitud; neither haid we nor he any kynd of shame; but

<sup>1</sup> Bewitched.

<sup>2</sup> This seems to allude to passing the child, &c., through an enchanted hoop, ring, or belt, a very common popular charm in those days.

<sup>3</sup> Dog.

<sup>4</sup> The same form and subscriptions as in the preceding Confession, with the Notarial Attestation, &c. of JOHN INNES.

especiallie he hes no shame with him at all. He wold lye and hawe carnall dealling with all, at enerie tym, as he pleafed. He wold haw carnall dealling with ws in the shap of a deir or any vther shap that he wold be in. We wold never refufe him. He wold com to my hows-top in the shap of a crow, or lyk a deir, or in any vther shap, now and then. I wold ken his woice, at the first heiring of it, and wold goe furth to him and haw carnall cowpulation with him. The youngeft and lwtifest women will haw werie great pleafour in their carnall cowpulation with him, yea much mor than with their awin husbandis; and they will haw a exceiding great desir of it with him, als much as he can haw to them, and mor; and never think shame of it. He is abler for ws that way than any man can be (Alace! that I fould compair him to ane man!) onlie he ves heavie lyk a malt-seck; a hudge nature, verie cold, as yce.

He wold fend me now and then to *Aulderne* som ealandis to my neightbouris, in the shap of ane hair. I wes on morning, abowt the break of day, going to *Aulderne* in the shap of ane hair, and *Patrik Papleyis* ferwandis, in *Kilhill*, being goeing to ther labouring, his boundis being with them, ran efter me, being in the shap of ane haire. I ran werie long, bot wes forcet, being wearie, at last to take my own hous. The dore being left open, I ran in behind ane chift, and the boundis followed in; bot they went to the vther syd of the chift; and I was forcet to run furth agane, and wan into ane vther hows, and thair took leafour to fay,

‘HAIR, hair, God fend thé cair!  
I am in a hearis liknes now,  
Bot I fall be ane voman ewin now!  
Hair, hair, God fend thé cair!’

And so I returned to my owin shap, as I am at this instant, again. The dowgis will som tymes get som byttis<sup>1</sup> of vs, quhan ve ar in hairis,<sup>2</sup> bot will not get ws killed. Quhan ve turn owf of a hairis liknes to owr awin shap, we will haw the byttis, and rywis, and scrattis<sup>3</sup> in owr bodies. Quhan we vould be in the shap of cattis, we did nothing but cry and wraw,<sup>4</sup> and rywing, and as it ver, wirrieng on ane vther; and quhan ve com to owr awin shap again, ve will find the scrattis and rywes on our skins, werie for. Quhan on of vs or mor ar in the shap of catis, and meitt with ony vtheris owr neightbouris, we will fay,

‘DIVELL SPEID THÉ—GOE THOW WITH ME!’

And immediatlie they will turne in the shap of ane catt, and goe with ws. Quhen we wilbe in the shap of crows, we will be larger than ordinar crows, and will sitt upon brenches of treis. We went in the shap of rewkis<sup>5</sup> to *Mr Robert Donaldson* hows, *THE DIVELL*, and *Johne Taylor*, and his wyff, went in at the kitchen chimney, and went down upon the crowk.<sup>6</sup> It wes about *Lambes*,<sup>7</sup> in anno 1659; they opened ane window, and (we) went all in to the hows, and gott beiffe and drink thair; bot did no more harme.—We went in to the *Downie-hillis*; the hill opened, and we cam to ane fair and large braw rowme, in the day tym. Thair ar great bullis rowtting and fkyolling ther, at the entrie, quiblk feared me.<sup>8</sup>

Bot that quibich troubles my conscience most, is the killing of severall perfones, with the arrowes quibich I gott from *THE DIVELL*. The first woman that I killed wes at the *Pleugh-landis*; also I killed ane<sup>9</sup> in the East of *Murrey*, at *Candimas*<sup>10</sup> laft. At that tym *Bessie Wilfon*, in *Alderne*, killed on thair; and *Margaret Wilfon*, ther, killed ane vther; I killed also *James Dick* in *Canniecaill*: Bot the death that I am most of all forrie for, is the killing of *William Bower*, in the *Miltowne of Moyne*; *Margaret Brodie* killed ane voman, wathing, at the *Burne of Tarres*; *Bessie Wilfons* killed ane man at the *Buife of Strutheris*; *Bessie Hay* in *Aulderne* killed ane prettie man called *Dunbar*, at the Eist

<sup>1</sup> Bites.

<sup>2</sup> In the shape of hares.

<sup>3</sup> Tears and scratches.

<sup>4</sup> Caterwaul, like cats.

<sup>5</sup> Rooks.

<sup>6</sup> The crook, on which the ‘kail-pot’ hangs, over the fire.

<sup>7</sup> *Lammas*, the 1st day of August.

<sup>8</sup> Alarmed.

<sup>9</sup> The crook, on which the ‘kail-pot’ hangs, over the fire. See her *CONFESSION*, Apr. 13, 1662, page 604.

<sup>10</sup> *Ane*; one.

<sup>11</sup> The purification of the blessed Virgin Mary, Feb. 2d.

end of the *Towne of Forres*, as he wes coming owt at an gaitt; *Margaret Brodie* in Alderne killed on *David Blak*, in Darnvay. *Janet Breadhead*, spows to *Johne Taylor*, told me, a litle befor she wes apprehendit, that *Margaret Wilfone* in Alderne shot *Alexander Huchoon*, in Alderne; *Janet Breadhead* shot *Johne Falconer*, in the Park. The most of ws all wer ther, at that tyme. *Bessie Wilfone* killed on *William Man*, at Burgie; *Margaret Wilfone* killed on *Johne Lee*, and *Janet Breadhead* killed a fuy<sup>1</sup> at Burgie; *Bessie Wilfone* in Alderne, on an first Monday of the Reath, took a bagg maid of hairis lieweris,<sup>2</sup> the flesh, guttis and gallis of toadis, naillis of fingeris and toes, and fwinged it on an young man called *Thomas Reid*, and he died. *Bessie* and *Margaret Wilfones* in Alderne, *Johne Taylor* and his wyff, *Margrat Brodie* and I, and THE DIVELL, wer together, and *Mr Harie Forbes*, Minister at Alderne, goeing to *Moynes*. THE DIVELL gaw *Margret Brodie* an arrow to shoot at him, quhillk she did; bot it cam short; and the *Divell* cawfed tak it wp again. We desirte to shoot again, bot the *Divell* said, 'No; we wold not gett his lyff at that tyme!' The *Divell* cawfed me to shoot at the *Laird of Park*,<sup>3</sup> as he wes croceing the *Burne of the Boath*; bot I missed him.

We wold goe to feuerall howffis, in the night tym. We wer at *Candlmas* last in *Graingehill*,<sup>4</sup> quhair we got meat and drink anewgh. THE DIVELL sat at the heid of the table, and all the COVEN about. That night he desirte *Alexander Elder*, in Earlseat, to fay the grace befor meat, quhillk he did; and is thus:

'We eat this meat in THE DIVELLIS nam,  
With sorrow, and sych,<sup>5</sup> and meikle shame;  
We sall destroy hows and hald;  
Both sheip and noat in till the fald.  
Litle good fall come to the fore  
Of all the rest of the lile store!'

And than ve began to eatt. And quhan ve haid endit eattin, we looked steadfastlie to THE DIVELL, and bowing owrselwes to him, we said to the *Divell*,

'We thank thé owr Lord for this!' &c.

The wordis which we spak, quhan we maid the pictur, for distroyeing of the *Laird of Parkis* meall-children, wer thus:

'IN THE DIVELLIS nam, we powr in this water among this mowld (meall),<sup>6</sup>  
For lang dayning and ill heall;  
We putt it into the fyre,  
That it may be brunt both stik and stowre.  
It salbe brunt, with owr will,  
As any stikle<sup>7</sup> wpon a kill.'

THE DIVELL taught ws the wordis; and quhan ve haid learned them, we all fell downe wpon owr bare kneys, and owr hair aboutw owr eyes, and owr handis lifted wp, looking steadfast wpon THE DIVELL, still sayin the wordis thryfe ower, till it wes maid. And then, in THE DIVELLIS nam, we did put it in, in the midst of the fyre. Efter it had skrukned<sup>8</sup> a litle befor the fyre, and quhan it wes read lyk a coale, we took it owt in THE DIVELLIS nam. Till it be broken, it will be the deathe of all the meall children that the *Laird of Park* will ewer get. Cast it ower an Kirk, it will not brak quhill<sup>10</sup> it be broken with an aix, or som such lyk thing, be a man's handis. If it be not broken, it will last an hundreth yeir. It hes ane cradle abut it of clay, to preferue it from skaith;<sup>11</sup> and it wes rosten each vther day, at the fyr; som tymes on pairt of it, som tymes an vther pairt of it; it vould be a litle wat with water, and then rosten. The bairn vould be brunt and rosten, ewin as it wes by ws. It vanted

<sup>1</sup> Sow. <sup>2</sup> Hares' livers. <sup>3</sup> John Hay of Park. <sup>4</sup> Belonged to Brodie of Lethin. <sup>5</sup> Sighing; lamentation. <sup>6</sup> The rest was probably omitted in writing down the Confession, as being blasphemous. <sup>7</sup> It is writtin *meall* in the other Confession; and the metre (such as it is) requires this liberty. *Mowld* signifies 'earth' or 'dust.' <sup>8</sup> Stubble. <sup>9</sup> Parched; shrivelled. <sup>10</sup> Until. <sup>11</sup> Harm; injury.

no mark of all the pairtis of an child, little lippis, &c., and the handis of it folded downe by its fydis. *Johne Taylor* and *Janet Breadheid* his wyff, *Bessie* and *Margret Wilfones* in *Aulderne*, and I my selfe, with *THE DIVELL*, wer onlie at the making of it; but all the multitud of all owr COEVENS got notice of it, at the nixt meitting; for all owr actis and deidis, betuixt grett Meittingis, most be geven accompt of, and notted<sup>1</sup> in his book at each Grand Meitting—but all my owin COVEN gott notice of it werie schortlie. *THE DIVELL* him self cam to me, to my awin hows, and bad me meitt him in *Johne Tayloris* hows, to help thaim to mak the said pictur. All *THE COVEN* did flie lyk cattis, keas, hairis, and rewkis, &c. bot *Barbara Ronald*, in *Brightmanney*, and I, still<sup>2</sup> read on an horfe, quihich ve vold mak of a straw or becin-stalk.<sup>3</sup> *Bessie Wilfone* was still in the liknes of a rewk.

Quhan we ar at meat, or in any vther place quahateur, *the Maiden* of each COVEN fittis abow the rest, nixt *THE DIVELL*; and she serwis *THE DEVILL*, for all the old peopill that he cairis not for, and ar weak and wmeit for him. He will be with hir and ws all lyk a weath-horfe efter mearis; and somtymes a man, bot werie wilfull<sup>4</sup> in carnall cowpulation at all tymes; and they ewin so als wilfull and desirous of him. Som tymis, among owr felwis, we wold be calling him 'BLAK JOHNE,' or the lyk, and he wold ken it, and heir ws weill aneughe; and he ewin then com to ws, and say, 'I ken weill aneugh what ze wer faying of me!' And then he vold beat and buffet ws werie for. We wold be beattin if ve wer absent any tyme, or neglect any thing that wold be appointit to be done. *Alex<sup>r</sup> Elder*, in *Earlseat*, vold be werie oft beattin. He is bot soft,<sup>5</sup> and cowlde never defend him self in the leif, bot greitt and cry, quhan he vold be scourging him. Bot *Margret Wilson*, in *Aulderne*, wold defend hir self fynlie, and cast wp hir handis to keip<sup>6</sup> the stroakis off from hir; and *Bessie Wilfone* wold speak cruffie with hir towng, and wold be belling again to him stowtie. He wold be beattin and fceurging ws all wp and downe with cardis<sup>7</sup> and vther tharp fceurges, like naked gwhafts; and we wold be still cryeing, 'Pittie! pittie! mercie! mercie, owr Lord!' Bot he wold haw neither pittie nor mercie. Whan he vold be angrie at ws, he wold girne at ws lyk a dowge, as iff he wold fwellow ws wp. Somtym he vold be lyk a stirk, a bull, a deir, a rae, or a dowg, &c., and haw dealling with ws; and he vold hold wp his taill wntill we wold kisse his arce. And at each tyme, quhan ve wold meitt with him, we behoovit to ryfe and mak our curtesie; and we wold say, 'Ze ar welcom owr Lord!'—and 'How doe ze, my Lord!' &c. Quhan we wold tak the furit<sup>8</sup> (fruit?) away of anie perfonen midden or dunghill, we wold say thus, (when we wold putt haiked flesh of an vnchristned child, dowgis and sheipis flesh, and pairingis of naillis, &c., all bakid throw-vther):—

'We putt this intill this ham,'<sup>9</sup>  
In our Lord *THE DIVELLIS* nam.  
The first handis that handles thé,  
Brunt and scalded fall they be |  
We fall distroy hows and hald,  
With the sheip and nout<sup>10</sup> intill the fald,  
And litle sal come to the fore  
Of all the rest of the litle-store!<sup>11</sup>

We killed an ox, in *Burgie*, about the dawing of the day, and we brougth the ox with ws hom to *Aulderne*, and did eat all amongst ws, in an hows of *Aulderne*, and feasted on it.

*THE DEVILL* wold giw ws the brawest lyk money that ewer wes coyned; within fowr and twantie hours it vold be horfe-muke.<sup>12</sup> Alace! I deferw not to be fitting heir, for I haw done so manie evill

<sup>1</sup> Noted; recorded.

<sup>2</sup> Constantly; always; uniformly.

<sup>3</sup> Bean-stalk.

<sup>4</sup> Wanton.

<sup>5</sup> Uncon-

rageous; simple; unresisting.

<sup>6</sup> *Kp*; ward off.

<sup>7</sup> Scourges made of cords—not 'cairds,' or instruments

used in carding wool, flax, &c.

<sup>8</sup> The Editor never before met with this word; it evidently means strength,

spirit, 'fushion,' (Fr. *foison*); that is, the fertilizing power.

<sup>9</sup> Hame; home; destination.

<sup>10</sup> Nolt;

cattle.

<sup>11</sup> The last four lines are the same with the conclusion of the *WITCH-GRAVE*, in this Confession, p. 612.

<sup>12</sup> Horse-dung. In other Witch cases, money thus procured is usually said to have been turned into 'sclaith-stanis.'



deidis, especiallie killing of men, &c. I deferw to be reivin upon iron harrowes, and worfe, if it culd be deuyfit!

And quhan we tak away the fruit of cornis, at *Lambes*,<sup>1</sup> we tak an wooll-sheir, and cuttis or clips onlie thrie stakis<sup>2</sup> of it, and plaitis viher thrie rudis togither, and fayes,

' We cutt this corne in our Lord THE DIVELLIS nam,  
And we fall haw the fruit of it ham!'

And this thryfe ower; and so we haw the fruit of that field. Ewin so, quhan we tak keall or the lyk, &c. And we lay all vp till *Yewll, Pace*, or *Halie dayes*; and pairtis it among vs, and feastis on that togither.

Wpon the quhilkis all and fundrie of the premiffes, fwa spokin and willinglie Confest be the said *Jffobell Gowdie*, I, the said *Johne Innes*, Notar publict, haw wretten thir presentis, and with the Witnesfes abow and vnder namet, haw subfcryuit the famen with our handis, day, moneth, place, and yeir abow fett doun.

JOANNES INNES, Notarius Publicus.<sup>3</sup>

MR HARY FORBES, Minister of Auld Earn, Attestis.

HEN. ROSE, Minister at Nairne, Attestis the foirsaid Declaratioun, as to the principal substantialis.

HEW HAY of Newtown, Attestes.

Jo. WEIR, in Auldearne, Attestis.

GEORGE PHINNEY, in Kirkmichael, Attestis.

#### (4.) ISSOBELL GOWDIE'S FOURTH CONFESSION.

AT AULDERNE, the tuantie sevint day of May, 1662 yeiris. In prefence of MASTER HARRY FORBES, Minister at Alderne; PATRIK CAMPBELL of Boath; MR ALLEX<sup>4</sup> DUMBAR, School-master and Clerk of the Session of Alderne; GEORGE PHINNEY, in Kirkmichaell; HEW HAY of Newtowne; and JOHNE WEIR, in Alderne; WITNESSES TO THE CONFESSION OF ISSOBELL GOWDIE, spows to John Gilbert, in Lochloy.

THE said day, the said ISSOBELL, professing repentance for hir former sinnes of Witchcraft, and that she had bein ower long in THE DIVELLIS service; without ony compulsitouris, proceidit in hir CONFESSION, in maner efter following: That is to say. I acknowledg, to my great grieff and thaim, that fyftein yeiris since I denyed FATHER, SON, and HOLIE GOST, in the *Kirk of Alderne*; and gaw over my bodie and fowll to THE DIVELL; he standing in the Readeris Dask of *Aulderne*, and an blak book in his hand: *Margret Brodie*, in Alderne, held me wp to THE DIVELL, quhill<sup>5</sup> I did this, and quhill he marked me one the shoulder, and fowked out my blood thairat, and spitted it in his hand, and sprinkled it on my head, and baptisfed me 'JANET,' in his owin nam. Efter that, he had carnall cowpulation with me, in the *New Wardis of Inshoch*; and still thairefter, fra tym to tym, at owr pleasour.

The names of THE COEVEN ar thes.<sup>6</sup> *Bessie Wilfone*, in Alderne; *Janet Burnet*, ther; *Elypet Nylvie*, ther; *Margret Brodie*, ther; *Margret Vilfone*, ther; *Bessie Hay*, ther; *Johne Taylor*, in Belmakeith; *Janet Breadhead*, his spous; *Barbara Ronald*, *Jffobell Nicoll*, in Lochloy; my self, with *Jean Mairten*, our MAIDEN; and *Johne Young*, in Mehestoun, owt OFFICER. THE NAMES OF OUR DIVELLIS, that waited upon vs, ar thes. First, ROBERT, the *Jahis*; SANDERIS, the *Read Reaver*; THOMAS, the *Fearie*; SWEIN, the *roaring Lion*; THIEFFE OF HELL, *Wait upon hir self*; MAKHECTOUR; ROBERT, the *Rule*; HENDRIE LAING; and RORIE. We wold ken them all, on by

<sup>1</sup> *Lammas*, 1st August; *Festum S. Petri ad Vincula*.

<sup>2</sup> Stalks; stems.

<sup>3</sup> The long Latin *docquet* and motto, before referred to, are annexed.

<sup>4</sup> Until.

<sup>5</sup> The principal purpose of this renewed Examination seems to have been to get a more detailed account of the persons composing her COEVEN, &c., besides getting a solemn Confirmation of her former Declarations; so that the rest of that unhappy Society might in due time be brought to Trial and punishment.

on, from vtheris. Som of thaim apeirit in sadd-dun, som in grasse-grein, som in sea-greio, and som in yallow. THE NIK-NAMES that THE DIVELL gaw unto ws wer, PIKELL NEIREST THE VIND, thia was *Margret Wilfones* niknam; *Bessie Wilfones* niknam ves THROW THE CORN-YAIRD; *Elspet Nijhies* niknam ves BESSIE BALD; *Jean Mairtenis* niknam, quho ves MAIDEN, is OWER THE DYK WITH IT; *Bessie Hayes* nickname is ABLE AND STOUT.

I haw sein the Elf-arrows maid. The *Divell* dights<sup>1</sup> them, and the *Elf-boys* quhythes<sup>2</sup> them. We got ewerie on (of) ws so many of thaim from the *Divell*, to shoot at men.<sup>3</sup> I my self killed on *William Bower*, at Miltoun of Moynes. This griewis me mor than any thing that I ewer did. *Margret Brody* killed an woman, walhing, at the *Burn of Tarras*. *Bessie Wilfson* killed an man, at the *Busk of Strutheris*. *Bessie Hay* killed on . . . . *Dunbar*, at the East end of the town of *Forres*, coming owt at a gait. *Margret Brodie* shot at ou *David Blak*. *Margret Wilfone* killed on *Alex<sup>r</sup> Huchoon*, in Aulderm. *Janet Breadhead*, now in prison, killed *Johne Falconer*, in Park. Ther wer thrie killed East the countrie, at *Candlmas* last: I killed on, *Margret Brodie* on, and *Bessie Wilfson* on. I shot on *James Dik*, in Connicavell; *Margret Brodie* killed on *W<sup>m</sup> Cruikshank*; *Margret Wilfson* killed on *Johne Ley*; *Janet Breadhead* killed a fuyr,<sup>4</sup> also she killed an vther man at *Burgie*; and *Bessie Wilfson* killed on thair, namet *W<sup>m</sup> Man*. We killed an ox, and brought it to *Bessie Hayes* hows, in Aulderne; and we did eat him thair. I shot at the *Laird of Park*, as he ves crossing the Burn<sup>5</sup> of Boath; bot, thankis to God now, that he preferwit him. *Bessie Hay* gaw me a great cuffe,<sup>6</sup> becaus I missed him.

*Margaret Brodie* shot at *Mr Harie Forbes*, at the Standing-stantes, bot she missed; and speirit, 'If he sould shoot again?' And the *DIVELL* said 'Not!—For we wold nocht get his lyf at that tym.' We intentit<sup>7</sup> furerall tymes for him, quhan he ves seik. *Bessie Hay*, *Jean Mairten*, the Maiden, *Bessie Wilfson*, *Margret Brodie*, *Elspet Nijhie*, spows to *Johne Mathow*, and I myself met in *Bessie Wilfones* hows, and maid an bag agaisnt him. The bag was maid of the flesk, guttis, and gallis of toadis, the liewer of a bear,<sup>8</sup> pikles of corn, and pairingis of naillis of fingeris and toes; we steipit all night among water. The *Devell* learned ws to say thes wordis following, at the making of the bag:—

'HE is lying in his bed—and he is seik and fair,  
Let him ly in till that bedd monthes two and dayes thrie mair!  
He sal ly in till his bed, he sal be seik and fair—  
He sal lye in till his bedd monthes two and dayes thrie mair!'

And quhan we haid said thes wordis, we wer all on our kneis, our hair about owr shoulderis and eyes, holding wp our handis to THE *DIVELL*, that it<sup>9</sup> might destroy the said *Mr Harie*. It ves intentit that ve, coming in to his chalmer, in the night tym, we sould swing it on him. And becaus we prevailed not at that tym, *Bessie Hay* vndertook and cam in to his chalmer to wist him, being verie intimat with him; and she brought in of the bag in hir handis, full of the oyll thair of, to haw swowng and casten dropis of it on him; bot ther wer som vther worthie persons with him at that tym, by qulich God prevented *Bessie Hay*, that she got no harm don to him, bot swang a lid of it on the clothes of the bed quhair he lay.

*Johne Taylor* and his wyff, *Bessie* and *Margret Wilfones*, and I, maid a pictur for the *Laird of Parkis* maill children.<sup>10</sup> *Johne Taylor* brought hom the clay in his plaid newk; his wyff sifted it; we powred in vater in a cowl<sup>11</sup> amongst it, and wrought it for,<sup>12</sup> and maid a pictur of it, lyk a child, als big as a pow. It wanted no mark of the imag of a bairn, eyes, nose, mouth, litle lippies, and the hands of it folded down by its fydis. The vordis that we said, quhan we maid it, ves thes:—

<sup>1</sup> Dresses.

<sup>2</sup> Blocks them out.

<sup>3</sup> See the CONFESSION of Apr. 13, 1662, where Issobell tells us they were licensed to sport, in this manner, when riding on straws through the air; and that they had power to kill all who did not sanctify themselves, &c.

<sup>4</sup> A sow.

<sup>5</sup> On good authority, *Issobell* and her master ought to have known, that the *Laird* was out of their power while crossing a running stream.

<sup>6</sup> A smart slap, or blow.

<sup>7</sup> Tried; essayed.

<sup>8</sup> A hare's liver.

<sup>9</sup> Viz. Their charmed bag.

<sup>10</sup> See the former CONFESSIONS.

<sup>11</sup> A sort of wooden dish.

<sup>12</sup> Sore; extremely.

' We put this water among this meall,  
For long dwyning<sup>1</sup> and ill heall;  
We put it in intill the fyr,  
To burn them vp both flik and flour,  
That be brunt with our will,  
As any flikill<sup>2</sup> on an kill !'

THE DIVELL fitton on an blak kift. Ve wer al on our kneis, and owr hair about our eyes, looking on THE DIVELL stedfastlie, and owr handis lifted vp to him, saying the vordes ower. And by this the bairnis died, &c. All this, with a great many mor terrible thingis, the saidis Witnессes and Notar hard the said *Iffobell* CONFES, and most willinglie and penitently speak furth of hir ovin mouth. In wittnes quhairof, We haw subscryuit thir presenttis, with owr handis, day, yeir, and place, abow sett down.

*ITA EST Joannes Innes, Notarius Publicus, in fidem premifforum, rogatus et requisitus, subscribo.*

JOANNES INNES, No<sup>ti</sup>us Publicus.

MR HARY FORBES, Minister of the Gospel, at Old Earn, Attests.

W. SUTHERLAND of Kinsterrie, Attestis.

HEW HAY of Newtowne, Attestes.

ALL DUNBAR, Schoolmaster and Clerk to the Session of Olderne, Attests.

GEORGE PHINNIE, in Kirkmichel, Attests.

JO. WEIR, in Auldearne, Atteasts.

### VIII. CONFESSION of Janet Breadheid, spouse of John Taylor, in Belmakeith.

AT INSHOCH, the fowrteenth day of Aprill, 1662 yeiris. In prefrence of PATRIK DUNBAR of Benafferrie,<sup>3</sup> Shereff principall of the Shereffdome of Elgin and Forres; HEW HAY of Newtowne; ARCHBALD DUNBAR, in Meikle Penick; ARCHBALD DUNBAR, in Lochloy; WALTER CHALMER, in Balnaferrie; JAMES COWPER, in Inshoche; JOHNE WEIR, in Aulderne; and ane great multitud of all fortis of vther perfones; WITNESSES TO THE CONFESSIONS and DECLARATION after sett downe, spokin furth of the mowthe of JANET BREADHEID, spouse to Johne Taylor, in Belmakeith.

THE quihlk day, in prefrence of me, JOHNE INNES, Notar Publict, and Witnессes abownamet, vnderfubscryuand, <sup>4</sup>[the said] JANET BREADHEID, professing repentance for hir former sinnes of Witchcraft, and that she haid bein over long in the [famin] service; without any prefuris,<sup>5</sup> proceidit as followis, to witt. FIRST, I knew nothing of Witchcraft wntill I wes mari[et with] my husband, Johne Taylor; andsit wes he, and Elfpet Nishie, his mother, that entyfed me to that craft. And the first [thing] that we did wes, we maid some drowgries,<sup>6</sup> of dowgs flesh and shepis flesh, against Johne Hay, in the Mure; and therby took away his cornes, and killed his horfe, noat,<sup>7</sup> theip, and vther guidis;<sup>8</sup> and layed it abowt his hows, to tak away his awin lyffe; and thereafter, he shortlie died. Onlie my mother-in-law and my husband did this, to learne me; and this wes my first [lesson] from them, &c.<sup>9</sup> When they gott me to consent to this craft; first, they haid me to the Kirk of Nairne, in the nycht [tyme]; and THE DIVELL wes in the Readeris dask, and an book in his hand. And at that meitting, Bessie Wilsone, in Auld[erne]; Margret Wilsone, spouse to Donald Callam, thair; Margret Brodie, thair; Barbara Friece, ther; Helen Inglis, spouse to William [... ] thair; Janet Burnet, thair; Elfpet Makbeith, thair; Elfpet Nishie, spouse to Johne Mathew, in Aulderne; Mariore Taylor, [spouse] to Robert Barrie, ther; Bessie Hay, ther; Archibald Man, ther; Mariorie

<sup>1</sup> Pining; lingering sickness; gradual wasting away.

<sup>2</sup> Stubble.

<sup>3</sup> The Dunbars of Balnaferrie and

Westfield were heritable SHERIFFS of Murray.

<sup>4</sup> A considerable part of this paper having been destroyed by mice,

the Editor has supplied the blanks from conjecture, after a careful comparison with other similar Examinations. The words so supplied are put within brackets.

<sup>5</sup> Without the application of TORTURE, or other 'legal compulsi-

tours;' voluntarily.

<sup>6</sup> Drugs; enchanted charms.

<sup>7</sup> Nolt, cattle.

<sup>8</sup> Farm stock; 'beetial.'

<sup>9</sup> A

pretty experiment, indeed, for enticing a novice to be initiated !

Man, his daughter, ther; Elfpet Makhomie, relic [of] wmq<sup>1</sup> Alexander Hucheson, ther; Bessie Friece, spous to Johnie Gilbert, ther; Isobell Friece, spous to Androw Miller, ther; Agnes Torrie, spous to William Yowng, ther; Elfpet Chifolme, spous to wmq<sup>1</sup> . . . . Makhomie, ther; Alexander Elder, in Earleat; Janet Finlay, his spous; Elfpet Laird, in Miltoun of Moynes; Johnie Robertson, in Leathin; Grifall Sinklar, his spous; Alexander Sheipheard, in Miltoun of Moynes; Janet Man, his spous; Mariorie Danbar, in Brightmanney; . . . . Kyllie, in Vester Kinfray; Alexander Ledy, ther; Elfpet Gilbert, in Leathinbar; Agnes Brodie, in Leathin; Janet Smith, spous to Robert Frazer, in Arty; Bessy Peterkin, in Torrich; Alexander Bell, in Drumdewin, a charmer; Isobell Nicoll, in Lochloy; Bessie Young, ther; Elfpet Falconer, spous to James Inglis, in Penick; Bessie and Margret Huchsons, ther; Walter Ledy, ther; wer all ther that night. Johnie Taylor, my husband, wes then Officer; bot Johnie Yowng, in Mebestoune, is now Officer to my Coe[VEN.] Quhan I cam first ther, THE DIVELL called tham all be thair names, on the book; and my husband, than [OFFICER,]<sup>1</sup> called thame at the dore. And when that was done, Bessie Wilfon, in Alderne, fat down nixt THE DIVELL;<sup>2</sup> [Bessie] Hay, thair, fat nixt him, on the vther sid; Janet Burnet fat nixt hir; and Elfpet Nishie, spous to the said Johnie [Mathew,] fat nixt Bessie Wilfon, hir mother. She wes THE MAIDEN to hir motheris Coeven. All the rest fat downe [as] they to cam.<sup>3</sup>

The nixt thing, efter quhat wes done that night, THE DIVELL lay with them all abowt. And then . . . . . for me, my husband prefented me, and he and Margrat Wilfon, in Alderne, held me vp to THE [DIVELL to] be baptised: And efter I haid put my on hand to the foallis of my foot, and the vther hand to the [crown of] my head, and renunced my baptisme, and all betuixt my two handis to the Divell, the Divell [marked me] in the shoulder, and fuked out my blood with his mouth, at that place; he spowted it in his hand, and [sprinkled it] on my head. He baptised me thairvith, in his awin nam, 'CHRISTIAN.' And than immediatlie thairefter, [they all returned] each to ther awin howffis. Within fyw dayes thairefter, he cam to me to my bows, quhan my husb[and] was furth, in the morning, at the plewgh, to sie the mark quhich he gaw me; and he did lye with me in the naked [bed,] and haid carnall cowpulation with me; and gaw me ane piece of money, lyk a testain. He was a meikle, roch, blak man, cloven footed, werie cold; and I fand his nature within me als cold as spring-well-water. He promiseit to sie me again, within eight dayes, quhilk he did, and haid carnall cowpulation with me again, and gaw me an vther piece of money, lyk the first; bot they both turned read,<sup>4</sup> and I got nothing for thain. He cam again within twantie dayes, and still<sup>5</sup> once in the twantie dayes, and lay with me at each tym continually.

[We] met in the place of Darnvay<sup>6</sup> nixt that, and thair we did eat and drink, &c. Efter that, we vold still meit [euerie] ten, twelve, or twantie dayes continwally.

When we haid Great Meittingis, Walter Ledy, in Penick, my [husb]band, and Alexander Elder, nixt to THE DIVELL, wer Ruleris; and quhan ther wold be but fewar, I my self, the deceassit Jean Suthirland, Bessie Hay, Bessie Wilfone, and Janet Burnet wold rale thaim. The first thing that we did, except the taking of meat, wes taking of the cornis of Drumdewan, and [then] pairted that amongst ws. 2dly, We shoat noat<sup>7</sup> in plewghes. 3dly, Agnes Grant, who wes brunt on the . . . . hill of . . . ,<sup>8</sup> gott hyre from Elfpet Monro, to destroy the Lairdis of Park and Lochloy, and thair [posteritie.] And then I and my husband, Elfpet Nishie, and Bessie and Margret Wilfones, in Alderne, con[veened] our selves with THE DIVELL, in Elfpet Nishies hows; and then touk dowgis flesh, and theipis flesh, and [haked] it werie smail with an aix, and seithed it an hail furnoon in a pot, among water: And than I took it ow; and THE DIVELL, with his awin band, did put it in a theipis

<sup>1</sup> See *Isobell Gowdie's Confessions*; where it is stated that this worthy was OFFICER to a Coeven. <sup>2</sup> She being MAIDEN to the Coeven. <sup>3</sup> As they happened to come in; promiscuously. <sup>4</sup> Red.

<sup>5</sup> Uniformly; constantly. <sup>6</sup> The seat of the EARLS of MORAY. See *Isobell Gowdie's Confessions*. <sup>7</sup> Shot not, or cattle, in ploughs, with elf-arrows. <sup>8</sup> Left blank, in the original.

bagg, and he steiring it still<sup>1</sup> abowt with his handis. We wer wpon our kneyes, owr hair about owr eyes, and owr handis lifted up, and ve looking stedfastlie wpon THE DIVELL, praying to him, repeating the vordis quich he learned vs, that it sould kill and destroy the Lairdis of Park and Lochloy, and thair meall-children and posteritie. And then we cam to Inlloch, in the night tym, and skatered it wpon, and down, abow, and about the gait, and vther places quibair the Lairdis and thair fones wold most haunt; and then ve, in the lyknes of crowes and rewkis stood abow the gait, and in the treis oposit to the gait. It wes apointed so, that if any of them sould twitch<sup>2</sup> or tramp wpon any of it, als veill as it or any of it to fall on thaim, it sould strik thaim with byllis,<sup>3</sup> &c. and kill them: Quhilk it did; and they thortlie died. We did it to mak that hows airles.<sup>4</sup> It wold wrong non els bot they. And it wes Keathren Sowter, that wes brant,<sup>5</sup> that [shot] William Hay, the last Laird of Parkis brother, for<sup>6</sup> on Gilbert Kinley. It wes only that bagg that wes the death of both the last Lairdis of Park,

Also, four yeir since, I and my husband, Ifobell Gowdie, spows to Johne Gilbert, in Lochloy, and Bessie and Margret Wilfones, in Alderne, maid [a pictur] of clay, lyk the Laird of Parkis eldest sone. My husband brought hom the clay in his plaid [newk. It] wes maid in my hows; and THE DIVELL him self with ws. We brak the clay werie small, lyk meil, [and] sifted it with a siew, and powed in vater amonst it, with wordis that THE DIVELL learned vs, [in the Di]VELLIS nam. I brought hom the water, in a pig,<sup>7</sup> out of the Rud-wall.<sup>8</sup> We wer all wpon owr [kneyes,] and our hair about owr eyes, and owr handis lifted vp to THE DIVELL, and owr eyes stedfast looking [vpon him,] praying, and saying wordis which he learned ws, thryfe ower, for destroyeing of this<sup>9</sup> Lairdis [meall] children, and to mak his hows airles. It wes werie fore wrougt, lyk rye-bowt. It was about the bignes of a feadge or pow. It was just maid lyk the bairne; it wanted no mark of any mail child, such as heid, face, eyes, nose, mouth, lippes, &c., and the handis of it folded downe by its sydys. It wes putt to the fyre, first till it scrunked,<sup>10</sup> and than a cleir fyre about it, till it wes hard. And then we took it owt of the fyre, in THE DIVELLIS nam; and we laid a clowt abowt it, and did lay [it] vp on a knag, and sometimes vnder a chift. Each day we vold water it, and then rost and bek<sup>11</sup> it; and turn it at the fyre each other day, whill<sup>12</sup> that bairne died; and then layed it vp, and steired<sup>13</sup> it not wntill the nixt bairne wes borne: And then, within half an yeir efter that bairn wes borne, [we] took it owt again out of the cradle and clowt, and vold dip it now and than among water, and beck [it] and rost it at the fyre, each other day once, as ve did against the vther that wes dead, wntill that bairn [died] also. ALL quhilkis of the premisses, swa spokin and willinglie Confessit and declarit furth of the mouth of the said JANET BRED[HEID,] in all and be all thingis as is abow sett downe, I, the said JOHNE INNES, Notar Publict, haw writtine thir presentis, and with THE WITNESSES abownamet, in farder testimonie and witnessing of the premisses to be of veritie, We haw subscriuit the famen with our handis, [day, month,] yeir, and place abow specifeit.

JOANNES INNES, *Notarius Publicus*.<sup>14</sup>

Hew ROSE, Minister at Nairne, Attestis thir premisses, confessed in my presence, Aprile 15, 1662.

Ma HARY FORBES, Minister of the Gospel at Old Earn, Attestis.

ARCHIBALD DUNBAR, witness, Attestis. W. SUTHERLAND off Kinsterie, Attestis the premisses.

[JOHNE WE]IR, in Alderne, Attestis; Confessed in my presence, Apryll 15, 1662.

J. COUPER, Attestes. W. CHALMER, witness to the premisses, confest in my presentis, 15 of Apryll.

Hew HAY Attestes the premisses, Confest 15 Apryll, 1662.<sup>15</sup>

<sup>1</sup> Ever; constantly. <sup>2</sup> Touch. <sup>3</sup> Boils. <sup>4</sup> Hairless. <sup>5</sup> For Witchcraft. <sup>6</sup> At the instigation of. <sup>7</sup> Earthen jug, or jar. <sup>8</sup> The ROOD, or HOLY-CROSS, well. <sup>9</sup> The present Laird's male children. The last two Lairds are stated to have been destroyed by the charmed bag. <sup>10</sup> Got parched, or shrivelled; *shrunk*. <sup>11</sup> Bake. <sup>12</sup> Every alternate day, until that child died. <sup>13</sup> Stirred. <sup>14</sup> The long Latin docket is annexed. <sup>15</sup> Some farther marking had at one time been on the margin; but only a few of the letters at the end of each line now remain. It appears to have been the Judgment of the Justice-depute, from a fragment of a Memorandum on the back of the CONFESSION; so that it is probable she had been tried at one of the 'JUSTICE-AIRS'—and of course would, on her own Confession, be condemned to be burnt.



## No. VIII.

CONTINUATION OF No. XVIII. OF THE GENERAL APPENDIX OF  
DOCUMENTS ILLUSTRATIVE OF GOWRIE'S CONSPIRACY.

(See VOL. II. pp. 299 to 313.)

WHEN the Editor was in the progress of completing his collection of materials for illustrating the truth of the EARL OF GOWRIE'S CONSPIRACY against KING JAMES VI, one of the Volumes of *Sir James Balfour's* MSS. had been misplaced. Since that time, however, the Editor has had the advantage of again inspecting that truly valuable repository of historical information, and now submits a few more of those highly interesting Papers, which, he is happy to notice, place the conduct of the celebrated *Mr Robert Bruce* in a much more favourable point of view. In justice to the memory of that eminent individual, it has been thought proper to insert them in this Appendix. Throughout the protracted controversy between *Bruce* and THE KING, the latter, obviously, had the worst of the argument—and tyrannically put down his able but dauntless and pertinacious antagonist by a most unlawful stretch of arbitrary power, after he failed in all his attempts at foiling him with his own weapons.

The relentless persecution of *Bruce* must, assuredly, be accounted an additional blemish in the character of KING JAMES VI, by every unprejudiced person. The reader is once more referred to the text, and to the documents and authorities formerly quoted, in reference to this subject.

(18.) LETTER, *Mr Robert Bruce* to THE KING.<sup>1</sup>

PLEAS 3OUR MAIESTIE,

Wpon the directione fend to me by 3our hienes CONSELL, I thocht it meitt be my awin letter to testifie my resolucioun to 3our M. in that mater of GOWRIE. 3our M. can not be ignorant in quhatt termes I paffit my resolucioun at *Sanct Jonnestowne*.<sup>2</sup> That resolucioun is as 3itt extant, subferywitt be monie honest vitneffis. To that resolucioun, both in mater and maner, I adhear; and fra it I am nott myndit to pas, be GOD his grace. This resolucioun gaue 3our M. perfytt contentment than, and I doubt nott bott itt vill do the lyke 3itt. So luyking that 3our MAIESTIS scruple falbe fullie satisfied, in that mater, I rest,

3our M. his most humble and obedient subiect,

ROBERT BRUCE.

TO HIS MAIESTIE.

(19.) LETTER, *Mr Robert Bruce* to THE PRIVY COUNCIL.<sup>3</sup>

PLEAS 3OUR HONORIS,

I RECEAWED 3our Letteris on Setterday the 13 off this instant; and for satisfacioun thairoff I haue directed my Letter, containing my avin<sup>4</sup> resolucioun in that mater, unto his M. My resolucioun nov is relative to my resolucioun att *Sanct Jonstoun*, quhillk vas dyttit<sup>5</sup> by HIS MAIESTIS selff, and subferywett by monie honest vitneffis (befyd me) quha ar 3itt liewing. This resolucioun gawe his M.

<sup>1</sup> From Orig. preserved among the *Denmylne MSS.* Adv. Lib. A. 2. 52. No. 25. It is undated. <sup>2</sup> Perth, having been dedicated to St John as Patron Saint, was long known by this name. <sup>3</sup> From the same Coll. No. 26; also undated. <sup>4</sup> Own. <sup>5</sup> Edited, composed.

perfyt contentment then, and I doubt nott bot itt will do the lyk sitt; for vnto thatt resolutioun I adhear both in matter and maner; and I am readdie to testifie the same, so oft as his M. pleases, by my awia hand wreitt. Sa, luing that your honoris fall not be forder trublit in that mater, I rest,

Your honoris to be commandit to his povar, in God,

To HIS M. most honorable PRIVEE CONSEILL.

ROBERT BRUCE.

(20.) LETTER, *Mr Robert Bruce* to THE KING.

MAY IT PLEIS YOUR M.

HEIRING that my cuming to *Aberdene* was interpret to spring of contempt, I thoct it my bundin dewtie to purg my selfe to be vtermost thairof, for I compt contempt of GOD and his Lewtenuent be heighest cryme that is; And thairfoir, for purgation, I say, that quhatsoever is done with ane warrand of GOD and man can nocht incur be suspition of a contempt, lat be ane actuall; and in deid, gif thair had bene ane prescriptioun or limitation of tyme in any Licience, I had failzeit in passing be boundis thairof; sea nocht onlie that, but I avaittit upon be proper tyme quhairfoir my Licience was gevin me, and tuik be benefeit quhen be necessitie of my infirmite constrainit me; and being moir respectue than that, I tuik it nocht quhill THE BISCHOP OF MURRAY brocht me be adwyse of be BISCHOPPIS OF SANCT ANDROS and GLASGOW to do so: And gif I had resault be meiniest signification that culd be, that be imbracing of be benifit at that tyme wald nocht stand with your HIENESS contentment, I wald most glaidlie haiff abstantit thairfra; for I haiff layed my compt, be GODIS grace, never to involve me in that giltines. So, to end, thair is no thing done be me quhairfoir my former benefeit suld be retrenchit; and most humilie I creave that your M. censure go nocht befor my procuring, but that my reparing to *Aberdene* for my better helth and confort of my wyff and childrin may stand with your M. favor. So resting ever,

Your M. most humbill subiect and orator,

INDERNES,<sup>1</sup> ye 20 viij of Merche (1606?)

ROBERT BRUCE.

To THE KINGIS most excellent MAIESTIE.

(21.) SUPPLICATION, *Mr Robert Bruce* to THE PRIVY COUNCIL.\*

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humblie menis and schawis I, your seruitour, MR ROBERT BRUCE, Minister, That quhair, the last day when I was brocht befor your ll., I was commandit and ordaneit be your ll. to addresse my selff to the burgh of *Inverness*, and thair to remane and within four myllis abute the same, dureing his MAIESTEIS will and pleasour; lykeas, the tyme for my addresse thair daylie approtchis; quhairvnto, althocht I acknowledge my selff bundin in confidence befor GOD and in my alledgeance to THE KINGIS MAIESTIE, my Souerane, to gif all dew obedience, as by GODIS grace I mynd neur to be disobedyent to HIS MAIESTIE or your ll., in ory of your ll. directionis, in this kynd; yitt, the indispositioun and inhabilitie of my persone, conioyned with my grite aige, forceis me humblie to schew vnto your ll. how vnable I am to vndertak and to vaderly fuche a jorney and charge; for I am become so feible and waik,<sup>3</sup> and my aigeit and weyryed<sup>4</sup> persone is so far worne and waisted with greif, cair, and vtheris visitationis quhairwith it hes pleast THE LORD in his mercye to chastice me, that hardlie dow<sup>5</sup> I travell any quhair, without haifard of my lyff: And yf it fall pleas GOD to visite me with feiknes, outhat at *Inverness* or be the way, it is not liklie that I fall overcome<sup>6</sup> the same. And tuotching the imputation layed vpon me, whilk was the caus of HIS MAIESTIS offence,<sup>7</sup> and of this hard cours tane with me, I thank GOD I was frie and innocent thairof, and I cleirit my selff of the same in your ll. prefrence, it being a poynt verrie far fra my professioun to be a movair or steirair<sup>8</sup> vp of Seditioun, as HIS MAIESTIE was informed of me; and fra my hairt I deteast fuche Seditious practizes, as being most impious and wicked, and repugnant to the

<sup>1</sup> Inverness.

<sup>2</sup> It is unsigned, and no deliverance indorsed, but it is evidently the original, having the marks of the ribbon usually passed through Letters and bills, &c., when sealed and sent to a distance.

<sup>3</sup> Weak.

<sup>4</sup> Weary; spent.

<sup>5</sup> Am I able to travel.

<sup>6</sup> Survive, recover.

<sup>7</sup> Displeasure.

<sup>8</sup> Stirrer.

Holy Ordinanceis of God, quhairby we are commandit to gif all dew obedyence to our superioris. And as I schew vnto your ll., my coming to this hurg the tyme of the Parliament wes vpon a meere necessity, and to efchew the danger of horneing, quhairwith I wes threatned, for xxij merkis. And dureing the schorte tyme of my aboade heir, whilk wes not xxxvj hours, I spak not with a Parliament man, except the *Lord Kilgath*,<sup>1</sup> whome I employed to be cautioner for me; and had no kynd of meddling with the affairis of the Parliament, becaus thay concerneit me not; bot keipit my selff very quyet till my away-going. And dureing the tyme of my Warding in the *Castell of Edr*, my cariage wes so modest, calme, and peceabill, withoute meddling with thir matteris of THE KIRK now in questioun, as I hoip nothing can be obietit vnto me. And yf HIS MA<sup>TIE</sup> wald be gratiounlie pleisit to suffer me spend the few remanent of my aigeit and weyrysome dayes at my awne houe, I wilbe verrie glaid and willing to be perpetuallie confynned thair, and tua myllis thairaboute; and I fall neuir transcend that boundis, nor medle with ony matter concerneing the pollicie and gouernement of THE KIRK. Most humble befeiking your ll. to haif considration of this my estate; and outhir be your selfis, or be your intercessioun at HIS MAIESTIES handis, to grant me some ease and releiff in this heaue charge layed vponne me, whilk wilbe my vtter oerthrow and wrak. And your ll. anfuir.

(22.) LETTER, *The Archbishop of St Andrews*<sup>2</sup> to THE KING.

MOST SACRED SOVERAINE,

It may please your most excellent MA<sup>TIE</sup>, I haive seene your MA<sup>TIES</sup> directioun sent to THE EARLE OF DUNBAR about MR DAVID LYNDSEYE his intemperance in preaching. I haive tane baldnes to give anfuir and avyse, in maist humble and submisle maner. The man was input<sup>3</sup> be your MA<sup>TIE</sup> vpon my rasche and oft repeated sute. He hes oft done veill aganes the seditious, albeit inconflantlie. The vordes he spak, to my gryt greiff, wer to reprehend your MA<sup>TIE</sup> for toleratioun and advancing off PAPISTES, quha ever focht your MA<sup>TIES</sup> wrak; and this was efter jat I had congratulat to the peillip your MA<sup>TIES</sup> lait wonderfull delyverie.<sup>4</sup> Efter Sermon, I couened the *Bailles*, and *Counfall*, and sent pame to him to querrell him for his vnreverent usage; quhilk wrocht this effect that the daye followinge he preached ane palinod,<sup>5</sup> sa impudentlie flattering to your MA<sup>TIES</sup> praife, and vilipendinge all the Princes of Europe be name, in your MA<sup>TIES</sup> respect,<sup>6</sup> that all men esteimed he was makand penance for the former dayes infolence, with supererogatioun.

This his foolie<sup>7</sup> is nocht worthie of your MA<sup>TIES</sup> wrathe; and as for me, I will nocht give advyse to honour sick ane<sup>8</sup> with publick censure, at sic ane tyme. I haive advysed with your MA<sup>TIES</sup> most trustie servantis of our societie, quha thinkes meit to transport him, but noyce,<sup>9</sup> to a landwart<sup>10</sup> Kirk; and to affume to me ane<sup>11</sup> mor ryfe<sup>12</sup> and fast,<sup>13</sup> quhilk your M. fall fee accomplished, but your MA<sup>TIES</sup> empeschement.<sup>14</sup>

*My Lord of Dunbar* hes employed him selff sa faythfullie, eafaldlie,<sup>15</sup> and fortunatlie, in this lait service, that I presume to advyse your MA<sup>TIE</sup> to give him credit in your MA<sup>TIES</sup> service, in our gryteft turne, in this Parliament; for quhatfumever is glanked to your MA<sup>TIE</sup> in the contraire, is aither *panici terrores*, or prevaricatioun.

SIR, I lacke moien to do quhat I wald in your MA<sup>TIES</sup> service. I heir, daylie, foule vanities quhilkis I think I am called to repress. I want formall rycht and rent. Supplie this, SIR, in this your approching Court, and than se fall nocht neid to wreit hither; but the punished fall seik thither toward your MA<sup>TIE</sup> for obteneinge pardone. Finalle, your MA<sup>TIES</sup> erandis in the credit off the *Earle of Dunbar*, or of ane off lyk dispositioun, is heir possibill and easie. *Non debet sub tali tantoque*

<sup>1</sup> Sir William Livingston, one of the Ordinary Lords of Session, who succeeded Sir John Preston, Lord Fentonbarns, Jun. 6, 1609. His son was created Viscount of Kilsyth and Lord Campsie, by patent, Aug. 17, 1661.

<sup>2</sup> George Gladstones, translated from the See of Caithness anno 1606, but not consecrated till anno 1610. Died May 2, 1615. <sup>3</sup> Inducted, put in.

<sup>4</sup> From the Earl of Gowrie's Conspiracy. <sup>5</sup> Lat. *palinodium*, recantation after professions of repentance. The term is still used both in the Civil and Ecclesiastical Courts.

<sup>6</sup> In comparison to the King. <sup>7</sup> Folly. <sup>8</sup> Such a one. <sup>9</sup> Translate him without bustle or noise. <sup>10</sup> To a country or landward Parish Church. <sup>11</sup> One, viz. another Minister. <sup>12</sup> Wise. <sup>13</sup> Steady, sure.

<sup>14</sup> Without hindrance or trouble to your Majesty. <sup>15</sup> Sincerely, without duplicity, (q. d. *one-foldly*;) in contradistinction to *two-fold*, double, deceitful. The word is now nearly obsolete.

*principe precarium esse imperium.* This,<sup>1</sup> I humbly recommend your MATIES perfoun and esloit to God his mercifull Providence, I remaine,

Your MATIES maist humble oratour and obedient servant,  
EDINBURGHE, nynt of Februar, 1606(-7.)

To THE KINGIS most excellent MATY.

SANCTANDROIS.

### No. IX.

BOND by JOHN fifth EARL OF CASSILLIS, to his Brother HEW KENNEDY, commonly called THE MASTER OF CASSILLIS, to pay him and his accomplices 1200 merks yearly, &c. to commence from the date of their taking the Life of THE LAIRD OF AUCHINDRAYNE.

(See VOL. III. pp. 124, 581, &c.)

[In the preceding Collection, and also in the 'Historical and Genealogical Account of the principal FAMILIES of the Name of KENNEDY,' recently published,<sup>2</sup> all the incidents then discovered relative to the accumulated acts of villainy perpetrated by THE LAIRD OF AUCHINDRAYNE and his son have already been disclosed. The public being likewise in possession of the leading features of this extraordinary case, from the graphic pen of Sir WALTER SCOTT, who has prefixed an introductory notice to his dramatic poem, 'AUCHINDRAIN, or the Ayrshire Tragedy,' it is altogether unnecessary to attempt even a brief sketch of their lives and crimes in this place.

The Historical Account above referred to, and the present Collection, contain a great variety of Documents which have been brought forward, alike to illustrate the Trials of the Lairds of Auchindrane, and the extraordinary state of society and manners in the important district of Carrick and the adjoining shires. But no Papers which have hitherto been discovered appear to the Editor to afford so striking a picture of the savage state of barbarism into which that country must have been sunk, as the following BOND by the EARL OF CASSILLIS to his brother and their apparent, Hew Master of Cassillis. The uncle of these young men, Sir Thomas Kennedy of Culzean, Tutor of Cassillis, as the reader will recollect, was murdered, May 11th, 1602, by Auchindrayne's accomplices.

THE MASTER OF CASSILLIS, for many years previous to that event, was in terms of open personal hostility to his brother. During all that period, however, the Master maintained habits of the closest intimacy with Auchindrayne and his dissolute associates, and actually joined him in various hostile enterprises against his brother the Earl.<sup>3</sup> The occurrence of the *Laird of Culzean's Murder* was embraced by their mutual friends as a fitting opportunity to effect a permanent reconciliation between the brothers; "but (as 'the Historie' quaintly informs us) the cuntry thocht that he wald not be eirnist in that cause, for the auld luiff betuix him and Auchindrayne."<sup>4</sup> The unprincipled Earl, (whose *sobriquet*, and that of some of his ancestors, was *King of Carrick*, to denote the boundless sway which he exercised over his own vassals and the inhabitants of that district,) relying on his brother's necessities, held out the infamous bribe contained in the following Bond, to induce his brother, the Master of Cassillis, to murder his former friend, the old Laird of Auchindrayne. Though there be honour among thieves, it would seem that there is none among assassins; for the younger brother insisted upon having the price of blood assured to him by a written document, drawn up in the form of a regular Bond!

Judging by the Earl's former and subsequent history, he probably thought that, in either event, his purposes would be attained, by "killing two birds with one stone." On the other hand, however, it is but doing justice to the Master's acuteness, and the experience acquired under his quendam preceptor Auchindrayne, that we should likewise conjecture that, on his part, he would hold firm possession of his bond, to be used as a checkmate against his brother, should he think fit afterwards to turn his heel upon him, or attempt to betray him into the hands of justice.

The following is a correct copy of the Bond granted by the Earl, as transcribed from the original.]

WE, JOHNE EARLE OF CASSILLIS, Lord Kennedy, &c., Bindis and Obliss ws, that howfovrne our broder HEW KENNEDY of Brounfoun, with his complices, takis the LAIRD OF AUCHINDRAYNEIS lyf, that we sall mak guid and thankfull payment to him and pame of þe sowme of twelf hundreth merkis, zeirlie, togidder with corne to sex horlis, ay and quhill <sup>5</sup> we reflow <sup>6</sup> pame in houfhold with our self: Beginning þe first payment immediatlie after þair committing of þe said deid. ATTOUR,<sup>7</sup> howfovrne we reflow pame in houfhold, we sall pay to þe twa serwing gentillmen þe feis, zeirlie, as our awin houfhold ferwandis. And heirto we Obliss ws, vpon our honour. SUBSCRIVIT with our hand, AT MAYBOLE, þe ferd day of September, 1602.

JOHNE ERLE OFF CASSILLIS.

<sup>1</sup> Thus. <sup>2</sup> The Quarto Edition, Edin. 1830. <sup>3</sup> For the confessed purpose of taking his life, in following out their deadly Feud. <sup>4</sup> Historie of the Kennedies, p. 59. <sup>5</sup> Aye and until. <sup>6</sup> Receive. <sup>7</sup> Moreover.

## **GENERAL INDEX.**





# GENERAL INDEX

## TO CRIMINAL TRIALS, &c.

DURING THE REIGNS OF

KINGS JAMES IV AND V, MARY QUEEN OF SCOTS, AND KING JAMES VI.

\* \* THE reader, in consulting the following INDEX, is requested to remark, that owing to the Editor's having been under the necessity of sending the TRIALS which occurred during the reign of KING JAMES VI. to press, before the introductory portions of this work were compiled, it became requisite for him to page the earlier reigns in Vol. I. thus, \* 1, \* 2, &c. In order to avoid the annoyance and trouble of consulting *separate* INDICES of persons and matters, the Editor has bestowed a great deal of time and labour in constructing an extremely copious GENERAL INDEX, which he may venture to say embraces every circumstance contained in the work, which is at all likely to be esteemed interesting and useful to the historian, lawyer, antiquary, or genealogist. The most prominent of the ancient words and phrases, and the leading historical facts, superstitions, &c., have also been incorporated, so as to render the work more acceptable, and also as useful as possible to the public, as a book of reference.

- ABBOT OF UNREASON, I. \* 116, \* 121, \* 123 ;  
 Insurrection in Edinburgh, \* 409 ; in the  
 Mearns, &c., I. 5, 81. See Robin Hood, &c.  
 Abbreviator of the King's Household Books, I.  
 \* 313.
- Abduction, Forcible, I. \* 104, \* 180, \* 182 ;  
 Kincaid, &c. \* 421 ; Oliphant, 24 ; Carnecroce,  
 244 ; Gray, 297 ; Aikenhead, 362 ; Fleming,  
 377 ; Laird of Corhouse, 378 ; Laird of Thor-  
 nydykes carried off, when 14 years old, and  
 married against his consent, III. 402. See  
 Rape, Forcing, &c.
- Aberbrothock, Abbot of, I. \* 127 ; David, \* 136,  
 \* 185 ; Ambassador to France, 281 ; Geo., 16 ;  
 John, 89 ; Ja., II. 575.
- ABERCORN, LORD (EARL OF), Ja., II. 496, 544 ;  
 III. 138 ; his activity as to the Laird of Auch-  
 indrane's being brought to justice, *ib.* 168, &c.  
 Abercromby of Gourdy, Dav., I. \* 405 ;—of that  
 ilk, Alex., I. \* 441 ; Tho., II. 60 ; III. 318 ;—  
 of Ley, Alex., slain by Witchcraft, I. 206 ;—of  
 Murthlie, Tho., II. 49 ;—of Pitmedden, Alex.  
 Bigamy, Adultery, I. 110 ; his place burnt,  
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